

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

GUPTA WESSLER
JENNIFER D. BENNETT, State Bar
No. 296726
jennifer@guptawessler.com
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 569-6979

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
12 Newport, CA 92660
13 Telephone: (949) 706-9734

Attorneys for Plaintiffs and Plaintiff-Intervenor

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

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

16 Plaintiffs,

17 v.

18 ACT, INC., a corporation, and DOES 1-
19 100.

20 Defendant.

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

23 Plaintiff-Intervenor,

24 v.

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

27 Defendant.

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

**DECLARATION OF JESSE CREED
ISO NOTICE OF MOTION AND
MOTION OF PLAINTIFFS FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT UNDER
FED. R. CIV. P. 23(e), FOR
ATTORNEY'S FEES AND COSTS,
AND FOR CLASS
REPRESENTATIVE SERVICE
AWARDS**

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

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11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
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1 I, Jesse Creed, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am an
3 attorney with Panish Shea & Boyle LLP, attorneys of record for Plaintiffs. I have
4 personal knowledge of the facts set forth herein, except as to those stated on
5 information and belief and, as to those, I am informed and believe them to be true. If
6 called as a witness, I could and would competently testify to the matters stated herein.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement
8 Agreement and Proposed Consent Decree, dated as of September 2, 2020, among the
9 Plaintiffs and ACT (the “Settlement Agreement”). The Settlement Agreement, if
10 approved, would resolve all the claims in this action. All capitalized terms used
11 herein that are not otherwise defined have the meanings set forth in the Settlement
12 Agreement.

13 3. On September 2, 2020, ACT confirmed in writing to me that all ACT
14 examinees would be able, going forward, to enroll in EOS in the same manner during
15 the process of registering to take the ACT Test and to be assigned ACT ID numbers,
16 without regard to whether an examinee will test with or without accommodations and
17 without regard to whether an examinee has or does not have any disabilities. ACT
18 informed me the date on which ACT completed the changes was August 2, 2020.
19 Thus, for all purposes under the Settlement Agreement, the Date of Completion of
20 Changes is August 2, 2020.

21 **Events Leading Up to Settlement Negotiations**

22 4. On August 6, 2018, Plaintiffs, represented by me and Panish, Shea &
23 Boyle LLP, filed this action. *See* Compl., ECF No. 1.

24 5. On August 30, 2018, Plaintiffs filed a motion for preliminary injunction
25 enjoining ACT from reporting the existence and nature of examinees’ disabilities on
26 college score reports. *See* P.’s Mot. for Prelim. Inj., ECF No. 11. The Court required
27 ACT to stipulate to ceasing the practice challenged in the motion as a condition to
28 denying the motion.

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1 6. On September 11, 2018, ACT filed a motion to stay the claims of certain
2 plaintiffs pending arbitration. *See* D.’s Mot. to Stay, ECF No. 24. On December 4,
3 2018, the Court granted ACT’s motion. *See* Dec. 4, 2018 Order, ECF No. 86. On
4 January 22, 2019, ACT filed a motion to stay the claims of newly-added plaintiffs.
5 *See* D.’s Mot. to Stay, ECF No. 100. On the same day, Plaintiffs filed a motion to
6 certify the Court’s December 4 arbitration ruling for interlocutory appeal under 28
7 U.S.C. § 1292(b) and a motion for relief from the Court’s arbitration ruling. ECF No.
8 101. On March 7, 2019, the Court denied ACT’s motion to stay the claims of newly-
9 added plaintiffs and granted Plaintiffs’ motion to certify the Court’s December 4
10 arbitration ruling for interlocutory appeal under 28 U.S.C. § 1292(b) and motion for
11 relief from the Court’s arbitration ruling. *See* Mar. 7, 2019 Order, ECF No. 126. On
12 May 31, 2019, the Ninth Circuit granted Plaintiffs’ petition to file an interlocutory
13 appeal. *See* May 31, 2019 Order, ECF No. 151.

14 7. Beginning in January 2019, the Parties engaged in extensive discovery.
15 a. A.C. has propounded (i) three sets of requests for production with
16 a total of 43 requests and (ii) four sets of interrogatories with a total of 38 requests.
17 b. M.B. has propounded (i) three sets of requests for production with
18 a total of 11 requests and (ii) two sets of interrogatories with a total of 17 requests.
19 c. Caroline L. has propounded (i) three sets of requests for production
20 with a total of 4 requests and (ii) one set of interrogatories with a total of 6 requests.
21 d. Jane Doe has propounded (i) three sets of requests for production
22 with a total of 4 requests and (ii) one set of interrogatories with a total of 6 requests.
23 e. Sam M. has propounded (i) three sets of requests for production
24 with a total of 6 requests and (ii) two sets of interrogatories with a total of 17 requests.
25 f. Jaquel Pitts has propounded (i) one set of requests for production
26 with a total of 4 requests and (ii) two sets of interrogatories with a total of 9 requests.
27 g. Defendant ACT has propounded (i) one set of requests for
28 production to each of M.B., Caroline L., Jane Doe, Sam M., and Jaquel Pitts with a

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1 total of 17 requests and (ii) one set of interrogatories to each of M.B., Caroline L.,
2 Jane Doe, Sam M., and Jaquel Pitts with a total of 16 requests.

