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

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

24 Plaintiff-Intervenor,

25 v.

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

28 Defendant.

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

**DECLARATION OF MARCI
MILLER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
APPROVAL OF AWARD OF
ATTORNEY'S FEES AND COSTS
AND CLASS REPRESENTATIVE
SERVICE AWARDS**

Date: April 1, 2021
Time: 8:30 a.m.
Crtrm.: 9D

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1 I, Marci Lerner Miller, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court, and except
3 where expressly stated, I have personal knowledge of the facts set forth herein.

4 2. I am the principal and founder of Miller Advocacy Group (“MAG”), a
5 disability rights law firm whose mission is to improve the access of students with
6 disabilities to post-secondary education and employment opportunities. As part of the
7 preliminary approval of the proposed settlement, MAG was appointed Class Counsel
8 for all plaintiffs in this matter. I am also a partner at Potomac Law Group PLLC (PLG)
9 in the Education, Privacy and Litigation practice groups. PLG provides additional
10 resources and support for MAG’s mission through its expertise in education law and its
11 commitment to diversity and inclusion. Extensive conflict checks have been and
12 continue to be performed as needed to confirm that there are no existing or potential
13 conflicts of interest between MAG and PLG.

14 3. I make this declaration in support of Plaintiffs’ Motion for Final Approval
15 of Class Action Settlement, for Approval of Award of Attorney’s Fees and Costs, and
16 for Approval of Class Representative Service Awards. I have actively participated in
17 all aspects of this case, and I am fully familiar with all proceedings that took place in
18 this matter.

19 4. This action was undertaken on Plaintiffs’ behalf on a fully contingent
20 basis. My firm’s total lodestar was \$1,266,710 for a total of 1922.2 hours spent on this
21 matter, 1780.2 hours of which were attorney hours and 142.6 hours of which were
22 paralegal hours. As the case was in progress, I reviewed MAG’s time entries every
23 month and made corrections to eliminate inefficiencies. In some cases, I totally
24 eliminated some entries or portions of entries.

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1 5. The timekeepers who were involved in this matter, their names, positions
 2 and billing rates, number of hours billed, and total amount of fees are set forth in the
 3 following chart:
 4

Name	Position and Level of Experience	Billing Rate	Number of Hours Billed	Total Amount of Fees
<i>Marci Miller</i>	<i>Partner</i>	<i>\$675</i>	<i>1288.8</i>	<i>\$869,940</i>
<i>Christina Brown</i>	<i>Counsel</i>	<i>\$675</i>	<i>179.6</i>	<i>\$121,230</i>
<i>Christina Hoffman</i>	<i>Senior Attorney</i>	<i>\$675</i>	<i>268.6</i>	<i>\$181,305</i>
<i>Aimee Goldstein</i>	<i>Counsel</i>	<i>\$675</i>	<i>113.2</i>	<i>\$76,410</i>
<i>Linda Siegel</i>	<i>Paralegal</i>	<i>\$125</i>	<i>142.6</i>	<i>\$17,825</i>
Total			1992.8	\$1,266,710.00

11 6. In addition, MAG expended a total of \$3,677.92 in unreimbursed
 12 expenses in connection with the prosecution of this litigation.
 13

14 7. I am the attorney at MAG who oversaw or conducted the day-to-day
 15 activities in this action, and I reviewed these daily time records in connection with the
 16 preparation of this declaration. The purpose of this review was to confirm both the
 17 accuracy of the records as well as the necessity for, and reasonableness of, the time
 18 committed to the litigation. As a result of this review, I made reductions to certain of
 19 my firm’s time entries such that the time included reflects that exercise of billing
 20 judgment. Based on this review and the adjustments made, I believe that the time of
 21 MAG’s attorneys and staff reflected herein was reasonable and necessary for the
 22 effective and efficient prosecution and resolution of the case. No time expended on the
 23 application for fees and reimbursement of expenses has been included. In view of the
 24 result achieved, MAG’s contributions to the results, the substantial amount work
 25 performed and time required to achieve this result, and the risk undertaken by MAG in
 26 representing Plaintiffs on a contingency basis over the period of time required to
 27 achieve the results, MAG’s billing rates and costs are reasonable and justified in their
 28 entirety.

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1 8. Through the proposed settlement, Plaintiffs have achieved a substantial
2 monetary gain for the class members as well as a permanent, nationwide consent
3 decree resolving Plaintiffs' discrimination claims. The results of the settlement impact
4 a large number of affected class members (56,049), there are no objections, and only
5 two class members have opted out.

6 9. However, these successful results were only achieved after almost three
7 years of highly contested litigation which included multiple motions to dismiss,
8 motions to compel arbitration (275 docket entries), an interlocutory appeal, time-
9 intensive investigation and discovery, and months of intense mediation. Because
10 certain facts about ACT, Inc.'s testing and reporting process were not generally known
11 to the public, MAG learned these facts through a thorough and extensive pre-complaint
12 investigation that began over one year prior to the filing of this action. As the facts of
13 the case unfolded in litigation, MAG continued its investigation and uncovered
14 additional facts about the test registration process that were not generally known to the
15 public and resulted in new claims being asserted.

