

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

HALIE BLOOM, *et al.*, and all others
similarly situated.

Plaintiffs,

v.

ACT, INC., a corporation, and DOES 1-100.

Defendant.

JAQUEL PITTS, an individual, and all others
similarly situated,

Plaintiff-Intervenor,

v.

ACT, INC., a corporation, and DOES 1-100.,

Defendant.

Case No.: 2:18-CV-06749-GW-KS
District Judge George H. Wu;
Magistrate Judge Karen L. Stevenson

**SETTLEMENT AGREEMENT AND
PROPOSED CONSENT DECREE**

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This Settlement Agreement and Proposed Consent Decree dated Sept. 2, 2020 (the “Agreement”), is made and entered into by and among Plaintiffs HALIE BLOOM, an individual, DEVON LINKON, an individual, EMMA L., an individual, JOHN DOE, an individual, SAM M., an individual; CAROLINE L., an individual; JANE DOE, an individual; M.B., an individual; A. C., an individual, and JAQUEL PITTS, an individual in the above-captioned consolidated action (“Plaintiffs” or “Class Representatives”), through their undersigned counsel, and Defendant ACT, Inc. (“Defendant” or “ACT,” and together with Plaintiffs or Class Representatives, the “Parties” or “Settling Parties”).

1. RECITALS

WHEREAS, on August 6, 2018, Plaintiffs Halie Bloom, Devon Linkon, Emma L., K.B as legal parent of John Doe, Steven and Molly M. as legal parents of Sam M., and Andrew L. as legal parent of Caroline L. , along with former Plaintiff Michelle G. as legal parent of Alex G., filed a class action (the “Class Action”) alleging that ACT violated the rights of the Plaintiffs under the Americans with Disabilities Act, California’s Unruh Act, the California Constitution, and California’s Unfair Competition Law (Business & Professions Code § 17200) by reporting the disabilities of examinees or otherwise identifying examinees with disabilities in need of accommodations on college score reports and through ACT’s Educational Opportunity Service (“EOS”), a service offered to colleges to assist in their efforts to recruit potential applicants;

WHEREAS, on May 10, 2019, Plaintiffs Halie Bloom, Devon Linkon, Emma L., K.B. as legal parent of John Doe, Steven and Molly M. as legal parents of Sam M., Andrew L. as legal parent of Caroline L, K.J.B. as legal parent of Jane Doe, Lisa B. as legal parent of M.B., and A.C. filed a Second Amended Complaint alleging that ACT violated the rights of the Plaintiffs under the Americans with Disabilities Act, the Rehabilitation Act, California’s Unruh Act, the

California Constitution, and California’s Unfair Competition Law (Business & Professions Code § 17200) by the following conduct: (1) reporting the disabilities of examinees or otherwise identifying examinees with disabilities in need of accommodations on college score reports (a practice characterized by the Plaintiffs as “score flagging”), (2) denying Special Testing Examinees (as defined below) an equal opportunity to participate in EOS, and (3) permitting colleges to search for examinees through EOS on the basis of the existence and type of their disabilities;

WHEREAS, the Class Action is pending in the United States District Court, Central District of California, before the Honorable George Wu with the caption, *Bloom et al. v. ACT, Inc.*, Case No. 2:18-cv-06749-GW-KS (C.D. Cal.);

WHEREAS, on December 4, 2018, the Court entered an order granting ACT’s Motion to Stay Litigation Pending Arbitration with respect to Plaintiffs Halie Bloom, Devon Linkon, Emma L., Sam M., Caroline L., and John Doe;

WHEREAS, on March 7, 2019, the Court entered orders lifting the stay of litigation with respect to Plaintiffs Sam M. and Caroline L., granting Plaintiffs’ request to certify its December 4, 2018 order for appeal pursuant to 28 U.S.C. § 1292(b), denying ACT’s motion to stay litigation with respect to Plaintiffs Jane Doe and M.B., and dismissing Michelle G. as legal parent of Alex G. from the case;

WHEREAS, an interlocutory appeal from the District Court’s Final Ruling on ACT’s Motion to Stay Litigation Pending Arbitration is pending in the U.S. Court of Appeals for the Ninth Circuit (“Ninth Circuit”) with the caption, *Bloom et al. v. ACT, Inc.*, Case No. 19-55628 (the “Appeal”);

WHEREAS, on August 19, 2019, Plaintiffs filed a Third Amended Complaint, which is the operative complaint (ECF No. 205);

WHEREAS, the Parties engaged in extensive arm's-length settlement negotiations, including mediation sessions with Retired Judge Hon. Louis Meisinger on January 31, 2020, and April 30, 2020;

WHEREAS, those negotiations were informed by class-certification discovery exchanged among all Parties since February 2019 and informal discovery exchanged among all Parties in advance of the mediation;

WHEREAS, after carefully considering the facts and applicable law and the risks and uncertainty of continued litigation, and as a result of having engaged in extensive negotiations, the Parties agree that it is in their mutual best interests to finally and amicably resolve the claims in this Litigation as set forth in this Agreement; and

WHEREAS, the Parties agree that by entering into this Agreement, Defendant does not admit or concede any liability or wrongdoing whatsoever to Plaintiffs and expressly denies any such liability or wrongdoing, and that this Agreement represents a resolution of disputed claims;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged by all Parties, the Parties agree as follows:

2. DEFINITIONS

The following terms, when used in this Agreement, have the meanings as set forth below. All terms defined in the singular have the same meaning when used in the plural, and all terms defined in the plural have the same meaning when used in the singular. To the extent any term has a definition in this Settlement Agreement that is different from the definition of the same

term in the Consent Decree, the definition provided in the Consent Decree shall control the interpretation of that document.

“ACT” has the meaning assigned to such term in the Preamble.

“ACT® Test” or “ACT Test” means an administration of the standardized college admissions test that is developed and administered by ACT, Inc., for which the score is reportable by ACT in an official score report to a college, university, scholarship organization, athletic association, postsecondary program, Congressional office, enrollment management company, or any other entity assigned an ACT Code in the “ACT Code Numbers for Colleges and Other Score Recipients” publication. For clarity: for purposes of this Settlement Agreement, “ACT Test” includes only exams for which a “College-Reportable” score is or was provided and does not include any exam for which a “Non-College-Reportable” score is or was provided, as those terms are defined in the Consent Decree.

“Administrative Costs” means the cost of the notice program relating to this Agreement and the costs of administering and processing of claims, disbursements of consideration, and other necessary and reasonable expenses associated with administering this Agreement.

“Agreement” has the meaning assigned to such term in the Preamble.

“Appeal” has the meaning assigned to such term in the Recitals.

“Attorneys’ Fees Application” has the meaning assigned to such term in Paragraph 9.

“Attorneys’ Fees and Costs Award” means the award of attorneys’ fees, costs, and expenses made by the Court as described in Paragraph 9.

“California Class Members” means each member of the California Classes.

“California Classes” or “California Subclasses” means the California Disclosure Subclass and the California EOS Subclass.

“California Disclosure Subclass” has the meaning assigned to such term in Paragraph 3(b)(i).

“California EOS Subclass” has the meaning assigned to such term in Paragraph 3(b)(i).

“Check Cashing Deadline” is 120 days.

“Claims Administrator” or “Settlement Administrator” means KCC, chosen jointly by Class Counsel and Defendant’s Counsel, and to be approved by the Court to conduct various tasks, including as described herein.

“Class Action” has the meaning assigned to such term in the Recitals.

“Class Members” means members of the Injunctive Relief Class and the California Subclasses.

“Class Counsel” means the law firms of Panish, Shea & Boyle LLP and Miller Advocacy Group.

“Class Representatives” has the meaning assigned to such term in the Recitals.

“Court” means the United States District Court for the Central District of California.

“Cy Pres Beneficiary” means one or more entities jointly selected by Class Counsel and Defense Counsel, and approved by the Court, to receive any residual funds from the Net Settlement Fund after funds are distributed to Class Members in accordance with this Agreement.

“Defendant” has the meaning assigned to such term in the Preamble.

“Defense Counsel” means the law firm of SmithAmundsen, LLC.

“DFEH” has the meaning assigned to such term in Paragraph 7(b).

“Effective Date” means the date defined in Section 11.

“Eligible Claimant” means each California Class Member who has not made a timely and valid Opt-Out Request.

“Eligible SPS Question 8 Response” means an affirmative answer to SPS Question 8 other than “no disability.”

“EOS Opt-In Query” means a query to an examinee asking whether such examinee would like to enroll in EOS.

“EOS” refers to ACT’s “Educational Opportunity Service.”

“Escrow Account” has the meaning assigned to such term in Paragraph 5(b)(i).

“Fairness Hearing” means the hearing to be conducted by the Court under Fed. R. Civ. P. 23(e) to consider the fairness, reasonableness and adequacy of this Agreement.

“Fees and Expenses” means Administrative Costs, plus Service Awards, plus Attorneys’ Fees and Costs Award.

“Final Approval” means the Order by the Court, after notice and the holding of a Fairness Hearing, granting final approval of this Agreement.

“Injunctive Relief Class” has the meaning assigned to such term in Paragraph 3(c)(ii).

“Net Settlement Amount” means the Settlement Amount, minus Fees and Expenses.

“Ninth Circuit” has the meaning assigned to such term in the Recitals.

“Notice” means the notice of this proposed Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement and is consistent with the requirements of Federal Rule of Civil Procedure 23.

“Objection Deadline” has the meaning assigned to such term in Paragraph 4(e)(i).

“Objector” has the meaning assigned to such term in Paragraph 4(e)(i).

“Opt-Out Deadline” has the meaning assigned to such term in Paragraph 4(e)(ii).

“Opt-Out Request” has the meaning assigned to such term in Paragraph 4(e)(ii).

“Parties” has the meaning assigned to such term in the Preamble.

“Plaintiffs” has the meaning assigned to such term in the Preamble.

“Preliminary Approval Order” means an order preliminarily approving the Settlement Agreement.

“Qualified Settlement Fund” has the meaning assigned to such term in Paragraph 5(b)(ii).

“Released Claims” has the meaning assigned to such term in Paragraph 7(a).

“Releasing Plaintiff” means Class Representatives and Eligible Claimants.

“Service Awards” means five thousand dollars (\$5,000), subject to approval of the Court.

“Settlement Amount” means sixteen million dollars (\$16,000,000).

“Settling Parties” has the meaning assigned to such term in the Preamble.

“Special Testing” means ACT’s program for administering the ACT Test to individuals with disabilities whose ACT-approved accommodations cannot be provided during a National test administration at ACT test centers.

“Special Testing Examinee” means an examinee who took the ACT Test as part of ACT’s Special Testing program.

“SPS Question 8” means Student Profile Section Question 8, which previously asked examinees in the Student Profile Section of registration for, or administration of, the ACT Test whether the examinee has a disability that would require special provisions from an educational institution.

“Total Eligible Claimants” is a number equal to the sum of (1) the total number of Eligible Claimants in the California Disclosure Subclass and (2) the total number of Eligible Claimants in the California EOS Subclass. For clarity: an individual who is a member of both the

California Disclosure Subclass and the California EOS Subclass will be counted twice for purposes of calculating the number of Total Eligible Claimants.