3 h. Defendant ACT has propounded on A.C. (i) two sets of requests
4 for production with a total of 17 requests and (ii) two sets of interrogatories with a
5 total of 16 requests.

6 i. Before settlement discussion began, the Parties had eight separate
7 discovery disputes they were teeing up for resolution by the magistrate judge. The
8 Parties had teed up one dispute for resolution by the Court that required two informal
9 discovery conferences and briefing. *See* ECF No. 142; ECF No. 174; ECF No. 197;
10 ECF No. 204; ECF No. 206.

11 8. Settlement discussions began in earnest after the Court’s August 5, 2019
12 hearing and ruling on ACT’s motion to dismiss under Rule 12(b)(6). At that hearing,
13 the Court directed the Parties to hold a status conference to discuss, among other
14 things, the “issue of mediation and the scope of mediation.” Attached hereto as
15 Exhibit 2 is a true and correct copy of the transcript of the hearing on August 5, 2019
16 in this case.

17 9. On September 27, 2020, the Parties filed a joint status report under seal
18 describing the scope of settlement discussions up to that date and the reasons for the
19 Parties’ decision not to mediate the case as of that date. ECF No. 220.

20 10. On October 22, 2020, the Parties filed a joint status report informing the
21 Court that they had agreed to mediate the case. ECF No. 231.

22 11. On November 18, 2019, the Court held a hearing and issued a tentative
23 on ACT’s second motion to dismiss. ECF No. 243. Generally, ACT moved to
24 dismiss the Special Testing barrier claims (referred to in the motion for preliminary
25 approval as the Special Testing EOS Practice) on the basis that ACT does not own or
26 operate a place of public accommodation, that ACT is not subject to the Rehabilitation
27 Act as ACT is not a recipient of federal funds, and that the claims of A.C. and Jaquel
28 Pitts are time-barred. The Court issued a tentative ruling granting the motion as to the

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1 Rehabilitation Act, but denying the motion as to the remainder of the claims. ECF
2 No. 243 at 13.

3 12. After the Court’s tentative ruling, the Parties’ mediation discussions
4 picked up speed. In December 2019, the Parties set a mediation for January 31, 2020
5 before the Honorable Louis Meisinger. On January 15, 2020, the Court entered a stay
6 of proceedings and discovery to permit the attention and focus to be on the mediation
7 efforts, including informal discovery related to the mediation. ECF No. 251. ACT
8 provided discovery to Plaintiffs to facilitate and inform settlement discussions,
9 including the start and end dates of the challenged practices and the estimated number
10 of class members in each class.

11 13. On January 31, 2020, the Parties held a full day mediation before Judge
12 Meisinger. Before the mediation, the Parties exchanged multiple drafts of a term
13 sheet. For the mediation, the Parties submitted mediation briefs to Judge Meisinger.
14 After the January 31, 2020 mediation, negotiations among the Parties broke down, and
15 it was unclear whether further mediation would be pursued. The Parties continued to
16 negotiate. They agreed to do a second day of mediation.

17 14. The Parties set a second day of mediation for April 30, 2020. Plaintiffs
18 would not engage in any substantive negotiation about or reach any agreement on
19 monetary compensation for the classes until the prospective relief was materially
20 agreed-to. Before the second day, the Parties feverishly negotiated the term sheet
21 regarding prospective relief and had largely agreed on the material terms. From
22 October 2019 to September 2, 2020, the Parties exchanged dozens of drafts of the
23 term sheets or formal agreements for the Consent Decree and the Settlement
24 Agreement and had multiple calls to negotiate substantive terms. The complex
25 negotiation process spanned nearly nine months, with the Parties requesting a stay to
26 focus attention and resources on settlement discussions on January 15, 2020 and
27 repeated continuances of status conferences to permit further negotiations until an
28 agreement was concluded on September 2, 2020.

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15. The parties did not engage in substantive negotiation about or reach any agreement on attorneys’ fees, reimbursement of expenses, or class representative service awards (all of which will be subject to future application to the court) until they had resolved all essential terms of the relief available to the Class.

Numerosity

16. After entering into the Settlement Agreement, ACT provided the selected Settlement Administrator KCC a list of class members and their contact information. KCC told the Parties that it had deduped the data to the best of its ability and had performed an analysis of the data. According to KCC’s analysis:

a. There are approximately 56,049 unique individuals in the California Disclosure Subclass.

b. There are approximately 9,699 unique individuals in the California EOS Subclass. Each of those individuals would be expected to receive two shares of the Net Settlement Amount, as every member of the California EOS Subclass is by definition also a member of the California Disclosure Subclass.

c. In Paragraph 16(c) of my declaration for preliminary approval, ECF No. 273-1, I informed the Court that there may be a few more individuals in each of the California Settlement Classes, but the number of additional individuals is expected to be no more than 60 individuals.

d. There are at least 56,049 unique individuals in the Injunctive Relief Class, as the Injunctive Relief Class includes by definition every member of the California Disclosure Subclass.

e. Because every member of the California EOS Subclass is by definition a member of the California Disclosure Subclass, there are a total of approximately 56,049 unique individuals in the California Settlement Classes. Because every member of the California EOS Subclass has two claims to the Net Settlement Amount, there are a total of approximately 65,748 claims.

