PARTIES/ATTORNEYS

Plaintiff	Carlos Alberto Alonso	Thomas A. Saenz Luis L. Lozada Fernando Nuñez Mexican American Legal Defense and Educational Fund
Defendant	A.T. Still University	Kathleen M. Hartman Callahan, Thompson, Sherman & Caudill, LLP

Tentative Ruling

Plaintiff's counsel is required to appear and address the utility of a settlement website and whether it would be appropriate under these circumstances.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

This is a class action. On December 19, 2024, plaintiff Carlos Alberto Alonso filed his complaint alleging that defendant A.T. Still University (ATSU) follows a policy of denying the consideration to prospective students on the basis of their alienage or immigration status, including those who have Deferred Action for Childhood Arrivals ("DACA") status (Challenged Practice). He alleged one cause of action for violation of the Unruh Civil Rights Act.

<u>On Calendar</u>

Plaintiff seeks Preliminary Approval of a monetary class action settlement of $129,200, which allocates $99,200 to approximately 31 class members; $30,000 to a cy pres fund, to be distributed in recognition of those Class Members that were deterred from applying for Educational Programs because of the Challenged Practice; and an agreement for comprehensive corrective action to ATSU's policies to eliminate any present or future risk of the Challenged Practice.

<u>Settlement Details</u>

The class is defined as "the 31 individuals who, according to ATSU's records, were legally residing in California and applied for an Educational Program with Defendant from December 19, 2022 through May 12, 2025 and were denied Educational Programs based on their immigration status."

The monetary settlement fund will be distributed as reported above. Each class member will receive $3,200. The remaining $30,000 will be used to establish a cy pres fund, which plaintiff proposes to distribute equally between the organizations Immigrants Rising and TheDream.US, with each recipient receiving $15,000 each.[1] No funds will revert to ATSU. Instead, any unclaimed settlements will be distributed to the cy pres recipients. As noted, the settlement also provides for corrective action to ATSU's policies to ensure it will not deny applications based solely on an applicant's immigration status, unless required by law.

Settlement Discussion

1. General Standards for Approval of a Class Action Settlement

Review of a proposed class action settlement typically involves a two-step process: preliminary approval and a subsequent final approval hearing. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118—"Rule 3.769 of the California Rules of Court [CRC] sets forth the procedures for settlement of class actions in California.")

Procedurally, a party must move for "preliminary approval of the settlement." (CRC 3.769(c).) After the hearing, the court makes an order approving or denying "certification of a provisional settlement class." (CRC 3.769(d).) If the court grants preliminary approval, it must set a final approval hearing, and provide for notice to be given to the class. (CRC 3.769(e).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (CRC 3.769(f).) At the final approval hearing, "the court must conduct an inquiry into the fairness of the proposed settlement." (CRC 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (CRC 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

The first step is for the court to review the proposed terms of the settlement at a preliminary hearing and make a preliminary determination on the fairness,

[1] TheDream.US is the nation's largest college and career success program for undocumented immigrants and has provided more than 10,000 scholarships to DACA recipients. Immigrant Rising transforms the lives of undocumented people through college scholarships and resources, as well as career counseling. Both organizations will serve Class Members and similarly-situated individuals, and the interests of the Class.

reasonableness, and adequacy of the settlement terms. (CRC 3.769(c); see also Manual for Complex Litigation, (Federal Judicial Center 4th ed. 2021), § 21.632.)[2] The preliminary evaluation requires the court to address two competing concerns: (1) On the one hand, given that the court would have the opportunity to weigh the settlement's strengths and weaknesses with more information at the final approval hearing, the preliminary approval hearing did not need to substitute for that level of review; (2) On the other hand, sending notice to the class costs money and triggers the need for class members to consider the settlement, actions which are wasteful if the proposed settlement is obviously deficient from the outset. (Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th Ed. 2002) § 13:10; see *In re Traffic Executive Association–Eastern Railroads* (2d Cir.1980) 627 F.2d 631, 634.) "The judge should raise questions at the preliminary hearing and perhaps seek an independent review if there are reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys." (Manual for Complex Litigation, supra, § 21.632.)

Precertification settlements in class actions should be scrutinized carefully. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743.) This is accomplished through careful review by the trial court, and precertification settlements are routinely approved where they are found fair, adequate and reasonable. (*Ibid*; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and 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." (*Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801 (*Dunk*).) This list "is not exhaustive and should be tailored to each case." (*Dunk*, at p. 1801.) "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk*, at p. 1802.)

