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8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her
guardian; STUDENT B, by and through
12 PARENT B, his guardian; STUDENT C, by
and through PARENT C, his guardian; and
13 STUDENT D, by and through PARENT D, her
guardian, each one individually and on behalf
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL
DISTRICT and THE BOARD OF
18 EDUCATION OF THE BERKELEY UNIFIED
SCHOOL DISTRICT,

19 Defendants.
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Case No. 4:17-cv-02510-JST

**PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES PURSUANT
TO FED. R. CIV. P. 23(h) AND 54(d)(2)**

Hearing date: November 4, 2021

Time: 2:00 p.m.

Judge: Hon. John S. Tigar

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT at 2 p.m. on November 4, 2021, or as soon thereafter as the matter may be heard, Plaintiffs Student A, by and through Parent A, her guardian; Student B, by and through Parent B, his guardian; Student C, by and through Parent C, his guardian; and Student D, by and through Parent D, her guardian, each one individually and on behalf of themselves (collectively, "Plaintiffs") will move the Court pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2) for an order approving an award of attorneys' fees totaling \$350,000 under Section 12205 of Title 42 of the United States Code as well as under the parties' Settlement Agreement. The motion will be based on this notice of motion, the memorandum of points and authorities, the declarations of Shane Brun, Claudia Center and Deborah Jacobson, the records and file in this action, and such other matter as may be presented before or at the hearing of the motion.

DATED: August 27, 2021

Respectfully submitted,

By: /s/ Claudia Center

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 2, 2017, Plaintiffs filed this Class Action Civil Rights Complaint for Declaratory and Injunctive Relief (“the Complaint,” Dkt. No. 1) against Defendants in the United States District Court for the Northern District of California, Case No. 3:17-cv-02510 (“the Action”). The Complaint alleges *inter alia* that, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 (“Section 504”), Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“ADA”), the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (amended by Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108446, Title I) (“IDEA”), California Education Code Section 56000 *et seq.* (“Section 56000”) and applicable federal regulations, Defendants maintain policies and practices that discriminate against students with and suspected to have reading disorders and deprive them of a Free Appropriate Education (“FAPE”) in the Least Restrictive Environment (“LRE”). The Complaint further alleges that Defendants routinely fail to comply with the requirements of IDEA, 20 U.S.C. § 1400 *et seq.*, and its implementing regulations; Section 504, 29 U.S.C. § 794, and its implementing regulations; Title II of the ADA, 42 U.S.C. § 12132 *et seq.*, and its implementing regulations; and California Education Code Sections 56000 *et seq.* and its implementing regulations. Defendants deny that there is any factual or legal basis for the Plaintiffs’ claims.

Plaintiffs were represented by three to five law firms at all times during the course of this litigation, including the Disability Rights Education and Defense Fund, Inc. (“DREDF”). Each of these firms and DREDF brought different expertise to the representation and were diligent in case management to avoid duplicative work performed. Further, three of the firms that have represented Plaintiffs during the course of the litigation, whose attorneys combined put in thousands of hours and paid the vast majority of Plaintiffs’ costs in this litigation represented Plaintiffs on a *pro bono* basis and are not seeking fees or costs in this case. Plaintiffs’ counsel (“Class Counsel”)¹ have

¹ Class Counsel was preliminarily approved by the Court to be DREDF, including but not limited to Claudia Center of DREDF; Deborah Jacobson of Jacobson Education Law, Inc. (“JEL”); and King & Spalding LLP (“King & Spalding”), including but not limited to Shane Brun and George

1 vigorously and thoroughly litigated this case on behalf of Plaintiffs and the proposed Settlement
2 Class (“Class”) for over three years. This period of time does not include more than one year of
3 case development and pre-case negotiations and meetings with Defendants, nor does it include more
4 than a year of post settlement work and filings.

5 The litigation was active and hard-fought. On June 19, 2017, Defendants moved to dismiss
6 the Complaint, alleging failure to exhaust administrative remedies and a lack of cognizable claims
7 against the individual defendants. Dkt. No. 46 (“Motion to Dismiss”). Plaintiffs opposed the
8 Motion to Dismiss, and on October 12, 2017, the Court denied the Motion to Dismiss as to the
9 District and the Board but dismissed the individual defendants from the case. Dkt. No. 75.
10 Defendants answered the Complaint on November 13, 2017. Dkt. No. 85. The parties commenced
11 discovery, and in late 2017 initiated settlement discussions. Declaration of Shane Brun (“Brun
12 Decl.”), ¶ 3. The parties participated in two ADR Phone Conferences, ECF 60, 74, 77, and five
13 settlement conferences with the Hon. Laurel Beeler. ECF 86, 106, 109, 113, 114. While the parties
14 agreed to stay discovery during the initial period of their settlement efforts, they later engaged in
15 significant and costly discovery efforts, including written discovery, the depositions of each Plaintiff
16 parent, and six Defendant witnesses (Donald Evans, Jan Hamilton, Susan Coto McKenna, Pasqual
17 Scuderi, Julia Nicole Hart, Flor Anne Palma, Lisa Graham, and Maggie Riddle). Brun Decl., ¶ 4.
18 Defendants produced comprehensive electronic policies, procedures, processes, and additional
19 records and information that Class Counsel cataloged, reviewed, and analyzed. Brun Decl., ¶ 5.
20 Likewise, Plaintiffs produced hundreds of documents in response to Defendants’ discovery. *Id.*
21 Class Counsel also engaged in years of communications with expert consultants and retained expert
22 witnesses/consultants during this time period, both to develop a plan for relief, and in preparation
23 for depositions and other discovery-related matters and in preparation for expert reports and analyses

24
25 _____
26 Morris of King & Spalding. Dkt. No. 156. As set forth in Plaintiff’s motion for preliminary
27 approval, the fees will be paid to the Disability Rights Education and Defense Fund and Jacobson
28 Education Law. Goodwin Proctor, Venable and King & Spalding represented Plaintiffs on a *pro*
bono basis.

