

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

**SUPERIOR COURT
BUSINESS LITIGATION SESSION 2**

IN RE HARVARD MORGUE CASES

Lead Case:

**Nicole MacTaggart, et al. v. President & Fellows of Harvard College, et al., Civil Action No.
2384CV01389-BLS2**

Consolidated Civil Action Nos.:

2384CV01461-BLS2

2384CV01481-BLS2

2384CV01602-BLS2

2384CV01640-BLS2

2384CV01843-BLS2

2384CV02002-BLS2

2384CV02223-BLS2

2384CV02373-BLS2

2384CV02624-BLS2

2384CV02699-BLS2

2384CV02836-BLS2

2584CV02954-BLS2

2684CV01719-BLS2

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' ASSENTED-TO MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

The Plaintiffs in the above-referenced consolidated actions respectfully submit this memorandum of law in support of their Motion for Preliminary Approval (the “Motion”) of the class action settlement reached with the Defendants President & Fellows of Harvard College (“Harvard”) and Mark F. Cicchetti (“Cicchetti”), the managing director of the Harvard Medical School Anatomical Gift Program (“AGP”). Under the proposed settlement, Settling Defendants have agreed to pay a total sum of fifty-three million dollars (\$53,000,000) to settle all of the claims of Plaintiffs and the two Settlement Classes (defined below) against Harvard and Cicchetti (the “Settling Defendants”) for breach of fiduciary duty,

tortious interference with remains, negligence and negligent infliction of emotional distress, breach of contract and unjust enrichment arising out of Defendants' failure to safeguard the remains of the Class Members' relatives that had been donated to and entrusted to Harvard. All terms of the proposed settlement are set forth in the executed Class Action Settlement Agreement dated August 14, 2026 (the "Settlement Agreement") which is submitted as **Exhibit A** to the Motion filed herewith.¹

The proposed settlement represents an outstanding result after three years of hard-fought litigation, including a successful appeal by Plaintiffs to the Supreme Judicial Court. *Weiss v. President and Fellows of Harvard College*, 496 Mass. 675 (2025). The proposed settlement is the product of Class Counsel's careful consideration of the risks and costs of future litigation, including trial and appeals. Plaintiffs and Class Counsel believe, and demonstrate herein, that the Settlement is fair, reasonable, adequate and in the best interest of the Settlement Classes. The Settling Defendants deny Plaintiffs' allegations, and if the litigation were to continue, would dispute that class certification for purposes of summary judgment or trial would be appropriate. However, without admitting any liability, the Settling Defendants have concluded that it is desirable that the claims against them be settled and dismissed on the terms reflected in this Settlement Agreement, and they assent to the allowance by the Court of the relief requested by Plaintiffs' Motion for Preliminary Approval.²

Plaintiffs respectfully request that this Court enter the Proposed Preliminary Approval Order (the "Preliminary Approval Order") attached to the Motion as **Exhibit B**, which would:

¹ Unless otherwise defined, all capitalized terms herein have the same meanings set forth in the Settlement Agreement.

² Settling Defendants assent to the relief requested herein – the grant of preliminary approval of the parties' Settlement Agreement – but do not assent to Plaintiffs' recitation of the facts or allegations in the case as set forth in this Motion and reserve all rights and defenses in the event that the Settlement is not approved. Likewise, Settling Defendants in many respects assess the claims, defenses, risks and potential damages available to the parties in this litigation differently than Plaintiffs but assent to Plaintiffs' request that the Court approve the settlement as fair and reasonable.

- (a) preliminarily approve the Settlement Agreement
- (b) conditionally certify the Settlement Classes for settlement purposes only;
- (c) appoint the Settlement Class Representatives;
- (d) confirm the appointment of Class Counsel for settlement purposes;
- (e) appoint Simpluris, Inc. as the Settlement Administrator;
- (f) approve the Parties' proposed form and method for disseminating notice of the proposed Settlement to the Settlement Classes;
- (g) approve the proposed Claim Form;
- (h) preliminarily approve the proposed Plan of Allocation
- (i) establish deadlines for notice, claims, objections and related filings;
- (j) enjoin Settlement Class Members, pending Final Approval, from prosecuting Released Claims against the Released Parties.
- (k) schedule a Final Approval Hearing at which, following notice and an opportunity for Settlement Class members to be heard, the Court would:
 - (1) decide whether to grant final approval to the proposed Settlement; and
 - (2) rule on Class Counsel's application for an award of attorney's fees and expenses.

The Settling Defendants have assented to the allowance of the Motion for Preliminary Approval and the Court's entry of the Preliminary Approval Order.

I. SUMMARY OF PROCEEDINGS

On June 13, 2023, Cedric Lodge, the Manager of the Harvard Medical School Anatomical Gift Program ("AGP")³ who had been employed by Harvard at the AGP for decades, was indicted in the United States District Court for the Middle District of Pennsylvania for the unlawful interstate transportation of human remains that he had stolen

³ Harvard's AGP has run for more than 60 years. Donations of human bodies support HMS' mission of educating new doctors and training those in allied health professions. Donated bodies are HMS's only source of human bodies for teaching and research.

from Harvard. The indictment alleged that from 2018 through March 31, 2023, Lodge had removed body parts from the remains of donors to the Harvard Anatomical Gift Program and sold them.