“Written Objection” has the meaning assigned to such term in Paragraph 4(e)(i).

3. SCOPE AND EFFECT OF SETTLEMENT

(a) *Scope of the Settlement.*

This Agreement, together with the Consent Decree to be entered as provided herein, seeks to compromise and fully and finally resolve the Released Claims and the claims described in the Consent Decree.

(b) *Settlement Class Certification.*

(i) *California Settlement Class Certification.* The Parties stipulate to, and waive their rights to appeal, class certification, for settlement purposes only, of the following California Settlement Classes pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3):

California Disclosure Subclass: All individuals who meet all of the following criteria in connection with any single administration of the ACT Test according to ACT’s records:

- (a) took an ACT Test on or after September 1, 2002, and on or before the Date of Completion of Changes;
- (b) resided in California at the time they took the ACT Test or took the ACT Test in California, and
- (c) satisfies at least one of the following criteria: (i) such individual provided an Eligible SPS Question 8 Response or (ii) such individual was administered the exam through Special Testing.

California EOS Subclass: All individuals who meet the following criteria in connection with any single administration of the ACT Test according to ACT’s records:

- (a) took an ACT Test through Special Testing on or after September 1, 2007, and before the Date of Completion of Changes;
- (b) resided in California at the time they took the ACT Test or took the ACT Test in California and

(c) left the response to the EOS Opt-In Query blank on the Special Testing answer folder for at least one exam.

(ii) *Injunctive Relief Class Certification.* The Parties stipulate to, and waive their rights to appeal, class certification, for settlement purposes only, of the following Injunctive Relief Settlement Class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2):

Injunctive Relief Class: All individuals in the United States who meet either of the following criteria:

- (a) Took the ACT Test through Special Testing at any time, or
- (b) Provided an Eligible SPS Question 8 response at any time.

4. COURT APPROVAL, NOTICE PROGRAM, OBJECTIONS AND OPT-OUTS

(a) *Preliminary Approval Proceedings.*

(i) Within 14 days of ACT confirming in writing to Class Counsel that all ACT examinees will be able, going forward, to enroll in EOS in the same manner during the process of registering to take the ACT Test and to be assigned ACT ID numbers, without regard to whether an examinee will test with or without accommodations and without regard to whether an examinee has or does not have any disabilities (the “Confirmation of Completion of Changes”), Plaintiffs shall apply to the Court for a Preliminary Approval Order. The Confirmation of Completion of Changes will inform Class Counsel the date on which ACT completed the changes (the “Date of Completion of Changes”). This Settlement Agreement shall remain confidential until such time as ACT has provided the Confirmation of Completion of Changes to Class Counsel and Plaintiffs apply to the Court for a Preliminary Approval Order.

(ii) In the event that ACT is not able to make and provide Confirmation of Completion of Changes on or before September 1, 2020, due to technological difficulties or other unforeseen circumstances, Defense Counsel shall notify Class Counsel and

ACT shall have a one-time extension to October 1, 2020 to provide a Certification of Completion. If ACT is unable to provide a Certification of Completion by December 1, 2020 and the Parties are unable to resolve the timing of the Certification of Completion amongst themselves, the Parties shall submit the issue to the Court to weigh the balance of equities as between ACT and the settlement class members at the time of submission and make a decision as to when the Confirmation of Completion of Changes shall be completed.

(b) *Selection and Responsibilities of the Settlement Administrator.*

The Parties shall retain the Settlement Administrator to perform the following responsibilities: (i) identify members of the California Settlement Classes based on data provided by ACT and any reasonable additional investigation required; (ii) distribute the Settlement Notice, (iii) arrange for reasonable tracing of members of the California Settlement Classes for whom the Settlement Notice and settlement payments are returned undeliverable, or settlement payments are not cashed within 120 days; (iii) receive and forward to the Parties and the Court Opt-Out Notices and Objections; (iv) administer and distribute the Settlement Fund; and (v) such other duties as agreed to by the Parties that are necessary to carry out the provisions of this Agreement.

(c) *CAFA Notice.*

Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, Defendants shall serve upon the Attorneys General of each U.S. State in which there are members of any Class, the Attorney General of the United States, and other required government officials, notice of the proposed settlement, which shall include: (1) a copy of the most recent complaint and all materials filed with the complaint or notice of how to electronically access such materials; (2) notice of all scheduled judicial hearings in the Action;

(3) all proposed forms of Notice to the Settlement Class; and (4) a copy of this Agreement. To the extent known, the Defendant shall serve upon the above-referenced government official the names of Class Members who reside in each respective state and the share of the claims of such members to the entire settlement, or if not feasible, a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of the claims of such members to the entire Agreement. The costs of conducting CAFA Notice shall not be deducted from the Settlement Fund. Defendant is responsible for paying the costs of CAFA Notice separate and apart from the Settlement Fund.

(d) *Distribution of Settlement Notice.*

(i) Within fourteen (14) days of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the most current and complete information for California Class Members necessary to effectuate the Settlement Notice, including the names, mailing, residential and email addresses, telephone numbers, and appropriately masked ACT ID Numbers, to the extent this information is reasonably ascertainable from Defendant's records.

(ii) Before distribution of the Settlement Notice, the Settlement Administrator shall review the information provided by ACT, use best efforts to de-duplicate records in order to identify unique individuals, and perform a search for updated mailing addresses of California Class Members using the National Change of Address Database maintained by the United States Postal Service.

(iii) Before distribution of the Settlement Notice, the Settlement Administrator shall establish the following:

(1) an Internet Website, www.ACTClassActionSettlement.com, that will inform the Class Members of the terms of this Agreement, their rights, applicable dates and deadlines, Class Counsel's contact information (telephone numbers and email addresses), the Settlement Administrator's contact information, and other related information. The website shall make available for download in .pdf format, the following: 1) Settlement Agreement and the Exhibits to the Settlement Agreement; 2) the Settlement Notice; 3) the Preliminary Approval Order; 4) the Third Amended Complaint; and 5) all other documents or materials agreed upon by the Parties and/or required by the Court. The Claims Administrator shall be responsible for ensuring that the Website and all forms and other documents posted or available thereon will comply with the Web Content Accessibility Guidelines version 2.1 Level AA. The Website shall provide a method for updating contact information of California Class Members for distribution of settlement shares, subject to any further procedures necessary to verify the identity of the California Class Members.

(2) A toll-free telephone number, through which potential Class Members may obtain information about the Class Action, submit inquiries regarding the Settlement, provide updated contact information for distribution of settlement shares, and request a mailed copy of the Settlement Notice.

(3) A dedicated email address for potential Class Members to submit inquiries regarding the Settlement.

(iv) Within twenty-one (21) days of the Court's Preliminary Approval Order, the Settlement Administrator shall distribute the Court-approved Settlement Notice, substantially in the form attached hereto as Exhibit 1, to California Class Members via email, using the email addresses from Defendant's records. The Settlement Administrator shall use an

email distribution program or application that enables it to verify that a California Class Member has opened the email containing the Settlement Notice. If the Settlement Administrator is unable to verify that a California Class Member has opened the email containing the Settlement Notice, the Settlement Administrator will distribute the Settlement Notice to such California Class Members via a postcard mailing substantially in the form attached hereto as Exhibit 2. The Settlement Administrator shall create a publication notice plan designed to reach a reasonable portion of Class Members, in a form to be agreed upon by the Parties.

(v) Within twenty-one (21) days of the Court's Preliminary Approval Order, the Settlement Administrator shall cause publication notice to be provided through USA Today and through a link on the Settlement Administrator's website.

(e) *Written Objections and Opt Outs*

(i) *Written Objections.* Any California Class Member who wishes to object to the Settlement Agreement must send to the Court a written statement of objection (a "Written Objection") filed or postmarked no later than 45 days after initial distribution of the Settlement Notice or such other date specified by the Court in the Preliminary Approval Order (the "Objection Deadline"). All written objections and supporting papers must be timely filed with the Court by the Objection Deadline. If a California Class Member making a Written Objection (an "Objector") is represented by counsel, the Written Objection must be filed on the docket of the Class Action through the Court's Case Management/Electronic Case Filing (CM/ECF) system. All other California Class Members may file a Written Objection by one of the following means: (1) mailing the Written Objection to the Clerk of the United States District Court for the Central District of California, or (2) filing the Written Objection with the Clerk of Court at any location of the United States District Court for the Central District of California.

All Written Objections must: (1) clearly identify the case name and number of the Class Action, (2) state whether the Written Objection applies only to the Objector, to a specific subset of the California Classes, or to the entire California Class Classes, and (3) state with specificity the grounds for the Written Objection. To the extent a timely Written Objection is withdrawn before Final Approval, such Written Objection shall be treated as though it has not been made.

Plaintiffs will request in their motion requesting preliminary approval of this Agreement that the Court permit any Party to file a reply to any objection by seven days before the Fairness Hearing, or as the Court may direct. Any California Class Member who validly and timely opts out of the California Classes may not object to any part of the Agreement that relates to the provision of damages payments to California Class Members or the release of the California Class Members' damages claims.

(ii) *Opt-Outs.* To opt out of the Settlement, a California Class Member must send a signed written letter (an "Opt-Out Request") via U.S. Mail to the Settlement Administrator informing the Settlement Administrator of the California Class Member's election to be excluded from the Settlement. An Opt-Out Request must contain the following information: (1) the full name of the California Class Member, (2) his or her email address, telephone number, and physical address, (3) a clear statement communicating that such California Class Member elects to be excluded from the California Class and does not wish to be a member of the California Class, and (4) the case name and case number of the Class Action. Any Opt-Out Request must be postmarked (as determined by the date of the postmark on the return mailing envelope) or submitted electronically on or before 60 days after initial distribution of the Settlement Notice or such other date as specified by the Court in the Preliminary Approval Order (the "Opt-Out Deadline"). California Class Members who fail to submit a valid and

timely opt-out on or before the Opt-Out Deadline shall be bound by all terms of this Agreement and the preclusive effect of this Settlement. No “mass” or “class” opt outs are permitted.

California Class Members must opt out of the California Classes individually.

(iii) *Injunctive Relief Class.* As permitted by Fed. R. Civ. P. 23, no member of the Injunctive Relief Class may opt out of such class.

(iv) *Notice to Counsel.* The Settlement Administrator shall promptly provide copies of all Written Objections (whether or not such Written Objections are valid or timely), Opt-Out Requests (whether or not such Opt-Out Requests are valid or timely), and/or related correspondence from Class Members to Class Counsel and Defense Counsel. Not later than three (3) business days after the Opt-Out Deadline, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete opt-out list together with copies of the Opt-Out Requests. For clarity, as described above, delivery of a Written Objection to the Settlement Administrator is not a valid means of delivering notice to Counsel as required in this paragraph.

(f) *Final Approval Proceedings.*

Plaintiffs shall move for and brief the issue of Final Approval of the Settlement in accordance with the Preliminary Approval Order or such other or further order of the Court.