Commonality

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1 17. There are a number of common questions of facts and law presented by
2 this case, including the following:

3 a. Does ACT have a policy of annotating college score reports with
4 information indicating that the examinee has a disability or a need for testing
5 accommodations?

6 b. Would the aforementioned policy be unlawful under the
7 Americans with Disabilities Act, the Unruh Act, California's Unfair Competition
8 Law, or California's constitutional right to privacy?

9 c. Does ACT have a policy of requiring Special Testing examinees to
10 complete an additional burden to enroll in the EOS program? Does ACT operate a
11 place of public accommodation?

12 d. Would the aforementioned policy be unlawful under the
13 Americans with Disabilities Act, the Unruh Act, California's Unfair Competition
14 Law, or California's constitutional right to privacy?

15 e. Would statutory tolling under the discovery rule or fraudulent
16 concealment toll the statute of limitations for class members as to each of the policies
17 challenged?

18 **The Proposed Settlement Class/Subclass Representation (Typicality and**
19 **Adequacy of Representation)**

20 18. Halie Bloom took the ACT Test several times. Halie Bloom is a member
21 of the California Disclosure Subclass because she took the ACT Test after September
22 1, 2002 and before August 2, 2002, resided in California at the time she took the ACT
23 Test, and provided an Eligible SPS Question 8 Response (as defined by the Settlement
24 Agreement) and was administered the exam through Special Testing. Ms. Bloom is a
25 member of the California EOS Subclass because she took an ACT Test through
26 Special Testing on or after September 1, 2007, and before August 2, 2020, resided in
27 California at the time she took the ACT Test, and left the response to the EOS Opt-In
28 Query blank on the Special Testing answer folder for at least one exam. Ms. Bloom is

1 a member of the Injunctive Relief class because she took the ACT Test through
2 Special Testing and provided an Eligible SPS Question 8 response.

3 19. Devin Linkon took the ACT Test several times. Mr. Linkon is a member
4 of the California Disclosure Subclass because he took the ACT Test after September
5 1, 2002 and before August 2, 2002, resided in California at the time he took the ACT
6 Test, and provided an Eligible SPS Question 8 Response (as defined by the Settlement
7 Agreement) and was administered the exam through Special Testing. Mr. Linkon is a
8 member of the California EOS Subclass because he took an ACT Test through Special
9 Testing on or after September 1, 2007, and before August 2, 2002, resided in
10 California at the time he took the ACT Test, and left the response to the EOS Opt-In
11 Query blank on the Special Testing answer folder for at least one exam. Mr. Linkon is
12 a member of the Injunctive Relief class because he took the ACT Test through Special
13 Testing and provided an Eligible SPS Question 8 response.

14 20. Emma L. took the ACT Test several times. Emma L. is a member of the
15 Injunctive Relief class because she provided an Eligible SPS Question 8 response.

16 21. John Doe took the ACT Test at least once. John Doe is a member of the
17 California Disclosure Subclass because he took the ACT Test after September 1, 2002
18 and before August 2, 2002, resided in California at the time he took the ACT Test, and
19 provided an Eligible SPS Question 8 Response (as defined by the Settlement
20 Agreement) and was administered the exam through Special Testing. John Doe is a
21 member of the Injunctive Relief class because he took the ACT Test through Special
22 Testing and provided an Eligible SPS Question 8 response.

23 22. Sam M. took the ACT Test at least once. Sam M. is a member of the
24 Injunctive Relief class because he took the ACT Test through Special Testing and
25 provided an Eligible SPS Question 8 response.

26 23. Caroline L. took the ACT Test at least once. Caroline L. is a member of
27 the Injunctive Relief class because she took the ACT Test through Special Testing and
28 provided an Eligible SPS Question 8 response.

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1 24. Jane Doe took the ACT Test several times. Jane Doe is a member of the
2 California Disclosure Subclass because she took the ACT Test after September 1,
3 2002 and before August 2, 2002, resided in California at the time she took the ACT
4 Test, and provided an Eligible SPS Question 8 Response (as defined by the Settlement
5 Agreement) and was administered the exam through Special Testing. Jane Doe is a
6 member of the California EOS Subclass because she took an ACT Test through
7 Special Testing on or after September 1, 2007, and before August 2, 2020, resided in
8 California at the time she took the ACT Test, and left the response to the EOS Opt-In
9 Query blank on the Special Testing answer folder for at least one exam. Jane Doe is a
10 member of the Injunctive Relief class because she took the ACT Test through Special
11 Testing and provided an Eligible SPS Question 8 response.

12 25. M.B. took the ACT Test at least once. M.B. is a member of the
13 California Disclosure Subclass because he took the ACT Test after September 1, 2002
14 and before August 2, 2002, resided in California at the time he took the ACT Test, and
15 provided an Eligible SPS Question 8 Response (as defined by the Settlement
16 Agreement) and was administered the exam through Special Testing. M.B. is a
17 member of the California EOS Subclass because he took an ACT Test through Special
18 Testing on or after September 1, 2007, and before August 2, 2020, resided in
19 California at the time he took the ACT Test, and left the response to the EOS Opt-In
20 Query blank on the Special Testing answer folder for at least one exam. M.B. is a
21 member of the Injunctive Relief class because he took the ACT Test through Special
22 Testing and provided an Eligible SPS Question 8 response.

