UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV15-07895 JAK (MRWx)	Date	September 28, 2018
Title	J.V., et al. v. Pomona Unified School District, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (DKT. 235)**

I. Introduction

J.V., a minor ("J.V."), through guardian ad litem and mother Anabel Franco ("Franco"), and B.K., a minor ("B.K.") through guardian ad litem and mother Cynthia Brown ("Brown") (J.V. and B.K. together, "Plaintiffs")[1] brought this class action on behalf of themselves and all other similarly situated students in the Pomona Unified School District ("PUSD" or the "District"). Complaint, Dkt. 1. On November 10, 2016, Plaintiffs filed their Second Amended Complaint ("SAC"), which is the operative one. Dkt. 128. The SAC advances claims against PUSD, Pomona Special Education Local Planning Area ("SELPA"), Ana Petro ("Petro"), Christine Goens ("Goens"), Kameron Shields ("Shields"), Beatriz Krivan ("Krivan"), Jennifer Yales ("Yales"), Selene Amancio ("Amancio"), Brian El Mahmoud ("El Mahmoud"), Daniella Soto ("Soto"), Mary Garcia ("Garcia"), Cindy Green ("Green"), Elaine Markofski ("Markofski"), Superintendent Richard Martinez in his official capacity only ("Martinez") and Dolores Murillo ("Murillo"). *Id*.

Plaintiffs advance individual claims as well as claims on behalf of the class. The SAC advances nine causes of action: (i) violation of Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131 *et seq.*; (ii) violation of Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. §§ 794, *et seq.*; (iii) violation of 42 U.S.C. § 1983 (4th Amendment); (iv) False Imprisonment; (v) Battery; (vi) Assault; (vii) Intentional Infliction of Emotional Distress; (viii) Negligent Supervision; and (xiii) Negligence. *Id.* Plaintiffs are students receiving special education services. They claim that they were abused as the result of the conduct of the Defendants beginning in August 2013. They also allege that certain Defendants failed adequately to document or report this abuse, or to take reasonable steps to prevent its recurrence.

An Injunctive Relief Class was certified pursuant to Fed. R. Civ. P. 23(b)(2) on October 27, 2016. Dkt. 123. That class consists of:

[1] The use of the initials of each minor is consistent with the common practice intended to protect their privacy rights.

> [A]ll students with developmental disabilities as defined in California Welfare & Institutions Code section 4512, attending school in Pomona Unified School District since August 2013, who are currently being or who have been denied their right to full and equal access to, and the use and enjoyment of, the facilities, programs, services, and activities of the Pomona Unified School District.

Id. at 2.

Following the dismissal of certain state law claims (Dkt. 122), Plaintiffs filed a separate class action in the Los Angeles Superior Court, Case No. BC 640414 ("Superior Court Action"). It advances those state claims.[2]

On May 11, 2017, the parties entered a Settlement Agreement ("Settlement"), as to all claims in this action and the Superior Court Action. *See* Ex. 2 to Scheuneman Decl., Dkt. 234-3. If approved, it will resolve all claims in both actions, and provides for mutual releases. *See* Dkt. 234 at 6 n.1.[3]

On November 6, 2017, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Motion"). Dkts. 234, 235. The proposed order includes the following:

> (i) Granting preliminary approval of the proposed Settlement Agreement entered into between the two parties;
> (ii) Certifying the Damages Settlement Class, as defined in the Settlement;
> (iii) Appointing J.V. and B.K. as class representatives for the previously-certified Injunctive Relief Class and the proposed Damages Settlement Class;
> (iv) Appointing Christine A. Scheuneman and Elizabeth Eubanks, both currently counsel for Plaintiffs, as class counsel;
> (v) Staying all non-Settlement related proceedings in this action pending final approval of the Settlement; and
> (vi) Setting a Final Fairness Hearing and certain other dates in connection with the final approval of the Settlement.

Dkt. 235 at 2. Defendants filed notices of non-opposition to the Motion. Dkts. 236, 237.[4]

On December 11, 2017, a hearing was held on the Motion. Dkt. 239. At that hearing, certain issues were addressed with respect to the fairness of the Settlement, including whether the class representatives were adequate as to the Damages Settlement Class in light of the disproportionately

[2] *See* Ex. 1 to Declaration of Christine A. Scheuneman ("Scheuneman Decl."), Dkt. 234-2.

[3] The Settlement does not include any admissions of liability or wrongdoing by Defendants. Defendants "deny all claims asserted by Plaintiffs, deny all allegations of wrongdoing and liability, and deny the material allegations in the Litigation," and have agreed to the Settlement "solely for the purpose of avoiding the burden, expense and uncertainty of continuing the Litigation and for the purpose of putting to rest the controversies engendered in the Litigation." Ex. 2 to Scheuneman Decl., Dkt. 234-3 at 3.

[4] Because Petro has separate counsel, a separate notice of non-opposition was filed on her behalf. Dkt. 237.

high individual damages awards they were receiving. In response, the parties submitted an amended proposed class notice form. Dkt. 240.

For the reasons stated in this Order, the Motion is **GRANTED**. The Damages Settlement Class is certified, for purposes of settlement only, and the Settlement is approved on a preliminary basis.

II. Factual Background

The factual allegations at issue are detailed in the order certifying the Injunctive Relief Class, and in other prior orders. *See, e.g.*, Dkts. 122, 123, 221. Those discussions are incorporated here by this reference, and are summarized briefly.