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[2] The Manual for Complex Litigation is widely relied upon by federal judges as well as practitioners regarding the organization and administration of class actions and other complex litigation matters. (*Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 298.) The Manual does not have the force of law, but in federal court it does "provide a rough guide by which to measure whether the trial judge acted within his discretion." (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir.1979) 594 F.2d 1106, 1124, fn. 22.) The court relies on it here for its useful description of the relative scope of the preliminary approval and final approval process for class settlements.

This is only an initial presumption; a trial court's ultimate approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra*, 186 Cal.App.4th at p. 408, fn. 6.)

With these standards in mind, the court must whether the settlement agreement is fair, adequate, reasonable; whether preliminary certification of the class is appropriate; whether the proposed procedures appear sound; whether attorney's fees, costs, and settlement administrator and its costs are reasonable; and whether any class representative enhancement as requested is justified.

2. Is the Class Action Settlement Fair, Adequate and Reasonable?

a. Factors Favoring Presumption of Fairness

As noted, a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.)

Here, it is reported that after the complaint was filed, "over a period of several months, the Parties exchanged information discovery, including applications and records, copies of policies and procedures, and discussion of legal precedent, to assess the merits of Plaintiff's discrimination claims and the number of potentially

affected Class Members." (Lozada Decl., ¶ 16.) Following exchange of discovery, and an evaluation of the terms of court-approved class-action settlements in similar cases filed by Class Counsel against several banks and credit unions, the Parties negotiated the terms of the Settlement, and exchanged offers and counter-offers until a Settlement was reached. (*Id.* at ¶ 17.) The Parties conducted these negotiations directly through regular exchange of emails, and other conferences. (*Id.*) Counsels' experience in similar litigation has been established. (Lozada Decl., ¶¶ 4-12.)

These factors favor the presumption of fairness.

b. Strength of the Case

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407-408 (*Munoz*).) To perform this balance, the trial court must have "a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.' " (*Munoz, supra,* at p. 409; see *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.)

According to attorney Lozada, "Class Counsel initially demanded full payment of the potential damages for each Class Member. However, because of potential defenses to Class Member claims, including an argument that treatment of applicants with "work only" social security numbers does not constitute immigration-status discrimination under the Unruh Act and whether Defendant is a business establishment, the Parties eventually agreed to payments to each Class Member of 80% of the $4,000 statutory damages available under the Unruh Act for each discriminatory act, along with a commitment by Defendant to modify its admissions policy." (Lozada Decl., ¶ 16.)

" 'The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.' [Citation.]" (*7–Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1135,1150.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 246.) Class counsel is experienced and details the inherent risks of any continued litigation. The assessments appear reasonable.

3. Preliminary Certification of Class

Class action certification questions are essentially procedural and involve an assessment of whether there is a common or general interest between numerous people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant commons question of law or fact, class representatives with claims or defenses typical of class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

There has been a sufficient preliminary showing of numerosity, ascertainability, and predominance of commonality. (Motion, pp. 6-9.) The class is not inordinately large, there is a defined class period, with names obtained through records. It appears the claims are sufficiently similar, having been subjected to the same policies or practices. It also appears the proposed class representative has typical claims of the class as a whole. A class action appears the superior way to a fair and efficient adjudication of the lawsuit. Certification of the class seems appropriate.

4. Notice Procedures for the Claim Forms and Opt-Out

The class notice and claim form instructions are attached to Exhibit 1 of the Settlement Agreement. (Lozada Decl., Exh. A.) It properly details the nature of the lawsuit and identifies the proposed class. It provides the nature of the class claims and who may be eligible and accurately describes the settlement terms.

The Notice discloses the proposed deductions that will come from the settlement amount. It explains the terms of the class action settlement and describes how the parties reached that amount. It indicates that class members need not do anything to be deemed part of the class, what this means, and the nature of the general release required. The notice also explains what the class member can do if he or she does not want to participate (opt out), or if they simply want to object. It explains the nature of the preliminary approval process, culminating in the final approval hearing. The notice also gives a contact number for questions, including plaintiff's class counsel. The content of the notice is compliant with the California Rules of Court, rule 3.766(d).

