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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DELORES HUMES, an individual,
DIANE ABELLA, an individual, on
behalf of themselves and others
similarly situated,

Plaintiffs,

vs.

FIRST STUDENT, INC., an entity;
and Does 1 through 100, inclusive,

Defendants.

CASE NO. 1:15-CV-01861-BAM

Assigned to: Hon. Barbara A. McAuliffe

ORDER:

- (1) **GRANTING PRELIMINARY APPROVAL OF SETTLEMENT;**
- (2) **APPROVING CLASS NOTICE;**
- (3) **APPOINTING SETTLEMENT ADMINISTRATOR; AND,**
- (4) **SCHEDULING FINAL APPROVAL HEARING**

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2 On December 6, 2019, a hearing was held on the motion of Plaintiffs
3 Delores Humes and Diane Abella (“Plaintiffs”) for preliminary approval of the
4 proposed settlement (“Settlement”) with Defendant First Student, Inc.
5 (“Defendant”), approval of the notice to be sent to the class about the settlement,
6 and the setting of a date for the hearing on final approval of the settlement.

7 The Court having read and considered the papers on the motion, the
8 arguments of counsel, and the law, and good cause appearing therefore,

9 **IT IS ORDERED:**

10 1. The Court has jurisdiction over this action and the Parties’ proposed
11 settlement pursuant to 28 U.S.C. sections 1132(a) and 1332(d).

12 2. Pursuant to the Class Action Settlement Agreement (“Agreement”)
13 (Doc. 66-1, Declaration of Carol L. Gillam, Exhibit “1”), the Settlement is granted
14 preliminary approval as it meets the criteria for preliminary settlement approval.
15 The Settlement falls within the range of possible approval as fair, adequate and
16 reasonable, and appears to be the product of arm’s-length and informed
17 negotiations and to treat all Class Members fairly.

18 3. Under Rule 23(e), the Court may approve a class settlement only upon
19 finding that it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To
20 determine whether a proposed settlement meets these standards, the Court must
21 evaluate a number of factors, including:

- 22 (1) the strength of the plaintiffs’ case;
23 (2) the risk, expense, complexity, and likely duration of further
litigation;
24 (3) the risk of maintaining class action status throughout the trial;
25 (4) the amount offered in settlement;
26 (5) the extent of discovery completed and the stage of the proceedings;
(6) the experience and views of counsel;
(7) the presence of a governmental participant; and
(8) the reaction of the class members to the proposed settlement.

27 *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citations omitted); *see also*
28 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).

These factors are not exclusive, and in some circumstances, one factor may deserve

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2 more weight than others or alone may even prove to be determinative. *Officers for*
3 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982); *Nat’l Rural*
4 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal. 2004). In
5 addition, the settlement may not be the product of collusion among the negotiating
6 parties. *Ficalora v. Lockheed California Co.*, 751 F.2d 995, 997 (9th Cir. 1985); *In*
7 *re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). Given that some
8 of these factors cannot be fully assessed until the Court conducts the Final
9 Approval Hearing, a full fairness analysis is unnecessary at this stage. *Singer v.*
10 *Becton Dickinson and Co.*, 2009 WL 4809646, at *7 (S.D. Cal. 2009) (citation and
11 quotations omitted). “Rather, at the preliminary approval stage, the Court need
12 only review the parties’ proposed settlement to determine whether it is within the
13 permissible range of possible judicial approval and thus, whether the notice to the
14 class and the scheduling of the formal fairness hearing is appropriate.” *Id.*
15 (citations and quotations omitted). All of the factors considered for class settlement
16 approval support the preliminary approval of the Settlement:

17 a. **The Strength of the Plaintiffs’ Case.** Under California law,
18 non-exempt employees are entitled to complete and accurate wage
19 statements. Here, one of the defenses to the wage statement claim was that
20 Defendant complied with the Labor Code and issued accurate and complete
21 wage statements. Given the above uncertainties, this factor weighs in favor
22 of granting preliminary approval of the Settlement.

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24 b. **The Risk, Expense, Complexity, and Likely Duration of**
25 **Further Litigation.** “In most situations, unless the settlement is clearly
26 inadequate, its acceptance and approval are preferable to lengthy and
27 expensive litigation with uncertain results.” *Nat’l Rural Telecomms. Coop.*,
28 221 F.R.D. at 526. Here, the Parties have indicated a clear intention and
desire to resolve this matter and continued litigation would prove to be

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2 expensive for both sides. The Parties acknowledge that litigating and trying
3 this action may have led to possible appeals. This factor weighs in favor of
4 preliminary approval.

5 c. **The Risk of Maintaining Class Action Status.** Plaintiff also
6 argues that there was risk that they would not have been able to maintain
7 class certification through trial. Class certification in this action was
8 disputed by Defendant. This factor weighs in favor of preliminary approval
9 of the Settlement.