Students at PUSD schools who may be eligible for special education are placed into one of 13 categories. They include autism or autistic-like symptoms. Dkt. 221 at 3. After a determination that a student qualifies for a particular category, he or she is provided with an Individualized Education Plan ("IEP"). *Id.* The District maintains procedures and policies relating to management, reporting and oversight of special education through these IEPs, including policies about student behavior, crisis prevention, emergency intervention and physical injuries to students. *Id.* 3-6.

J.V. and B.K. are students at elementary schools in the District. Each has been diagnosed with autism. *Id.* at 7, 13. Their individual claims arise from injuries, both physical and emotional, they allegedly sustained at PUSD schools. *Id.* at 7-14. As class representatives, they seek the following relief on behalf of members of the Class:(i) damages (on behalf of the proposed Damages Settlement Class); and (ii) certain injunctive relief (on behalf of the certified Injunctive Relief Class) whose purpose is to evaluate and improve PUSD policies and practices with respect to the education and safety of students with developmental disabilities. Dkt. 234 at 10-11.

III. Procedural Background

The action was originally filed on October 7, 2015. Dkt. 1. On October 27, 2016, the Injunctive Relief Class was certified. Dkt. 123. On that date an order issued on a motion to dismiss certain claims pursuant to Fed. R. Civ. P. 12. Dkt. 122. Pursuant to that order, certain state law claims were dismissed as to PUSD and SELPA, including the following causes of action: (i) violation of the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et seq*. ("Unruh Act"); (ii) violation of Cal. Gov. Code §§ 11135 *et seq*.; (iii) false imprisonment; (iv) battery; (v) assault; (vi) intentional infliction of emotional distress; (vii) negligent supervision; and (viii) negligence. *See id.* at 2-7. These claims were dismissed as barred by the Eleventh Amendment, without prejudice to their being re-filed in a Superior Court. *Id.* at 17-19. Plaintiffs advanced those claims in the Superior Court Action, which was filed on November 10, 2016. Ex. 1 to Scheuneman Decl., Dkt. 234-2. That case has been stayed pending the global settlement that is the subject of the Motion. *See* Scheuneman Decl., Dkt. 234-1 ¶ 8.

IV. The Terms of the Settlement Agreement

A copy of the Settlement Agreement was filed in support of the Motion. *See* Settlement Agreement,

Dkt. 234-2. A brief summary of its relevant terms follows.

A. Individual Damages

The Settlement Agreement provides for the payment of monetary damages of $150,000 to both J.V. and B.K., to resolve their respective, individual claims. *See id.* at 11. These individual damages are separate from the proposed amount of damages that would be paid on a classwide basis with respect to the claims of the Damages Settlement Class. Dkt. 234 at 16.

B. Classwide Damages

1. Certification of Proposed Damages Settlement Class

The Settlement seeks certification, for purposes of settlement only, the following damages class:

> All students designated by their Individualized Education Program team as eligible for special education under one or more of the categories of Intellectual Disability, Autism (or Autistic-Like Behaviors), or Multiple Disabilities, who currently attend, or did attend, a school operated by Pomona Unified School District at any time between August 1, 2013, and the date of the Preliminary Approval Order.

Settlement Agreement, Dkt. 234-2 ¶ 2.4.

The parties estimate that 1173 students and former students are eligible to submit claims as members of the Damages Settlement Class. However, additional students may have become members of the Damages Settlement Class since that estimate was made. Scheuneman Decl. ¶ 12.

The Motion seeks a "threshold determination" certifying the proposed Damages Settlement Class pursuant to Fed. R. Civ. P. 23. Dkt. 234 at 23. Defendants have agreed to such a certification, but solely for the purposes of the Settlement. *See* Settlement Agreement, Dkt. 234-3 ¶ 2.3. If the Settlement is not approved, Defendants reserve the right to challenge certification of the damages class. *Id.*

2. Notice Plan

The Settlement provides a process for notice to members of the Damages Settlement Class. *See* Settlement Agreement ¶¶ 6.1-6.5.2; Exs. A and B to Settlement Agreement, Dkt. 234-3 at 30-36. A Settlement Administrator will provide direct mail notice to prospective Class members advising them of the terms of the Settlement, and their corresponding benefits and rights. Settlement Agreement ¶ 6.3.1. Information about the Settlement will also be made available on a website that will be created. *Id.* ¶ 6.2.

Class members may opt out of, or object to, the Damages Settlement Class. *See id.* ¶ 7.3-7.4. If the number of opt-outs exceeds 15 prospective Class members, the District retains the unilateral right to terminate the Settlement Agreement. *Id.* ¶ 7.4.3. If the District exercises that right, the parties "shall be returned to the *status quo ante* as of May 11, 2017, for all litigation purposes, as if no settlement had

been negotiated or entered into." *Id.*

3. Claim Payments to Damages Class Members

A Settlement Fund of $900,000 will be established. It will be used to pay $750 to each member of the Damages Settlement Class who submits a valid claim.. *Id.* ¶ 2.5. Any balance of funds after the payment of valid claims and the costs of class administration, will be returned to the District. *Id.*; *see also* Dkt. 234 at 10.[5]

Class claims are defined in the Settlement Agreement as those arising out of or relating to the ADA and Rehabilitation Act advanced in this action, and the Unruh Act claims advanced in the Superior Court Action. *See* Settlement Agreement ¶ 1.9. Separate individual tort claims, including those of J.V. and B.K., are not covered, or released under the terms of the Settlement Agreement.