1 Plaintiffs intended to use in support of class certification and, if necessary, trial. *Id.*

2 After extensive, arms-length negotiations, including the aforementioned five settlement
3 conferences, Plaintiffs and Class Counsel reached a proposed class-wide settlement in the Fall of
4 2020. As set forth more fully in Plaintiffs' motion for preliminary approval of the class action
5 settlement (Dkt. No. 153), the settlement provides substantial benefit to the Class as it requires a
6 comprehensive "Literacy Improvement Program" to be implemented over three to five years. The
7 original draft of the Literacy Improvement Program was the result of extensive research and was
8 developed and drafted by Class Counsel and their retained expert consultants. The initial draft of
9 the Literacy Improvement Program was negotiated and revised multiple times throughout the
10 litigation. The agreed upon Literacy Improvement Program requires that Defendant BUSD work
11 collaboratively with nationally recognized outside consultants to improve reading and language arts
12 achievement for all students with the use of research-based literacy programs and instruction,
13 especially those with or at risk for reading disabilities. The Literacy Improvement Program also
14 requires that the District adopt a "reading data system" and "reading testing system" for use in
15 Grades K-8 to measure students' reading fluency, and their progress toward academic goals.
16 Furthermore, the Settlement Agreement requires that Defendants retain an Outside Monitor who
17 will receive and submit progress reports regarding Defendants' compliance with the terms of the
18 Settlement Agreement, including the Literacy Improvement Program. This settlement reflects a
19 reasonable compromise between the parties considering the expense, delay, and uncertainty of
20 further litigation, and provides substantial value to the Class. The Class thus far agrees. Since the
21 notice of settlement has been disseminated, there has been no objections to the settlement and no
22 issues raised about the attorneys' fees and costs that the parties agreed would be paid to Plaintiffs'
23 counsel.

24 Accordingly, in accordance with the Court's July 16, 2021 Order (Dkt. No. 158), Plaintiffs
25 now move for an attorneys' fees award in the amount of \$350,000, which was negotiated and agreed
26 upon by Defendants as a part of the settlement. Consideration of the relevant factors set forth by
27 the Ninth Circuit confirms that a fees award of \$350,000 is reasonable in this case. Plaintiffs and
28

1 Class Counsel achieved a significant and valuable result for the Class in this complex case.
2 Moreover, the Class Counsel that are seeking fees through this motion utilized their significant
3 experience and skills in devoting nearly 4,000 hours to the litigation with no guarantee they would
4 ever be compensated for their time. Finally, the lodestar calculation of the fees and costs necessarily
5 incurred on behalf of Plaintiffs and the Class confirms the reasonableness of the amount sought.
6 The actual lodestar incurred by Class Counsel is many times the amount requested and agreed to
7 under the Settlement Agreement. Thus, Plaintiffs respectfully request that the Court grant Plaintiffs'
8 motion and award the attorneys' fees in the amount of \$350,000.

9 **II. ARGUMENT**

10 **A. Plaintiffs Qualify as a Party Entitled to Attorneys' Fees**

11 As set forth above, Plaintiffs brought this action against Defendants for, among other things,
12 violations of the ADA. Section 12205 of Title 42 of the United States Code provides that a court
13 may allow the "prevailing party" to receive attorneys' fees from defendants in cases brought under
14 this chapter, which includes the ADA. *See Barrios v. California Interscholastic Fed'n*, 277 F.3d
15 1128, 1134 (9th Cir. 2002). The Ninth Circuit has held that an ADA plaintiff is a prevailing party
16 if she: (1) "achieve[s] a material alteration of the legal relationship of the parties"; and (2) that
17 alteration is "judicially sanctioned." *Jankey v. Poop Deck*, 537 F.3d 1122 (9th Cir. 2008). In this
18 case, the Literacy Improvement Program coupled with the required Monitor achieves a material
19 alteration of the legal relationship between the parties. The second requirement can be met in many
20 ways, including when a party enters into a legally enforceable agreement with the defendant. *See*
21 *Barrios*, 277 F.3d at 1134 (holding that plaintiff was "prevailing party" under 42 U.S.C. § 12205
22 because he could enforce a settlement against the defendant). The parties here have entered into a
23 legally enforceable settlement agreement, which includes an agreement for Defendants to pay
24 Plaintiffs' attorneys' fees in the amount of \$350,000.

25 Indeed, the fact that the parties have a legally binding settlement agreement with a provision
26 for the payment of attorneys' fees provides yet another basis to award fees in this case. Under Fed.
27 R. Civ. P. 23(h), "the court may award reasonable attorney's fees and nontaxable costs that are

1 authorized by law or by the **parties' agreement.**" (emphasis added). As stated above, as a part of
2 an extensively negotiated settlement, Defendants agreed to pay Plaintiffs' counsel a total of
3 \$350,000, which is the amount sought in this instant motion. Moreover, this term was negotiated
4 after all substantive settlement terms pertaining to injunctive relief had been resolved, and the
5 ultimate amount was only agreed to by both Parties after lengthy negotiations and a significant fee
6 reduction from Plaintiffs' counsel. These fees did not include the tremendous time and expense of
7 the firms that worked on behalf of Plaintiffs on a *pro bono* basis. Brun Decl., ¶ 6. This is a practice
8 that courts have found to be proper and beneficial to the Class because there is no interference with
9 the negotiated benefit to the Class. See *In re: Volkswagen "Clean Diesel" Mktg., Sales Practices,*
10 *& Prod. Liab. Litig.*, No. 15-md-02672-CRB (JSC), 2016 WL 6248426, at *26 (N.D. Cal. Oct. 25,
11 2016). Accordingly, under both federal law and the parties' settlement agreement, Plaintiffs may
12 seek an award of attorneys' fees in this case.