5. SETTLEMENT CONSIDERATION (PAYMENT) AND ADMINISTRATION

(a) *Monetary Consideration*

In consideration for the Releases from the California Class Members contained below, and without admitting liability for any of the alleged actions or omissions, ACT shall pay, either directly or through its insurers, the Settlement Amount into the Escrow Account described

below, to be used to make payments in accordance with the terms of this Agreement to California Class Members, and to make other payments called for in this Agreement.

(b) *Creation of Settlement Fund*

(i) No later than fourteen (14) days after the Effective Date, ACT shall pay, either directly or through its insurers, an amount equal to the Settlement Amount into an escrow account (the “Escrow Account”) to be created and administered by the Settlement Administrator pursuant to the terms of this Agreement. The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in an interest-bearing bank account with a commercial bank with excess capital exceeding One Hundred Million Dollars (\$100,000,000.00), with a rating of “A” or higher by Standard & Poor’s and insured by the FDIC. All funds in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed. Interest earned on money in the Escrow Account, less any taxes owed thereon (if any), will be added to the Settlement Amount for the benefit of the payments being allocated to Eligible Claimants. This Escrow Account shall be deemed the Settlement Fund.

(ii) The Settlement Fund will be used to pay all Settlement claims and costs, including without limitation all payments to California Class Members and all Fees and Expenses as defined in Section 2 of this Agreement. Defendant’s and its insurers’ maximum liability and financial obligation pursuant to this Settlement, excluding any liability or financial obligation to comply with the Consent Decree or any liability or costs expressly excluded from the Settlement Amount, shall be the Settlement Amount under the Agreement.

(iii) The Parties hereto agree that the Settlement Fund is intended to be a “qualified settlement fund” (“Qualified Settlement Fund”) within the meaning of Treasury

Regulation § 1.468B-1 and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any required tax returns for and paying from the Settlement Fund any taxes owed with respect to the Settlement Amount. The Parties hereto agree that the Settlement Amount shall be treated as a “qualified settlement fund” from the earliest date possible, and agree to any relation-back election required to treat the Settlement Fund as a “qualified settlement fund” from the earliest date possible. Defense Counsel agree to provide promptly to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). Any and all taxes shall be paid out of the interest earned on the Settlement Fund, be considered to be a cost of administration of the Settlement, and be timely paid by the Settlement Administrator without prior order of the Court.

(c) *No Claims Process*

It is the intent of the Parties not to use a claim-form process to determine eligibility for settlement distributions, provided that a claim form process may be used, after consultation by the Parties and the Settlement Administrator, to the extent the Settlement Administrator determines a claim-form process is required in order to identify California Class Members who cannot be definitively identified from the available data. Distributions of settlement shares to California Class Members shall be made directly to the extent possible.

(d) *Finalization of List of Valid California Class Members*

Within thirty (30) days after the Opt-Out Deadline, the Settlement Administrator shall finalize the list of California Class Members consisting of two parts: (i) a list of claimants in the California Disclosure Subclass and (ii) a list of claimants in the California EOS Subclass. The finalization of such lists shall be the final, binding, and non-appealable list of claimants to the Settlement Amount as determined herein.

(e) *Payment Allocation*

Eligible Claimants shall be entitled to receive a portion of the Net Settlement Amount as follows:

(i) An Eligible Claimant who is a member of the California Disclosure Subclass or California EOS Subclass, but not of both, shall be entitled to an amount equal to the product of the Net Settlement Amount and a fraction the numerator of which is 1 and the denominator of which is the Total Eligible Claimants.

(ii) An Eligible Claimant who is a member of both the California Disclosure Subclass and the California EOS Subclass shall be entitled to an amount equal to the product of the Net Settlement Amount and a fraction the numerator of which is 2 and the denominator of which is the Total Eligible Claimants.

(f) *Distribution of Payment Allocation*

(i) No later than thirty calendar (30) days after the Effective Date, the Settlement Administrator shall cause the distribution of payments in the amount specified in the allocation procedure describe above to Eligible Claimants in the form of a check along with 1099-MISC forms. All checks shall be negotiable for no more than the Check Cashing Deadline.

(ii) For each check returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall, within twenty (20) calendar days, conduct one or more computer database traces of such claimant and re-mail the check to such additional address as may be obtained through the tracing process. All returned checks for whom no additional address is obtained through the tracing process shall be held by the Settlement Administrator for ninety (90) days. If no claim is made for such checks during this time period, the funds shall become part of the funds to be redistributed to Eligible Claimants or allocated to

the Cy Pres Beneficiary and distributed in accordance with Paragraph 5(g). The Settlement Administrator shall conduct the process described in this sub-paragraph for returned checks only once per Eligible Claimant.

(iii) For each check that has not been cashed by the Check Cashing deadline, the Settlement Administrator shall, within twenty (20) days, conduct one or more computer database traces of such claimant and re-mail the check to such additional address as may be obtained through the tracing process. If no additional address is obtained through the tracing process, the funds shall become part of the funds to be redistributed to Eligible Claimants or allocated to the Cy Pres Beneficiary and distributed in accordance with Paragraph 5(g).

(g) *Distribution of the Remainder of the Net Settlement Amount*

Within thirty (30) days after the Check Cashing Deadline has expired for any checks re-mailed to the Eligible Claimants under Paragraphs 5(f)(ii) and 5(f)(ii), the Settlement Administrator shall cause the distribution of the remainder of the Net Settlement Amount (i.e. unclaimed funds) pro rata to all Eligible Claimants who have cashed the checks based on their participation in the Net Settlement Amount unless, in the discretion of Class Counsel, doing so would not be reasonable given the incremental Administrative Costs, in which latter case the remainder of the Net Settlement Amount will be distributed cy pres to the Cy Pres Beneficiary.

6. PROSPECTIVE TREATMENT OF CLASS REPRESENTATIVES

ACT shall provide its products and services to each Class Representative as it would to any consumer without regard to any actions (including disaffirmance) taken by the Class Representative in connection with the Lawsuit and shall not cancel the ACT Test scores of any Class Representative on the basis of any actions (including disaffirmance) taken by such individual in connection with the Lawsuit. The Parties agree no Class Member has disaffirmed

any contract with ACT on the basis of any claims made or brought in this Lawsuit or on the basis of this Settlement.

7. RELEASES

(a) *General Release*

In return for the consideration provided for in this Agreement, the adequacy of which is hereby acknowledged, on the Effective Date, (i) Releasing Plaintiffs, both individually and as a class representative or member of a class, shall release and discharge ACT, its officers, directors, employees, attorneys, affiliates, subsidiaries, predecessors, successors-in-interest, and insurers from any and all claims, causes of action, demands, losses, or damages arising out of or related to the facts, events or circumstances alleged, or which could have been alleged, in the Third Amended Complaint (the “Released Claims”), and (ii) ACT shall, and shall cause its subsidiaries and affiliates, to release and discharge Releasing Plaintiffs, both individually and as a class representative or member, from any and all claims, causes of action, demands, losses, or damages arising out of or related to the facts, events or circumstances alleged, or which could have been alleged, in any counterclaim to the Third Amended Complaint.

For clarity, this release does not discharge any claim or cause of action based on actual or alleged intellectual property theft or on actual or alleged cheating or other issue related to test security.

As to the Released Claims only, each Releasing Plaintiff expressly, knowingly, and voluntarily waives the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Releasing Plaintiffs expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims.

(b) *DFEH Claims*

Each Named Plaintiff who has filed a complaint with the California Department of Fair Employment and Housing (“DFEH”) shall withdraw the complaint and request dismissal thereof and, pursuant to and consistent with this Agreement, shall release and discharge ACT, its officers, directors, employees, attorneys, affiliates, subsidiaries, predecessors, successors-in-interest, and insurers from any and all claims, causes of action, demands, losses, or damages arising out of or related to the allegations made in such complaints or which could have been alleged therein.

8. SERVICE AWARDS TO CLASS REPRESENTATIVES

No later than thirty (30) days after the Effective Date, subject to Court approval, the Settlement Administrator shall pay a Service Award to each Class Representative. Each Class Representative shall also be eligible to recover payments as Eligible Claimants under and in accordance with the terms of this Agreement.

9. ATTORNEYS’ FEES AND COSTS

Plaintiffs shall file an application (the “Attorneys’ Fees Application”) to the Court in accordance with applicable law for an award of reasonable attorneys’ fees, costs and expenses incurred in connection with this litigation through the Effective Date of this Agreement in an amount not to exceed \$4 million. ACT will not object to any such application. ACT agrees that Plaintiffs may seek to support their fee application by reference to both the monetary payment to be made hereunder and the value of the injunctive relief contained in the Consent Decree. The Settlement Administrator shall issue payment to Class Counsel by the later of (i) seven (7) days after receipt of the Settlement Amount by the Settlement Administrator or (ii) seven (7) days after approval of the Attorneys’ Fees Application.

Other than the foregoing Attorneys’ Fees Application by Plaintiffs, each Party will bear its own costs, expenses and attorneys’ fees.

10. TERMINATION

(a) *No Right to Reversion*

Defendant has no right to reversion of any portion of the Settlement Amount unless this Agreement is not approved or fails to become effective (i.e., to become “final and unconditional” as described in Section 11, *infra*) for any reason.

(b) *Vacatur of Class Certification.* In the event that the Agreement is terminated pursuant to its terms or is not granted preliminary or final approval by the Court, or is modified in any material respect by the Court, or such approval is reversed, vacated, or subsequently modified in any material respect by the Court or by any other court, the Settlement and the Agreement shall be null and void, the certification of the Settlement Classes shall be deemed vacated and the Class Action shall proceed as if the Settlement Classes had not been

certified, and the Defendant reserves all rights to challenge certification of any class for trial purposes.

(c) For purposes of the immediately preceding subparagraph, if the Court grants preliminary and final approval of the Agreement, but either declines to establish procedures for notice, objections, or opt-outs or establishes different procedures than those requested by the Parties with respect to notice, objections or opt-outs, such modification to the Agreement shall not be deemed material. For purposes of the immediately preceding paragraph, if the Court does not grant the Attorneys' Fees Application or Service Awards requested by Plaintiffs or grants such in an amount different than the amounts requested, that shall not be deemed material.

(d) *Election to Withdraw*

Within ten (10) days after the Opt-Out Deadline, ACT will have the option to withdraw from this Agreement if 2.5% or more of the total California Class Members has made a timely and valid Opt-Out Request. If ACT exercises this option, ACT will bear any Administrative Costs incurred to that date, and the Settlement will be deemed null and void.

(e) *No Right to Withdraw as a Result of Decision in the Appeal*

On June 11, 2020, the Parties filed a Joint Motion to Stay Appeal and Strike Oral Argument Date with the Ninth Circuit in the Appeal, which the Ninth Circuit granted on June 18, 2020. If the Ninth Circuit nevertheless issues a decision in the Appeal, the Parties shall nonetheless be obligated to seek approval of the Settlement and perform the obligations contained herein. The Parties will promptly notify the Ninth Circuit when Plaintiffs have filed the motion for preliminary approval of the Settlement and, thereafter, upon either approval or rejection thereof by the Court.