At the December 11 hearing, counsel were asked to address whether the parties are aware of any individual with damages claims, other than J.V. and B.K.. Counsel stated that the parties were not aware of any such claims, but confirmed that any claims arising out of individual torts would not be released as a result of the Settlement. However, counsel for Defendants added that any such individual claims that had not been brought may be time-barred.

C. Injunctive Relief

The certified Injunctive Relief Class is defined as follows:

> All students with developmental disabilities as defined in California Welfare & Institutions Code section 4512, attending school in Pomona Unified School District since August 2013, who are currently being or who have been denied their right to full and equal access to, and the use and enjoyment of, the facilities, programs, services, and activities of the Pomona Unified School District.

Settlement Agreement, Dkt. 234-3 ¶ 2.2.

As part of the Settlement Agreement, the parties have agreed to a Stipulated Injunction. *See* Ex. E to Settlement Agreement, Dkt. 234-3 at 56-69. It would implement remedial and training measures intended to improve the education and safety of students with developmental disabilities. A summary of the relevant provisions included in the Stipulated Injunction follows:

- Two third-party Consultants will be appointed to conduct a comprehensive review of the District's policies, practices, and procedures (including training and documentation protocols) that apply to students with developmental disabilities. *See* Stipulated Injunction ¶ I.A.

[5] As noted, the number of potential Class members may increase if more qualified students have enrolled in PUSD schools since the estimate was generated in November 2016. *See* Scheuneman Decl. ¶ 12. However, the Settlement explicitly provides for a payment of $750 upon verification of a valid claim under the Settlement. Settlement Agreement, Dkt. 234-3 ¶ 2.6.1.1.

- This review will focus on areas of potential improvement, including, but not limited to: (i) staff training;(ii) procedures as to the physical restraint of students; (iii) procedures for handling student injuries; (iv) parental engagement; and (v) the use and development of certain "behavior intervention plans." *Id.* ¶ II.
- Based on their comprehensive review, the Consultants will issue written findings recommending changes to the relevant policies, practices and procedures of the District. *Id.* ¶ IV. The District will implement policies and procedures consistent with these recommendations. *Id.* ¶ IV.B.
- The District will ensure the implementation of training of all staff who work with students with developmental disabilities that is consistent with the recommendations of the Consultants. *Id.* ¶ VI.
- An ADA Coordinator will be appointed by the District, to serve for at least three years. The ADA Coordinator will oversee the development and implementation of these new policies and training programs. The ADA Coordinator will also prepare and submit reports to Class counsel and the Consultants, which detail the progress of the District in implementing and complying with the revised policies and procedures. *Id.* ¶ VIII.

D. Release of Claims

The Settlement Agreement will effect a release of the following Class claims:

> [A]ny and all actions, claims, demands, rights, suits, and causes of action by the Plaintiffs, as class representatives and each member of the Injunctive Relief Class and Damages Settlement Class against the Released Parties[6], including damages, costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, arising out of or relating to the claims and allegations raised in the Litigation[7] related to violations of the Americans With Disabilities Act, Section 504 of the Rehabilitation Act, and the Unruh Civil Rights Act, which are the class claims alleged in the Litigation.

Id. ¶ 1.9.

The Settlement Agreement releases all such Class claims, including ones of which Class members may be unaware. It also includes the broad statutory waiver under Cal. Civ. Code. § 1542. That statute includes a release of all claims that are known or unknown. *Id.* ¶ 5.2. However, the Settlement Agreement applies only to those claims advanced on a class-wide basis, under the ADA, the Rehabilitation Act, and the Unruh Act. *Id.* ¶ 1.9. Absent class members' individual tort claims are not released by the Settlement Agreement.[8]

E. Attorney's Fees and Costs

[6] "Released Parties is defined as the named Defendants "and their respective agents, Board members, attorneys, administrators, employees, representatives, successors, and assigns. *Id.* ¶ 1.27.
[7] "Litigation" is defined as this action and the Superior Court Action. *Id.* ¶ 1.20.
[8] The Settlement Agreement also includes a parallel release by the named Plaintiffs of their individual claims. *See id.* ¶ 5.1.

Class Counsel will make an application for an award of attorney's fees, to be paid by the District, in an amount that is not greater than $1,650,000. Settlement Agreement, Dkt. 243-3 ¶ 4.1. The application for an award of attorney's fees will be filed at the same time as a motion for final approval of the Settlement. *See* Scheuneman Decl. ¶ 14. Plaintiffs have submitted some evidence as to what they represent as a reasonable fee award. *See id.* ¶¶ 16-22; Exs. 3-7 to Scheuneman Decl., Dkts. 234-4-234-8. It includes billing records and summary charts from both law firms representing Plaintiffs in this matter. Any fees that are awarded will require a separate payment by the District. Thus, they will not be deducted from either the Settlement Fund or the amounts paid to Plaintiffs under the Settlement Agreement. *Id.* ¶ 4.2.