13 **B. The Requested Attorneys' Fees are Fair and Reasonable**

14 While the amount of fees to be paid to Plaintiffs' counsel is not in dispute between the
15 parties, and in fact it has been negotiated and agreed to by the Defendants, in the context of a class
16 settlement, "courts have an independent obligation to ensure that" any award of fees "is reasonable,
17 even if the parties have already agreed to an amount." *In re Bluetooth Headset Products Liability*
18 *Litigation*, 654 F.3d 935, 941 (9th Cir. 2011). In deciding whether a requested fee amount is
19 appropriate, the court's role is to determine whether such amount is "fundamentally 'fair, adequate,
20 and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P.
21 23(e)).

22 The factors used by the Ninth Circuit to analyze the reasonableness of the fee award
23 requested include: (1) the results achieved by class counsel; (2) the complexity of the case and skill
24 required; (3) the risks of litigation; (4) the benefits to the class beyond the immediate generation of
25 a cash fund; (5) the market rate of customary fees for similar cases; (6) the contingent nature of the
26 representation and financial burden carried by counsel; and (7) a lodestar cross-check. See, e.g., *In*
27 *re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, 2017

1 WL 1047834, *1 (N.D. Cal., Mar. 17, 2017); *see also Six Mexican Workers v. Arizona Citrus*
2 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). These factors support Plaintiffs' request for fees
3 and costs in this case.

4 **1. The Settlement Provides Substantial Benefit to the Class**

5 The benefit that Class Counsel secured for Plaintiffs and the Class is the single most
6 important factor in evaluating the reasonableness of a requested fee. *In re Bluetooth*, 654 F.3d at
7 942; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008); *see also Hensley*
8 *v. Eckerhart*, 461 U.S. 424, 436 (1983) (stating that the "most critical factor" to the reasonableness
9 of an attorney fee award is "the degree of success obtained"). Here, Class Counsel achieved an
10 excellent result on behalf of Plaintiffs and the Class. The Settlement Agreement and accompanying
11 comprehensive Literacy Improvement Program will address the deficiencies of the policies,
12 procedures and practices alleged in the Complaint and Plaintiffs and all members of the proposed
13 class will be subject to, and will and benefit from, these revised policies, procedures, and practices.
14 Indeed, the Settlement Agreement achieved the exact policy and practice changes sought in bringing
15 this litigation and did so in an expedited manner such that the affected students can start enjoying
16 the benefits of the Literacy Improvement Program significantly earlier than if the case would have
17 continued to trial and verdict. The Settlement Agreement further provides for an outside monitor to
18 ensure Defendants' compliance with the terms of the Settlement Agreement, which will benefit
19 students for years to come. Accordingly, the substantial value that Class Counsel achieved for
20 Plaintiffs and the Class through litigating, and ultimately reaching a settlement of this case, weighs
21 strongly in favor of finding that the requested fees are both fair and reasonable.

22 **2. This Case Was Complex, Imposed Recovery Risks, and Required the**
23 **Skills and Experience of Class Counsel for Successful Resolution**

24 The Complaint in this case asserted complex claims under several federal and state statutes
25 to effectuate change in the policies and procedures of an entire school district. The Defendants are
26 sophisticated parties represented by an AM Law 100 law firm, Gordon Rees. The Defendants
27 vigorously defended this case including extensive motion practice and discovery and demonstrated
28

1 every intention to continue to do so through trial in this Action. *See Lofton v. Verizon Wireless LLC*,
2 No. C 13-05665 YGR, 2016 WL 7985253, at *1 (N.D. Cal. May 27, 2016) (the “risks of class
3 litigation against an able defendant well able to defend itself vigorously” support an upward
4 adjustment in the fee award). Plaintiffs were, however, equally vigorous in litigating this case.
5 Moreover, the legal organizations and lawyers representing Plaintiffs and the Class are highly
6 experienced and have served as counsel in numerous and varied disability rights cases across the
7 country, including complex class actions in the area of education and special education. *See*
8 Declaration of Claudia Center (“Center Decl.”), ¶¶ 4-6; Declaration of Deborah Jacobson
9 (“Jacobson Decl.”), ¶¶ 4-5. Class Counsel drew on their experience to develop the legal theories
10 Plaintiffs asserted, they developed evidence to support the Class claims, engaged in vigorous
11 discovery, and ultimately engaged in extensive arms-length settlement negotiations. *See Wallace v.*
12 *Countrywide Home Loans, Inc.*, No. SACV 08-1463-JLS, 2015 WL 13284517, at *9 (C.D. Cal.
13 Apr. 17, 2015) (factors reflecting counsel’s skill included developing the facts and legal claims,
14 conducting discovery, reviewing documents, retaining experts, motion practice, and negotiating and
15 drafting the settlement).