23 26. A.C. took the ACT Test three times. A.C. is a member of the California
24 Disclosure Subclass because she took the ACT Test after September 1, 2002 and
25 before August 2, 2002, resided in California at the time she took the ACT Test, and
26 provided an Eligible SPS Question 8 Response (as defined by the Settlement
27 Agreement) and was administered the exam through Special Testing. A.C. is a
28 member of the California EOS Subclass because she took an ACT Test through

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1 Special Testing on or after September 1, 2007, and before August 2, 2020, resided in
2 California at the time she took the ACT Test, and left the response to the EOS Opt-In
3 Query blank on the Special Testing answer folder for at least one exam. A.C. is a
4 member of the Injunctive Relief class because she took the ACT Test through Special
5 Testing and provided an Eligible SPS Question 8 response.

6 27. Jaquel Pitts took the ACT Test several times. Mr. Pitts is a member of
7 the California Disclosure Subclass because he took the ACT Test after September 1,
8 2002 and before August 2, 2002, resided in California at the time he took the ACT
9 Test, and provided an Eligible SPS Question 8 Response (as defined by the Settlement
10 Agreement). Mr. Pitts is a member of the Injunctive Relief class because he provided
11 an Eligible SPS Question 8 response.

12 28. I am thoroughly familiar with this action, including through discovery,
13 and am unaware of any conflict between the Plaintiffs and the absent class members.
14 I am also unaware of any conflict of interest between the Plaintiffs and the lawyers
15 representing the Plaintiffs. There are no incentive agreements between the lawyers
16 representing the Plaintiffs and the Plaintiffs.

17 **Predominance and Superiority**

18 29. The common issues outlined above under the header Commonality would
19 predominate over individual issues in this action. As an initial matter, the Third
20 Amended Complaint does not seek damages under any statute other than California
21 law. The ADA is the basis for relief for non-California class members, and the only
22 relief available under Title III of the ADA is injunctive relief. Predominance and
23 superiority requirements do not apply to claims for injunctive relief, as the claims for
24 injunctive relief would be subject to certification under Rule 23(b)(2) only.

25 30. For California class members, the common issues predominate over
26 individual issues because the Unruh Act awards statutory damages. Once liability is
27 established under the Unruh Act and there is a determination that (1) the policy
28 challenged exists, (2) the policy challenged applies to the plaintiff, and (3) the policy

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1 is unlawful under the Unruh Act, statutory damages would automatically follow. The
2 Unruh Act explicitly incorporates the federal ADA as standards of conduct, Cal. Civ.
3 Code § 51(f), resulting in the availability of statutory damages for California plaintiffs
4 suing under the ADA.

5 31. The class action vehicle is a superior vehicle to the litigation of
6 individual claims. The Rule 23(b)(2) class for injunctive relief would avoid the
7 litigation of individual claims for an injunction restraining ACT from applying a
8 company-wide policy to individuals on an individual-by-individual basis. This would
9 be duplicative, inefficient, expensive, and wasteful. The Rule 23(b)(3) class for
10 damages would avoid the litigation of individuals claims for an automatic statutory
11 damages award. While the individual damage awards under the Unruh Act are higher
12 than many consumer class actions, the amount remains relatively low, at \$4,000 each,
13 for individuals to pursue individual actions. Moreover, some of those individuals
14 would be subject to ACT's arbitration clause. For those individuals, the costs and fees
15 necessary to litigate thousands or tens of thousands of arbitrations would be crushing
16 to ACT and inefficient, reducing the potential amount of a compensatory recovery to
17 class members.

18 Qualifications of Class Counsel

19 32. This Court previously appointed the law firms of Panish, Shea & Boyle
20 LLP and Miller Advocacy Group PC as class counsel for the California Settlement
21 Classes and the Injunctive Relief Class.

22 33. Panish, Shea & Boyle LLP, particularly the two lead attorneys
23 prosecuting this action, myself and Rahul Ravipudi, has extensive experience in
24 litigating class actions, multidistrict litigation, mass torts, and complex litigation,
25 including the below cases. In all these cases, Mr. Ravipudi, myself, and members of
26 our firm Panish, Shea & Boyle, LLP, have vast amounts of experience in handling
27 large, complex cases, class actions, and single and multi-party actions nationwide
28 involving consumer products, pharmaceuticals, automobile components, products

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1 liability, dietary supplements, aviation disasters, medical devices and litigation against
2 utility companies. Mr. Ravipudi personally and members of his law firm have served
3 as lead trial counsel, liaison counsel, class counsel, members of executive, steering or
4 other leadership committees on behalf of plaintiffs in many mass/class actions, both in
5 federal Multi-District Litigation and California State Coordinated Litigation
6 proceedings. In these cases, Panish, Shea & Boyle's attorneys have played significant
7 roles in the retention and preparation of experts, conducting discovery, law and
8 motion work, trial preparation, evidentiary and expert witness hearings and motions in
9 limine, much of which work has been of common benefits to similar cases throughout
10 the country.

11 a. *Southern California Fire Cases*, JCCP No. 4965, Mr. Ravipudi is
12 personally Co-Lead Counsel for the thousands of victims of the 2017 Thomas Fire and
13 resulting Montecito Debris Flow with over \$10 billion at stake as against Southern
14 California Edison.