On June 14, 2023, in response to the indictment, Harvard sent letters from the Dean of the Harvard Medical School to family members of Harvard AGP donors informing them of the indictment against Lodge and the conduct alleged in the indictment. In one iteration of the letter Harvard said: “At this time, we cannot rule out the potential that [your relative’s] remains may have been impacted.” In the other iteration of the letter Harvard said: “At this time, we do not believe that [your relative’s] remains were impacted.”

Subsequently, multiple actions were filed in Suffolk Superior Court against Harvard. Certain actions also named Cicchetti and another Harvard employee, Tracey Fay, who was the Managing Director of the AGP, as defendants. Some of the complaints also named Cedric Lodge as a defendant.⁴ Five of the actions were filed as putative class actions. The complaints asserted claims including breach of fiduciary duty, tortious interference with remains, negligence, negligent infliction of emotional distress, breach of contract, unjust enrichment, and claims for equitable, injunctive, and declaratory relief.

On November 27, 2023, the Court consolidated the cases for pre-trial purposes and appointed a designated leadership structure of Plaintiffs’ counsel. Dkt. #13.⁵ Thereafter, Defendants Harvard, Cicchetti and Fay moved to dismiss all the complaints against them. On February 12, 2024, the Court allowed the motion to dismiss, dismissing all claims against

⁴ The claims against Lodge remain pending and will not be resolved by the Settlement; however, Plaintiffs have agreed to dismiss such claims without prejudice at this time. Some of the Complaints also named the Carl J. Shapiro Institute for Education and Research at Harvard Medical School a/k/a Harvard Medical School as a defendant. All claims against that defendant have been voluntarily dismissed.

⁵ Since the initial consolidation, two additional lawsuits were filed against Harvard and those are also now part of the consolidated actions and subject to the Settlement Agreement.

Defendants Harvard, Cicchetti and Fay,⁶ holding that the good faith provision in the Uniform Anatomical Gift Act (“UAGA”), G.L. c. 113A, Sec. 18(a), applied and that Plaintiffs had not adequately pleaded Defendants’ bad faith. Dkt. #20.

Plaintiffs appealed. On October 22, 2024, the Supreme Judicial Court transferred the appeal, *sua sponte*, from the Appeals Court. Dkt. #24. Oral argument before the SJC was held on February 10, 2025. In its November 7, 2025, decision, the SJC reversed the dismissal of the complaints against Defendants Harvard and Cicchetti, observing and holding that at this stage of the case, plaintiffs had sufficiently alleged a violation of the UAGA. *Weiss*, 496 Mass. at 685-87.⁷ Accordingly, the case was remanded to the Business Litigation Session of the Superior Court to proceed with discovery into whether Defendants acted in good faith in complying with the Act.

After remand, the Parties agreed to mediate, with attorney Thomas Maffei as the mediator, in an effort to reach a class wide settlement of the above-referenced actions. The Settling Defendants provided Plaintiffs with information and documentation in advance of the mediation subject to Protective Orders entered by the Court on December 17, 2025, and February 2, 2026. Dkts. #31 and #33. On May 19 and 20, 2026, the Parties conducted two in-person full-day mediation sessions with Attorney Maffei. The Parties’ mediation efforts ultimately resulted in a settlement in principle, which provided for the general terms for the present Settlement Agreement. Since then, the parties have diligently taken this settlement in principle and negotiated the final terms which have culminated in the present Settlement Agreement.

⁶ Lodge had not moved to dismiss, and the claims against him were not dismissed.

⁷ The SJC affirmed the dismissal of the Complaints against the defendant Fay, finding that the allegations did not support an inference that Fay had failed to act in good faith. *Id.* at 676.

II. THE PROPOSED SETTLEMENT

A. *The Settlement Classes.*

The Settlement is on behalf of two different settlement classes.

1. The **Primary Settlement Class**

The Primary Settlement Class, subject to Court approval, is defined as:

[A]ny now living spouses, registered domestic partners, children, grandchildren, parents, siblings, and/or AGP Designees of any Donor with a Removal Receipt Date that was on or between January 1, 2018 and March 31, 2023. The Primary Settlement Class shall also include any Plaintiffs who have filed an Action asserting claims relating to any Donor with a Removal Receipt Date that was on or between January 1, 2018 and March 31, 2023.

An “AGP Designee” is defined as: (a) a person identified by the Donor in an Instrument of Anatomical Gift, AGP paperwork, Harvard records, or another written or electronic record as authorized to communicate with Harvard, make decisions, receive cremated remains, direct final disposition, or otherwise act regarding the Donor’s anatomical gift; and/or (b) a person to whom Harvard directed correspondence about the subject matter of these Actions on or about June 14, 2023, and/or December 7, 2023. The “Removal Receipt Date” is the date on which a Donor’s body departed from the morgue at Harvard Medical School for final disposition, as recorded in the records maintained by the Anatomical Gift Program.

According to Harvard’s records, there were approximately 438 Donors whose Removal Receipt Date was on or between January 1, 2018, through March 31, 2023, and thus, who fit the description for the Primary Settlement Class. Some members of the Primary Settlement Class were sent the June 14, 2023, letter in which Harvard said: “At this time, we cannot rule out the potential that [your relative’s] remains may have been impacted.”

2. The **Pre-2018 Settlement Class**

The Pre-2018 Settlement Class, subject to Court approval, is defined as:

[A]ny now living spouses, registered domestic partners, children, parents, siblings, and/or AGP Designees of any Donor with a Removal Receipt Date that was on or between January 1, 2003 and December 31, 2017. The Pre-2018 Settlement Class shall also include any Plaintiffs who have filed an Action asserting claims relating to any Donor with a Removal Receipt Date that was on or between January 1, 2003 and December 31, 2017.

