

## Long Form Notice

*Marlena Rosado v. Barry University, Inc.*

### NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

**READ THIS NOTICE FULLY AND CAREFULLY  
THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS**

**IF YOU WERE A STUDENT AT BARRY UNIVERSITY ON  
MARCH 1, 2020 AND WERE ASSESSED TUITION AND OTHER FEES  
FOR THE SPRING 2020 SEMESTER, THEN YOU MAY BE  
ENTITLED TO CREDIT FOR AN OUTSTANDING BALANCE, A CASH  
PAYMENT, AND/OR FUTURE TUITION CREDITS**

*A federal court has authorized this Notice; it is not a solicitation from a lawyer.*

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING AND AUTOMATICALLY RECEIVE AN ACCOUNT CREDIT, CASH PAYMENT, OR TUITION CREDITS  OR  COMPLETE AN ELECTION FORM AND SELECT BETWEEN TUITION CREDITS OR A CASH PAYMENT</b>	<p>1. If you do nothing, you will automatically receive either a credit for unpaid balances due to Barry University, Tuition Credits for future classes, or a cash payment so long as you do not opt-out of or exclude yourself from the Settlement (described in the next box).</p> <p>2. Although you do not have to take any steps to participate in the Settlement, if you want to choose between Tuition Credits or a cash payment, as opposed to Barry University choosing one of these options for you, you will be asked to make an election. Details on the election process are described in Section 6 below.</p> <p>In either instance above, Barry University reserves the right to first use your Settlement benefit to credit any outstanding balances you may have on your Barry University account.</p>
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT AND RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	<p>You can choose to exclude yourself from the Settlement or “opt-out.” This means you choose not to participate in the Settlement. You will keep your individual claims against Barry University, but you will not receive a credit for unpaid balances due to Barry University, a cash payment, or Tuition Credits for future classes. If you exclude yourself from the Settlement, but want to recover against Barry University, you will have to file a separate lawsuit or claim.</p>
<b>OBJECT TO THE SETTLEMENT</b>	<p>You can file an objection with the Court explaining why you believe the Court should reject the Settlement. If your objection is overruled by the Court, then you may receive a credit for unpaid balances due to Barry University, a cash payment, or Tuition Credits for future classes, and you will not be able to sue Barry University for the claims asserted in this Action. If the Court agrees with your objection, then the Settlement may not be approved.</p>

These rights and options – ***and the deadlines to exercise them*** – along with the material terms of the Settlement are explained in this Notice.

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## **BASIC INFORMATION**

### **1. What is this lawsuit about?**

The lawsuit that is being settled is entitled *Marlena Rosado v. Barry University, Inc.* It is pending in United States District Court for the Southern District of Florida, Case No. 1:20-cv-21813-JEM. The case is a “class action.” That means that the “Class Representative,” Marlena Rosado, is an individual who is acting on behalf of all students who were enrolled for the Spring 2020 semester at Barry University, as of March 1, 2020, which number approximately 6100 students, and who paid tuition, room and board and/or fees when Barry University transitioned to remote learning due to the COVID-19 pandemic. The Class Representative has asserted a claim for breach of contract and unjust enrichment.

Barry University denies the claims asserted and contends that its actions were proper and in accordance with the terms of its student policies, agreements and applicable law. Barry University therefore denies that its actions give rise to any claim by the Class Representative or any Settlement Class Members.

### **2. Why did I receive this Notice of this lawsuit?**

You received this Notice because Barry University’s records indicate that you were enrolled at Barry University as of March 1, 2020 and were charged tuition and other fees that are the subject of this action. The Court directed that this Notice be sent to all Settlement Class members because each such member has a right to know about the proposed Settlement and the options available to him or her before the Court decides whether to approve the Settlement.

### **3. Why did the Parties settle?**

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Class Representative’s and their lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, the Class Representative’s lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative has the duty to act in the best interests of the class as a whole and, in this case, it is her belief, as well as Class Counsels’ opinion, that this Settlement is in the best interest of all Settlement Class members.