15 b. *California North Bay Fire Cases*, JCCP No. 4955, Mr. Ravipudi
16 personally serves as an Executive Committee Member for the tens of the thousands of
17 victims of the fourteen 2017 North Bay Fires with over \$20 billion at stake as against
18 PG&E.

19 c. *Southern California Gas Leak Cases*, JCCP No. 4861, Mr.
20 Ravipudi's firm Panish, Shea & Boyle is Co-Lead Trial Counsel in one of the largest
21 mass torts in history. (38,000 residents of Porter Ranch damaged as the result of a gas
22 well blow out at the Southern California Gas Company's Aliso Canyon Storage
23 Facility in October 2015). I personally am extensively involved in the *Southern*
24 *California Gas Leak Cases*.

25 d. *Natural Gas Anti-Trust Cases I, II, III & IV* (Pipeline Cases),
26 coordinated in San Diego County, JCCP Nos. 4221, 4224, 4226 and 4228. These
27 cases involve California class actions brought as a result of restraints put on
28 California's electrical and gas market. Mr. Ravipudi and his firm were designated

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1 lead class counsel in this matter. A settlement was reached early on with the El Paso
2 Defendants in the amount of \$1.7 billion and has been distributed to the Class
3 members. Plaintiffs' counsel subsequently reached a settlement with the Sempra
4 Defendants for approximately \$1.7 billion.

5 e. *Team Design v. Reliant Energy, Inc., et al.* (Price Indexing Cases),
6 MDL 1566, 2:03-cv-01432, C.A. No. 2:03-3644. California antitrust class action
7 against Reliant Energy and its subsidiaries and others based on the allegation that
8 Defendants illegally manipulated the California energy markets. Mr. Ravipudi and his
9 firm were designated lead class counsel in this matter. The case settled with a
10 majority of the Defendants for over \$100 million.

11 f. *The Rhulen Company, Inc. v. Canon U.S.A. Inc.*, Los Angeles
12 County Superior Court Case Number BC 172473. This case involved an initial class
13 action brought as a result of consumers receiving a defective product. This case was
14 settled for a confidential sum.

15 g. *Acosta v. Betz Laboratories, Inc., et al.*, Los Angeles County
16 Superior Court, case number BC161669. While at Engstrom, Lipscomb & Lack, Mr.
17 Ravipudi assisted in the representation of over 1,000 plaintiffs claiming personal
18 injuries from exposure to Chromium VI. This case was settled for a confidential sum.
19 Acosta was the sequel to Adams v. Pacific Gas and Electric, Los Angeles County
20 Superior Court, case number BC 113000 which, after trying approximately 30 of the
21 cases, the defendant settled all of the cases for \$333 million in 1996.

22 h. *In re Vioxx*, MDL Docket Number 1657 (E.D. La.), Mr. Ravipudi
23 represented a number of individual plaintiffs claiming personal injuries or death as a
24 result of the consumption of Vioxx and was a leader in the Plaintiffs' Steering
25 Committee which ultimately procured a pending settlement on behalf of all claimants
26 of over \$4 billion. Members of Panish Shea & Boyle also participated as lead counsel
27 in the only Vioxx trial in California in which a jury made a finding of liability against
28 Merck.

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1 i. *In re Diet Drug Cases* (Fen-Phen), Los Angeles Superior Court
2 JCCP 4032, Mr. Ravipudi represented a number of individual plaintiffs claiming
3 personal injuries or death as a result of the consumption of Fen-Phen and members of
4 Panish Shea & Boyle participated in the Plaintiff Executive Committee.

5 j. *In re Welding Rod Products Liability Litigation*, MDL Docket
6 Number 1535. Mr. Ravipudi represented a large number of persons claiming personal
7 injuries resulting from exposure to welding rod fumes alleged to cause Parkinson
8 Syndrome like symptoms. Kathleen M. O'Malley, tel: 216-357-7242.

9 k. *The Glendale Metrolink Derailment Cases*, Los Angeles County
10 Superior Court, case number BC332426, pending action in which Mr. Ravipudi's firm
11 represents a large number of persons claiming personal injuries resulting from the
12 derailment of the Metrolink in Glendale, California on January 26, 2005. Members of
13 Panish Shea & Boyle participated on the Plaintiffs Steering Committee and were
14 designated as Co-Lead Trail Counsel.

15 l. *In re Crown Princess Listing Incident Cases*, Los Angeles County
16 Superior Court, case number BC356095, pending action in which Mr. Ravipudi's firm
17 represented a number of persons injured in the listing of the Crown Princess Cruise
18 Ship in July 18, 2006. Members of Panish Shea & Boyle participated on the Plaintiffs
19 Steering Committee.

20 m. *In re Toyota Motor Corp. Unintended Acceleration Cases*, United
21 States District Court Central District of California Southern Division, case number
22 8:10ML2151 JVS (FMOx), an action in which Mr. Ravipudi's firm Panish, Shea &
23 Boyle LLP are Co-Lead Liaison Counsel for Personal Injury/Wrongful Death Cases
24 arising out of the numerous persons injured by the unintended acceleration of various
25 vehicles manufactured by Toyota Motor Corporation. Members of Mr. Ravipudi's
26 firm Panish Shea & Boyle participate on the Plaintiffs Steering Committee.