Harvard's records reflect that there were approximately 1,462 Donors who fit the criteria described in the above definition of the Pre-2018 Settlement Class. Some members of the Pre-2018 Settlement Class were sent the June 14, 2023 letter in which Harvard said: "At this time, we do not believe that [your relative's] remains were impacted."

B. *The Settlement Consideration*

The settlement contemplates consideration to class members in the form of monetary cash payments to Class Members and non-monetary consideration.

1. Monetary Consideration

Under the Settlement, Defendants have agreed to pay fifty-two million, five hundred thousand dollars (\$52,500,000) to settle the claims of all members of the Primary Settlement Class and five hundred thousand dollars (\$500,000) to settle the claims of all members of the Pre-2018 Settlement Class.

The significant difference between the amounts to be paid to the two settlement classes is based on the significantly different value of the claims of the two settlement classes. The indictment of Cedric Lodge alleges conduct that occurred from 2018 through March 31, 2023, and ensuing criminal proceedings reveal that the government's investigation determined that Lodge's criminal conduct first began in 2018 (including identifying his first sale of body parts in May 2018). The criminal proceedings revealed that Lodge's wife had stopped working around that time due to health issues, putting financial pressure on the family and motivating Lodge to engage in his criminal conduct. All available evidence indicates that Lodge's criminal activity occurred during this time frame and there is no evidence that the conduct occurred prior to 2018. Given the indictment's focus on 2018 to March 31, 2023 as the period during

which donor bodies were desecrated, and the lack of evidence that any such conduct occurred prior to 2018, Plaintiffs' counsel determined that the claims of the Primary Settlement Class were strong and valuable, while the claims of the Pre-2018 Settlement Class had little or no chance of succeeding and had little value.

The \$53 million that Settling Defendants will pay will encompass the fees and out-of-pocket expenses of Class Counsel, as awarded by the Court.⁸ It will also cover the costs of providing notice to the members of the Settlement Classes, the costs of the Settlement Administrator and other settlement administration costs. The remaining Settlement Amounts (the Net Settlement Amounts for each of the two Settlement Classes) will be paid to class members who have timely filed approved claims pursuant to the Plan of Allocation discussed below. Under no circumstances would any of the \$53 million Settlement Amount be returned to Settling Defendants. If, for any reason, some of the Net Settlement Amounts remain undistributed to class members, and those remaining funds cannot be economically distributed to class members, they would be distributed to appropriate *cy pres* recipients pursuant to Mass R. Civ. P. 23(e).

3. Additional Consideration

In addition to the monetary consideration provided in the settlement, Harvard Medical School will provide the following additional consideration applicable to both Settlement Classes, subject to Court approval:

1. A live webinar statement to claimant families by the Dean for Medical Education of Harvard Medical School, in a form agreed by the Parties, confirming that Lodge's criminal acts were morally reprehensible and inconsistent with the standards Harvard

⁸ Class Counsel will request a fee and expense award of no more than 33 1/3% of the \$53 million recovery, plus the out-of-pocket expenses they incurred in prosecuting the cases.

University and Harvard Medical School expect for treatment of AGP Donors and their loved ones;

2. A statement from Harvard Medical School summarizing changes made to the AGP to continue improving AGP operations, including changes to oversight, security, policies, and training; and
3. Beginning in the 2027–2028 academic year, an annual Harvard Medical School AGP Donors Scholarship of at least \$20,000 per academic year in honor of persons who donate their bodies to the AGP in furtherance of medical education and research, which will assist an enrolled Harvard Medical School student with medical-education costs.

C. *Releases and Claims Against Certain Non-Parties*

In exchange for the agreed-upon payments made to Plaintiffs and Settlement Class Members and other non-monetary relief, Plaintiffs and Settlement Class Members will release any and all suits, actions, causes of actions, claims, or demands arising from the facts alleged in the Complaints (the Released Claims) against the Released Parties as defined in the Settlement Agreement. The settlement does not release claims against Cedric Lodge, Denise Lodge, or any person convicted of purchasing or trafficking human remains originating from the AGP. Claims against those persons may proceed against them personally. However, the settlement does release any alleged direct or indirect liability of the Released Parties arising from the conduct of those non-Released Parties.

III. THE SETTLEMENT IS FAIR AND REASONABLE IN LIGHT OF THE LEGAL AND FACTUAL RISKS FACED BY PLAINTIFFS AND THE CLASSES

In deciding to settle these actions pursuant to the terms of the Settlement, Class Counsel carefully considered and evaluated the several significant legal and factual risks they faced if

these actions had continued to be litigated, which could have resulted in a complete loss at the summary judgment stage or at trial. Those risks included:

A. *Failing to Prove Harvard and Cicchetti's Bad Faith*

In reversing the dismissal of the complaints in these actions, the Supreme Judicial Court held that Plaintiffs' complaints adequately pleaded that Harvard and Cicchetti had acted in bad faith. But, of course, Plaintiffs would still need to prove that bad faith in order to prevail, in light of the good faith provision in the Uniform Anatomical Gift Act, G.L. c. 113A, Sec. 18(a), which would immunize Harvard and Cicchetti from any liability unless it was proven that they acted in bad faith.