The Notice will be provided to each Class Member in English and Spanish. The parties have agreed that "Defendant will not pay for the creation of a settlement website unless the Court orders that notice to the Class must include a website. Class Counsel agrees not to request the creation of a website as part of the Notice to the Class, unless the Court requires it." (Lozada Decl., Exh. A, ¶ 5 (e).)

Websites are often part of a multi-faceted notice strategy that includes direct mail, email, and publication. For example, in an appropriate case, notice may be

provided through a settlement website, a hyperlink on the defendant's homepage, email notices, and publication in USA Today. This is effective to reach unknown persons who may be members of the class. (See *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 739; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251.) In some cases, using a summary notice that directs the class member wanting more information to a web site containing a more detailed notice may be an acceptable manner of giving notice. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 58.)

In this case, all class members are known, and the facts here don't suggest use of a website may be the best way to give or support the giving of notice. The court directs plaintiff to address this issue further at the hearing.

5. Settlement Administrator Fees and Costs

Plaintiff requests appointment of Phoenix Class Action Administration Solutions as administrator. The parties agreed to costs in the amount of $3,250, which defendant will pay independent of the settlement fund. (Lozada Decl., Exh. A, ¶5 (e).) This appears to be appropriate.

6. Class Counsel's Request for Fees and Costs

Counsel's fees will be paid from a separate fund, directly by ATSU. But the fact defendant will pay the attorneys' fees from its own funds does not limit the court's obligation to review the reasonableness of the agreed-to fees. The court must minimize the conflict of interest between the class and its attorney inherent in such an arrangement. (*Strong v. BellSouth Telecommunications, Inc.* (5th Cir. 1998) 137 F.3d 844, 849–850; see also *Weinberger v. Great Northern Nekoosa Corp*. (1st Cir.1991) 925 F.2d 518, 524 [explaining that when fees are paid from the defendant's own funds, a conflict results from "the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees"]; Court Awarded Attorney Fees, Report of the Third Circuit Task Force, 108 F.R.D. 237, 266 (1985) ["Even if the plaintiff's attorney does not consciously or explicitly bargain for a higher fee at the expense of the beneficiaries, it is very likely that this situation has indirect or subliminal effects on the negotiations. And, in any event, there is an appearance of a conflict of interest."].)

In reviewing an attorney fee provision in a class action settlement agreement, the trial court has an independent duty to determine the reasonableness of the award. (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 128; *Dunk, supra,* 48 Cal.App.4th at p. 1801.) The percentage-of-fund method of calculating attorneys' fees is appropriate under California law. (*Laffitte v. Robert Half Int'l Inc.* (2016)1 Cal. 5th 480, 503–506.) Thus, under California law a court

"may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at 503.) In *Laffitte,* the California Supreme Court affirmed an attorneys' fee recovery for a wage-and-hour class action of one-third of a $19 million settlement fund and a lodestar cross-check that used a multiplier of between 2.03 and 2.13. (*Id*. at 495, 503–506.)

Here, counsel reports that ATSU will not oppose an application for attorneys' fees and costs of up to $40,000. Further, it is represented that Class Counsel's request for fees and costs will not exceed $40,000, "which represents 22% of the value of the "constructive common fund" when taking into account the total amount to settle this case." (Motion, p. 6, ll. 2-3.) In fact, the $40,000 is closer to 31% of the value of the fund rather than 22% of the value of the fund.

No declaration has been submitted in support of this request. The court will provisionally allow fees and costs not to exceed the requested amount but expects a fully supported request along with a robust discussion of the reasonableness of the fees in the final approval.

7. Enhancement for Class Representative

Class counsel asks for an enhancement for plaintiff of $5,000.

It is established that a named plaintiff is eligible for reasonable incentive payments to compensate him or her for the expense or risk they have incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark, supra*, 175 Cal.App.4th at p. 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id*. at p. 806.)

Plaintiff has ***not*** submitted a declaration in support of the request. His counsel has listed some tasks he performed as class representative and declared that Plaintiff was instrumental in assisting counsel in prosecuting this case. Counsel also emphasized plaintiff's risk in placing his name on the lawsuit and the benefits to the members as a result.

The factual recitations offered here are insufficient to support an award. While the court is willing to *preliminarily* approve an enhancement of *up to* $5,000, it expects sufficient specificity from the plaintiff at the final approval hearing

quantifying the actual time he spent on this matter. (*Id*. at p. 807; *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 [these "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit]; see *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785.)

Appearance at the hearing is required.