11. EFFECTIVE DATE AND FINALITY OF SETTLEMENT.

(a) The Settlement provided for in this Agreement shall be final and unconditional immediately on the date upon which the last of the following events and conditions has been satisfied or waived, such date to be the “Effective Date”:

- (i) This Agreement has been fully executed by all Parties and their counsel;
- (ii) The Court enters the Preliminary Approval Order;
- (iii) The Settlement Administrator causes the Notice to be served in accordance with the Preliminary Approval Order;
- (iv) The Court issues the Final Order and Judgment;
- (v) All appeal periods have expired or been resolved as set forth below:
 - (1) If no appeal is taken from a court order or a judgment, the date after the time to appeal therefrom has expired; or
 - (2) If any appeal is taken from a court order or judgment, the date after all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of, such that the time to appeal therefrom has expired, in a manner resulting in an affirmance without material modification of the relevant order or judgment.

12. MISCELLANEOUS PROVISIONS

(a) *Notices*

All notices (other than the Settlement Notice and CAFA Notices) required by this Agreement shall be made in writing and communicated by mail and email to the following addresses:

For the Class Representatives and Class Counsel

Rahul Ravipudi (ravipudi@psblaw.com)
Jesse Creed (creed@psblaw.com)

Panish, Shea & Boyle LLP
11111 Santa Monica Blvd, Suite 700
Los Angeles, CA 90025
Telephone: (310) 477-1700

Marci Miller (marci@milleradvocacy.com)
Miller Advocacy Group
1303 Avocado Ave., Suite 230
Newport, CA 92660
Telephone: (949) 706-9734

For ACT, Inc.

Eric Samore (esamore@salawus.com)
Ronald Balfour (rbalfour@salawus.com)
SmithAmundsen LLC
150 Michigan Ave #3300
Chicago, IL 60601
Telephone: (312) 894-3200

All contact information for the individuals designated above may be changed by written notice.

(b) *Mutual Intent*

The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish such terms and conditions. Parties and their respective counsel agree that they will act in good faith and will not engage in any conduct that could frustrate the purposes of this Agreement.

(c) *Best Efforts to Effectuate*

The Parties agree to make their best efforts on an ongoing basis to effectuate the settlement consideration (both injunctive relief set forth in the Proposed Consent Decree and the monetary payments provided for in this Agreement), as well as to defend this Agreement from any legal challenge by objection, appeal, collateral attack, or otherwise.

(d) *Confirmatory Discovery and Representations and Warranties*

(i) Defendant shall substantively answer Plaintiffs' confirmatory interrogatories propounded on July 21, 2020 and attached hereto as Exhibit 3. Such answers shall be provided in a form that can be submitted to the Court if and as reasonably necessary to effectuate the purposes of this Agreement. No other discovery shall be permitted for any purpose in connection with implementation of the terms of this Agreement; however, the Court may ask the Parties for additional information in the event it determines such information is necessary in order to approve or effectuate this settlement.

(ii) Defendant represents and warrants that it has not reported an individual's SPS Question 8 answer on any college score report requested on or after September 15, 2018.

(iii) Defendant represents and warrants that it has removed the ability for EOS users to conduct new searches using an examinee's response to SPS Question 8 as a search criterion and has removed the ability for users who had previously conducted searches using an examinee's response to SPS Question 8 as a search criterion to obtain new student profiles through those searches or access the results of those searches.

(e) *Public Statements*

After Plaintiffs file a motion for the Preliminary Approval Order, the Parties will issue a joint press release describing the Settlement. Neither Plaintiffs nor their counsel will make any public comment related to this Action that disparages ACT or indicates any admission of fault or liability on the part of ACT.

(f) *No Admission of Liability*

By entering into this Agreement, ACT does not admit or concede any liability or wrongdoing whatsoever to any other Party and expressly denies any such liability or wrongdoing. This Agreement represents a resolution of disputed claims.

(g) *Governing Law*

This Agreement and the Exhibits hereto will be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the Parties will be construed and enforced in accordance with, and governed by, the substantive laws of the State of California.

(h) *Authority to Bind*

The undersigned each represent and warrant that they are authorized to sign on behalf of, and to bind, the Party on whose behalf they are signing.

(i) *Continuing Jurisdiction*

The Court will retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Agreement and matters related to this settlement.

(j) *Inadmissibility.* This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any Court or tribunal in any state, territory, or jurisdiction. Further, neither this Agreement, the settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the

Approval Order. Nothing contained herein is intended to limit enforcement of the Agreement or the Consent Decree in accordance with their terms.

(k) *Modifications and Amendments.* No amendment, change, or modification to this Agreement will be valid unless in writing signed by the Parties or their counsel.

(l) *Agreement Constitutes a Complete Defense.* To the extent permitted by law, this Agreement may be pled as a full and complete defense to any action, suit, or other proceedings that may be instituted, prosecuted or attempted against the Released Parties contrary to this Agreement.

(m) *Counterparts.* This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, PDFs, or facsimiles of executed copies of this Agreement may be treated as originals.

(n) *Recitals.* The Recitals are incorporated by this reference and are part of the Agreement.

(o) *Severability.* If any provision of this Settlement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

Agreed to on the date indicated below.

DATED: August 16, 2020



Halie Bloom
Plaintiff

DATED: August __, 2020

Devon Linkon
Plaintiff

DATED: August __, 2020

Emma L.
Plaintiff

DATED: August __, 2020

John Doe
Plaintiff

DATED: August __, 2020

Sam M.
Plaintiff

DATED: August __, 2020

Caroline L.
Plaintiff

DATED: August __, 2020

Jane Doe
Plaintiff

DATED: August __, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

DATED: August ___, 2020

Halie Bloom
Plaintiff

DATED: August 16, 2020



Devon Linkon
Plaintiff

DATED: August ___, 2020

Emma L.
Plaintiff

DATED: August ___, 2020

John Doe
Plaintiff

DATED: August ___, 2020

16

Sam M.
Plaintiff

DATED: August ___, 2020

Caroline L.
Plaintiff

DATED: August ___, 2020

Jane Doe
Plaintiff

DATED: August ___, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

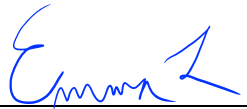
DATED: August ___, 2020

Halie Bloom
Plaintiff

DATED: August ___, 2020

Devon Linkon
Plaintiff

DATED: August 15, 2020



Emma L.
Plaintiff

DATED: August ___, 2020

John Doe
Plaintiff

DATED: August ___, 2020

Sam M.
Plaintiff

DATED: August ___, 2020

Caroline L.
Plaintiff

DATED: August ___, 2020

Jane Doe
Plaintiff

DATED: August ___, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

DATED: August ___, 2020

Halie Bloom
Plaintiff

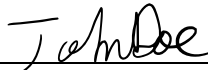
DATED: August ___, 2020

Devon Linkon
Plaintiff

DATED: August ___, 2020

Emma L.
Plaintiff

DATED: August 14, 2020


John Doe
Plaintiff

DATED: August ___, 2020

Sam M.
Plaintiff

DATED: August ___, 2020

Caroline L.
Plaintiff

DATED: August ___, 2020

Jane Doe
Plaintiff

DATED: August ___, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

DATED: August ___, 2020

Halie Bloom
Plaintiff

DATED: August ___, 2020

Devon Linkon
Plaintiff

DATED: August ___, 2020

Emma L.
Plaintiff

DATED: August ___, 2020

John Doe
Plaintiff

DATED: August 13, 2020



Sam M.
Plaintiff

DATED: August ___, 2020

Caroline L.
Plaintiff

DATED: August ___, 2020

Jane Doe
Plaintiff

DATED: August ___, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

DATED: August ___, 2020

Halie Bloom
Plaintiff

DATED: August ___, 2020

Devon Linkon
Plaintiff

DATED: August ___, 2020

Emma L.
Plaintiff


DATED: August ___, 2020

John Doe
Plaintiff

DATED: August ___, 2020

Sam M.
Plaintiff

DATED: August 14, 2020



Caroline L.
Plaintiff

DATED: August ___, 2020

Jane Doe
Plaintiff

DATED: August ___, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

DATED: August ___, 2020

Halie Bloom
Plaintiff

DATED: August ___, 2020

Devon Linkon
Plaintiff

DATED: August ___, 2020

Emma L.
Plaintiff

DATED: August ___, 2020

John Doe
Plaintiff

DATED: August ___, 2020

Sam M.
Plaintiff

DATED: August ___, 2020

Caroline L.
Plaintiff

DATED: August 15, 2020



Jane Doe
Plaintiff

DATED: August ___, 2020

M.B.
Plaintiff

Agreed to on the date indicated below.

DATED: August ___, 2020

Halie Bloom
Plaintiff

DATED: August ___, 2020

Devon Linkon
Plaintiff

DATED: August ___, 2020

Emma L.
Plaintiff

DATED: August ___, 2020

John Doe
Plaintiff

DATED: August ___, 2020

Sam M.
Plaintiff

DATED: August ___, 2020

Caroline L.
Plaintiff

DATED: August ___, 2020


Jane Doe
Plaintiff

DATED: August 15, 2020



M.B.
Plaintiff

DATED: August 16, 2020



A.C.
Plaintiff

DATED: August __, 2020

Jaquel Pitts
Plaintiff

As to Sections 4 and 12, and to Form:

DATED: August __, 2020


PANISH SHEA & BOYLE LLP

Rahul Ravipudi
Jesse Creed
Attorneys for Plaintiffs

As to Sections 4 and 12, and to Form:

DATED: August 16, 2020

MILLER ADVOCACY GROUP



Marci Miller
Attorney for Plaintiffs

DATED: August __, 2020

A.C.
Plaintiff

DATED: August 13, 2020

Jaquel Pitts
Plaintiff

As to Sections 4 and 12, and to Form:

DATED: August __, 2020

PANISH SHEA & BOYLE LLP



Rahul Ravipudi
Jesse Creed
Attorneys for Plaintiffs

As to Sections 4 and 12, and to Form:

DATED: August __, 2020

MILLER ADVOCACY GROUP

Marci Miller
Attorney for Plaintiffs

DATED: August 28, 2020

ACT, INC.

DocuSigned by:

Janet Godwin

Janet Godwin

Chief Executive Officer

DocuSigned by:

Lucas Kuhlmann

Lucas Kuhlmann

Interim Chief Financial Officer

As to Sections 4 and 12, and to Form:

DATED: August ____, 2020

SMITHAMUNDSEN, LLC

/s/

Eric Samore

Ron Balfour

Attorneys for ACT, Inc.

DATED: August ____, 2020

ACT, INC.

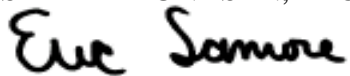
Janet Godwin
Chief Executive Officer

Lucas Kuhlman
Interim Chief Financial Officer

As to Sections 4 and 12, and to Form:

DATED: August 31, 2020

SMITHAMUNDSEN, LLC



Eric Samore
Ron Balfour
Attorneys for ACT, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

HALIE BLOOM, *et al.*, and all others
similarly situated.