B. *Application of the Charitable Immunity Cap to Limit Recovery from Harvard*

Proving Cicchetti's bad faith would have been critical for any meaningful, substantial monetary recovery in the event of strict application of G.L. 231, sec. 85K, which if applied notwithstanding Plaintiffs' arguments against the cap in this case, would potentially limit any recovery from Defendant Harvard to as little as \$20,000. Thus, even if Plaintiffs proved Harvard's bad faith but not Cicchetti's, the recovery against Harvard could still have been limited to \$20,000 per claimant pursuant to G.L. 231, sec. 85K, an amount that is far below the anticipated per-Donor Share for Primary Settlement Class Members under the Settlement.

The indictment concerning Lodge stated that his conduct was undertaken "without the knowledge or permission of HMS." In opposition to any bad faith claim, Harvard would present evidence that it had long had in place rigorous procedures and policies. Harvard would argue that its procedures were designed to ensure that bodies donated to its Anatomical Gift Program were carefully tracked from the moment they arrived at the morgue until the cremated remains were either returned to the donor's designee or buried in Pine Hill Cemetery in Tewksbury, depending on the donor's preference. Plaintiffs would have had the burden to demonstrate the existence of bad faith on the part of Harvard and on the part of Mark Cicchetti.

C. *The Inability to Prove That Any Particular Donor's Body Had Been Desecrated*

Plaintiffs were faced with the defense that they would not be able to prove that any particular donor's body had been desecrated by Lodge. In summary, this is because almost all the donors' remains, after their use for medical training by the Harvard Medical School, were cremated pursuant to the donors' wishes. And cremation destroys DNA. Accordingly, Plaintiffs' claims for negligent infliction of emotional distress would be based at least in part on the distress caused by the prospect that a donor's remains had been desecrated, as opposed to the fact that such desecration had occurred. This exposed Plaintiffs and the Classes to the risk that the Court would eventually hold that, on those facts, the Plaintiffs' claims for negligent infliction of emotional distress failed as a matter of law. *See, e.g., Anderson v. Hamel, Wickens & Troupe Funeral Home, Inc.*, 75 Mass. App. Ct. 1112 (2009) (unpublished); *Christensen v. Superior Court*, 54 Cal. 868, 902 (1991).

D. *The Inability to Prove, On a Class-Wide Basis, Any Physical Impact from the Plaintiffs' and Class Members' Emotional Distress*

Defendants would argue that Massachusetts jurisprudence provides requires that in most situations to maintain a claim for negligent infliction of emotional distress, a plaintiff must prove that the distress required the plaintiff to obtain therapy or it caused or was accompanied by symptoms such as anxiety, high blood pressure, etc. *See, e.g., Brown v. Bayview Crematory, LLC*, 79 Mass. App. Ct. 337, 339 (2011). Plaintiffs had arguments, supported by case law authority, that those usual requirements to maintain a claim for negligent infliction of emotional distress, do not and should not apply to cases involving mishandling or desecration of a body. However, if the Court in this case determined that such additional proof was required, Plaintiffs would likely not have been able to obtain class certification, and many Plaintiffs and class members would not have been able to meet that proof requirement.

IV. THE PLAN OF ALLOCATION

The Settlement Funds will be distributed pursuant to a Court-approved Plan of Allocation, attached as Exhibit 1 to the Settlement Agreement.

The Allocation Plan distributes the Net Settlement Funds for the Primary Settlement Class and the Pre-2018 Settlement Class separately according to the Allocation Plan in a two-step process.

First, the Net Settlement Fund for each Settlement Class will be divided by the number of Donors for whom timely and valid claims are submitted to arrive at a per-Donor share of the Net Settlement Funds (“Donor Share”). Second, each Donor Share will be allocated among approved claimants associated with a particular Donor in accordance with the relationship-based criteria and procedures set forth in the Plan of Allocation specific for that Settlement Class.

The Allocation Plan is designed to ensure awards are given to all claimants with approved claims while also awarding more to those claimants who are relationally closer to the Donor. To achieve this, the Allocation Plan divides claimants into an “Inner” and “Outer” Circle based on their relationship to the donor, with the Inner Circle receiving more of the Donor Share than Outer Circle claimants. Inner Circle claimants include surviving spouses or registered domestic partners, and surviving children of a donor. They each receive three allocation units. Outer Circle claimants are parents, siblings, AGP Designees, and named Plaintiffs. These categories receive one or two units depending on the claimant’s status. For the Primary Settlement Class, surviving grandchildren also qualify as Outer Circle claimants and receive one allocation unit.

The Donor Share is divided in proportion to the allocation units assigned to the approved claimants associated with that Donor, but in no event will less than 75% of the Donor Share be allocated to the Inner Circle whenever at least one Inner Circle claimant has filed an

approved claim. In other words, whenever at least one Inner Circle claimant has filed an approved claim, Outer Circle claimants collectively would receive no more than the remaining 25% of the Donor Share, apportioned among them according to their respective allocation units. If no Inner Circle claimant has filed an approved claim, Outer Circle claimants would receive the full Donor Share in proportion to their allocation units.

V. NOTICE PLAN

As described in the Settlement Agreement and the Declaration of Jacob Kamenir, Vice President of Legal Notice for Simpluris, Inc., attached to the Motion as **Exhibit C** (“Kamenir Declaration”), the Notice Plan provides for the following methods to provide reasonable and practical notice to Class Members.