F. Relevant Dates

The Settlement Agreement includes a detailed timeline for the implementation of its terms. A summary is presented in Paragraph 14 of the Scheuneman Declaration. For purposes of this Motion, the following dates are material:

1. Execution of Settlement

- Within 14 days after entry of the Preliminary Approval Order: Direct notice to Damages Settlement Class will be sent, which will initiate the Notice Period. Settlement Agreement, Dkt. 234-3 ¶¶ 6.2, 6.3.1.
- 45 days after Preliminary Approval Order: Notice period ends. *Id.* ¶ 6.3.1.
- 75 days after Preliminary Approval Order: Claims and Opt-Out/Objection Deadline. *Id.* ¶ 1.6.
- 85 days after Preliminary Approval Order: Deadline to exercise termination provision if more than 15 opt-outs are received. *Id.* ¶ 7.4.3.
- 106 days after Preliminary Approval Order: Deadline for Plaintiffs to file Motion for Final Approval of Settlement, Attorney's Fees, and Entry of Stipulated Injunction.
- Approximately 127 days after Preliminary Approval Order: First day to set Final Fairness Hearing. *Id.* ¶ 7.1.6.

2. Stipulated Injunction

- 30 days after entry of the Stipulated Injunction Order (after the Final Approval of the Settlement): District hires two Consultants.[9]
- 210 days after Consultants are hired: Consultants issue final written findings from their review. This includes a 30-day notice and comment period.
- 200 days after Consultants issue final findings: All District staff shall be trained.
- Monitoring Period of three years, which commences when staff training has been completed.

[9] The parties have already agreed to the consultants: Edward Miguel and Karla Estrada. *See* Ex. E to Settlement Agreement, Dkt. 234-3 at 58. If either Miguel or Estrada is unable or unwilling to serve, the District will contract with others to whom the parties have agreed. *Id.*

See Stipulated Injunction, Ex. E to Settlement Agreement, Dkt. 234-3 at 56-69.

G. Proposed Order

The Proposed Order, which is attached as Exhibit C to the Settlement Agreement, *see* Dkt. 234-3 at 38-35, includes the following terms:

- Certifies the proposed Damages Settlement Class, for purposes of effecting the Settlement;
- Preliminary approval of the Settlement as fair, reasonable and adequate, subject to further consideration at the Final Fairness Hearing;
- Preliminary finding that Plaintiffs fairly and adequately represent the interests of both the Injunctive Relief and the Damages Settlement Classes, and designates the Plaintiffs as the representatives of the Classes;
- Preliminarily designates Class Counsel as Christine A. Scheuneman (Pillsbury Winthrop Shaw Pittman LLP) and Elizabeth Eubanks (Disability Rights Legal Center);
- Sets a date for the Final Fairness Hearing;
- Approves the form and content of the Direct Mail Notice (Dkt. 240 (amended proposed notice)) and the content of the Internet-based Claim Forms (Ex. B to Settlement Agreement, Dkt. 234-3 at 33-36),as well as the procedure the notice program will follow;
- Affirms that the notice program as defined is the only notice required, and such notice satisfies Due Process requirements;
- Affirms that all Damages Settlement Class members who do not opt out from the Settlement shall be bound by all determinations and judgments concerning the settlement, including the release of all claims;
- Provides a 75-day window for all opt-outs to be received;
- Provides the opportunity for all Damages Settlement Class members who do not opt out to submit a written objection to the Settlement and to appear at the Final Fairness Hearing to support that written objection;
- Stays all proceedings pending final approval of the Settlement, except as necessary to implement the Settlement.

V. Analysis

A. Class Certification

1. Legal Standards

a) Certifying a Class for Purposes of Settlement

The first step in a preliminary approval process is to determine whether a class can be certified. "[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis because certification is conditional: 'Conditional certification is not a means whereby the District Court can avoid deciding whether, at that time, the requirements of the Rule have been substantially met." *Arabian v. Sony Elecs., Inc.*, No. 05-cv-1741-WQH, 2007 WL 627977, at *2 n.3 (S.D.

Cal. Feb. 22, 2007) (quoting *In re Hotel Tel. Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). "When, as here, the parties have entered into a settlement agreement before the district court certifies the class, reviewing courts must pay undiluted, even heightened, attention to class certification requirements." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (internal citations and quotation marks omitted).

A settlement "is relevant to a class certification." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997).

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620 (internal citation omitted). "In the context of a request for settlement-only class certification, the protection of absentee class members takes on heightened importance." *Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir. 2016) (citing *Amchem*, 521 U.S. at 620).

b) Class Certification in General

"The class action is an exception to the usual rule that litigation is conduct by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011) (internal quotation marks omitted). Under Fed. R. Civ. P. 23, a class "may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). That "rigorous analysis" will "frequently" include "some overlap with the merits of the plaintiff's underlying claim." *Dukes*, 564 U.S. at 351. "Sometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim, and sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question." *Falcon*, 457 U.S. at 160.

The first step of class certification requires a showing that the proposed class meets each of the prerequisites of Rule 23(a). *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). These are: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. *See* Fed. R. Civ. P. 23(a)(1)-(4). Further, "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350 (emphasis in original).If these four prerequisites are met, the analysis proceeds to a consideration of whether the proposed class satisfies the terms of Rule 23(b). *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

Here, the parties seek certification of the Damages Settlement Class under Rule 23(b)(3). Dkt. 234 at 25. Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members" and that class resolution is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

2. Application

Because the Injunctive Relief Class in this action was previously certified (Dkt. 123), the analysis here is limited to the Damages Settlement Class.

a) Rule 23(a) Requirements

(1) Numerosity

Rule 23(a)(1) requires that a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Impracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). While there is no specific numeric requirement to satisfy this requirement, courts have generally found that a class of at least 40 members is sufficiently numerous. *See Rannis v. Recchia*, 380 Fed. Appx. 646, 651 (9th Cir. 2010).