Plaintiffs,

v.

ACT, INC., a corporation, and DOES 1-
100.

Defendant.

JAQUEL PITTS, an individual, and all
others similarly situated,

Plaintiff-Intervenor,

v.

ACT, INC., a corporation, and DOES 1-
100.,

Defendant.

Case No.: 2:18-CV-06749-GW-KS
District Judge George H. Wu;
Magistrate Judge Karen L. Stevenson

[PROPOSED] CONSENT DECREE

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Plaintiffs HALIE BLOOM, an individual, DEVON LINKON, an individual, EMMA L., an individual, JOHN DOE, an individual, SAM M., an individual; CAROLINE L., an individual; JANE DOE, an individual; M. B., an individual; A. C., an individual, and JAQUEL PITTS, an individual, on behalf of themselves and similarly situated individuals as described herein (“Plaintiffs”), through their undersigned counsel, having filed a claim for injunctive relief, and Defendant ACT, Inc. (“Defendant” or “ACT,” and together with Plaintiffs, the “Parties” or “Settling Parties”), through its undersigned counsel, having appeared and stipulated to the entry of this Consent Decree, and Plaintiffs having consented to this Decree:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter and all parties to this action under 28 U.S.C. §§ 1331 and 1332 and its inherent equitable powers, in all cases for purposes of entering and enforcing this Consent Decree.

2. The Third Amended Complaint filed on August 19, 2019 in this action alleged claims for injunctive relief under the Americans with Disabilities Act, the Rehabilitation Act, California’s Unruh Act, the California Constitution, and California’s Unfair Competition Law (Business & Professions Code § 17200).

1 3. Defendant denied those claims and does not admit or concede any
2 liability or wrongdoing whatsoever to Plaintiffs and expressly denies any such liability
3 or wrongdoing.
4

5 4. This Consent Decree is part of an amicable resolution of disputed claims,
6 as to which there have been no findings of fact or conclusions of law made by the
7 Court on the merits of any claims asserted by the Plaintiffs.
8

9 5. For purposes of this Consent Decree:
10

11 a. The Parties stipulate to, and waive their rights to appeal from, class
12 certification, for settlement purposes only, of the following Injunctive Relief Class
13 pursuant to Fed. R. Civ. P. 23(b)(2):
14

15 All individuals in the United States who meet either of the following
16 criteria: (a) took the ACT Test through Special Testing at any time or (ii)
17 provided an Eligible SPS Question 8 response at any time.
18

19 b. The Parties stipulate to, and waive their rights to appeal from, the
20 appointment of Panish, Shea & Boyle LLP and Miller Advocacy Group PC as class
21 counsel (“Class Counsel”).
22

23 6. For purposes of this Consent Decree, the following definitions shall
24 apply:
25

1 a. “ACT® Test” or “ACT Test” refers to the standardized college
2 admissions test that is developed and administered by ACT, Inc.

3
4 b. “EOS” refers to ACT’s “Educational Opportunity Service” or any
5 similar enrollment management program or student search service offered and
6 operated by ACT.

7
8 c. “Covered Program” is a college, university, scholarship
9 organization, athletic association, postsecondary program, Congressional office,
10 enrollment management company, or any other entity assigned an ACT Code in the
11 “ACT Code Numbers for Colleges and Other Score Recipients” publication.
12

13
14 d. “College-Reportable” score is a score for the ACT Test that is
15 reportable by ACT to any Covered Program in an official ACT Test score report.
16

17
18 e. “National Testing” is ACT’s program for administering the ACT
19 Test at test centers throughout the United States.

20
21 f. “Non-College Reportable” score is one achieved on the ACT Test
22 using accommodations and/or English Language supports that are not approved by
23 ACT through its standard accommodation review process and instead are approved by
24 a state agency or department, a school, or a local educational agency.
25

26
27 g. “Qualified User” is a college, university, entity that offers
28 scholarships, or an entity that offers other educational or scholarship opportunities for

1 individuals with disabilities that certifies in writing to ACT that it has programs or
2 services for individuals with mental or physical impairments, is aware of the
3 regulations regarding pre-admission inquiries under the Rehabilitation Act and, if
4 applicable, has reviewed them, will access and use the information provided by ACT
5 in compliance with all applicable laws, and has stated in writing to ACT that it will
6 not disclose the individual's interest in learning about such opportunities to personnel
7 who will make decisions regarding the individual's admission to any postsecondary
8 program prior to any admission decision.
9
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12 h. "Special Testing" means ACT's program for administering the
13 ACT Test to individuals with disabilities whose accommodations include
14 accommodations that cannot be provided during a National test administration at ACT
15 test centers (such as more than 50% extra testing time or testing over multiple days).
16
17

18 7. Upon entry of this Consent Decree, ACT, Inc. is permanently restrained
19 and enjoined from :
20

21 a. Providing any information on score reports for the ACT Test that it
22 provides to any Covered Program, for any test taken in a College-Reportable manner,
23 which discloses that the examinee received disability-related testing accommodations
24 or that the examinee has a disability (including examinees self-identifying as having a
25 disability).
26
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1 b. Using “SCHOOL” or “national” to identify the location of an exam
2 administration on score reports for the ACT® Test, or any other “location” identifier
3 that would identify whether an individual took the ACT® Test by way of National or
4 Special Testing.
5

6 c. Including any examinee’s answer to any question regarding
7 disabilities on any score report for the ACT Test sent to any Covered Program, for any
8 test taken in a College-Reportable manner.
9

10 d. Inquiring into an examinee’s disability status during registration
11 for or administration of the ACT Test for reasons unrelated to the provision of testing
12 accommodations.
13

14 e. Allowing users of EOS to use either disability status or receipt of
15 accommodations as a search criterion.
16

17 8. Upon entry of this Consent Decree, ACT, Inc. is permanently enjoined
18 to:
19

20 a. Assign ACT ID numbers to ACT Test examinees without regard to
21 whether an examinee tested with accommodations and without regard to whether an
22 examinee has or does not have any disabilities.
23

24 b. Allow all examinees to enroll in EOS in the same manner during
25 the process of registering to take the ACT Test, without regard to whether an
26

1 examinee will test with or without accommodations and without regard to whether an
2 examinee has or does not have any disabilities.

3
4 9. Notwithstanding Paragraph 7(b), ACT may use the Test Location field to
5 indicate that an ACT Test was taken through state or district testing, DANTES testing,
6 residual testing, or international testing. ACT reserves the right to use the Test
7 Location field to indicate other test locations as well, provided that those locations do
8 not indicate that an exam was taken through National or Special Testing, that an exam
9 was taken with testing accommodations, or that the examinee had a disability at the
10 time of test administration (including examinees self-identifying as having a
11 disability).

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15 10. Notwithstanding any other provision of this Consent Decree, this Consent
16 Decree does not prohibit the activities described in this paragraph: ACT may ask
17 examinees during registration for or administration of the ACT Test whether they
18 would like their contact information to be provided to a Qualified User so that the
19 Qualified User may reach out to them regarding scholarships or other educational
20 opportunities for individuals with disabilities. If an examinee answers yes, ACT may
21 provide that examinee's name, contact information, and answer to the question(s)
22 regarding such interest only to Qualified Users.

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27 11. ACT agrees that it will cause its subsidiaries and affiliates, including but
28 not limited to NRCCUA, to comply with the obligations undertaken by ACT in

1 paragraphs 7 and 8 above to the extent they possess any disability information that
2 originated with ACT and have assumed responsibility for the reporting of ACT Test
3 scores or ACT's enrollment service products relating to any examinees who,
4 according to ACT's records, reside in the United States or have their scores reported
5 to entities located in the United States. Subsidiary means an entity in which ACT
6 directly or indirectly owns more than half its stock, membership units, or other equity
7 interests. Affiliate means an entity in which ACT directly or indirectly owns less than
8 half of its stock, membership, or other equity interest, but nonetheless has the power
9 to elect more than half of its board of directors or trustees. Notwithstanding its
10 Privacy Policy, ACT will not disclose information obtained pursuant to Paragraph 10
11 to any entities that are not included within the definition of "affiliate" provided in this
12 paragraph.

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18 12. Notwithstanding any other provision of this Consent Decree, ACT may
19 make any disclosures required or permitted in response to a subpoena or other legal
20 processes, required by law, or in connection any government or governmental agency
21 investigation.

22
23
24 13. Before any litigation is commenced to enforce this Consent Decree, ACT
25 and Class Counsel or the affected Class Member (as applicable) shall make a good
26 faith effort to resolve any dispute without court intervention. As part of this good faith
27 effort to resolve any dispute, a Class Member or Class Counsel must provide notice in
28

1 writing to ACT of a dispute under the Consent Decree (a “Written Notice”), afford
2 ACT a reasonable opportunity to provide a response to such Written Notice or cure
3 the alleged breach, and then hold a meet-and-confer session with counsel for ACT in
4 person. If ACT does not provide a response to the Written Notice within 30 days’ of
5 such notice, then Class Counsel or the Class Member (as applicable) may file an
6 enforcement action. If, after ACT provides a response to the Written Notice and the
7 relevant parties conduct an in-person meet and confer, the alleged breach has not been
8 resolved by the relevant parties, the Class Member or Class Counsel shall be deemed
9 to have discharged their obligation to meet and confer under this section and may seek
10 judicial relief. Failure to make a good-faith effort to resolve such disputes as
11 described in this paragraph shall result in the Court either dismissing any action or
12 proceeding to enforce this Consent Decree or staying the proceeding until such good-
13 faith effort has occurred. In determining whether a Class Member or Class Counsel
14 has afforded ACT a reasonable opportunity to provide a response to such Written
15 Notice or cure the alleged breach, the Court shall consider whether the affected Class
16 Member has notified ACT that such Class Member will suffer irreparable injury
17 absent compliance with this Consent Decree (including sufficient information to
18 enable ACT to evaluate such claim of irreparable injury) and the approximate date
19 such irreparable injury is expected to occur.
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1 14. ACT or Class Counsel may request that the other party agree to a
2 modification to any term in the Consent Decree for good cause, and approval for such
3 a modification will not be unreasonably withheld. Any such modification must be
4 made by way of a written agreement signed by an authorized representative of ACT
5 and Class Counsel. Subject to the dispute resolution process above, either ACT or
6 Class Counsel may petition the Court to modify the terms of this Consent Decree to
7 the extent permissible under existing law. ACT may not ask any Class Members to
8 waive any of ACT's obligations under this Consent Decree.
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12 15. Notwithstanding any other provision, the restrictions imposed on ACT by
13 this Consent Decree will not apply to ACT's reporting of Non-College-Reportable
14 scores.
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17 16. Each Plaintiff and each Class Member hereby broadly releases and
18 forever discharges ACT, Inc., its officers, directors, affiliates, predecessors and
19 successors-in-interest from any and all federal and California claims against ACT for
20 injunctive relief arising out of or related to the facts alleged in the Third Amended
21 Complaint, the collection or disclosure of disability or disability-related information in
22 connection with the ACT Test, enrollment in EOS, or disclosure of disability-related
23 information through EOS. For clarity, the foregoing release does not release claims
24 for injunctive relief based on any practices related to Non-College-Reportable Scores,
25 data breaches, or the activities described in Paragraph 10 above to the extent they
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1 violate applicable law. For purposes of this paragraph, a “data breach” is defined as
2 the unauthorized acquisition of computerized data that compromises the security,
3 confidentiality, or integrity of personal information maintained by ACT; the good
4 faith acquisition of information by an employee or agent of ACT for the purposes of
5 ACT’s business is not a “data breach” as long as the information is not used for an
6 unauthorized purpose or subject to further disclosure for a purpose that is
7 unauthorized.
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9

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11 DATED: July __, 2020 _____

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13 Submitted by:
14 PANISH SHEA & BOYLE LLP
15

16
17 By _____
18 Rahul Ravipudi
19 Jesse Creed
20 Attorneys for Plaintiffs and Class
21 Members

22 SMITHAMUNDSEN LLC
23
24

25 _____
26 Eric Samore
27 Ronald Balfour
28 Attorneys for ACT, Inc.