A. The Settlement Administrator

Simpluris, Inc. has been selected by Class Counsel, subject to Court approval, to serve as Settlement Administrator. In the Kamenir Declaration, Simpluris describes its substantial experience in class-action administration, including appointments in more than 10,000 matters and distributions exceeding \$10 billion. Simpluris estimates that the administration will cost \$169,254.00. Simpluris has no affiliation with counsel in this matter and maintains significant privacy and data-security safeguards, including SOC 2 Type 1 and Type 2 certification, restricted access controls, employee screening and confidentiality requirements, HIPAA training, and secure data-retention and destruction procedures.

B. Scope of Notice

The proposed notice program is designed to provide direct notice to identifiable Settlement Class Members by email, U.S. Mail and to unidentified Settlement Class Members through a national digital campaign across multiple platforms.

C. Identification of Class Members

In order to identify as many potential class members as possible, the Settlement Administrator will utilize data provided by Harvard, pursuant to a Non-Disclosure Agreement between Harvard and the Settlement Administrator, that includes the names of each Donor and the names and contact information for individuals identified and listed by Donors as Designees of the Donor according to Harvard's AGP records for each Donor. In addition, Harvard will specify which Settlement Class each Donor and therefore, a Donor's potential claimants, belong to utilizing Harvard's AGP records. In addition, Plaintiffs' counsel will also provide the Settlement Administrator with client lists with contact information.

To identify the current names and addresses of additional Settlement Class Members the Settlement Administrator will use this information to conduct upfront next-of-kin searches for all Donors using LexisNexis, which aggregates data from a wide variety of public records, electronic directory assistance listings, real estate records, and other sources. The Settlement Administrator will utilize this information to create a unified Settlement Class Member database to be used as the basis for Direct Notice.

D. Direct Notice

The Settlement Administrator will then mail the Long Form Class Notice, attached as Exhibit 3 to the Settlement Agreement, to each of those potential class members. The Class Notice describes these cases, provides details about the Settlement, explains how class members can submit claims and provides a Claim Form (attached as Exhibit 2 to the Settlement Agreement) to do so and explains how a class member can be heard by the Court regarding the Settlement. In addition to the Long Form Class Notice, and a shorter electronic notice ("Email Notice") will also be sent to Class Members (attached at Exhibit 3 to the Settlement Agreement), which will direct Class Members to the Settlement Website.

Both Class Notices will direct recipients to a Settlement Website to be established by the Settlement Administrator, and which will contain the relevant filings in these actions,

including the Settlement Agreement and its Exhibits, Plaintiffs' Motion for Preliminary Approval and the filings in support, including this memorandum, and the Preliminary Approval Order entered by the Court. The Settlement Website will also contain, when filed with the Court, Plaintiffs' Motion for Final Approval of the Settlement, and supporting submissions, and Class Counsel's Application for an Award of Fees and Expenses and supporting submissions.

E. National Digital Campaign

The Settlement Administrator will also initiate a national campaign using social media and other digital platforms, to inform about the pendency of these actions and the pending Settlement and directing people to the Settlement Website for further information.

VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, CERTIFY THE SETTLEMENT CLASS, APPROVE THE NOTICE PLAN AND SCHEDULE A FINAL APPROVAL HEARING

A. The Court Should Preliminarily Approve the Settlement

Pursuant to Massachusetts Rule of Civil Procedure 23(c), a Massachusetts class action "shall not be dismissed or compromised without the approval of the court." "Settlement agreements enjoy great favor with the courts as a preferred alternative to costly, time-consuming litigation." *Fid. & Guar. Ins. Co. 11. Star Equip Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) (quotation omitted).⁹ Indeed, in Massachusetts there is a "well-established public policy favoring the private settlement of disputes." *Cabot Corp. v. AVX Corp.*, 448 Mass. 629, 638 (2007). While the proponent of a class action settlement must demonstrate that the settlement is fair, reasonable and adequate, usually "there is a presumption in favor of the settlement" where, as here, "discovery has been adequate and the parties have bargained at arms length."

⁹ The Supreme Judicial Court has looked to federal law on class action settlements and found it to be instructive. *See, e.g., Sniffin v. The Prudential Ins. Co. of Am.*, 395 Mass. 415, 420-21 (1985) ("The standard applied by the [trial] Court in its order is similar to that adopted by the Federal courts when reviewing proposed settlements of class actions under Fed. R. Civ. P. 23 (c), the Federal provision analogous to Mass. R. Civ. P. 23 (c).").

Nat'l Ass'n of Chain Drug Stores v. New Eng. Carpenters Health Benefits Fund, 582 F.3d 30, 44 (1st Cir. 2009) (quotation omitted).

Approval of a class action settlement is a two-step process: first, a preliminary approval order issues; and, second, after notice of the proposed settlement has been provided to the settlement class and the court has reviewed the fairness, reasonableness, and adequacy of the settlement, final approval is considered. *See, e.g., Fortin v. Ajinomoto U.S.A., Inc.*, 2005 Mass. Super. LEXIS 670, *1-2 (Dec. 15, 2005).

At the preliminary approval stage, the Court “need not make a final determination regarding the fairness, reasonableness and adequateness of a proposed settlement; rather, the Court need only determine whether it falls within the range of possible approval.” *In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. 125, 140 (D.P.R. 2010) (citation omitted). “[T]he standard for preliminary approval is less stringent than for final approval, because preliminary approval means simply that notice of the proposed settlement will be sent to class members, who will then be given a chance to be heard at the hearing regarding final approval.” *In re Mass. Smokeless Tobacco Litig.*, 2008 Mass. Super. LEXIS 126, *7 (April 9, 2008).

