

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STUDENT A, et al.,
Plaintiffs,
v.
BERKELEY UNIFIED SCHOOL
DISTRICT, et al.,
Defendants.

Case No. 17-cv-02510-JST

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUIRING REVISIONS TO
PROPOSED NOTICE**

Re: ECF No. 153

Before the Court is Plaintiffs’ – identified as Students A, B, C, and D – unopposed motion for preliminary approval of class action settlement. ECF No. 153. Upon preliminary examination, the proposed settlement appears to be fair, reasonable, and adequate. Accordingly, the Court will grant the motion for preliminary approval. However, the Court will require Plaintiffs to revise and re-file the proposed notice before the Court authorizes its dissemination to the members of the settlement class.

In support of this conclusion, the Court makes the following findings:

First, the Court has jurisdiction over this action and each of the parties to the Agreement.

Second, the parties have substantially complied with the Class Action Fairness Act of 2005’s (“CAFA”) notice requirements. *See* 28 U.S.C. § 1715. The parties explain in their motion that “Defendants will comply with all applicable notice provisions of the [CAFA] by February 13, 202[1].”¹ ECF No. 153 at 24. February 13, 2021 would have been 64 days after the motion for preliminary approval was filed. While this notice was sent late, *see* 28 U.S.C. § 1715(b)

¹ The Court assumes that “February 13, 2020” was a typographical error because the parties did not execute the Agreement until December 11, 2020. *See* ECF No. 154 at 21.

1 (requiring CAFA notice “[n]ot later than 10 days after a proposed settlement of a class action is
2 filed in court”), this defect is not fatal to preliminary approval. *See Adoma v. Univ. of Phoenix,*
3 *Inc.*, 913 F. Supp. 2d 964, 973 (E.D. Cal. 2012) (listing cases finding that “late mailing of notices
4 to state and federal officials under CAFA is not fatal to approval of settlements”).

5 Third, the Court preliminarily finds, for settlement purposes only, that this action satisfies
6 the applicable prerequisites for class action treatment under Rule 23, namely:

- 7 • The settlement class members are so numerous that joinder of all of them is
8 impracticable;
- 9 • There are questions of law and fact common to the settlement class members,
10 which predominate over any individual questions;
- 11 • Plaintiffs’ and the settlement class’s claims arise out of the same alleged conduct
12 and are based upon the same legal theories and therefore satisfy the typicality requirement;
- 13 • Plaintiffs and class counsel do not have interests antagonistic to the settlement class
14 and have fairly and adequately represented and protected the interests of the settlement class
15 members; and
- 16 • Final injunctive relief is appropriate and will provide relief to each member of the
17 class.

18 Fourth, the Court preliminarily finds that the settlement of this action, on the terms and
19 conditions set forth in the parties’ settlement agreement, is fundamentally fair, reasonable,
20 adequate, and in the best interest of the settlement class members, when considering, in their
21 totality, the following factors:

22 [T]he strength of the plaintiffs’ case; the risk, expense, complexity,
23 and likely duration of further litigation; the risk of maintaining class
24 action status throughout the trial; the amount offered in settlement;
25 the extent of discovery completed and the stage of the proceedings;
the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed
settlement.

26 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by*
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1 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (citations omitted).²

2 Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court therefore finds that
3 the prerequisites for a class action have been met and provisionally certifies the following class for
4 settlement purposes only:

5 All current and future [Berkeley Unified School District (“BUSD”)]
6 students who have, may have or are suspected of having a reading
7 disability, such as dyslexia, within the meaning of [the Individuals
8 with Disabilities Education Act], Section 504 [of the Rehabilitation
9 Act of 1973], the [Americans with Disabilities Act] and/or [California
10 Education Code] Section 56000.

11 The Court also appoints Plaintiffs as the representatives for the settlement class, and
12 appoints Disability Rights Education and Defense Fund, Inc. (“DREDF”), including but not
13 limited to Claudia Center of DREDF; Deborah Jacobson of Jacobson Education Law, Inc. ;
14 Goodwin Procter LLP (“Goodwin”), including but not limited to Brendan E. Radke of Goodwin;
15 and King & Spalding LLP (“King & Spalding”), including but not limited to Shane Brun and
16 George Morris of King & Spalding, as class counsel.

17 Given the nature of the settlement agreement, the parties need not engage a settlement
18 administrator. However, Defendants will retain an impartial Outside Monitor to monitor the
19 implementation of the Agreement.

20 This Court approves the proposed form of the notice of the class action settlement, which
21 includes DREDF and Defendants each posting on their respective websites a copy of the Class
22 Notice until the deadline for submitting objections has passed and Defendants providing a copy of
23 the Class Notice to all enrolled students and/or their parents or guardians through email or its
24 online portal(s). ECF No. 153 at 24. Finally, BUSD shall post the Class Notice on its website,
25 including in District News and on the Special Education page. *Id.* The proposed method for

26 ² These factors are substantially similar to those articulated in the 2018 amendments to Rule 23(e),
27 which were not intended to “displace any factor [developed under existing Circuit precedent], but
28 rather to focus the court and the lawyers on the core concerns of procedure and substance that
should guide the decision whether to approve the proposal.” *See Hefler v. Wells Fargo & Co.*, No.
16-cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018) (quoting Fed. R. Civ. P.
23(e)(2) advisory committee’s note to 2018 amendment). The Court also considered the 23(e)
factors in preliminarily finding that the settlement of this action, on the terms and conditions set
forth in the Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best
interest of the settlement class members.

1 notifying the settlement class members of the settlement and its terms and conditions meet the
2 requirements of Rule 23(c)(2)(A) and due process, and constitute due and sufficient notice to all
3 persons and entities entitled to the notice. *See* Fed. R. Civ. P. 23(c)(2)(A) (“For any class certified
4 under [23(b)(2)] . . . the court may direct appropriate notice to the class.”).

5 The Court additionally finds that the proposed notices are clearly designed to advise the
6 settlement class members of their rights and approves their substance, with a few exceptions.
7 First, the proposed notice does not include instructions on how to opt out of the settlement.
8 Second, the proposed notice does not list a “website, maintained by . . . class counsel, that has
9 links to the notice, motions for approval and for attorneys’ fees and any other important
10 documents in the case.” Northern District of California, *Procedural Guidance for Class Action*
11 *Settlements* § 3 (“Northern District Guidance”), [https://www.cand.uscourts.gov/forms/procedural-](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/)
12 [guidance-for-class-action-settlements/](https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/). Third, the proposed notice lists Judge Jon S. Tigar as
13 “Magistrate Judge Jon S. Tigar” and includes the wrong address for the courtroom and the Clerk
14 of the Court. *See* ECF No. 153-6 at 45-46. Fourth, objections must be submitted to the Court,
15 which will enter objections on the electronic case docket, but need not be mailed separately to
16 class counsel. *Id.*; Northern District Guidance § 5. Finally, the reference to a “claim process” on
17 page 4 of the proposed notice should be removed. ECF No. 153-6 at 46.

18 Within seven days of the date this order is issued, Plaintiffs shall file a revised proposed
19 notice for the Court’s review, as well as a redline showing any changes made to the proposed
20 notice. The Court will set dates for a motion for final settlement approval, a petition for an award
21 of attorney’s fees, objections to the settlement, and a final fairness hearing once the Court
22 approves the revised proposed notice and authorizes the dissemination of such notice to the
23 settlement class.

24 **IT IS SO ORDERED.**

25 Dated: July 8, 2021

26 
27 JON S. TIGAR
28 United States District Judge