There is legal uncertainty about whether a judge or a jury will find that Barry University was contractually or otherwise legally obligated to refund the tuition and fees at issue. And even if the university was contractually or otherwise wrong not to refund some or all of the tuition or fees, there is uncertainty about whether the Class Representative’s claims are subject to other defenses that might result in no recovery or to a smaller recovery to Settlement Class Members. Even if the Class Representative was to win at trial, there is no assurance that the Settlement Class Members would be awarded more than the current Settlement amount and it may take years of litigation before any payments would be made. By settling, Settlement Class Members will avoid these and other risks and the delays associated with continued litigation.

Barry University disputes the allegations in the lawsuit and denies any liability or wrongdoing, and there has been no finding of liability or wrongdoing by any Court. However, to support its students and to resolve the matter, Barry University entered into the Settlement.

## **WHO IS IN THE SETTLEMENT**

### **4. How do I know if I am part of the Settlement?**

If Barry University's records reflect that you were enrolled in classes for the Spring 2020 semester at Barry University, and your enrollment remained active as of March 1, 2020, then you are a member of the Settlement Class and are entitled to receive Tuition Credits for future classes, a cash payment, or credit for outstanding balances due to Barry University.

## **YOUR OPTIONS**

### **5. What options do I have with respect to the Settlement?**

You have four options: (1) do nothing and you will be eligible to participate in the Settlement and receive the benefits allocated to you according to the terms of this Settlement; (2) complete an Election Form to select the benefits you will receive according to the terms of the Settlement; (3) exclude yourself from the Settlement; or (4) participate in the Settlement, but object to it. Each of these options is described in a separate section below.

### **6. What are the critical deadlines?**

There is no deadline to file anything to receive the benefits under the Settlement. However, if you want to choose between receiving Tuition Credits or a cash payment, you will need to make an election by visiting the Settlement Website at [www.BarrySpring2020refund.com](http://www.BarrySpring2020refund.com) and submitting your choice no later than July 28, 2021. If you do not make a timely election and you are a Former Student (defined as an individual in the Settlement Class not enrolled at Barry University at the start of the Spring 2021 term), you will receive a cash payment by mail at the address on record at Barry University. If you are a Current Student (defined as any individual in the Settlement Class enrolled at Barry University at the start of the Spring 2021 term), Barry will provide you, in its discretion, with a Tuition Credit on your Barry account or a cash payment mailed to your address on file. Regardless of whether you elect to receive a Tuition Credit or a cash payment, if you have an outstanding balance with Barry University, Barry University has the option of first applying any payment due to you under the Settlement to the outstanding balance on your account with Barry University. All Settlement funds provided as Tuition Credits must be used by the start of the Fall 2023 semester or they will be forfeited.

The deadline for sending a letter to exclude yourself from or opt-out of the Settlement is July 28, 2021.

The deadline to file an objection with the Court is also July 28, 2021.

### **7. How do I decide which option to choose?**

If you do not like the Settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this Settlement, then you may want to consider opting-out.

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved. If your objection (and any other

objection) is overruled, and the Settlement is approved, then you may still get Tuition Credits, a cash payment, and/or credit for an account balance and you will be bound by the Settlement.

#### **8. What has to happen for the Settlement to be approved?**

The Court has to decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide Preliminary Approval of the Settlement, which is why you received a Notice. The Court will make a final decision regarding the Settlement at a Final Approval Hearing, which is currently scheduled for August 27, 2021 at 1:30 p.m.

### **THE SETTLEMENT PAYMENT**

#### **9. How much is the Settlement?**

Barry University has agreed to create a Settlement Fund of \$2,400,000.

As discussed separately below, attorneys' fees and litigation costs, and a Service Award (as discussed in Paragraph 11 below), if approved by the Court, and the costs paid to a third-party Settlement Administrator, if any, will be paid out of the Settlement Fund. Thereafter, the Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Benefits as outlined in the Settlement Agreement.

#### **10. How much of the Settlement Fund will be used to pay for attorney fees and costs?**

Class Counsel will request the Court to approve attorneys' fees of not more than 33.33% of the \$2,400,000 Settlement Fund and will request that it be reimbursed for litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

#### **11. How much of the Settlement Fund will be used to pay the Class Representative a Service Award?**

Class Counsel will request that the Class Representative, Ms. Rosado, be paid a "Service Award" in the amount of \$5,000.00, which represents an award to Ms. Rosado for her work in connection with this case. The Service Award must be approved by the Court.