The Injunctive Relief Class was previously certified based on a showing that as of 2014, at least 368 students with autism and 299 students with intellectual disabilities were enrolled at PUSD. Dkt. 123 at 10. It is estimated that there are 1173 students in the proposed Damages Settlement Class. *See* Scheuneman Decl. ¶ 12. Therefore, the numerosity requirement is satisfied.

(2) Commonality

Rule 23(a)(2) provides that a class may be certified only if "there are questions of law or fact common to the class." Commonality requires a showing that "the class members have suffered the same injury" and "does not mean merely that they have all suffered a violation of the same provision of law." *Dukes*, 564 U.S. at 350 (internal quotation marks omitted). The class claims must "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). In measuring commonality, "even a single common question will do." *Dukes*, 564 U.S. at 359 (internal quotation marks omitted).

In a civil rights action, "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). "In such circumstance, individual fact differences among the individual litigants or groups of litigants will not preclude a finding of commonality." *Id.*

The prior order determined that the Injunctive Relief Class met the commonality requirement. Although the class members were students with individualized needs, the common issues arose from the policies and procedures within the District. *See* Dkt. 123 at 12. This same analysis applies to the proposed Damages Settlement Class. These putative class members are students with autism or intellectual disabilities who were allegedly subjected to District policies, practices and procedures. Although "a presently existing risk may ultimately result in different future harm for different [class members] . . . every [member] suffers exactly the same constitutional injury when exposed to a single [] policy or practice that creates a substantial risk of serious harm." *Parsons v. Ryan*, 754 F.3d 657, 676 (9th Cir. 2014).

Commonality does not require "that every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a single significant question of law or fact," class treatment of which will "generate common answers apt to drive the resolution of the litigation." *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th Cir. 2013) (internal citations omitted). The members of the proposed Damages Settlement Class "allege deficiencies in uniform policies and procedures that apply to all putative class members." Dkt. 123 at 13.

For these reasons, the commonality requirement is satisfied.

(3) Typicality

The typicality requirement is met if the "representative claims are 'typical,'" *i.e.*, "if they are reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d 1011, 1020 (9th Cir. 1998). Representative claims "need not be substantially identical." *Id.* The test of typicality is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon*, 976 F.2d at 508.

The commonality and typicality requirements of Rule 23(a) overlap. *See Dukes*, 564 U.S. at 349 n.5. Therefore, as with commonality, whether the Damage Settlement Class meets this requirement presents similar issues to those considered in the certification of the Injunctive Relief Class. Typicality does not require that every class member have allegedly suffered the same type or level of injury. *See* Dkt. 123 at 14 (citing *Armstrong*, 275 F.3d at 869). The claim that students with developmental disabilities are exposed to a risk of harm due to alleged deficiencies in training, reporting, and supervision is sufficient to satisfy the typicality requirement. *Id.*

(4) Adequacy of Lead Plaintiffs and Counsel

Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011).

The prior order determined that Plaintiffs and their counsel were adequate under Rule 23(a)(4). However, this finding was based in part on the nature of the injunctive relief that was sought. *See* Dkt. 123 at 14-15 ("it is significant that the Plaintiffs have conceded that they are pursuing only injunctive relief on behalf of the class."). J.V. and B.K. each seeks the approval of an individual damages award of $150,000, while each of the putative class members will receive approximately $750, with a total payment of approximately $900,000. *See* Settlement Agreement, Dkt. 234-3 ¶¶ 2.5, 3.2. This disparity could give the proposed class representatives an incentive to approve the Settlement Agreement because it serves their interests, but not those of the putative class. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015); *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1163-64 (9th Cir. 2013) (class action settlements are disfavored where the "settlement provide[s] disproportionately large payments to class representatives."). *See also Staton*, 327 F.3d at 975-78) (if "such members of the class are provided with special 'incentives' in the settlement agreement, they may be more concerned with maximizing those incentives than with judging the adequacy of the settlement as it applies to class members at large." *Id.* at 975.

Staton and *Radcliffe* addressed incentive awards that provided payments "in addition to [the class member's] share of the recovery." *Id.* The disproportionate recovery here arises from the resolution of the individual tort claims of the proposed class representatives. This provides J.V. and B.K. with an incentive to resolve the class claims so that each receives his independent settlement payment. *See Ellis*, 657 F.3d at 985. This does raise concerns. However, they are offset by the manner in which this matter has been litigated, and the experience of counsel for the parties. Those factors support the reasonableness of the individual settlements, as well as the reliability of the Plaintiffs and counsel for the proposed Damages Settlement Class to act in its best interest.

Furthermore, these issues can be addressed in the context of the fairness of the Settlement. *See Amchem*, 521 U.S. at 623 (class action settlement approval under Rule 23(e) is designed to "protect[] unnamed class members from unjust or unfair settlements affecting their rights when the representatives . . . are able to secure satisfaction of their individual claims by a compromise." (internal quotation marks omitted); *Staton*, 327 F.3d at 957-58 ("Although we later question whether the settlement agreement . . . was the result of disinterested representation, that question is better dealt with as part of the substantive review of the settlement than under the Rule 23(a) inquiry. Otherwise, the preliminary class certification issue can subsume the substantive review of the class action settlement.").

For these reasons, the adequacy-of-representation requirement for purposes of conditional class certification is satisfied, subject to the consideration of the fairness of the Settlement for the Damages Settlement Class.

b) Rule 23(b)(3) Requirements

(1) Predominance

To certify a class under Rule 23(b)(3), requires a finding that "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P.