27 n. *Johnson v. CSAA* cases, Superior Court of California, County of
28 Sacramento, case number, 07AS03197, action in which Mr. Ravipudi's firm Panish

1 Shea & Boyle served as co-counsel alongside Dreyer Babich Buccola & Wood and
2 Kershaw and Cutter & Ratinoff in representing a class of policyholders against CSAA
3 Inter-Insurance Bureau. The Class action arose from the failure of CSAA to waive
4 deductibles for its insureds who have been involved in accidents with uninsured
5 motorists.

6 o. *Singapore Airlines 006* cases, Central District of California, MDL
7 1394, pending action in which members of Mr. Ravipudi's firm Panish Shea & Boyle
8 served the Plaintiff's Executive Committee and Plaintiff's Steering Committee in the
9 federal mass tort litigation concerning the air crash of Singapore Airlines Flight 006.

10 p. *Alaska Airlines 261* cases, Northern District of California, MDL
11 1394, members of Mr. Ravipudi's firm Panish Shea & Boyle served the Plaintiff's
12 Executive Committee and Plaintiff's Steering Committee in the federal mass tort
13 litigation concerning the air crash of Alaska Airlines Flight 261.

14 q. *Chatsworth Metrolink Collision* cases, Los Angeles Superior
15 Court, Lead Case No. PC043703, pending action in which members of Mr. Ravipudi's
16 firm Panish Shea & Boyle serve the Plaintiff's Steering Committee in the coordinated
17 state court litigation concerning the largest train crash in U.S. history that killed 25
18 people and injured over 100 others.

19 s. *Blythe Bus Cases*, Lead Case No. BC 549973 (Los Angeles
20 Superior Court, Cal.). Mr. Ravipudi served as Co-Lead Trial Counsel and a member
21 of the Plaintiff Steering Committee in a consolidating proceeding involving thirty-one
22 plaintiffs.

23 34. My co-counsel at Miller Advocacy Group PC ("MAG") is a disability
24 rights law firm with the mission of improving access of students with disabilities to
25 post-secondary education and employment opportunities.

26 a. The attorneys at MAG have extensive experience in handling
27 complex litigation and the types of claims asserted in the action, including claims
28 based on the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the

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1 Unruh Civil Rights Act. MAG has extensive education and experience representing
2 students with disabilities and in special education law matters, specifically in the
3 secondary and post-secondary education context. Marci Miller, the principal of MAG,
4 received advanced training through the Special Education Advocacy Training
5 program, a nationally recognized program developed by the University of Southern
6 California and Children’s Hospital of Los Angeles,

7 b. The attorneys at MAG also have many years of collective
8 experience handling class actions and other complex litigation matters such as the
9 claims asserted in this action. For example, MAG currently acts as counsel for the
10 plaintiffs in *Smith v. Regents of the University of California* (Alameda Sup. Ct.), a
11 case in which students with disabilities allege the discriminatory use of standardized
12 tests by the University of California. MAG is also co-counsel for plaintiffs in *Hurvitz*
13 *v. Facebook and LinkedIn Corporation* (N.D. Cal.), a consolidated case of fifteen
14 different complex actions alleging the improper dissemination of confidential and
15 sensitive data. MAG is co-counsel for plaintiffs in the putative class action, *J.P., The*
16 *National Center for Fair and Open Testing v. Educational Testing Services* (C.D.
17 CA), a case alleging the violation of the Unruh Civil Rights Act, the Americans with
18 Disabilities Act and the Rehabilitation Act of 1973, and Business and Professions
19 Code 17200 and 17500 based upon the defendants’ failure to provide students with
20 disabilities access to the at-home Advanced Placement exam and limiting access to the
21 2020 AP Exams.

22 c. Other attorneys at MAG include Christina Hoffman, Christina
23 Harvell-Brown and Aimee Goldstein. Christina Hoffman, a partner at MAG, has
24 worked extensively in litigation involving special education, consumer rights, and
25 privacy law. Ms. Hoffman acted as the defense counsel in *Evans v. Procter & Gamble*
26 in a Bus. & Prof. Code 17200 consumer class action. She also represented Alpha
27 Omega Services, Inc. in a complex business arbitration proceeding in a dispute
28 involving contract and privacy issues. Aimee Goldstein, a consultant with MAG, has

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1 practiced law in both California and New York. She specializes in complex
2 transactions, education and disability discrimination law. Ms. Goldstein worked at
3 Irell & Manella’s California office, became a partner at Clifford Chance LLP and then
4 Simpson Thatcher & Bartlett LLP, and in 2017, Ms. Goldstein limited her practice to
5 educational consulting, focusing on students with disabilities. Ms. Goldstein has
6 represented clients before the Federal Trade Commission, the Antitrust Division of the
7 Department of Justice and numerous state and foreign competition authorities. She
8 also represented MasterCard in both *In re Visa Check/MasterMoney Class Action*
9 *Litigation*, a class action lawsuit brought against MasterCard and Visa by a class of 4
10 million retailers alleging more than \$40 billion in damages for antitrust violations.