1 SO ORDERED:

2 DATED: July ___, 2020
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5 _____
Honorable George Wu
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EXHIBIT 1

NOTICE OF PENDING CLASS ACTION SETTLEMENT **AND NOTICE OF PROPOSED SETTLEMENT**

Certain ACT Test examinees who tested with disability-related accommodations as part of ACT's Special Testing (rather than as part of National Testing) or who reported disability information to ACT when they completed the Student Profile Section may be eligible for benefits from a class action settlement

**THIS IS A NOTICE OF A SETTLEMENT OF A CLASS ACTION LAWSUIT.
YOU ARE NOT BEING SUED.**

- **A federal court authorized this Notice. This is not a solicitation from a lawyer.** A settlement has been reached with ACT, Inc. ("ACT") (the "Settlement") in a class action lawsuit, *Bloom et al. v. ACT, Inc.*, Case No. 2:18-cv-06749-GW-KS (C.D. Cal.) (the "Lawsuit"). The plaintiffs who filed the Lawsuit (the "Named Plaintiffs") alleged that ACT violated certain laws by (1) reporting the disabilities of examinees or otherwise identifying examinees with disabilities on college score reports, (2) denying examinees who tested with accommodations as part of Special Testing (as opposed to National Testing) an equal opportunity to participate in ACT's Educational Opportunity Service, a service offered to colleges to assist in their efforts to recruit applicants, and (3) permitting colleges to search for prospective applicants through EOS on the basis of the existence and type of their disabilities.
- **ACT denies the Named Plaintiffs' allegations.** However, as part of the Settlement, ACT has agreed under a consent decree to stop or change certain practices related to the collection and use of disability-related information and the ways for Special Testing examinees to enroll in EOS (the "Consent Decree"). All class members in the United States (as defined in the Consent Decree, *see* Question 2 below) have rights under the Consent Decree. In exchange, all class members will release their right to seek further injunctive relief from ACT related to the facts alleged in the Lawsuit, the collection or disclosure of disability or disability-related information in connection with the ACT Test, enrollment in the Educational Opportunity Service, or disclosure of disability-related information through the Educational Opportunity Service.
- If, according to ACT's records, you resided in California at the time you took the ACT Test or took the ACT Test in California, you may also be entitled to compensation under the Settlement. The Settlement provides \$16,000,000 as a Settlement Amount to resolve claims asserted under California law on behalf of certain individuals who reside or took the ACT Test in California. The Settlement Amount -- minus administrative costs, service awards to the Named Plaintiffs, and attorneys' fees and expenses for class counsel -- will be distributed to certain California ACT examinees who tested with disability-based accommodations as part of ACT's Special Testing program (as opposed to National Testing) or who reported their disabilities to ACT during exam registration or administration (the "California Class"). If you are a potential class member (*see* Question 2) but did not reside in California at the time you took the ACT Test or did not take the

ACT Test in California, then you are not entitled to receive any monetary payment pursuant to this Settlement.

- In settling the Lawsuit, ACT does not admit or concede any liability or wrongdoing whatsoever to Plaintiffs or any class members and expressly denies any such liability or wrongdoing. ACT further disputes that any Settlement Class Member, including Named Plaintiffs, has sustained any damages or injuries due to the alleged acts. The Court has made no finding that ACT engaged in any unlawful conduct.
- This Notice contains information about the Settlement and the Lawsuit. It is critical that you read this entire Notice carefully, because your legal rights are affected whether or not you act.

As described in more detail below, the Settlement automatically distributes payments to you if you received this Notice by mail or email and do not opt-out of the Settlement or inform the Settlement Administrator that you are not a Class Member. **YOU MUST CONTACT THE SETTLEMENT ADMINISTRATOR TO PROVIDE AN UPDATED ADDRESS IF THE ADDRESS INFORMATION [ABOVE][ON THE ENVELOPE CONTAINING THIS NOTICE] IS NOT ACCURATE. OTHERWISE, YOU MIGHT NOT RECEIVE YOUR SETTLEMENT PAYMENT. Unless you contact the Settlement Administrator at the address shown below, your payment will be distributed to the address [listed above] [on the envelope containing this Notice].**

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
ACTION	EXPLANATION
DO NOTHING	<p>If you received this Notice by mail or email, ACT’s records preliminarily indicate that you are a member of the California Class and are eligible for a payment. If you do nothing, you will receive at least one, and potentially two, payments in exchange for giving up your right to assert claims against ACT based on the facts alleged in the lawsuit that has been settled.</p> <p>In addition, anyone reading this Notice may be a member of the Settlement Class for injunctive relief purposes. If you do nothing, you will release your right to seek injunctive relief from ACT based on the facts alleged in the lawsuit if the Court approves the Settlement.</p>
EXCLUDE YOURSELF [DUE DATE]	<p>You may choose not to receive a payment and not to participate in the Settlement as a member of the California Class. If you choose to exclude yourself (opt-out), you will not be included in the Settlement, you will receive no payments, and you will keep any right you currently have to assert claims against ACT for damages based on the facts</p>

	alleged in the lawsuit. However, you will still be a class member for injunctive relief purposes and will release your right to seek injunctive relief from ACT based on the facts alleged in the lawsuit if the Court approves the Settlement.
OBJECT [DUE DATE]	You may file objections to the Settlement, provided you have not chosen to opt-out of the Settlement. If you do this, you will still be a class member but any payments that you or other class members receive will depend on whether the Court approves the Settlement and the terms upon which it does so. To object to the Settlement, you must write to the Court and explain your objection, as described more fully below.

FREQUENTLY ASKED QUESTIONS

1. Why is there a Settlement? No court has decided in favor of either side in the Lawsuit. Plaintiffs and their lawyers believe that the claims they have made against ACT have merit, but that the proposed settlement is fair and in the best interest of the class because it provides a recovery for eligible class members now, while avoiding the risk, expense, uncertainty, and delay of continuing to pursue the Lawsuit. In reaching this conclusion, Plaintiffs and their lawyers considered the possibility that one or more of the Plaintiffs and many of the class members might be required to bring their claims individually in arbitration, and the possibility that the lawsuit might ultimately result in no recovery whatsoever. ACT does not believe that the claims against it have merit. It is settling because it believes that it is in the best interests of its business and its examinees to enter into the proposed settlement and avoid the costs and disruptions of extended litigation.

2. Who is in the Settlement Class? In the preliminary approval of the settlement, the Court has approved two subclasses affected by the alleged practices that are entitled to receive monetary payments pursuant to the Settlement:

- *California Disclosure Class:* All individuals who, according to ACT’s records, (a) took a college-reportable ACT Test on or after September 1, 2002 and on or before [INSERT DATE, which will correspond with the date on which ACT successfully implements a new registration system], (b) resided in California at the time they took the ACT Test or took the ACT Test in California, **and** (c) satisfy at least one of the following criteria: (i) such individual provided an Eligible Student Profile Section (SPS) Question 8 Response or (ii) such individual was administered the exam through Special Testing. An “Eligible Response to SPS Question 8” means an affirmative answer, other than “no disability”, in response to ACT’s inquiry as to whether the individual had a disability that would require special provisions from an educational institution.

- *California EOS Class*: All individuals who, according to ACT's records: (a) took a college-reportable ACT Test through Special Testing on or after September 1, 2007 and before [INSERT DATE, which will correspond with the date on which ACT successfully implements a new registration system], (b) resided in California at the time they took the ACT Test or took the ACT Test in California, **and** (c) left the response to the EOS Opt-In Query blank on the Special Testing answer folder for at least one exam.

In addition, the Court has approved an *Injunctive Relief Class* of all individuals in the United States who meet either of the following criteria: (a) took the ACT Test through Special Testing at any time, or (b) provided an Eligible SPS Question 8 Response at any time. This class is not entitled to receive monetary payments (unless part of the California Class) but might benefit from injunctive relief from the Court.

3. If I am eligible, how much money will I get? ACT and certain of its insurers have agreed to pay \$16,000,000 into a settlement fund. After deducting administrative costs, service awards to the Named Plaintiffs who have served as Class Representatives, and attorneys' fees and costs, a portion of the Net Settlement Amount will be automatically distributed to you in the form of a check. The amount of the payment will depend on how many individuals are eligible to participate in the Settlement and do not choose to opt-out. If you are a member of the California EOS Class, you will receive two "shares" of the settlement fund. If you are a member of the California Disclosure Class only, you will receive one "share" of the settlement fund. A share is equal to $[1/X]$, with X representing the total number of individuals in the California Disclosure Class plus the total number of individuals in the California EOS Class.

The Settlement Administrator might also make a second distribution to those claimants who have cashed an initial payment check, in proportion to their participation in the settlement fund and depending on whether funds remain after payment of administrative costs. Whether a second payment is made will depend upon the discretion of Class Counsel, who also have the discretion to distribute any remaining funds to a Cy Pres Beneficiary.

4. Do I need a lawyer in this case?

The Court has appointed the following lawyers, known as Class Counsel, to represent the Class Members in connection with the Settlement:

Rahul Ravipudi (actlawsuit@psblaw.com)
Jesse Creed
Panish, Shea & Boyle LLP
11111 Santa Monica Blvd, Suite 700
Los Angeles, CA 90025
Telephone: (310) 477-1700

Marci Miller (marci@milleradvocacy.com)
Miller Advocacy Group
1303 Avocado Ave., Suite 230
Newport, CA 92660

Telephone: (949) 706-9734

You will not be charged for contacting these lawyers, and they will help you with any questions about your claim at no cost to you.

If you want to be represented by a lawyer other than Class Counsel, you are free to do so at your own expense.