The Settlement here warrants preliminary approval and the authorization to send notice to the Settlement Class. The Settlement is the result of intensive, arm’s-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this action. *See, e.g., Gulbankian v. MW Mfrs., Inc.*, 2014 U.S. Dist. LEXIS 177668, at *10-11 (D. Mass. Dec. 29, 2014) (giving “significant weight” to experienced class counsel’s determination that the settlement was fair, reasonable, and adequate). The parties also engaged in an intensive, two-day mediation before a seasoned and well-respected mediator, Thomas Maffei. The use of an experienced mediator further strengthens the presumption that the Settlement is fair. *See, e.g., Roberts v. TJX Cos., Inc.*, 2016 U.S. Dist. LEXIS 136987, *22 (D. Mass. Sept. 30, 2016) (“[T]he participation of an experienced

mediator... supports the Court's finding that the Settlement is fair, reasonable, and adequate.”). Class Counsel zealously represented their clients at mediation, procuring a substantial recovery for the Classes and a settlement structure that will ensure that real, meaningful cash benefits will go to Class Members, and will also put in place meaningful additional consideration, including an ongoing scholarship in honor of donors to the AGP.

At the time Plaintiffs entered into the Settlement, Class Counsel had extensively researched and briefed the key legal issues in this case in their briefs filed in the Superior Court concerning Defendants’ motion to dismiss, their briefs filed with the Supreme Judicial Court for their successful appeal of the Superior Court decision granting Defendants’ motion to dismiss, and in their extensive written submissions to the mediator, Thomas Maffei. Class Counsel were thus fully knowledgeable about the strengths and weaknesses of the case when they negotiated the Settlement.

Moreover, this action sought the recovery of damages for the Settlement Class Members for the harm they suffered as a result of Settling Defendants’ alleged failure to safeguard the remains of their loved ones, and the Settlement will provide the Settlement Classes with a significant recovery. The Settlement also avoids the time-consuming and costly process of trial and appeal and instead provides the Class with an immediate recovery. The Settlement is fair, reasonable and adequate, and the Court should preliminarily approve it.

B. *The Court Should Provisionally Certify the Settlement Classes*

The Court should preliminarily certify the Settlement Classes, as defined above, for the purposes of settlement under Rules 23(a) and (b) of the Massachusetts Rules of Civil Procedure.

It is appropriate to certify a class action for settlement purposes. *See, e.g., In re First Commodity Corp. of Boston Customer Accounts Litig.*, 119 F.R.D. 301, 307 (D. Mass. 1987). As explained below, the Settlement Classes meet all the elements of Mass. R. Civ. P. 23, and preliminary certification of the Class is warranted.

1. All the Elements of Mass. R. Civ. P. 23(a) Are Satisfied

In Massachusetts, a court may certify a class if a named plaintiff can establish each of the four requirements of Mass. R. Civ. P. 23(a):

- (1) the class is so numerous that joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) the representative parties will fairly and adequately protect the interests of the class.

As demonstrated below, each of these elements is present here.

a. The Class Is So Numerous That Joinder of All Members Is Impracticable

The Settlement Classes include hundreds of individuals, which more than suffices to establish numerosity. *See, e.g., Layes v. RHP Props., Inc.*, 95 Mass. App. Ct. 804, 823 (2019) (“class of 240 members is sufficiently numerous to qualify for class treatment”). Indeed, “classes of 40 or more have been found to be sufficiently numerous under Rule 23(a)(1).” *Speakman v. Sullivan Bros. Nissan*, 2018 Mass. Super. LEXIS 4092, *5-6 (July 22, 2018).¹⁰

b. There Are Questions of Law or Fact Common to The Class

Every Settlement Class Member had a loved one whose remains were in the AGP during the period when the indictment alleged that Cedric Lodge engaged in misconduct, subjecting each Settlement Class Member to uncertainty about what befell their loved ones’ remains, which presents common issues of law and fact. To establish commonality, the class needs only “have a common interest that arises out of a common relationship to a definite wrong, and all class members have the right to seek the same relief against the defendants.”

¹⁰ *See also Waters v. EarthLink, Inc.*, 2006 Mass. Super. LEXIS 674, *15 (Mass. Super. May 10, 2006) (same); *DeMego v. Nisonson, DeMego*, 2017 Mass. Super. LEXIS 72, *16 (May 23, 2017) (same); *Rodrigues v. Members Mortg. Co., Inc.*, 226 F.R.D. 147, 150 (D. Mass. 2005) (same).

Delgado v. Arbor Homecare Servs., UC, 2016 Mass. Super. 2016 WL 3368735, *2 (May 10, 2016). “It is not essential that the interest of each member of the class be identical in all aspects with that of the [named] plaintiffs’ so long as that interest arises ‘out of a common relationship to a definite wrong.’” *Dorrian v. LVNV Funding, LLC*, 2017 Mass. Super. LEXIS 34, *16 (Mar. 30, 2017), *rev’d on other grounds*, 479 Mass. 265 (2018). “To meet this commonality standard, a class need not establish that every question of law or fact is identical; rather, the existence of a single significant common issue of fact or law is sufficient.”

Oklahoma Firefighters Pension & Ret. Sys. v. Biogen Inc., 348 F.R.D. 268, 276 (D. Mass. 2025).

“Because ‘[a] *single* common legal or factual issue can suffice’ to satisfy the 23(a)(2) requirement, ‘the commonality requirement ordinarily is easily met.’” *Swack v. Credit Suisse First Bos.*, 230 F.R.D. 250, 259 (D. Mass. 2005) (quoting *Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D.21, 25 (D. Mass. 2003) at 25 (emphasis in original)).