16 10. MAG expended significant resources diligently investigating facts in this
17 action that were essential to the representation of plaintiffs and other examinees with
18 disabilities, and those facts led to the specific claims ultimately asserted. MAG also
19 expended significant time and effort identifying and interviewing potential plaintiffs
20 and witnesses, collecting their documentation, and communicating with plaintiffs and
21 their parents in response to discovery requests.

22 11. The representation of Plaintiffs in this action required unique experience,
23 including specialized knowledge of student privacy law, disability law and
24 standardized testing practices. The attorneys at MAG are uniquely qualified for
25 handling the types of claims asserted in this action, including claims based on the
26 Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Unruh Civil
27 Rights Act. I have over twenty years of experience representing students in disability
28 rights, student privacy and special education advocacy matters, specifically in the

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1 standardized testing and higher education context. Most recently, MAG joined Public
2 Counsel and other advocacy groups in representing the plaintiffs in *Kawika Smith, et*
3 *al. v. Regents of the University of California*, the landmark civil rights action
4 challenging the use of standardized exam scores in college admissions and scholarship
5 awards. In September 2020, the *Smith v. Regents* Court granted a preliminary
6 injunction that required the University of California system to immediately stop using
7 the SAT and ACT as part of its admissions process, recognizing that even a test
8 optional system would have been harmful to students with disabilities given the
9 existing access issues. MAG is also co-counsel for plaintiffs in the putative class
10 action, *J.P., The National Center for Fair and Open Testing v. Educational Testing*
11 *Services* (C.D. CA), a case alleging the violation of the Unruh Civil Rights Act, the
12 Americans with Disabilities Act and the Rehabilitation Act of 1973 based upon the
13 defendants' failure to provide students with disabilities access to remote exams.

14 12. Other attorneys at MAG who billed time on this case include Christina
15 Harvell Brown, Christina Hoffman and Aimee Goldstein. The attorneys at MAG have
16 many years of collective experience in the specific issues involved in this action, and
17 all attorneys at MAG have a minimum of fifteen years of experience practicing law.
18 The specialized nature of MAG's practice combined with the significant litigation
19 experience of co-counsel allowed Plaintiffs to prevail despite the vigorous defense by a
20 number of different lawyers and firms.

21 13. The service or incentive awards requested are consistent with the risks
22 taken and effort required by the Class Representatives in this matter. The reputational
23 risks taken by the Class Representatives in this case were substantial. Many of the
24 Class Representatives were minors when the action was filed. Others were just starting
25 college or had not yet applied to college and feared retaliation in the admissions or
26 scholarship process due to their involvement in this action.

27 14. This action was based upon the privacy and protection of disability
28 information, yet the Class Representatives put their own privacy and information at

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1 risk by risking disclosure of their identities and details about their disabilities. Some
2 used fictitious names, but others felt they needed to speak out publicly against the
3 practices they believed were wrong, so they needed to use their own names. For
4 example, Plaintiffs Halie Bloom and Devon Linkon used their own names in the
5 litigation and also spoke out publicly to the press when asked about the litigation. Both
6 were freshmen in college at the time the case was filed. Jaquel Pitts also filed this
7 action in his own name. As a community college student, Mr. Pitts took significant risk
8 by doing so, because he was in the process of transferring to a 4-year college during
9 the course of the litigation. Bloom, Linkon and Pitts exposed their true identities to
10 speak out on behalf of other plaintiffs, and in doing so, they took on significant
11 reputational, and possibly financial risks.

12 15. In addition, all of the Class Representatives undertook substantial work on
13 behalf of the class. They participated in pre-filing investigation, worked with counsel
14 to collect documents to review written discovery responses, participated in interviews,
15 and together, they wrote dozens of declarations that were filed with the Court. Most of
16 the Class Reps took on this extraordinary burden while they were either in their last
17 year of high school or their first or second year of college. For example, I personally
18 worked with Mr. Pitts for approximately 50 hours with the collection, gathering, and
19 development of evidence, assisting him with discovery responses, and speaking with
20 him about his claims. I also personally worked both Ms. Bloom and Mr. Linkon for
21 dozens of hours helping them collect documentation and evidence for the complaint
22 and for their discovery responses.

23 16. Due to the time-consuming efforts of the Class Representatives and the
24 reputational risks undertaken in support of the other plaintiffs in this action, the \$5,000
25 service awards are reasonable and equitable to compensate them for the risk and effort
26 taken not just on their own behalf, but on behalf of the entire class.

27
28

1 I declare under penalty of perjury under the laws of the United States of America that
2 the foregoing is true and correct to the best of my knowledge.

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4 Executed on this 18th day of March, 2021 at Orange County, California.

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7 Marci Lerner Miller

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