5. How will the Class Counsel be paid? Panish, Shea, & Boyle LLP and Miller Advocacy Group have been approved by the court as Class Counsel for the settlement classes. Class Counsel will ask the Court for payment of attorneys' fees and the expenses that they have incurred in this Lawsuit to compensate them for their services and expenses. Class Counsel expects to ask the court for \$4,000,000, and Defendant has agreed not to object to that request. The payment of these attorneys' fees and costs will reduce the benefits made available to the Class under the Settlement.

6. How much will the Named Plaintiffs be paid? ACT has agreed to pay the 11 Named Plaintiffs up to \$5,000 each from the Settlement Amount, subject to final Court approval of the Settlement and that payment.

7. What am I giving up if I remain in the Settlement? If you do nothing in response to this Notice, you will give up your right to object to the Settlement and your right to be excluded from the Settlement. If you are a California Disclosure Class Member or a California EOS Class Members and the Settlement is approved, you will automatically receive at least one payment in exchange for giving up your right to assert claims against ACT based on the facts alleged in the Lawsuit. **Please ensure the Settlement Administrator has your correct mailing address to send a settlement check.**

8. How do I tell the Court that I do not like the Settlement? You may write to the Court about why you object to (i.e., don't like) the Settlement and think it should not be approved. Filing an objection does not exclude you from the Settlement.

To object to the settlement, you must send the Court a written statement of objection. Be sure to include your name, address, telephone number, signature, the reason(s) you object to the settlement and whether the objection applies only to you or to a specific subset of the California Classes, and the case caption, *Bloom et al. v. ACT, Inc.*, Case No. 2:18-cv-06749-GW-KS (C.D. Cal.). If you are represented by counsel, the objection must be filed on the docket of this case through the Court's Case Management/Electronic Case Filing (CM/ECF) system. If you are not represented by counsel, the objection must be mailed to the Clerk of the United States District Court for the Central District of California, 350 West First Street, Los Angeles, CA 90012 or filed with the Clerk of Court at any location of the United States District Court for the Central District of California.

If you have not opted-out of the Settlement and fail to object in the manner specified above, you will be deemed to have waived any objections and will be prohibited from later making any

objection (whether by appeal or otherwise) to the settlement agreement. **The deadline for filing an objection is [date to conform to Settlement Agreement/court order]**

9. How do I exclude myself from participating in the Settlement? You may exclude yourself from the California Disclosure Class and/or the California EOS Class only. You may not exclude yourself from the Injunctive Relief Class. To exclude yourself, you must send a written request for exclusion (an “Opt-Out Request”) via U.S. Mail to the Settlement Administrator, or submit an Opt-Out Request electronically on the settlement website listed below. Your Opt-Out Request must include (1) your full name, (2) your email address, telephone number, and physical address, (3) a clear statement communicating that you elect to be excluded from the Settlement and do not wish to be a member of the California Disclosure Class and/or California EOS Class, (4) the case caption of the Lawsuit, *Bloom et al. v. ACT, Inc.*, Case No. 2:18-cv-06749-GW-KS (C.D. Cal.), and (5) your signature. If you exclude yourself and the Settlement is approved, you will not receive any payment under the Settlement and you will retain your right to file your own claims for damages in arbitration or court against ACT, subject to any applicable statute of limitations or other legal constraints. **Even if you exclude yourself from the Settlement, you will remain a member of the Injunctive Relief Class.**

Any Opt-Out Request must be postmarked (as determined by the date of the postmark on the return mailing envelope) or electronically submitted on or before [date to conform to Settlement Agreement] (the “Opt-Out Deadline”). Class Members who fail to submit a valid and timely opt-out on or before the Opt-Out Deadline shall be bound by all terms of the approved settlement agreement and the preclusive effect of the Settlement. No “mass” or “class” opt outs are permitted. Each Class Member must individually opt out of the California Classes. **The deadline for filing an Out-Out Request is [date to conform to Settlement Agreement/court order].**

10. What if I never took the ACT test? If you never took the ACT Test, or if you took the ACT Test but never disclosed any information regarding a disability to ACT, then you are not entitled to receive any payment in connection with this Settlement. If you nevertheless received this Notice indicating you might be a Class Member, please contact the Settlement Administrator and inform them that you are not a Class Member and do not cash any check that you might receive.

11. When will I know if the Settlement has been approved by the Court? The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and costs by Class Counsel, and the Named Plaintiffs’ request for service awards for bringing the lawsuit. **The Fairness Hearing has been scheduled for [date to conform to court order].**

You may, but are not required to, speak at the Fairness Hearing about any objection you filed to the Settlement. If you desire to speak at the Fairness Hearing, you must also submit a “Notice of Intention to Appear” to the Court and the parties’ attorneys, indicating your desire to do so. You must send a letter saying that it is your “Notice of Intention to Appear in the *Bloom, et al. v. ACT, Inc.* Class Action Settlement Fairness Hearing.” Be sure to include all the information required for the objection (see question 8 above). Mail the notice to the Court, and send a copy by fax, U.S. mail, or email to Class Counsel and Defense Counsel at the addresses listed below.

Additional information and documents related to the Settlement and the claims being settled are available at www.ACTClassActionSettlement.com.

COURT

Clerk of the Court
United States Courthouse for the Central District of California
350 West First Street
Los Angeles, CA 90012

CLASS COUNSEL

Rahul Ravipudi (actlawsuit@psblaw.com)
Jesse Creed
Panish, Shea & Boyle LLP
11111 Santa Monica Blvd, Suite 700
Los Angeles, CA 90025
Telephone: (310) 477-1700
Facsimile: (310) 477-1699

Marci Miller (marci@milleradvocacy.com)
Miller Advocacy Group
1303 Avocado Ave., Suite 230
Newport, CA 92660
Telephone: (949) 706-9734

DEFENSE COUNSEL

Eric Samore (esamore@salawus.com)
Ronald Balfour (rbalfour@salawus.com)
SmithAmundsen LLC
150 Michigan Ave #3300
Chicago, IL 60601
Telephone: (312) 894-3200
Facsimile: (312) 894-3210

EXHIBIT 2

NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT

Bloom et al. v. ACT, Inc.
P.O. Box XXXXX
City, ST xxxxx-xxxx

Certain ACT Test examinees who tested with disability-related accommodations as part of ACT's Special Testing (rather than as part of National Testing) or who reported disability information to ACT when they completed the Student Profile Section may be eligible for benefits from a class action settlement.

[CODE]
Name
Address
Address
City, ST ZIP

**www.ACTClassActionSettle
ment.com**

A3M

A settlement has been reached with ACT, Inc. ("ACT") in a class action lawsuit alleging that it violated certain laws by reporting or otherwise identifying examinees with disabilities on college score reports, denying examinees an equal opportunity to participate in its Educational Opportunity Service, and permitting colleges to search for prospective applicants based on the existence and type of disabilities. ACT denies these allegations. The settlement is not an admission of wrongdoing.

If you received this Notice, ACT's records preliminarily indicate that you are included in the Settlement and eligible for a payment. The settlement includes all individuals who, according to ACT's records, (a) took a college-reportable ACT Test on or after September 1, 2002 and on or before [INSERT DATE], (b) resided in California at the time they took the ACT Test or took the ACT Test in California, and (c) provided an Eligible Student Profile Section (SPS) Question 8 Response *or* was administered the exam through Special Testing ("California Disclosure Class Members") *or* left the response to the EOS Opt-In Query blank on the Special Testing answer folder for at least one exam ("California EOS Class Members"). The settlement also includes a Consent Decree covering you and all other individuals in the United States who took the ACT Test through Special Testing at any time, *or* provided an Eligible SPS Question 8 Response at any time ("Injunctive Relief Class Members").

ACT and its insurers have agreed to pay \$16,000,000 into a settlement fund. After deducting administrative costs, service awards to the Named Plaintiffs (up to \$5,000 each), and attorneys' fees and costs (up to \$4,000,000), a portion of the Net Settlement Amount will be automatically distributed to you in the form of a check. California EOS Class Members will receive two "shares" of the settlement fund and California Disclosure Class Members will receive one "share". A share is equal to [1/X], with X representing the combined total of California Disclosure Class Members and California EOS Class Members.

If you remain in the settlement (do not exclude yourself) and the settlement is approved, you will automatically receive a payment and you will give up any right to assert claims against ACT for the actions challenged in this lawsuit. If you do not want to receive a settlement payment, but you want to keep any right to assert claims against ACT for the actions challenged in this lawsuit you must exclude yourself by [DATE]. If you do not exclude yourself, you may object to the settlement by [DATE] if you have an objection you want to make..

The Court will hold a Fairness Hearing in this case (*Bloom v. ACT, Inc.*, No. 2:18-cv-06749) on [DATE] to consider the Settlement, Class Counsel's request for attorneys' fees and costs, and the request for service awards for the Named Plaintiffs.. You or your lawyer may appear at ask to speak at this hearing, at your own cost, but you do not have to.

EXHIBIT 3

1 PANISH SHEA & BOYLE LLP
RAHUL RAVIPUDI, State Bar No. 204519
2 *ravipudi@psblaw.com*
JESSE MAX CREED, State Bar No. 272595
3 *creed@psblaw.com*
11111 Santa Monica Boulevard, Suite 700
4 Los Angeles, California 90025
Telephone: 310.477.1700
5 Facsimile: 310.477.1699

6 MILLER ADVOCACY GROUP PC
MARCI LERNER MILLER, State Bar No. 162790
7 *marci@milleradvocacy.com*
1303 Avocado Ave., Suite 230
8 Newport, CA 92660
Telephone: (949) 706-9734

9 Attorneys for Plaintiffs
10

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 HALIE BLOOM, an individual;
15 DEVON LINKON, an individual;
EMMA L., an individual; K.B. an
16 individual, as legal parent of JOHN
DOE, a minor; STEVEN and MOLLY
17 M., individuals, as legal parents of
SAM M., a minor; MICHELLE G., an
18 individual, as a legal parent of ALEX
G., a minor; ANDREW L., an
19 individual, as legal parent of
CAROLINE L., a minor; K.J.B, an
20 individual, as legal parent of JANE
DOE; LISA B., an individual, as legal
21 parent of M.B.; and A. C., an
22 individual..

23
24 Plaintiff,

25 v.

26 ACT, INC., a corporation, and DOES 1-
100.

27 Defendant.
28

Case No.: 2:18-CV-06749-GW-KS
District Judge George H. Wu;
Magistrate Judge Karen L. Stevenson

**PLAINTIFF A.C.'S FOURTH SET
OF INTERROGATORIES TO
DEFENDANT ACT, INC.**

1 PROPOUNDING PARTY: Plaintiff A.C.
2 RESPONDING PARTY: Defendant ACT, Inc.
3 SET NO.: Fourth

4 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff A.C.
5 requests that Defendant ACT, Inc. answer the following interrogatories.