Here, there are numerous common questions of law and fact among Settlement Class Members, including what legal duties Defendants owed to Plaintiffs and the Settlement Class, the scope of those duties, whether Defendants breached those duties and whether Defendants are liable for breach of fiduciary duty, tortious interference with remains, negligence and negligent infliction of emotional distress, breach of contract and unjust enrichment. Plaintiffs’ and Settlement Class Members’ claims arise out of a single nucleus of operative fact - Cedric Lodge’s unspeakable conduct at Harvard, allegedly under the lax watch of Defendants Harvard and Cichetti. *See, e.g., Brophy v. School Comm. of Worcester*, 6 Mass. App. Ct. 731, 736 (1978) (holding that because defendants acted consistently towards classes of plaintiffs, a class action was appropriate).

c. The Claims or Defenses of The Representative Parties Are Typical of The Claims or Defenses of The Class

“Typicality is established when there is ‘a sufficient relationship . . . between the injury to the named plaintiff and the conduct affecting the class,’ and the claims of the named plaintiff and those of the class ‘are based on the same legal theory.’” *Weld*, 434 Mass. at 87. “The typicality requirement may be satisfied by an allegation that the defendant acted consistently toward the members of a putative class.” *Fletcher v. Cape Cod Gas Co.*, 394 Mass 595, 606 (1985).

Here, Plaintiffs allege that they and the Settlement Class Members were damaged by Defendants’ conduct in essentially the same way, by their failure to take reasonable and effective steps to: (1) ensure that bodies donated to Harvard were properly handled and maintained for their intended purpose of scientific study and not improperly exploited, dissected, viewed, moved, and/or sold to third parties; and (2) adequately train, supervise and manage Lodge, who was responsible for the proper custody and use of the bodies of the loved ones of Plaintiffs and Settlement Class Members.

d. Plaintiffs will Fairly and Adequately Represent the Settlement Classes

Adequacy is established when the “interests of the representative party will not conflict with the interests of any of the class members [and] counsel chosen by the representative party is qualified, experienced, and able to vigorously conduct the proposed litigation.” *Dorrian*, 2017 Mass. Super. LEXIS 34, *20-21.

Plaintiffs do not have any conflicts with the members of the Settlement Class. They all have the same interest in holding the Defendants accountable for their alleged misconduct in connection with Lodge’s macabre scheme and maximizing their recovery for the same. Class Counsel are also highly experienced in class action litigation and have vigorously prosecuted

this action, including the successful appeal to the Supreme Judicial Court. The adequacy requirement is satisfied.

e. All the Elements of Mass. R. Civ. P. 23(b) are Satisfied

Under Mass. R. Civ. P. 23(b), Plaintiffs must demonstrate that “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members,” and “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” These elements are met here.

f. The Questions of Law or Fact Common to The Members of The Class Predominate Over Any Questions Affecting Only Individual Members

“The predominance test expressly directs the court to make a comparison between the common and individual questions involved in order to reach a determination of such predominance of common questions.” *Salvas*, 452 Mass. at 362; *Sandoval v. M.J.F. Bowery Corp.*, 2011 Mass. Super. LEXIS 231, *9 (July 22, 2011). Further, “the presence of individual questions does not, *per se*, contraindicate class action treatment.” *Campbell v. Glodis*, 2011 Mass. Super. LEXIS 114, *12 (May 27, 2011). “Rather, ‘the question is whether the individual questions so inundate the common issues that a class action is no longer desideratum-or even useful.’” *Id.* The predominance requirement is met by a “sufficient constellation of common issues binds class members together” and “cannot be reduced to a mechanical, single-issue test.” *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000); *Weld*, 434 Mass. at 92.

Common issues predominate here because the Settlement Classes were impacted by a uniform course of conduct,¹¹ Defendants’ failure to ensure that bodies donated to Harvard were

¹¹ See *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 392-98 (2004) (certification appropriate where class subject to uniform course of conduct); *Escorbor v. Helping Hands Co.*, 2017 Mass. Super. LEXIS 162, *14-15 (Sept. 13, 2017) (common questions predominated where defendants used uniform policies); *Delgado*, 2016 Mass. Super. LEXIS 58, *11 (predominance satisfied where “policy or practice... was common”); *Woodruff v. Niles Co.*, 2007 Mass. Super.

properly handled and maintained and failure to adequately train, supervise and manage Lodge. Each Plaintiff and Settlement Class Member had a common expectation that their loved one's body would be, with certainty, properly managed, and the loss of that certainty about the honor, dignity and respect their loved one's remains impacted each Plaintiff and Settlement Class Member. The predominance element is met for the purposes of settlement.

*g. A Class Action Is Superior to Other Available Methods for
The Fair and Efficient Adjudication of the Controversy*

A class action is superior to any other available method of adjudication of the claims of the members of the two Settlement Classes. It would be a draining use of legal and judicial resources for Settlement Class members to have to bring each of their actions against the Defendants separately, presenting the same evidence again and again in numerous proceedings. *Id.* Any difficulties likely to be met in the management of this class action are minimal and would pale in comparison to difficulties and burden on the parties and the Court if the class members' claims were litigated in numerous separate matters. *See Campbell*, 2011 Mass. Super. LEXIS 114, *14-15. A class action is unquestionably superior to a multitude of individual actions.