11 d. Because certain facts about ACT, Inc.’s testing and reporting
12 process were not generally known to the public, MAG learned these facts through a
13 thorough and extensive investigation that began over one year prior to the filing of this
14 action. As the facts of the case unfolded in litigation, MAG continued its investigation
15 and uncovered additional facts about the test registration process that were not
16 generally known to the public. MAG expended significant resources diligently
17 investigating facts in this action that were essential to the representation of plaintiffs
18 and other examinees with disabilities, and those facts led to the specific claims
19 ultimately asserted. MAG expended significant time and effort identifying and
20 interviewing potential plaintiffs and witnesses, collecting their documentation, and
21 communicating with plaintiffs and their parents in response to discovery requests.

22 **The Settlement is Fair, Reasonable, and Adequate**

23 35. Final administrative costs are estimated by KCC to be \$208,030.22.

24 36. Assuming the maximum attorneys’ fees are awarded by the Court, the
25 Service Awards set forth in the Settlement Agreement are awarded by the Court, and
26 the final administrative costs, the Net Settlement Amount (as defined in the Settlement
27 Agreement) is expected to be \$11,741,969.78.

28

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1 37. Based on the number of class members described in Paragraph 16 of this
2 declaration and assuming \$11,741,969.78 is the Net Settlement Amount, (a) a member
3 of the California Disclosure Subclass who is not a member of the California EOS
4 Class would receive \$178.59 and (b) a member of the California EOS Subclass would
5 receive \$357.18.

6 38. My firm fielded over a hundred inquiries from potential class members
7 and made reasonable attempts to respond to their inquiries. In addition, after it
8 became clear that certain class members may not have received the email notice, I
9 coordinated with ACT to clarify the issue and secured resolution after ACT searched
10 deeper into its records to obtain email addresses of thousands of additional class
11 members, with the goal of ensuring a notice program that uses the manner of
12 communication most likely to reach eligible class members.

13 39. Based on my experience and upon information from our appellate
14 counsel at Public Justice and Gupta Wessler, it is my belief that the Ninth Circuit
15 interlocutory appeal would have delayed by at least 18 months, or potentially denied
16 entirely, judicial relief in this class action for thousands of class members.

17 40. Attached hereto as Exhibit 3 is a true and correct copy of Theodore
18 Eisenberg, et al., “Attorney Fees and Expenses in Class Action Settlements: 1993-
19 2008,” 7 J. Emp. Leg. Studies 248 (2010), available at
20 <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2468&context=facpub>

21 41. My firm’s lodestar was \$1,177,575 for 1,621.50 hours spent on this
22 matter. Attached hereto as Exhibit 4 is a detailed summary indicating the amount of
23 time spent by attorneys of my firm who, from inception of the action through and
24 including March 18, 2021, billed 10 or more hours to the action, and the lodestar
25 calculation for those individuals. The schedule was prepared from the time records of
26 each individual he or she prepared and maintained. While my firm had substantial
27 paralegal hours involved in the action, my firm has decided to eliminate the paralegal
28 hours from the lodestar in an exercise of billing discretion. My firm has also decided

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- 1 to reduce certain billing hours of all billing attorneys in an exercise of billing
2 discretion. The work involved the following activities:
- 3 a. Pre-filing investigation, including working closely with
4 plaintiffs;
 - 5 b. Preparation of the complaint, amended complaint, second
6 amended complaint, and third amended complaint, and review ACT's answer;
 - 7 c. Preliminary injunction proceedings, including development of
8 substantial evidentiary record, working with experts, and gathering evidence;
 - 9 d. Two arbitration motions, one motion for reconsideration of the
10 Court's arbitration ruling, and one motion for interlocutory appeal, resulting in
11 nineteen separate briefs (including briefs requested by the Court, ECF No. 74);
 - 12 e. Ninth Circuit briefing on the interlocutory appeal of the Court's
13 arbitration ruling, including the petition for permission to file an appeal before the
14 Ninth Circuit (in addition to the one before the district court);
 - 15 f. Nine joint status reports;
 - 16 g. Motion for additional class representatives to intervene;
 - 17 h. Two motions to dismiss under Rule 12(b)(6);
 - 18 i. One motion to dismiss for lack of personal jurisdiction;
 - 19 j. Rule 26(f) conference and discovery plan;
 - 20 k. Discovery, as described above in my declarations (with 42
21 separate sets of discovery requests), including document review, working with
22 clients on responses, preparation of responses, and drafting requests;
 - 23 l. Meet and confers with defense regarding discovery disputes,
24 drafting of joint stipulations, and briefing of multiple disputes before magistrate
25 judge;
 - 26 m. Mediation, including briefing;
 - 27 n. Procurement of class list from ACT pre-certification,
28 development of communications to class members on the class list, meet and confer

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1 with defense counsel regarding such communications, submission of disputes
2 regarding such communications to the magistrate judge, individual correspondence
3 with class members to gather evidence.