#### **12. How much of the Settlement Fund will be used to pay the Settlement Administrator's expenses?**

Barry University will decide whether self-administer or to retain a third-party Settlement Administrator to provide Notice and/or to administer the allocation and distribution of the Settlement Class Member Benefits. In the event Barry University retains a Settlement Administrator, those expenses are estimated to be \$35,000.

#### **13. How much will my credit for outstanding balance, cash payment, or Tuition Credit be?**

The balance of the Settlement Fund after attorneys' fees and litigation costs, the Service Award and the Settlement Administrator's Costs, also known as the Net Settlement Fund, will be divided among

all Settlement Class Members entitled to Settlement Class Member Benefits pro rata based upon the type of fees paid. For example, the portion of the Settlement Class Member Benefit allocated under the Settlement to Room and Board Fees will be divided, pro rata, among all students who paid Room and Board Fees and received a move-out credit from Barry University in Spring 2020. The same is true of Tuition Fees, Health Fees, Lab and Materials Fees, and Other Fees.

#### **14. Do I have to do anything if I want to participate in the Settlement?**

No. If Barry University's records reflect that you were enrolled in non-online classes for the Spring 2020 semester at Barry University, and your enrollment remained active as of March 1, 2020, you are entitled to receive a credit for outstanding balances, a cash payment, or Tuition Credits without having to submit a claim. However, you will be asked to make an election if you want to choose between receiving a Tuition Credit or cash payment. To make the election, you must visit the Settlement Website at [www.BarrySpring2020refund.com](http://www.BarrySpring2020refund.com) and submit your choice no later than July 28, 2021.

If you do not opt-out of the Settlement, which means that you choose to remain in the Settlement, and you either complete an Election Form to select your Settlement benefit, or you do not submit an Election Form but receive or are allocated a Settlement benefit, you will release all Released Claims against Barry University.

#### **15. When will I receive my payment?**

The Court will hold a Final Approval Hearing on August 27, 2021 at 1:30 p.m. to consider whether the Settlement should be approved. If the Court approves the Settlement, then Settlement Class Member Benefits will be distributed approximately 15 business days after the Settlement's Effective Date. However, if someone objects to the Settlement, and the objection is sustained, then there may be no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

#### **16. How do I exclude myself from the settlement?**

If you do not want to receive a credit for outstanding balances owed to Barry University, a cash payment, or a Tuition Credit, or if you want to keep any right you may have to sue Barry University for the claims alleged in this lawsuit, then you must exclude yourself, or opt-out.

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say "I hereby elect to be excluded from the settlement in the *Marlena Rosado v. Barry University, Inc.* class action. Be sure to include your name, your Student ID number(s), address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by July 28, 2021, and sent to:

Barry Spring 2020 Refund Settlement  
c/o JND Legal Administration  
PO Box 91398  
Seattle, WA 98111

## **17. What happens if I opt-out of the Settlement?**

If you opt-out of the Settlement, you will preserve and not give up any of your rights to sue Barry University for the claims alleged in this case. However, you will not be entitled to receive a credit for outstanding balances due to Barry University, a cash payment, or Tuition Credits from the settlement if the Settlement is otherwise approved by the Court.

### **OBJECTING TO THE SETTLEMENT**

## **18. How do I notify the Court that I do not like the Settlement?**

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt-out, from the Settlement. (Settlement Class members who exclude themselves from the Settlement have no right to object to how other Settlement Class members are treated.) To object, you **must** send a written document by mail or private courier (e.g., Federal Express) to the Clerk of Court, Settlement Administrator, Class Counsel, and Defendant's Counsel at the addresses below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- e. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. a copy of orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
- h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

1. the objector's signature (an attorney's signature is not sufficient).

