

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
310.477.1700 phone • 310.477.1699 fax

1 PANISH SHEA & BOYLE LLP
2 RAHUL RAVIPUDI, State Bar No.
204519
3 *ravipudi@psblaw.com*
4 JESSE MAX CREED, State Bar No.
272595
5 *creed@psblaw.com*
6 11111 Santa Monica Boulevard, Suite
700
7 Los Angeles, California 90025
8 Telephone: 310.477.1700
9 Facsimile: 310.477.1699

PUBLIC JUSTICE
JENNIFER D. BENNETT, State Bar
No. 296726
jbennett@publicjustice.net
475 14th St., Suite 610
Oakland, CA 94612
Telephone: (510) 622-8150

Attorneys for Plaintiffs

8 MILLER ADVOCACY GROUP PC
9 MARCI LERNER MILLER, State Bar No. 162790
10 *marci@milleradvocacy.com*
11 1303 Avocado Ave., Suite 230
Newport, CA 92660
12 Telephone: (949) 706-9734

12 Attorneys for Plaintiffs and Plaintiff-
Intervenor

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

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

18 Plaintiffs,

19 v.

20 ACT, INC., a corporation, and DOES 1-
21 100.

22 Defendant.

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

25 Plaintiff-Intervenor,

26 v.

27 ACT, INC., a corporation, and DOES 1-
28 100.,

Defendant.

Case No.: CV 18-6749-GW-KSx
District Judge George H. Wu;
Magistrate Judge Karen L. Stevenson

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 1, 2020
Time: 8:30 a.m.
Crtrm.: 9D

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard Suite 700
Los Angeles California 90025
310.477.1700 phone • 310.477.1699 fax

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement came on for hearing before this Court on October 1, 2020, at 8:30 a.m.. After full consideration of the matter, this Court finds as follows:

1. Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Settlement Agreement.

2. This Court has jurisdiction over this litigation, Plaintiffs, Defendants, and Settlement Class Members, and any party to any agreement that is part of or related to the Settlement Agreement.

PRELIMINARY APPROVAL

3. The Court has reviewed the terms of the proposed Settlement Agreement, the exhibits and attachments thereto, Plaintiffs' motion papers and briefs, the declarations submitted in support of the motion, and statements made on the record during the hearing on Plaintiff's Motion for Preliminary Approval. Based on its review, the Court finds that the Settlement Agreement appears to be the result of serious, informed, non-collusive negotiations conducted with the assistance of the Honorable Louis Meisinger.

4. The Settlement does not improperly grant preferential treatment to any individual or segment of the Settlement Class; does not exhibit any signs of collusion, explicit or subtle; and falls within the range of possible approval as fair, reasonable, and adequate and thus is likely to gain final approval under Federal Rule of Civil Procedure 23(e)(2).

5. For purposes of this order and settlement, ACT does not admit or concede any liability or wrongdoing whatsoever to any other Party and expressly denies any such liability or wrongdoing.

6. The Court therefore GRANTS preliminary approval of the Settlement.

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard Suite 700
Los Angeles California 90025
310.477.1700 phone • 310.477.1699 fax

1 **PRELIMINARY FINDINGS ON SETTLEMENT CLASS CERTIFICATION**

2 7. The Court finds that it will likely be able to certify the following
3 California Settlement Classes for purposes of judgment on the proposed Settlement
4 under the Rule 23(b)(3):

5 *California Disclosure Subclass:* All individuals who meet all of the following
6 criteria in connection with any single administration of the ACT Test according to
7
8 ACT’s records:

9 (a) took an ACT Test on or after September 1, 2002, and on or
10 before August 2, 2020;

11 (b) resided in California at the time they took the ACT Test or took
12 the ACT Test in California; and

13 (c) satisfies at least one of the following criteria: (i) such individual
14 provided an Eligible SPS Question 8 Response or (ii) such individual was
15 administered the exam through Special Testing.

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

19 (a) took an ACT Test through Special Testing on or after September
20 1, 2007, and before August 2, 2020;

21 (b) resided in California at the time they took the ACT Test or took
22 the ACT Test in California; and

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

25 8. The Court finds that it will likely be able to certify the following
26 California Settlement Classes for purposes of judgment on the proposed Settlement
27 under the Rule 23(b)(2):

28 *Injunctive Relief Class:* All individuals in the United States who meet either

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard Suite 700
Los Angeles California 90025
310.477.1700 phone • 310.477.1699 fax

1 of the following criteria:

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

4 9. The Court preliminarily finds, for settlement purposes only, that the
5 requirements of Rule 23(a) are satisfied.

6 10. Rule 23(a)(1) is satisfied because the California Disclosure Subclass
7 consists of at least 55,984 unique individuals, the California EOS Subclass consists
8 of at least 9,749 unique individuals, and the Injunctive Relief Class consists of at
9 least 55,984 unique individuals.

10 11. Rule 23(a)(2) is satisfied because there are common issues of fact and
11 law, including the following:

12 a. Does or did ACT have a policy of annotating college score
13 reports with information indicating that the examinee has a disability or a need for
14 testing accommodations?