16 Class Counsel also used their knowledge and expertise to recognize the complexity and risks
17 in this case. While Class Counsel felt strongly about the merits of the case, they also understood
18 the risks involved in this case specifically, and in litigation generally. It was understood that even
19 if Plaintiffs successfully navigated through the various risks points in the case by winning a
20 contested motion for class certification, prevailing on the merits, and fighting off any appeals, that
21 process would likely have taken years and cost millions of additional dollars in attorneys’ fees and
22 costs. All the while, Plaintiffs and other students with reading disabilities would have been waiting
23 for relief, some of whom would move on to high school and even graduate high school having never
24 received the programs and services they need to read fluently. Going even one year without
25 appropriate programs and services can impact a young student for life. Moreover, the end result of
26 protracted litigation would have been unlikely to be considerably better than the terms that the
27 Settlement Agreement and Literacy Improvement Program provide, as again, Plaintiffs achieved the

1 exact policy and practice changes they sought in bringing this litigation. In fact, the Literacy
2 Improvement Program was originally developed by Plaintiffs' retained and nationally recognized
3 literacy experts, who were able to give extensive input as to each aspect of the program throughout
4 the negotiations and in settlement conferences, including details such as program goals, how to
5 implement the program to achieve those goals, and even as to specific intensive, research-based
6 reading interventions and services that should be used in the District. If Plaintiffs were successful
7 in litigation and the Court ordered Defendants to develop such a program and begin to use research-
8 based reading interventions, Plaintiffs' experts may not have been able to give such extensive input.

9 Thus, based on their experience litigating disability rights cases and the claims in this matter,
10 Class Counsel were well equipped to understand that the policy and practice changes and other
11 provisions that they negotiated in the Settlement Agreement would yield an excellent outcome that
12 will ensure that the Plaintiffs and the Class have access to a free and appropriate public education
13 including in the areas of identification, evaluation, provision of services, and monitoring of progress
14 for students with reading disabilities. The successful settlement of this complex case is a testament
15 to Class Counsels' skill and quality of work, which also weighs in favor of finding that the requested
16 fees are both fair and reasonable.

17 **3. Class Counsel Had No Guarantee of Payment or Reimbursement for**
18 **the Substantial Time, Effort, and Costs Expended in Litigating This**
19 **Case**

20 Class Counsel's fee request also reflects the risk that Class Counsel assumed that they would
21 not recover any of their fees as they handled this case on a contingency basis. Counsel at DREDF
22 have expended more than 1777.23 hours in attorney time, and counsel at JEL² have expended more
23 than 1997.7 hours of attorney time litigating this case. The nearly 4,000 hours of total time between
24 these two organizations over the past three years represented a substantial portion of DREDF's and
25 JEL's available attorney time in lieu of other work, and these hours were expended without any

26 _____
27 ² JEL is a small firm, with 1-2 attorneys on staff at all times. As a result, JEL did not work on this
28 matter on a *pro bono* basis.

1 guarantee that DREDF or JEL would receive any compensation in return for the significant time
2 and resource commitment to this complicated case. These circumstances also weigh in favor of
3 finding that the requested fees are both fair and reasonable. *In re Omnivision Techs., Inc.*, 559 F.
4 Supp. 2d 1036, 1046-47 (N.D. Cal. 2008) (“The risk that further litigation might result in Plaintiffs
5 not recovering at all, particularly a case involving complicated legal issues, is a significant factor in
6 the award of fees.”).

7 **4. The Lodestar Incurred by Class Counsel Confirms the Reasonableness**
8 **of the Fees Requested**

9 The “lodestar method” is a method of computing attorney fees by multiplying the number
10 of hours reasonably expended on litigation by a reasonable hourly rate. *See Blackwell v. Foley*, 724
11 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (applying lodestar method to Section 12205 in action to
12 improve accessibility for physically disabled people). Here, the nearly 4,000 hours that Class
13 Counsel devoted to this litigation were reasonable and necessary “taking into consideration the
14 amount of substantive litigation activity.” *In re Apple Inc. Device Performance Litig.*, 2021 WL
15 1022866, at *8 (N.D. Cal. Mar. 17, 2021). As set forth above, Class Counsel litigated a motion to
16 dismiss, engaged in extensive written discovery and fact depositions, and participated in numerous
17 ADR and settlement conferences in this case. Both DREDF and JEL are requesting a small
18 percentage of their combined loadstar. Counsel have provided the Court with a summary of the
19 review of the time records detailing the work they performed on behalf of Plaintiffs and the Class.
20 Loadstar does not include pre-case development, nor the work performed on this case after
21 settlement, such as the motion at issue here. Center Decl., Ex. A; Jacobson Decl., Ex A.

22 Further, throughout the litigation, Class Counsel proactively sought to exercise billing
23 judgment by implementing systems to avoid duplication and achieve economies. Brun Decl., ¶ 7.
24 For example, during the discovery period, Class Counsel developed a tasking system through which
25 attorneys were assigned to specific discovery tasks, that is, rather than having every organization
26 work on expert discovery, a selection of attorneys were tasked with managing this work; similarly,
27 Class counseled convened a subset of attorneys to manage written discovery and another group to

1 lead oral discovery. *Id.* This system allowed Class Counsel to avoid duplication and ensured that
2 only the necessary personnel were billing time to the case for the work performed. *Id.*