23(b)(3). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. The predominance analysis assumes that the Rule 23(a)(2) commonality requirement has been established. *See Hanlon*, 150 F.3d at 1022 ("[T]he presence of commonality alone is not sufficient to fulfill Rule 23(b)(3) . . . [which instead] focuses on the relationship between the common and individual issues."). Where the issues of a cause "require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate." *Zinser v. Accufix Research Inst., Inc.*, 253 1180, 1189 (9th Cir. 2001).

With respect to the Rule 23(b)(3) predominance requirement, the Motion states the applicable legal standard in arguing that "there is more than sufficient cohesion to warrant class adjudication." Dkt. 234 at 25 (citing *Hanlon*, 150 F.3d at 1022). The prior order certifying the Injunctive Relief Class did not address this issue. However, a separate analysis shows that the predominance requirement has been satisfied.. As noted above, there are common questions as to whether the District's policies, practices, and procedures regarding the education and safety of students with autism and developmental disabilities were deficient as to all of the putative class members. These claims do not turn on an assessment of the individualized conditions and support needed by students. The alleged inadequacy of the District's procedures presents a common question of law that predominates over individualized issues here.

Because the common questions as to liability predominate over any individualized issues concerning damages, the predominance requirement has been met.

(2) Superiority

The final requirement for class certification pursuant to Fed. R. Civ. P. 23(b)(3) is a showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Matters pertinent to this issue include "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

Plaintiffs argue that the only alternative to a single class action would be more than 1000 individual actions, and that this would not be practical or an efficient use of judicial resources. *See* Dkt. 234 at 25 (citing *Hanlon*, 150 F.3d at 1023 ("[M]any claims [that] could not be successfully asserted individually . . . would not only unnecessarily burden the judiciary, but would prove uneconomic for potential plaintiffs."). Further, although the individual claims of others may be time-barred, they are not released under the Settlement.

Consequently, the superiority requirement has been met.

* * *

For the foregoing reasons, the Motion is **GRANTED**, and for the purposes of settlement only, the

Damages Settlement Class is certified.

B. Preliminary Approval of the Settlement Agreement

1. Legal Standards

Fed. R. Civ. P. 23(e) establishes a two-step process for determining whether to approve a class action settlement. First, a court must make a preliminary determination whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). If it so concludes, following notice to the class members and a consideration of their responses, if any, the court determines whether final approval of the settlement should be granted. This decision requires the application of several criteria.

At the preliminary stage, "the settlement need only be potentially fair." *Id.* This is due, in part, to the policy preference for settlement, particularly in the context of complex class action litigation. *See Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . . ."). In evaluating fairness, a court must consider "the fairness of a settlement as a whole, rather than assessing its individual components." *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th Cir. 2012). A court is to consider and evaluate the following non-exclusive factors in evaluating fairness at each stage:

(1) the strength of the plaintiff's case;
(2) the risk, expense, complexity, and likely duration of further litigation;
(3) the amount offered in settlement;
(4) the extent of discovery completed and the stage of the proceedings;
(5) the experience and views of counsel;
(6) any evidence of collusion between the parties; and
(7) the reaction of the class members to the proposed settlement.

See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458-60 (9th Cir. 2000)

Each factor may not apply to every proposed settlement, and others may be considered. For example, whether the settlement is the result of arms-length negotiations with an experienced neutral. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.") (internal citations omitted). Where the proposed settlement is reached before class certification has been decided, a "more exacting review" is required, "to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent." *Lane*, 696 F.3d at 819 (internal quotation marks omitted).

2. Application

A balancing of the *Mego* factors weighs in favor of preliminary approval of the Settlement. This does not change the prior conclusion that the substantial individual awards to Plaintiffs must be reviewed again

in connection a request for final approval.

Plaintiffs argue that the Settlement Agreement "avoids the uncertainty to all parties that arises from litigating the issues and conserves the time and monetary resources of the parties and the Courts involved in bringing these claims to judgment, at the same time ensuring that the class members receive fair consideration now for a release of their claims. Given these considerations, preliminary approval of the settlement is appropriate to avoid the uncertainties and expense of continued litigation." Dkt. 234 at 20-21. This argument is persuasive. The Settlement provides individual recoveries for J.V. and B.K.; class-wide recoveries for the Damages Settlement Class, and material remedial measures, which will be instituted under the proposed injunction and benefit class members and future students. It also provides for ongoing monitoring for several years.

If this litigation proceeded on the merits, the outcome would be uncertain. There have been extensive proceedings on motions as well as substantial discovery, including approximately 30 depositions and the production of thousands of pages of documents. *See* Scheuneman Decl. ¶¶ 5-7. The trial date was approaching prior to the entry of the Settlement, and there was no certainty that Plaintiffs would have prevailed. *See Rodriguez*, 563 F.3d at 964 (defeating defendant's motion for summary judgment does not establishing liability or show that plaintiff would obtain a favorable outcome at trial). Furthermore, to obtain all of the remedies provided by the Settlement, the Plaintiffs would have had to prevail in two trials, one here and the other in the Superior Court Action. *See id.* ¶ 8. The Settlement provides an efficient resolution of both actions and addresses the risk of an unfavorable outcome in either.

Once again, fairness issues are raised as to the damages offered to the Damages Settlement Class when viewed in light of the $150,000 awards to J.V. and B.K. with respect to their individual claims. That issue has been reserved as stated above.