All objections must be post-marked no later than July 28, 2021 and must be mailed to the as follows:

<b>CLERK OF COURT</b>	<b>SETTLEMENT ADMINISTRATOR</b>	<b>DEFENDANT'S COUNSEL</b>
Clerk of the Court United States District Court for the Southern District of Florida Wilkie D. Ferguson, Jr United States Courthouse Miami, Florida 33128	Barry Spring 2020 Refund Settlement c/o JND Legal Administration PO Box 91398 Seattle, WA 98111	Mendy Halberstam Jackson Lewis 1 Biscayne Tower 2 S. Biscayne Blvd. Suite 3500 Miami, FL 33131
<b>CLASS COUNSEL</b>		
Jeff Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, FL 33301	Anna Haac Tycko & Zavareei LLP 1828 L Street, NW Suite 1000 Washington, DC 20036	Daniel Warshaw Pearson, Simon & Warshaw, LLP 15165 Ventura Blvd. Suite 4000 Sherman Oaks, CA 91403

**19. What is the difference between objecting and requesting exclusion from the settlement?**

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the Settlement Class, and asking the Court to reject it. You can object only if you do not opt-out of the Settlement. If you object to the Settlement and do not opt-out, then you are entitled to a credit for outstanding balances owed to Barry University, a cash payment, or Tuition Credits if the Settlement is approved, but you will release claims you might have against Barry University. Excluding yourself or opting-out is telling the Court that you do not want to be part of the Settlement, and do not want to receive a credit for outstanding balances due to Barry University, a cash payment, or Tuition Credits, or release claims you might have against Barry University for the claims alleged in this lawsuit.

**20. What happens if I object to the Settlement?**

If the Court sustains your objection, or the objection of any other member of the Settlement Class, then there may be no Settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the Settlement.



## **THE COURT'S FINAL APPROVAL HEARING**

### **21. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at 1:30 p.m. on August 27, 2021 at the United States District Court for the Southern District of Florida, Wilkie D. Ferguson, Jr. Courthouse, 400 North Miami Avenue, Miami, Florida 33128. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the Service Award to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the Settlement Website at [www.BarrySpring2020refund.com](http://www.BarrySpring2020refund.com). The date and time of the Final Approval Hearing may change without further notice. Please check the Settlement Website [www.BarrySpring2020refund.com](http://www.BarrySpring2020refund.com) for updates.

### **22. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you may want to attend.

### **23. May I speak at the hearing?**

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

## **THE LAWYERS REPRESENTING YOU**

### **24. Do I have a lawyer in this case?**

The Court ordered that the lawyers and their law firms referred to in this notice as "Class Counsel" will represent you and the other Settlement Class Members.

### **25. Do I have to pay the lawyer for accomplishing this result?**

No. Class Counsel will be paid directly from the Settlement Fund subject to court approval.

### **26. Who determines what the attorneys' fees will be?**

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for attorneys' fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the [www.BarrySpring2020refund.com](http://www.BarrySpring2020refund.com).

## **GETTING MORE INFORMATION**

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed or obtained online at [www.BarrySpring2020refund.com](http://www.BarrySpring2020refund.com).

For additional information about the Settlement and/or to obtain copies of the Settlement Agreement, or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Barry Spring 2020 Refund Settlement  
c/o JND Legal Administration  
PO Box 91398  
Seattle, WA 98111  
1-833-358-1846  
[info@barryspring2020refund.com](mailto:info@barryspring2020refund.com)

For more information, you also can contact the Class Counsel as follows:

Jeff Ostrow Kopelowitz Ostrow P.A. One West Las Olas Boulevard Suite 500 Fort Lauderdale, Florida 33301 954-525-4100 <a href="mailto:ostrow@kolawyers.com">ostrow@kolawyers.com</a>	Anna Haac Tycko & Zavareei LLP 1828 L Street, NW Suite 1000 Washington, DC 20036 202-973-0900 <a href="mailto:ahaac@tzlegal.com">ahaac@tzlegal.com</a>	Daniel Warshaw Pearson, Simon & Warshaw, LLP 15165 Ventura Blvd. Suite 4000 Sherman Oaks, CA 91403 818-788-8300 <a href="mailto:dwarshaw@pswlaw.com">dwarshaw@pswlaw.com</a>
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***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF BARRY UNIVERSITY CONCERNING THIS NOTICE OR THE SETTLEMENT.***