3 In terms of the rates, DREDF had hourly rates ranging from \$340 to \$985 (Center Decl., ¶
4 9) and JEL had hourly rates ranging from \$410 to \$485 per hour. Jacobson Decl., Ex. A. Class
5 Counsel’s rates are “reasonable and comparable to the fees generally charged by attorneys with
6 similar experience, ability, and reputation for work on similar matters in this judicial district.” *Rivas*
7 *v. BG Retail, LLC*, No. 16-CV-06458-BLF, 2020 WL 264401, at *7 (N.D. Cal. Jan. 16, 2020). “To
8 determine the prevailing market rate, courts may rely on attorney affidavits as well as ‘decisions by
9 other courts awarding similar rates for work in the same geographical area by attorneys with
10 comparable levels of experience.’” *Id.* (citation omitted). Class Counsel have provided the Court
11 with declarations describing their background and experience as well as their rate sheets that have
12 been formulated through research including case law and court orders regarding fees and fee awards
13 in the Bay Area, analyses and research about Bay Area hourly rates, economic benchmarks and
14 forecasts including the Consumer Price Index (Urban) (CPI) for the Bay Area and nationwide, as
15 well as the Federal Reserve interest rates. *See* Center Decl., ¶ 7-8; Jacobson Decl., ¶ 8. Class
16 Counsel’s hourly rates are consistent with rates approved by courts in this district, which typically
17 range from \$300 to \$1,000 for attorneys. *See Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-
18 04922-HSG, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020) (finding rates between \$275 and
19 \$1,000 for attorneys reasonable); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-
20 02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (approving rates of \$450 to \$900
21 for partners, \$160 to \$850 for non-partner attorneys, and \$50 to \$380 for staff members); *Superior*
22 *Consulting Servs., Inc. v. Steeves-Kiss*, No. 17-cv-06059-EMC, 2018 WL 2183295, at *5 (N.D. Cal.
23 May 11, 2018) (“[D]istrict courts in Northern California have found that rates of \$475 to \$975 per
24 hour for partners and \$300-\$490 per hour for associates are reasonable.”).

25 DREDF’s 1777.23 hours in attorney time at hourly rates ranging from \$340 to \$985 per hour
26 results in a total lodestar for DREDF of \$1,105,645.90. Center Decl., ¶ 9. JEL’s 1997.7 hours at
27 hourly rates ranging from \$410 to \$485 per hour yields a total lodestar for JEL of \$940,802.50.

1 Jacobson Decl., ¶ 9.³ As a result, the agreed-upon fee award of \$350,000⁴ for DREDF and JEL is
 2 far below their actual lodestar and in fact represents between 15 and 18 percent of a lodestar of more
 3 than \$2 million. The fact that the benefits conferred on the Plaintiffs and the Class are substantial,
 4 coupled with the fees being a small percentage of the overall lodestar, demonstrates that the fees
 5 requested are facially fair and reasonable.⁵

6 Finally, Class Counsel incurred out-of-pocket litigation costs. *See* Center Decl. ¶ 9 (attesting
 7 to costs of \$3,428.45) and Jacobson Decl., ¶ 9 (attesting to costs of \$2,300.50). These costs were
 8 for postage, copying, mileage, public transportation, research costs, delivery fees, public record act
 9 request fees, courier fees, and deposition fees. *Id.* Here, the costs incurred were necessary to the
 10 litigation, very reasonable in amount, and the type of costs typically billed to paying clients. *See*
 11 *Dickey*, 2020 WL 870928, at *9. While Class counsel is not seeking reimbursement of their costs
 12 as a part of the fee award, these incurred costs further demonstrate the reasonableness of the award
 13 of fees sought.

14 III. CONCLUSION

15 In consideration of the above, Plaintiffs respectfully request that this Court grant Plaintiff's
 16 motion awarding attorneys' fees in the amount of \$350,000.

17
 18 DATED: August 27, 2021

Respectfully submitted,

19
 20 By: /s/ Claudia Center

CLAUDIA CENTER (SBN 158255)

ccenter@dredf.org

MALHAR SHAH (SBN 318588)

mshah@dredf.org

21
 22
 23 ³ While King & Spalding and Goodwin are Class Counsel and have incurred significant attorneys'
 24 fees and costs in representing Plaintiffs, these firms have acted in a *pro bono* capacity in this
 25 Action and have agreed to waive any and all claims for attorneys' fees and costs in order to obtain
 the Settlement Agreement. Goodwin and King & Spalding will, however, submit declarations
 providing their hours, fees, and lodestar if that information would be beneficial to the Court.

26 ⁴ Per the Settlement Agreement, \$175,000.00 of the \$350,000.00 shall be paid to the "Disability
 27 Rights Education and Defense Fund," in three (3) installments, and \$175,000.00 shall be paid to
 "Jacobson Education Law," also in three installments.

28 ⁵ There are no Service fees or Cy Pres fees being sought as a part of the settlement of the Action.

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**DISABILITY RIGHTS EDUCATION
AND DEFENSE FUND, INC.**

Ed Roberts Campus
3075 Adeline Street, Suite 210
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Tel: +1.510.644.2555
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By: /s/ Deborah Jacobson

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JACOBSON EDUCATION LAW, INC.
1919 Addison Street, Suite 105
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By: /s/ Shane Brun

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sbrun@kslaw.com
KING & SPALDING LLP
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Telephone: (415) 318-1245
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Attorneys for Plaintiffs

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6 Fax: (510) 841-8645

7 [Additional Counsel and Parties Listed on Next Page]

8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her
guardian; STUDENT B, by and through
12 PARENT B, his guardian; STUDENT C, by
and through PARENT C, his guardian; and
13 STUDENT D, by and through PARENT D, her
guardian, each one individually and on behalf
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL
DISTRICT and THE BOARD OF
18 EDUCATION OF THE BERKELEY UNIFIED
SCHOOL DISTRICT,

19 Defendants.
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Case No. 4:17-cv-02510-JST

**DECLARATION OF SHANE BRUN IN
SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
ATTORNEYS' FEES PURSUANT TO
FED. R. CIV. P. 23(h) AND 54(d)(2)**