6 **DEFINITIONS AND INSTRUCTIONS**

- 7 1. "PERSON(S)" includes any natural person, firm, association,
8 organization, partnership, business, trust, corporation, governmental or public entity
9 or any other form of legal entity.
- 10 2. "DOCUMENT" or "DOCUMENTS" shall mean all documents,
11 electronically stored information, and tangible things as described in Rule 34 of the
12 Federal Rules of Civil Procedure, including without limitation all written and
13 graphic matter and all other means of recording information, whether written,
14 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced,
15 or recorded, and including but not limited to: originals, drafts, computer-sorted and
16 computer-retrievable information, copies and duplicates that are marked with any
17 notation or annotation or otherwise differ in any way from the original,
18 correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
19 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs,
20 calendars, computer printouts, computer disks, card files, lists of persons attending
21 meetings or conferences, sketches, diagrams, calculations, evaluations, analyses,
22 directions, work papers, press clippings, sworn or unsworn statements, requisitions,
23 manuals or guidelines, audit work papers, financial analyses, tables of organizations,
24 charts, graphs, indices, advertisements and promotional materials, audited and
25 unaudited financial statements, trade letters, trade publications, newspapers and
26 newsletters, photographs, emails, electronic or mechanical records, facsimiles,
27 telegrams and telecopies, and audiotapes. Each draft, annotated, or otherwise non-
28 identical copy is a separate DOCUMENT within the meaning of this term.

1 DOCUMENTS shall also include any removable sticky notes, flags, or other
2 attachments affixed to any of the foregoing, as well as the files, folder tabs, and
3 labels appended to or containing any documents. DOCUMENTS expressly include
4 all ELECTRONIC RECORDS.

5 3. "ELECTRONIC RECORDS" shall mean the original (or identical
6 duplicate when the original is not available) and any non-identical copies (whether
7 non-identical because of notes made on copies or attached comments, annotations,
8 marks, transmission notations, or highlighting of any kind) of writings of every kind
9 and description inscribed by mechanical, facsimile, electronic, magnetic, digital, or
10 other means. ELECTRONIC RECORDS includes, by way of example and not by
11 limitation, computer programs (whether private, commercial, or work-in-progress),
12 programming notes and instructions, activity listings of email transmittals and
13 receipts, output resulting from the use of any software program (including word
14 processing documents, spreadsheets, database files, charts, graphs and outlines),
15 electronic mail, and any and all miscellaneous files and file fragments, regardless of
16 the media on which they reside and regardless of whether said ELECTRONIC
17 RECORDS exists in an active file, deleted file, or file fragment. ELECTRONIC
18 RECORDS includes without limitation any and all items stored on computer
19 memories, hard disks, diskettes and cartridges, network drives, network memory
20 storage, archived tapes and cartridges, backup tapes, floppy disks, CD-ROMs,
21 removable media, magnetic tapes of all types, microfiche, and any other media used
22 for digital data storage or transmittal. ELECTRONIC RECORDS also includes the
23 file, folder tabs, and containers and labels appended to or associated with each
24 original and non-identical copy.

25 4. "COMMUNICATION(S)" means any oral, written or electronic
26 transmission of information, including but not limited to meetings, discussions,
27 conversations, telephone calls, telegrams, memoranda, letters, telecopies, telexes,
28 conferences, messages, notes or seminars.

1 5. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means
2 constituting, containing, concerning, embodying, reflecting, identifying, stating,
3 mentioning, discussing, describing, evidencing, or in any other way being relevant
4 to that given subject matter.

5 6. "PLAINTIFF" shall mean Plaintiff A.C..

6 7. "DEFENDANT," "YOU" "ACT" and "YOUR" shall mean Defendant
7 ACT, Inc. and all of its employees and agents, including attorneys, or other
8 PERSONS acting on its behalf.

9 8. "PUTATIVE CLASS MEMBER" shall mean any member of the
10 putative class action as defined in the First Amended Complaint in this action.

11 9. "POLICY OR PRACTICE" shall mean a standard course of action that
12 has been officially established by DEFENDANT, regardless of whether such
13 standard course of action is established by a written policy or a standard practice.

14 10. "SPS Question 8" shall mean the following question: "Do you have a
15 disability that requires special provisions from the educational institution?"

16 11. "Complaint Date" shall mean the date the initial complaint was filed in
17 this action.

18 12. The phrase "describe in detail" shall mean a request for a complete
19 description and explanation of the facts, circumstances, analysis, opinion and other
20 information relating to (as that phrase is defined below) the subject matter of a
21 specific interrogatory.

22 13. "CONTACT INFORMATION" means the last-known address,
23 telephone number, and email address.

24 14. "TESTING YEAR " is used in this interrogatory in the same manner
25 that ACT uses such term in its Answer to A.C.'s First Set of Interrogatories. In
26 furtherance and not in limitation of the foregoing, Testing Year as used by ACT
27 appears to coincide with a school calendar year that begins in the fall of one year
28 and ends in the summer of the following year, thus spanning two calendar years (i.e.

1 2012-2013, 2013-2014, 2014-2015, etc.)

2 15. "SPECIAL TESTING" means ACT's program for administering the
3 ACT Test to individuals with disabilities whose accommodations cannot be
4 provided at an ACT Test Center.

5 16. "ELIGIBLE SPS QUESTION 8 RESPONSE" means an affirmative
6 answer to SPS Question 8 other than "no disability."

7 17. Whenever possible, the singular form of a word shall be interpreted in
8 the plural or vice versa; verb tenses shall be interpreted to include past, present and
9 future tenses; the terms "and" as well as "or" shall be construed either conjunctively
10 or disjunctively, as necessary, to bring within the scope of these interrogatories any
11 information that might otherwise be considered outside their purview; and words
12 imparting the masculine shall include the feminine and vice versa.

13 **INTERROGATORIES**

14 **INTERROGATORY NO. 27:**

15 Identify the number of SPECIAL TESTING exams associated with an
16 examinee who, according to ACT's records, resided in California for the following
17 time periods: (a) from the 2002-2003 TESTING YEAR to the 2018-2019 TESTING
18 YEAR, (b) from the 2002-2003 TESTING YEAR to the 2016-2017 TESTING
19 YEAR, (c) from the 2015-2016 TESTING YEAR to the 2018-2019 TESTING
20 YEAR, and (d) from the 2015-2016 TESTING YEAR through the 2016-2017
21 TESTING YEAR.

22 **INTERROGATORY NO. 28:**

23 Identify the number of SPECIAL TESTING exams associated with an
24 examinee who, according to ACT's records, did not reside in California but took the
25 exam in California for the following time periods: (a) from the 2002-2003
26 TESTING YEAR to the 2018-2019 TESTING YEAR, (b) from the 2002-2003
27 TESTING YEAR to the 2016-2017 TESTING YEAR, (c) from the 2015-2016
28 TESTING YEAR to the 2018-2019 TESTING YEAR, and (d) from the 2015-2016

1 TESTING YEAR through the 2016-2017 TESTING YEAR.

2 **INTERROGATORY NO. 29:**

3 Identify the number of exams with an ELIGIBLE SPS QUESTION 8
4 RESPONSE associated with an examinee who, according to ACT's records, resided
5 in California for the following time periods: (a) from the 2002-2003 TESTING
6 YEAR to the 2017-2018 TESTING YEAR, and (b) from the 2015-2016 TESTING
7 YEAR to the 2017-2018 TESTING YEAR.

8 **INTERROGATORY NO. 30:**

9 Identify the number of exams with an ELIGIBLE SPS QUESTION 8
10 RESPONSE associated with an examinee who, according to ACT's records, did not
11 reside in California but took the exam in California for the following time periods:
12 (a) from the 2002-2003 TESTING YEAR to the 2017-2018 TESTING YEAR, and
13 (b) from the 2015-2016 TESTING YEAR to the 2017-2018 TESTING YEAR.

14 **INTERROGATORY NO. 31:**

15 Identify the average number of tests taken per person (nationwide) (a) to the
16 tenth decimal place, from the 2009-2010 TESTING YEAR to the 2018-2019
17 TESTING YEAR, (b) to the ten millionths, for the 2019 graduating class, (c) to the
18 ten millionths, for the 2015 graduating class, and (d) to the ten millionths, for the
19 2011 graduating class, and (e) to the ten millionths, for the 2009 graduating class.

20 **INTERROGATORY NO. 32:**

21 Identify the percentage of individuals for the 2019 graduating class who (a)
22 tested one time, (b) testing two times, (c) testing three times, (d) testing four times,
23 and (e) testing more than four times.

24 **INTERROGATORY NO. 33:**

25 Identify the average number of score reports that (a) all examinees who
26 graduated high school in 2018 sent to colleges and universities for their most recent
27 test and (b) examinees who most recently tested through SPECIAL testing and
28 graduated high school in 2018 sent to colleges and universities for such test.

1 **INTERROGATORY NO. 34:**

2 State the date ACT stopped reporting responses to SPS Question 8 (a) on
3 paper score reports, (b) through AIRO reports, and (c) through CD reports.

4 **INTERROGATORY NO. 35:**

5 State (a) the date ACT removed the ability for EOS users to conduct new
6 searches using an examinee's response to SPS Question 8 as a search criterion and
7 (b) the date ACT permanently removed the ability for EOS users who had
8 previously conducted searches using an examinee's response to SPS Question 8 as a
9 search criterion.

10 **INTERROGATORY NO. 36:**

11 State the state ACT began treating enrollment in its EOS program differently
12 for SPECIAL TESTING examinees than for National Testing examinees.

13 **INTERROGATORY NO. 37:**

14 State the number of SPECIAL TESTING answers folders in which the EOS
15 opt-in question was left blank (a) from the 1997-1998 TESTING YEAR to June
16 2020, (b) from the 2007-2008 TESTING YEAR to June 2020, and (c) from the
17 2015-2016 TESTING YEAR to June 2020.

18 **INTERROGATORY NO. 38:**

19 For each TESTING YEAR from the 2002-2003 TESTING YEAR to the
20 present, identify the percentage of exams taken through National Testing for which
21 an examinee opted into EOS.

23 DATED: July 21, 2020

PANISH SHEA & BOYLE LLP

25
26 By: 

27 Jesse Creed
28 Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Los Angeles, State of California. My business address is 11111 Santa
5 Monica Boulevard, Suite 700, Los Angeles, CA 90025.

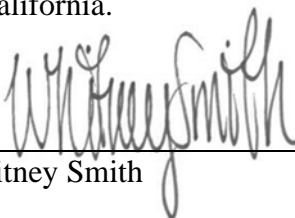
6 On July 21, 2020, I served true copies of the following document(s) described as
7 **PLAINTIFF A.C.'S FOURTH SET OF INTERROGATORIES TO DEFENDANT ACT,**
8 **INC.** on the interested parties in this action as follows:

9 Eric L. Samore
10 Albert M. Bower
11 SMITHAMUNDSEN LLC
12 150 N. Michigan Avenue, Suite 3300
13 Chicago, IL 60601
14 Attorneys for Defendants

15 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
16 document(s) to be sent from e-mail address wsmith@psblaw.com to the persons at the e-mail
17 addresses listed in the Service List. I did not receive, within a reasonable time after the
18 transmission, any electronic message or other indication that the transmission was unsuccessful.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct and that I am employed in the office of a member of the bar of this
21 Court at whose direction the service was made.

22 Executed on July 21, 2020, at Los Angeles, California.

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27
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Whitney Smith