15 b. Would the aforementioned policy be or have been unlawful
16 under the Americans with Disabilities Act, the Unruh Act, California’s Unfair
17 Competition Law, or California’s constitutional right to privacy?

18 c. Does or did ACT have a policy of requiring Special Testing
19 examinees to complete an additional burden to enroll in the EOS program? Does
20 ACT operate a place of public accommodation?

21 d. Would the aforementioned policy be or have been unlawful
22 under the Americans with Disabilities Act, the Unruh Act, California’s Unfair
23 Competition Law, or California’s constitutional right to privacy?

24 e. Would statutory tolling under the discovery rule or fraudulent
25 concealment toll the statute of limitations for class members as to each of the
26 alleged policies challenged?

27 12. The Court further finds that the Class Representatives’ claims are
28

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard Suite 700
Los Angeles California 90025
310.477.1700 phone • 310.477.1699 fax

1 typical of those of Settlement Class Members and that the Class Representatives will
2 fairly and adequately protect the interests of the Settlement Class; therefore Rule 23
3 (a)(3) and (4) are satisfied.

4 13. Additionally, the Court preliminarily finds, for settlement purposes
5 only, that the requirements of Rule 23(b)(2) are satisfied as to the Injunctive Relief
6 Class, as ACT is alleged to have acted or refused to act on grounds that apply
7 generally to the class, so that final injunctive relief is appropriate respecting the
8 class as a whole;

9 14. Additionally, the Court preliminarily finds, for settlement purposes
10 only, that the requirements of Rule 23(b)(3) are satisfied as to the California
11 Settlement Classes, as the questions of law or fact common to the Settlement Class
12 predominate over individual questions, and a class action is superior to other
13 available methods for the fair and efficient adjudication of this controversy.

14 15. The Court appoints:

- 15 a. All Plaintiffs as Class Representatives of the Injunctive Relief
- 16 Class.
- 17 b. Halie Bloom, Devon Linkon, Jaquel Pitts, M.B., Jane Doe, A.C.,
- 18 and John Doe as Class Representatives for the California Disclosure Subclass.
- 19 c. Halie Bloom, Devon Linkon, M.B., Jane Doe, A.C., and John
- 20 Doe as Class Representatives for the California EOS Subclass.

21 **NOTICE AND ADMINISTRATION**

22 16. The Court hereby designates KCC as Settlement Administrator.

23 17. The Court finds that giving California Class Members notice of the
24 Settlement is justified under Rule 23(e)(1) because, as described above, the Court
25 will likely be able to: approve the Settlement under Rule 23(e)(2); and certify the
26 California Settlement Classes for purposes of judgment. The Court finds that notice
27 to the Injunctive Relief Class (other than those who are also part of the California
28 Settlement Classes) is not required by Rule 23 and not reasonably necessary.

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard Suite 700
Los Angeles California 90025
310.477.1700 phone • 310.477.1699 fax

1 18. The Court finds that the proposed Notice satisfies the requirements of
2 due process and Federal Rule of Civil Procedure 23 and provides the best notice
3 practicable under the circumstances. The Notice and plan for its dissemination are
4 reasonably calculated to apprise California Class Members of the nature of this
5 litigation, the scope of the California Settlement Classes, a summary of the class
6 claims, that a Class Member may enter an appearance through an attorney, that the
7 Court will grant timely exclusion requests, the time and manner for requesting
8 exclusion, and the binding effect of final approval.

9 19. The Court therefore approves the Notice and directs the parties and the
10 Settlement Administrator to provide notice pursuant to the terms of the Settlement
11 Agreement and this Order.

12 **OPT OUTS AND OBJECTIONS**

13 20. To opt out of the Settlement, a California Class Member must send a
14 signed written letter (an “Opt-Out Request”) via U.S. Mail to the Settlement
15 Administrator informing the Settlement Administrator of the California Class
16 Member’s election to be excluded from the Settlement.

17 21. An Opt-Out Request must contain the following information: (1) the
18 full name of the California Class Member, (2) his or her email address, telephone
19 number, and physical address, (3) a clear statement communicating that such
20 California Class Member elects to be excluded from the California Class and does
21 not wish to be a member of the California Class, and (4) the case name and case
22 number of the Class Action.

23 22. Any Opt-Out Request must be postmarked (as determined by the date
24 of the postmark on the return mailing envelope) or submitted electronically on or
25 before 60 days after initial distribution of the Settlement Notice or such other date as
26 specified by the Court in the Preliminary Approval Order (the “Opt-Out Deadline”).
27 The Settlement Administrator and the Parties will establish a date certain for the
28 Opt-Out Deadline based on the date of the initial distribution of the Settlement

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
310.477.1700 phone • 310.477.1699 fax

1 Notice.

2 23. California Class Members who fail to submit a valid and timely opt-out
3 on or before the Opt-Out Deadline shall be bound by all terms of this Agreement
4 and the preclusive effect of this Settlement. No “mass” or “class” opt outs are
5 permitted. California Class Members must opt out of the California Classes
6 individually.