Hearing Date: November 4, 2021
Time: 2:00 p.m.
Judge: Hon. John S. Tigar

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Tel: (415) 318-1245
Fax: (415) 318-1200

Attorneys for Plaintiffs

1 I, Shane Brun, declare and state as follows:

2 1. I am an attorney with the law firm of King & Spalding LLP and I am counsel for
3 Plaintiffs Student A, by and through Parent A, her guardian; Student B, by and through Parent B,
4 his guardian; Student C, by and through Parent C, his guardian; and Student D, by and through
5 Parent D, her guardian, each one individually and on behalf of themselves (collectively, “Plaintiffs”) in the above referenced action. I have also been preliminarily approved as Class Counsel per the
6 Court’s July 8, 2021 Order (ECF No. 156).

8 2. I make this declaration in support of Plaintiffs’ Unopposed Motion for Attorney Fees
9 (“Motion”). This declaration is made based upon my personal knowledge, and I am familiar with
10 its contents. If called to testify, I could and would testify under oath to the facts set forth herein.

11 3. Plaintiffs and Defendants Berkeley Unified School District (“BUSD”) and the Board
12 of Education of Berkeley Unified School District (the “Board,” and collectively with the BUSD,
13 “Defendants,” and collectively with Plaintiffs, the “Parties”) began settlement discussions in late
14 2017, and over the ensuing months the Parties exchanged multiple letters concerning possible
15 settlement.

16 4. The Parties agreed to stay discovery during the initial period of their settlement
17 efforts, including through the period of the first and second settlement conferences with the Hon.
18 Laurel Beeler. Discovery remained stayed until May of 2019, after which the Parties engaged in
19 significant discovery efforts, including written discovery, the depositions of each of the four Plaintiff
20 parents, and six Defendant witnesses, including a day-long 30(b)(6) deposition of Defendants’
21 designee.

22 5. Defendants produced comprehensive electronic policies, procedures, processes, and
23 additional records and information that Class Counsel cataloged, reviewed, and analyzed. Likewise,
24 Plaintiffs produced hundreds of documents in response to Defendants’ discovery. Class Counsel
25 also engaged in years of communications with expert consultants and retained expert
26 witnesses/consultants during this time period, both to develop a plan for relief, and in preparation
27 for depositions and other discovery-related matters and in preparation for expert reports and analyses
28 Plaintiffs intended to use in support of class certification and, if necessary, trial.

1 6. Subject to this Court’s approval, Defendants have agreed to pay Plaintiffs’ Counsel
2 a total of \$350,000. This term was negotiated after all substantive settlement terms pertaining to
3 injunctive relief had been resolved, and the ultimate amount was agreed to by both Parties only after
4 lengthy negotiations and a significant fee reduction from Plaintiffs’ Counsel. These fees did not
5 include the tremendous time and expense of the firms that worked on behalf of Plaintiffs on a *pro*
6 *bono* basis.

7 7. Throughout the litigation, Class Counsel proactively sought to exercise billing
8 judgment by implementing systems to avoid duplication and achieve economies. For example,
9 during the discovery period, Class Counsel developed a tasking system through which attorneys
10 were assigned to specific discovery tasks, that is, rather than having every organization work on
11 expert discovery, a selection of attorneys were tasked with managing this work; similarly, Class
12 counseled convened a subset of attorneys to manage written discovery and another group to lead
13 oral discovery. This system allowed Class Counsel to avoid duplication and ensured that only the
14 necessary personnel were billing time to the case for the work performed.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct.

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Executed August 27, 2021, at San Francisco, California.

By: 

SHANE BRUN

1 CLAUDIA CENTER (SBN 158255)
ccenter@dredf.org
2 MALHAR SHAH (SBN 318588)
mshah@dredf.org
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5 Berkeley, CA 94703
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7 [ADDITIONAL COUNSEL AND PARTIES LISTED ON NEXT PAGE]

8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her
guardian; STUDENT B, by and through
12 PARENT B, his guardian; STUDENT C, by
and through PARENT C, his guardian; and
13 STUDENT D, by and through PARENT D, her
guardian, each one individually and on behalf
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL
DISTRICT and THE BOARD OF
18 EDUCATION OF THE BERKELEY UNIFIED
SCHOOL DISTRICT,

19 Defendants.
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Case No. 4:17-cv-02510-JST

**DECLARATION OF CLAUDIA
CENTER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES PURSUANT
TO FED. R. CIV. P. 23(h) AND 54(d)(2)**

Hearing date: November 4, 2021

Time: 2:00 p.m.

Judge: Hon. John S. Tigar

1 DEBORAH JACOBSON (SBN 278104)
2 *djacobson@jacobsoneducationlaw.com*
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8 SHANE BRUN (SBN 179079)
9 *sbrun@kslaw.com*
10 GEORGE R. MORRIS (SBN 249930)
11 *gmorris@kslaw.com*
12 **KING & SPALDING LLP**
13 601 S. California Ave.
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16 Telephone: (415) 318-1245
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18 *Attorneys for Plaintiffs*

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1 I, Claudia Center, declare and state as follows:

2 1. I am the Legal Director of Disability Rights Education and Defense Fund
3 (DREDF), and I am counsel for Plaintiffs Student A, by and through Parent A, her guardian;
4 Student B, by and through Parent B, his guardian; Student C, by and through Parent C, his
5 guardian; and Student D, by and through Parent D, her guardian, each one individually and on
6 behalf of themselves (collectively, “Plaintiffs”) in the above referenced action.