4 42. My firm staffed this matter leanly, primarily with one partner and one
5 senior associate, with the goal of avoiding duplicative and inefficient work. I am the
6 attorney most familiar with the day-to-day activities of this action at my firm and led
7 the preparation of much of the “litigation work” for the team (from analysis to
8 research, drafting, coordinating revisions, and finalizing pleadings and briefs, as well
9 as meet and confer on discovery and other matters). During parts of the three years of
10 this litigation, I devoted almost my entire work time to this matter, due to the number
11 of motions, complexity of the legal issues, the number of named plaintiffs to work
12 with, number of discovery disputes, and vigorous advocacy of defense counsel. I
13 reviewed the time submissions made by each of the billing individuals in connection
14 with the preparation of this declaration. The purpose of the review was to confirm the
15 necessity for, and reasonableness of, the time committed to the litigation. After
16 certain adjustments, I believe the time of my firm’s attorneys and staff reflected in
17 Exhibit 4 was reasonable and necessary for the effective and efficient litigation and
18 resolution of this action.

19 43. Attached hereto as Exhibit 5 is a summary of the out-of-pocket expenses
20 my firm is seeking for reimbursement that were incurred in connection with this
21 action. My firm is seeking a total of \$74,200.22 in litigation expenses.

22 44. The litigation expenses incurred in the action are reflected in the books
23 and records of my firm. These books and records are prepared from expense
24 vouchers, check records, and other source materials and are an accurate record of the
25 expenses incurred. The expenses reflected in Exhibit 5 are the expenses actually
26 incurred by my firm.

27 45. Attached hereto as Exhibit 6 is a biography of the Panish, Shea & Boyle
28 LLP law firm and the attorneys billing time in this matter.

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Risk Multiplier

1
2 46. All Plaintiffs’ counsel in this matter agreed to represent the named
3 plaintiffs in this action on behalf of the classes on a contingency fee basis. My firm
4 would not have taken this case other than on a contingency fee basis, as our
5 expectation was to receive a greater fee if taken on a contingency basis than the firm
6 would have received billing by the hour at market rates. If there was no recovery in
7 this matter, my firm would not have received any fee and, in fact, would have been
8 out-of-pocket on litigation expenses.

9 47. My firm drafted the pleadings in this case from scratch, without using
10 pleadings from prior cases at the firm. Because there are so few standardized exam
11 companies and, to my knowledge, none of them appear to have policies or practices
12 that could be alleged to be score flagging, this case would in my judgment and the
13 judgment of my firm be unlikely to open a new line of business based on ACT’s
14 documents or the prevalence of these type of policies alleged to be discriminatory.

15 48. There was no government enforcement action on which I or, to my
16 knowledge, any other Plaintiffs’ counsel piggybacked. In fact, as a result of my and
17 my co-counsel’s investigation and fact gathering, the California Department of Fair
18 Employment and Housing, who brought the Law School Admission Council score
19 flagging case, was investigating the claims brought in this action. Counsel for the
20 DFEH contacted me and/or my co-counsel on multiple occasions in what appeared to
21 be an effort for the agency to build the case. When counsel for DFEH learned of a
22 settlement in this action on the horizon and then of the settlement’s conclusion, the
23 agency’s communications with me subsided.

24 49. To my knowledge, after investigation with other Class Counsel, no firms
25 other than Class Counsel brought claims like those brought in this action on behalf of
26 their own clients. Thus, Class Counsel did not share the risk of this litigation with any
27 other firm.

Service Awards

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1 50. When my firm interviewing potential clients at the beginning of this
2 investigation, the number one concern and impediment potential clients had for
3 bringing this action was the risk they would face to their reputation. The concern was
4 that participation as a named plaintiff in this action would do the harm the lawsuit
5 sought to avoid: disclosure of a disability to the public and/or college admission
6 officers. This lawsuit generated substantial media attention in the “trades” for higher
7 education professionals (including admission officers), bringing the lawsuit, named
8 plaintiffs, and the policies being challenged to their attention.

9 51. Some Class Representatives were willing to come forward and speak out
10 against policies and practices they believed were wrong and illegal and were unaware
11 of.

12 52. At the start of this action, five of the class representatives were minors,
13 making their willingness to come forward all the more daunting and impressive.

14 53. My office worked with Halie Bloom, Devon Linkon, John Doe (and his
15 parents), Sam M. (and his parents), Caroline L. (and her parents), Jane Doe (and her
16 parents), M.B. (and his parents), A.C., and Jaquel Pitts. Before filing suit, my firm or
17 my co-counsel’s firm collected documents and one of the billing attorneys at my firm
18 or Ms. Miller of Miller Advocacy Group interviewed each of the plaintiffs. These
19 interviews lasted at least an hour each.

20 54. Class Counsel (through myself or Ms. Miller) shared drafts of complaints
21 and other motions applicable to their claims. I received communications from all
22 Class Representatives concerning these documents.

23 55. My firm regularly communicated the Class Representatives with updates
24 on the status of the case.

25 56. The Class Representatives had numerous declarations filed in this action
26 in motion practice. The Class Representatives assisted with the preparation and
27 finalization of the declarations.

28

1 57. As noted above in Paragraph 7, the Class Representatives who were not
2 subject to the Court’s arbitration ruling responded to voluminous discovery requests
3 propounded on them individually by ACT. My office worked with the Class
4 Representatives to collect the documents, gather the information requested, and
5 review and finalize responses.

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct.

8 Executed on this 18th day of March, 2021, at Los Angeles, California.

9
10 */s/ Jesse Creed*
11 Jesse Creed
12

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11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
310.477.1700 phone • 310.477.1699 fax
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