The Settlement Classes, as proposed, meet all the requirements for certification under Mass. R. Civ. P. 23(a) and (b), the Settlement Classes should be certified.¹²

C. The Court Should Approve the Notice Plan

The forms of notice described above, and plan to send provide such notice to Class Members as described above and detailed in the Settlement Agreement will "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that

LEXIS 146, *7-8 (May 7, 2007) (predominance met where liability could be resolved based on uniform conduct); *Eldridge v. Provident Cos.*, 2000 Mass. Super. LEXIS 163, *21-22 (Feb. 1, 2000) (predominance established where plaintiffs "allege a common course of conduct").

¹² Although Harvard and Cichetti have assented to this motion for preliminary approval, under the Settlement Agreement they expressly reserve their right to contest certification of a litigation class if the settlement is not finally approved.

are open to them in connection with the proceedings.” *Wal-Mart Stores, Inc. v. VISA U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (quotation marks and citation omitted). *See also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 527-28 (D.N.J. 1997) (settlement notice “need only be reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.” (citation omitted); *Patrowicz v. Transamerica, HomeFirst, Inc.*, 359 F. Supp. 2d 140, 150 (D. Conn. 2005) (“the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.”) (citation omitted).

Consistent with these requirements, the Notice will be directly mailed to all Class Members whose addresses are known, whether to Harvard or Plaintiffs’ Counsel. And a national digital advertising campaign will notify others about the class settlement of these actions. The Notice will explain in plain and easily understandable language the nature of the action, who are in the two Settlement Classes, the essential terms of the Settlement, the proposed plan for distributing the Net Settlement Proceeds, the effect of the judgment on Settlement Class members and the methods and deadline for Settlement Class members to submit a Claim Form. The Notice also provides information about Plaintiffs’ Counsel’s to be filed application for attorneys’ fees and reimbursement of expenses to be paid from the Settlement Amount. The Notice will further provide the date, time and place of the Final Approval Hearing, as scheduled by the Court, and advise Class Members as to the deadlines for objecting to any aspect of the Settlement and/or Plaintiffs’ Counsels’ fee and expense application. Finally, the Notice explains how Settlement Class members can obtain additional information through the Settlement Website, as well as from the Settlement Administrator and Class Counsel.

The method and form of Notice fully meet the requirements of Massachusetts law and due process, and Plaintiffs respectfully request that the Court approve the Notice Plan.

D. *The Court Should Schedule a Final Approval Hearing*

In connection with preliminary approval of the Settlement, the Court should set a date for the Final Approval Hearing at which the Court will determine whether final approval of the Settlement Agreement is proper. This hearing will provide a forum to discuss the terms and conditions of the Settlement Agreement, after the Settlement Classes have received Notice and the opportunity to be heard. At or following the Final Approval Hearing the Court would determine whether the Settlement is fair, adequate and reasonable and should be approved and the Court would act on Class Counsel's Application for an award of attorneys' fees and expenses.

The deadlines that will need to be established for events leading up to the Final Approval Hearing work forwards from the date of the Court's Preliminary Approval Order. Accordingly, the Plaintiffs propose the following schedule for further events and proceedings in these actions:

<u>Date</u>	<u>Event</u>
30 days after Preliminary Approval Order	The Settlement Administrator will provide Notice to the Class in accordance with the Notice Plan described herein
35 days after Preliminary Approval Order	Plaintiffs shall file with the Court and serve on Defense Counsel, their motion for final approval of the Settlement, Fee Application, and any supporting materials
90 days after Preliminary Approval Order	Deadline for Class member objections to Settlement Agreement or Fee Application
97 days after Preliminary Approval Order	Deadline for response(s) to Class member objections to Settlement Agreement or Fee Application
97 days after Preliminary Approval Order	Class Counsel shall file a declaration from the Settlement Administrator attesting to compliance with and completion of the plan of Notice set forth in the Motion papers

At least 106 days after Preliminary Approval Order	Final Approval Hearing
113 days after Preliminary Approval Order	Deadline for submission of Claim Forms to the Settlement Administrator in the manner provided in the Claim Form

VII. CONCLUSION

For the forgoing reasons, the Court should grant the Plaintiffs' Assented-To Motion for Preliminary Approval of Settlement, provisionally certify the Settlement Classes, authorize the sending and publication of the Notice to the Settlement Class Members as provided in the Settlement Agreement and schedule a hearing to consider final approval of the Settlement, by entering the proposed Preliminary Approval Order attached as Exhibit B to the Motion.

Respectfully submitted,

PLAINTIFFS' CO-LEAD COUNSEL

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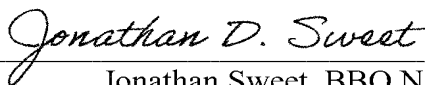
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By: Leo V. Boyle
 Leo V. Boyle

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Date: August 17, 2026

CERTIFICATE OF COMPLIANCE WITH SUPERIOR COURT RULE 9C

Pursuant to Superior Court Rule 9C(a), I hereby certify that Plaintiffs advised and conferred with counsel for the defendants through requesting assent to the Memorandum In Support of Plaintiffs' Assented to Motion For Preliminary Approval of Class Action Settlement. On August 14, 2026 Counsel for Defendant, Attorneys Steinberg and Cloherty, responded via email and stated that the Defendant assented to the relief requested in the motion.


Jonathan Sweet, BBO No.
634755

Certificate of Service

I hereby certify that a true copy of the above document was served upon counsel of record for Defendants by e-mail on August 17, 2026.

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