7 2. I make this declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’
8 Fees. This declaration is made based upon my personal knowledge, and I am familiar with its
9 contents. If called to testify, I could and would testify under oath to the facts set forth herein.

10 3. I am among Class Counsel for the settlement class preliminarily approved by the
11 Court in this matter. I am a member of the California bar. I graduated from Berkeley Law in
12 December 1991. I received a B.A. from Wesleyan University in 1987.

13 4. I have been the Legal Director with DREDF since February 2020. Prior to this
14 position, I was a Senior Staff Attorney at the American Civil Liberties Union Foundation
15 (“ACLU”) Disability Rights Program for six years. Prior to joining the ACLU, I worked at the
16 Legal Aid Society – Employment Law Center for 19 years, where I directed the disability rights
17 program. Before that, I worked at the National Abortion and Reproductive Rights Action League
18 for two and a half years.

19 5. I have represented plaintiffs in disability rights cases, including complex class
20 actions, and including class actions in the area of education, for more than 25 years. I have also
21 served as amicus counsel in cases of importance to people with disabilities, including in cases
22 about disability rights in education. In 2009, I received the Paul G. Hearne Award for Disability
23 Rights from the American Bar Association Commission on Disability Rights. I have served as an
24 adjunct professor of disability rights at the University of California Hastings College of the Law
25 and at Berkeley Law School. I have written articles and given trainings about disability rights on
26 many occasions.

27 6. I supervise Malhar Shah, Staff Attorney with DREDF, in this matter. Mr. Shah is
28 point person for special education at DREDF where he works on issues of inclusion of students

1 with disabilities in general education, restraints and seclusions, and access to quality educational
2 services and supports. Mr. Shah was previously a family law staff attorney at the National Center
3 for Lesbian Rights, where he worked on appellate cases challenging state laws that prohibited
4 LGBTQ+ parents from accessing parental rights. Prior to that, Mr. Shah was a litigation fellow at
5 Public Counsel where he worked on education equity cases seeking access to quality literacy
6 education for students in California and Detroit, trauma sensitive services for students with
7 disabilities, and safe educational environments for transgender students. Mr. Shah graduated from
8 Harvard Law School in 2017 and from University of California, Riverside in 2014.

9 7. I have reviewed the 2020 hourly rate sheet for DREDF's current and prior
10 attorneys, and I am familiar with the research that underlies the DREDF rate sheet. Linda Kilb,
11 Director of DREDF's California Legal Services Trust Fund Support Center Program, conducts the
12 research underlying the rate sheet, and updates the sheet on an annual basis. The updated rate sheet
13 is then reviewed by me for approval. The research and assessments that Ms. Kilb conducts and
14 that underlie the rate sheet include: case law and court orders regarding fees and fee awards in the
15 Bay Area; analyses and research about Bay Area hourly rates compiled by California attorneys'
16 fees expert Richard M. Pearl and filed in declarations supporting petitions for fees; economic
17 benchmarks and forecasts including the Consumer Price Index (Urban) (CPI) for the Bay Area and
18 nationwide, the Federal Reserve interest rates, growth forecast, and inflation projection, and the
19 U.S. Bureau of Economic Analysis personal consumption expenditures price index; and
20 consideration of the entire DREDF ladder in order to keep each DREDF rate in logical
21 relationship to one another and to make other adjustments such as flattening increases at the top
22 end. In early 2020, due to the pandemic, many of these factors were disrupted. DREDF's 2020 rate
23 sheet was therefore based on the pre-pandemic 2019 rate sheet, adjusted by the projected annual
24 Bay Area CPI.

25 8. I have reviewed the DREDF's detailed billing records and out-of-pocket costs list
26 in this case. I am attaching as Exhibit A a summary of DREDF's lodestar and out-of-pocket costs
27 that I compiled on or about December 4, 2020, based upon these detailed records. The summary
28 shows the calculation for the lodestar, including hours by attorney, hourly rates by attorney, total

1 hours, and total lodestar. The total hours listed are 1777.23 and the total lodestar is \$1,105,645.90.
2 The summary also states DREDF's out-of-pocket costs which are \$3,428.45. These costs were for
3 postage, copying, mileage, public transportation, research costs, delivery fees, public record act
4 request fees, courier fees, and deposition fees. Fees and costs together total \$1,109,074.35.

5 9. The attached summary does not include all of the time expended by DREDF in this
6 matter. For example, it does not include any time expended after December 4, 2020, such as time
7 spent by Class Counsel revising the class notice, posting the settlement documents, responding to
8 questions from constituents about the settlement, and preparing this motion for attorneys' fees and
9 costs. Further, the attached summary uses DREDF's 2020 rate sheet, rather its 2021 rate sheet
10 which has higher rates.

11 10. Subject to this Court's approval, Defendants have agreed to pay Plaintiffs' Counsel
12 at total of \$350,000, which includes \$175,000 for DREDF. This amount represents about 16% of
13 DREDF's lodestar as of December 4, 2020.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.
16

17 Executed August 25, 2021, at San Francisco, California.
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22 _____
23 Claudia Center
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EXHIBIT A

DREDF Fees and Costs Summary
Student A. v. BUSD

Attorney	Year of Law School Graduation	Hours	Billable Rate	Lodestar
Robert Borrelle	2013	4.4	\$375.00	\$1,650.00
Claudia Center	1991 (Dec.)	21.41	\$845.00	\$18,091.45
Larissa Cumming	1987	696.52	\$885.00	\$616,420.20
Arlene Mayerson	1977	74.75	\$985.00	\$73,628.75
Ramaah Sadasivan	2009	894.35	\$410.00	\$366,683.50
Malhar Shah	2017	85.8	\$340.00	\$29,172.00
TOTAL		1777.23		\$1,105,645.90
Out of Pockets				\$3,428.45
TOTAL				\$1,109,074.35

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7 [ADDITIONAL COUNSEL AND PARTIES LISTED ON NEXT PAGE]

8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 STUDENT A, by and through PARENT A, her
guardian; STUDENT B, by and through
12 PARENT B, his guardian; STUDENT C, by
and through PARENT C, his guardian; and
13 STUDENT D, by and through PARENT D, her
guardian, each one individually and on behalf
14 of all other similarly situated children,

15 Plaintiffs,

16 v.