The Settlement Agreement also provides that the Court may award attorney's fees of up to $1,650,000. *See* Scheuneman Decl. ¶¶ 16-21. "Class counsel has a fiduciary to the class as a whole . . . ." *Radcliffe*, 715 F.3d at 1167. Once again, this is an issue that will be addressed in connection with the final approval process when complete records are provided, and any objections by class members will be available. That the fee award will not be made from the funds available for payment to the Plaintiffs or members of the classes is noted. However, issues could nevertheless arise as to whether the amount of a potential award affected the amount that was made available for potential payment to members of the Damages Settlement Class.

Plaintiffs argue that preliminary approval is merited because the Settlement was the result of extensive arms-length negotiations between the parties. Dkt. 234 at 19-20. The parties engaged in several formal settlement discussions and telephonic conferences with Magistrate Judge Wilner and Judge Carl. J. West (ret.). Scheuneman Decl. ¶ 10. At the December 11 hearing, counsel stated that Judge West was involved in the negotiations through the completion of the Settlement Agreement. With respect to the negotiation process, Plaintiffs' counsel declares that

> Every aspect of the settlement was heavily negotiated by Class Counsel and Defendants' Counsel, including the overall dollar amount of the settlement, the form of remedial measures to be taken by Defendants in the form of a Stipulated Injunction,

> each aspect of the settlement agreement and exhibits, the releases, the amounts of relief available to individual Damages Settlement Class members, the claims process and the class administration process. Although the material monetary terms had been agreed upon, documenting the settlement required approximately two months of negotiations after an agreement was reached. The District's Board approved the settlement on September 13, 2017. This process was also hard-fought and protracted. Class Counsel determined that a global settlement of all claims on the terms reflected in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs, the Injunctive Relief Class and the Damages Settlement Class.

Id. ¶ 11.

These facts support preliminary approval.

Under the fifth *Mego* factor, "[g]reat weight" is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal citations omitted). Scheuneman declares that "a global settlement of all claims on the terms reflected in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs, the Injunctive Relief Class and the Damages Settlement Class." Scheuneman Decl. ¶ 11; *see also* Declaration of Elizabeth Eubanks ("Eubanks Decl.") ¶ 23. ("The proposed Settlement Agreement will provide[] injunctive relief that is reasonably calculated to effectuate the changes necessary to bring the Pomona Unified School District's policies and practices in line with best practices to ensure a safe educational environment for all students with developmental disabilities. In my opinion, the policies and funding required by the proposed Settlement Agreement will allow students with developmental disabilities—if not all students—to have access to a safe educational experience, by, if not before, the end of the Settlement Agreement's term. Based on my experience, I believe that the proposed Settlement Agreement is an excellent result for the Class, and that it is unlikely that this Court would order greater relief.").

The scope of the proposed injunctive relief also supports preliminary approval. The Settlement is designed to implement changes that are expected to result in substantial improvements to the District's treatment and education of students with developmental disabilities.

"Settlement is the offspring of compromise; the question [courts] address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027. Class members will have the opportunity to object, or opt-out of the Settlement. The parties have made substantial changes to the proposed notice to class members, which address the fairness issues addressed above. Class members will be provided with the details about the individual damages awards, as well as the potential award of attorney's fees.

The substance of the Settlement is sufficiently fair to satisfy the requirements for preliminary approval under Rule 23(e).Therefore, the Motion is **GRANTED**.

C. Attorney's Fees

1. Legal Standards

Attorney's fees and costs "may be awarded in a certified class action where so authorized by law or the parties' agreement"; however, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *see also* Fed. R. Civ. P. 23(h). "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton*, 327 F.3d at 964.

A district court must "assure itself that the fees awarded in the agreement [are] not unreasonably high, so as to ensure that the class members' interests [are] not compromised in favor of those of class counsel" or class representatives. *Id.* Factors considered in examining the reasonableness of the fee include: (i) whether the results achieved were exceptional; (ii) risks of continued litigation; (iii) non-monetary benefits conferred by the litigation; (iv) customary fees for similar cases; (v) the contingent nature of the fee and financial burden carried by counsel; and (vi) the attorneys' "reasonable expectations, which are based on the circumstances of the case and the range of fee awards out of common funds of comparable size." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

2. Application

As noted, the Settlement Agreement provides that an award of attorney's fees and costs not to exceed $1,650,000 may be made by the Court in response to an application by counsel for the classes. Scheuneman Decl. ¶ 16; Settlement Agreement, Dkt. 234-3 ¶ 4.1. The application is to be presented as part of the motion for final approval. Scheuneman Decl. ¶ 21. However, the attorneys representing Plaintiffs have submitted substantial evidence through summary charts and detailed billing records to support the amount of attorney's fees that may be awarded under the terms of the Settlement Agreement. *See* Exs. 3-7 to Scheuneman Decl., Dkts. 234-4-234-8 (Pillsbury records); Exs. 1-5 to Eubanks Decl., Dkts. 234-10-234-14 (DRLC records). The records show that applying the hours worked to the normal hourly rates of counsel shows $3,250,978 recorded by attorneys and legal assistants at Pillsbury (Dkt. 234-4 at 5), and $539,936 for those at DRLC (Dkt. 234-11).

The submitted records are sufficient to warrant a preliminary approval of the term in the Settlement that permits counsel to seek a total award of up to $1,650,000. As noted, a final ruling on the reasonableness of the requested attorney's fees and costs will not be made until all relevant evidence, including any objections, is reviewed in connection with the Final Fairness Hearing. Based on the data provided by counsel, the appropriate lodestar and related analyses will be conducted in connection with that review, which will also take into account the aforementioned issues that arise from the separation of amounts available to members of the Damages Settlement Class, the Plaintiffs who are class representatives and for attorney's fees .