7 24. Any California Class Member who wishes to object to the Settlement
8 Agreement must send to the Court a written statement of objection (a “Written
9 Objection”) filed or postmarked no later than 60 days after initial distribution of the
10 Settlement Notice (the “Objection Deadline”). The Settlement Administrator and
11 the Parties will establish a date certain for the Opt-Out Deadline based on the date of
12 the initial distribution of the Settlement Notice.

13 25. All written objections and supporting papers must be timely filed with
14 the Court by the Objection Deadline. If a California Class Member making a
15 Written Objection (an “Objector”) is represented by counsel, the Written Objection
16 must be filed on the docket of the Class Action through the Court’s Case
17 Management/Electronic Case Filing (CM/ECF) system. All other California Class
18 Members may file a Written Objection by one of the following means: (1) mailing
19 the Written Objection to the Clerk of the United States District Court for the Central
20 District of California, or (2) filing the Written Objection with the Clerk of Court at
21 any location of the United States District Court for the Central District of California.
22 All Written Objections must: (1) clearly identify the case name and number of the
23 Class Action, (2) state whether the Written Objection applies only to the Objector,
24 to a specific subset of the California Classes, or to the entire California Class
25 Classes, and (3) state with specificity the grounds for the Written Objection. To the
26 extent a timely Written Objection is withdrawn before Final Approval, such Written
27 Objection shall be treated as though it has not been made. Plaintiffs will request in
28 their motion requesting preliminary approval of this Agreement that the Court

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard Suite 700
Los Angeles California 90025
310.477.1700 phone • 310.477.1699 fax

1 permit any Party to file a reply to any objection by seven days before the Fairness
2 Hearing, or as the Court may direct. Any California Class Member who validly and
3 timely opts out of the California Classes may not object to any part of the
4 Agreement that relates to the provision of damages payments to California Class
5 Members or the release of the California Class Members’ damages claims.

6 **CONSENT DECREE**

7 26. The Proposed Consent Decree shall be entered as part of the Final
8 Order and Judgment and will become effective as of the Effective Date of the
9 Settlement. The Parties shall submit the Proposed Consent Decree as part of the
10 Final Order and Judgment for entry.

11 **FINAL APPROVAL AND HEARING SCHEDULE**

12 27. The Court will hold a Final Approval hearing on April 1, 2021 at 8:30
13 a.m. in Courtroom 9D of the First Street Courthouse, 350 W. 1st Street, Los
14 Angeles, California 90012. The Court may continue the date of the Final Approval
15 hearing without further notice to California Class Members and without notice to
16 Injunctive Relief Class members. Class Members should check the Settlement
17 website or the Court’s online calendar for the date of the Final Approval hearing.

18 28. At the Final Approval hearing, the Court will consider: whether the
19 Settlement is fair, reasonable, and adequate and should be granted final approval;
20 whether the Settlement Class should be finally certified; whether a final judgment
21 should be entered; and any other matters the Court may deem appropriate.

22 29. Before the settlement is finally approved, Class Counsel may apply for
23 an award of attorneys’ fees, reimbursement of expenses, and service payments to
24 Class Representatives to be made after final approval and implementation of the
25 claims procedure. Class Counsel’s request for attorneys’ fees and reimbursement of
26 expenses may not exceed \$4 million. All attorneys’ fees and expenses and any
27 Service Awards the Court approves will be paid from the Settlement Amount.

28 30. In summary, the parties shall adhere to the following schedule unless


1 otherwise ordered by the Court:

EVENT	DATE
Settlement Administrator to Send Notice to Class Members	Within 21 days of the date of this Order
Last Day for Class Members to File Request for Exclusion from Settlement in accordance with this Order and Settlement Agreement	No later than 60 days from the date of mailing the Notice
Last Day for Class Members to Object in accordance with this Order and Settlement Agreement	No later than 60 days from the date of mailing the Notice
Parties to File Motion for Final Approval	March 18, 2021
Final Approval Hearing	April 1, 2021 at 8:30 a.m.

PANISH SHEA & BOYLE LLP
 11111 Santa Monica Boulevard Suite 700
 Los Angeles California 90025
 310.477.1700 phone • 310.477.1699 fax

12
 13 31. In the event that the Settlement is terminated pursuant to the terms of
 14 the Settlement Agreement, this Order shall become void, shall have no further force
 15 or effect, and shall not be used in this action or in any other proceedings for any
 16 purpose other than as may be necessary to enforce the terms of the Settlement
 17 Agreement that survive termination.

18
 19 Dated: October 1, 2020


 HON. GEORGE H. WU,
 United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October ____, 2020

PANISH SHEA & BOYLE LLP

By: /s/ Jesse Creed
Jesse Creed
Attorneys for Plaintiffs

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

PANISH SHEA & BOYLE LLP
11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
310.477.1700 phone • 310.477.1699 fax