17 THE BERKELEY UNIFIED SCHOOL
DISTRICT and THE BOARD OF
18 EDUCATION OF THE BERKELEY UNIFIED
SCHOOL DISTRICT,

19 Defendants.
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Case No. 4:17-cv-02510-JST

**DECLARATION OF DEBORAH
JACOBSON IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR ATTORNEYS' FEES PURSUANT
TO FED. R. CIV. P. 23(h) AND 54(d)(2)**

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17 Fax: (415) 318-1200

18 *Attorneys for Plaintiffs*

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1 I, Deborah Jacobson, declare and state as follows:

2 1. I am the founder of Jacobson Education Law Inc., (“JEL”), and I am counsel for
3 Plaintiffs Student A, by and through Parent A, her guardian; Student B, by and through Parent B,
4 his guardian; Student C, by and through Parent C, his guardian; and Student D, by and through
5 Parent D, her guardian, each one individually and on behalf of themselves (collectively, “Plaintiffs”)
6 in the above referenced action.

7 2. I make this declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’
8 Fees (“Motion”). This declaration is made based upon my personal knowledge, and I am familiar
9 with its contents. If called to testify, I could and would testify under oath to the facts set forth herein.

10 3. I am among the counsel of record for the Plaintiffs and the putative class in this
11 matter. I am a member of the California bar. I graduated from Golden Gate University School of
12 Law in May 2011.

13 4. I founded JEL in September 2013. Prior to starting my private practice in California,
14 I was the managing associate of a special education law firm in Washington, D.C. Before that, as a
15 law student, I worked as a legal intern and special education advocate for Disability Rights
16 California and Bay Area Legal Aide.

17 5. I have spent my entire legal career working on behalf of children with disabilities in
18 the area of special education law. I have represented countless children with reading disabilities
19 such as dyslexia in individual due process cases against school districts. I have specific expertise
20 in the area of reading instruction and reading services for children with reading disabilities such as
21 dyslexia and have attended trainings regarding dyslexia and reading instruction by nationally
22 recognized experts. I have also given trainings locally and at national legal conferences on special
23 education law and specifically, representation of children with reading disabilities such as dyslexia.
24 I believe that I am qualified to represent the Settlement Class in this action.

25 6. JEL has had considerable involvement in this lawsuit from its inception through the
26 filing of the Complaint, discovery, and settlement negotiations. Accordingly, JEL has extensive
27 knowledge of the factual and legal issues of this case, the Parties, the Settlement Class, and class
28 action settlements in general.

1 7. JEL has also worked closely with the Plaintiffs themselves. Plaintiffs have
2 vigorously pursued the prosecution of their claims, including through attending settlement
3 conferences and participating in settlement discussions and participating in discovery.

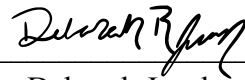
4 8. I have created the hourly rate sheet for JEL's current and prior attorneys, and I have
5 conducted the research underlying the rate sheet and update the sheet on an annual basis, however
6 the rate sheet. The research and assessments that I conduct include briefs, case law and court orders
7 regarding California and local prevailing rates and fee awards in special education cases; analyses
8 and research about Bay Area hourly rates including review of declarations from attorneys in my
9 region in support of fee petitions.

10 9. I have prepared and reviewed JEL's detailed billing records and out-of-pocket costs
11 list in this case. Attached hereto as **Exhibit A** is a true and correct summary of JEL's lodestar and
12 out-of-pocket costs. The summary shows the calculation for the lodestar, including hours by
13 attorney, hourly rates by attorney, total hours, and total lodestar that I compiled on or about
14 December 5, 2020. The total hours are 1997.7 and the total lodestar is \$938,502.00. This does not
15 include hundreds of pre-litigation hours JEL attorneys spent building this case. The summary also
16 states JEL's out-of-pocket costs which are \$2,300.50. These costs were for mileage, travel expenses
17 including public transportation, research costs, and deposition fees. Fees and costs together are
18 \$940,802.50. The attached summary does not include time spent on final settlement negotiations
19 and recent time expended preparing Plaintiffs' motion for preliminary approval of the settlement,
20 nor this motion.

21 10. Subject to this Court's approval, Defendants have agreed to pay Plaintiffs' Counsel
22 a total of \$350,000, which includes \$175,000 for JEL. This amount represents about 18% of JEL's
23 lodestar.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct.
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1 Executed August 27, 2021, in Berkeley, California.
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Deborah Jacobson

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EXHIBIT A

Attorney	Year of Law Schol Graduation	Hours	Billable Rate	Lodestar
Ramaah Sadasivam	2009	405.1	\$410.00	\$166,091.00
Deborah Jacobson	2011	1592.6	\$485.00	\$772,411.00
TOTAL		1997.7		\$938,502.00
Out of Pockets				\$2,300.50
TOTAL				\$940,802.50