D. Class Representatives and Class Counsel

Plaintiffs seek preliminary approval of J.V. and B.K. as representatives of the Injunctive Relief Class and the Damages Settlement Class. As discussed above, Plaintiffs fairly and adequately represent the interests of both classes, subject to the fairness concerns regarding the individual damages awards. Ultimately, in light of the foregoing discussion, Plaintiffs have obtained significant injunctive relief for the class, and at present there is no reason to conclude that additional injunctive relief would have been obtained had the class representatives not been seeking individual damages. Further, the issue of the disparity between individual and class-wide damages, which has been addressed above, is reserved for a final determination. Therefore, the Motion to have J.V. and B.K. serve as Class Representatives is **GRANTED**.

Plaintiffs also seek the preliminary approval of Scheuneman and Eubanks as Class Counsel. Based on their respective declarations, the Court's experience with their advocacy throughout these proceedings, and their substantial experience in handling class actions, it is determined that they will fairly and adequately represent the interests of the Classes. Therefore, the Motion to designate Scheuneman and Eubanks as Class Counsel is **GRANTED**.

E. Notice to Class

Rule 23(e) requires that a court "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e). As noted, the parties were instructed to submit an amended class notice that addressed some of the fairness concerns that have been addressed in this order. The parties did so on December 15, 2017. Dkt. 240. That amended notice is considered here. The amended notice (Dkt. 240 at 3-4), the proposed Claim Form (Ex. B to Settlement Agreement, Dkt. 243-3 at 33-36, and the proposed notice process (*see* Settlement Agreement, Dkt. 234-3 ¶¶ 6-7), satisfy the requirements of due process and Rule 23(e).

The proposed Notice explains the nature of the Action, the terms of the Settlement and how each Class member may participate in, opt out to, or object to the Settlement. Dkt. 240 at 3. It explains that the total Settlement Fund will be $900,000, and that Class members who submit valid claims will be paid $750. *Id.* It also lists the options available to Class members:

- **Submit a Claim** (You must submit a timely and valid claim in order to be eligible to receive a payment) by: _____, 2018.
- **Exclude Yourself** (if you want to retain the ability to file your own lawsuit pursuing the claims sought in this Litigation) by: _____, 2018.
- **Object** (you will be required to write to the Court, making your objection) by _____, 2018.
- **Go to the Fairness Hearing** (the Court will consider the Settlement, the request for attorneys' fees and expenses, and the Plaintiff's request for an incentive award for pursuing the Litigation) on _____, 2018.
- **Do Nothing** (You will not receive a payment from the Settlement Fund, you will give up your right to bring your own lawsuit, and to object to the Settlement).

Id. at 4.

The Notice also discloses Plaintiffs' individual damage awards, the anticipated application for an award of attorney's fees, and the release of individual claims:

- **Individual Damages**: "The Settlement also provides $150,000.00 in payments to each of the two Class Representatives for each of their respective individual claims, which include personal injuries that are independent from the civil rights claims included in the Damages Settlement Class."
- **Attorney's Fees**: "The Settlement also provides for an award of reasonable attorney's fees and expenses. Class Counsel will make an application to the Court for an award of reasonable attorneys' [sic] fees and costs to be paid by PUSD on behalf of all defendants, separate and apart from, and in addition to, the settlement funds. The parties have agreed that the application will request payment of $1,650,000, and that that amount represents the reasonable attorneys' [sic] fees and costs to be paid.
- **Release of Claims**: "You will not be releasing any independent tort claims for personal injuries. You will not be releasing any other claims arising out of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Unruh Civil Rights Act that fall outside the claims and allegations of this Litigation . . . . If you have questions about the scope of the release or whether you have claims independent of those included in the Damages Settlement Class, you should consult with a licensed attorney."

Id. at 3.

These forms and disclosures are sufficient. However, given the fairness concerns discussed in this order, the parties are instructed to use a colored font to highlight the disclosure language as to individual damages, attorney's fees, and the release of claims.

The proposed Notice will be distributed to the Damages Settlement Class members by mail, within 14 days of the entry of this Order. Settlement Agreement, Dkt. 234-3 ¶ 6.3.1. A website will also be created within 14 days of the entry of this order as provided in the submissions in support of the Motion. *Id.* ¶ 6.2.

The Notice Period shall run for 30 days. *Id.* ¶ 6.3.1. The Claims Deadline shall be no later than 30 days after the termination of the Notice Period, and shall be clearly stated on the Notice. *Id.* ¶ 1.6. The deadline to opt out of the Settlement shall be no later than 75 days after entry of this Order, and shall be clearly stated on the Notice. *Id.* ¶ 7.3.1.

The Motion to approve the Notice procedure is **GRANTED** as amended in this Order.

VI. Conclusion

For the reasons stated in this Order, the Motion for preliminary approval of the Settlement is **GRANTED**, All non-settlement proceedings in this action remain stayed pending a determination of a

request for the final approval of the Settlement. The Final Fairness Hearing is set for March 18, 2019 at 8:30 a.m. On or before February 4, 2019, Plaintiff shall file a motion for final approval, including Class Counsel's application for attorney's fees and costs. Any response or notice of non-opposition by Defendants shall be filed on or before February 18, 2019; and any reply, if necessary, shall be filed on or before February 25, 2019.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer ak