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11 d. **The Amount Offered in Settlement.** When analyzing the
12 amount offered in settlement, the Court should examine “the complete
13 package taken as a whole, rather than the individual component parts” to
14 determine whether the proposal is fair. *Officers for Justice*, 688 F.2d at 628.
15 “[I]t is well-settled law that a proposed settlement may be acceptable even
16 though it amounts to only a fraction of the potential recovery that might be
17 available to class members at trial.” *Nat’l Rural Telecomms. Coop.*, 221
18 F.R.D. at 527 (citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242
19 (9th Cir. 1998)). “[T]he very essence of a settlement is compromise.” *Linney*,
20 151 F.3d at 1242 (citation omitted). The settlement of \$650,000 is non-
21 reversionary and compares favorably to the value of the claims being settled.
22 Accordingly, the Court finds the amount offered in settlement weighs in
23 favor of granting preliminary approval of the Settlement.

24 e. **The Extent of Discovery Completed and the Stage of the**
25 **Proceedings.** The proposed settlement in this case was reached after the
26 Parties engaged in discovery and Plaintiffs had obtained class certification as
27 to their wage statement claim. Plaintiffs have adequately demonstrated that
28 the agreement to settle did not occur until Class Counsel possessed sufficient

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2 information to evaluate the case and make an informed decision about
3 settlement. Accordingly, the Court finds that this factor supports preliminary
4 approval of the Settlement.

5 f. **The Experience and Views of Counsel.** Class Counsel is of
6 the opinion that the settlement is fair, reasonable, and adequate and is in the
7 best interests of the class. The settlement was negotiated and approved by
8 experienced counsel on both sides of the Action. Accordingly, this factor
9 weighs in final of preliminary approval.

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11 g. **The Presence of a Governmental Participant.** This factor
12 does not weigh in the Court's analysis at this time.

13 h. **The Reaction of the Class Members to the Proposed**
14 **Settlement.** The reaction of the class members to the proposed settlement
15 cannot be evaluated at this time. This factor will be appropriate for
16 consideration at the hearing for final approval of the Settlement.

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18 4. The Parties' proposed notice plan is constitutionally sound because
19 individual notices will be mailed to all class members whose identities are known
20 to the Parties, and such notice is the best notice practicable. The Notice of
21 Proposed Settlement of Class Action, and Hearing Date for Final Court Approval
22 ("Class Notice") attached to the Agreement as Exhibit A, sufficiently informs Class
23 Members of the terms of the Settlement, their rights under the Settlement, their
24 rights to object to the settlement, their right to receive an Settlement Share or elect
25 not to participate in the Settlement, and the processes for doing so, and the date and
26 location of the final approval hearing, and therefore are all approved. However, as
27 discussed at the December 6, 2019 hearing on this matter, the Parties shall meet and
28 confer to streamline language in the Class Notice regarding the background of this
action.

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2 5. Any Class Member who does not submit a valid request for exclusion
3 will receive a Settlement Share based upon the allocation formula in the
4 Agreement.

5 6. Any Class Member who wishes to comment on or object to the
6 Settlement, the attorneys' fees and costs, and/or the proposed Class Representative
7 Service Payment, or who elects not to participate in the Settlement has until 45 days
8 after the mailing of the Class Notice to postmark his or her comment, objection, or
9 request for exclusion in Settlement pursuant to the procedures set forth in the Class
10 Notice. Class Counsel must file their application for the attorneys' fees and costs
11 no later than 14 days prior to the end of the objection period, and the application
12 will be heard at the Final Approval Hearing

13 7. Simpluris is appointed to act as the Settlement Administrator, pursuant
14 to the terms set forth in the Settlement.

15 8. Plaintiffs Delores Humes and Diane Abella are appointed to serve as
16 Class Representatives.

17 9. Carol Gillam of The Gillam Law Firm, Armand Kizirian and Michael
18 Boyamian of Boyamian Law, Inc. and Thomas W. Falvey of the Law Offices of
19 Thomas W. Falvey are appointed to serve as Class Counsel.

20 10. The Class Notice will be disseminated according to the notice plan
21 described in the Agreement and substantially in the form submitted by the Parties.
22 Proof of distribution of Class Notice will be filed by the Parties prior to the final
23 approval hearing.

24 11. Defendant is directed to provide the Settlement Administrator the
25 Class Data as specified by the Agreement no later than 15 days after the date of this
26 order.

27 12. The Settlement Administrator is directed to mail the approved Class
28 Notice by first-class mail to the Class Members no later than 15 days after receipt
of the Class Data.

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2 13. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*
3 (“CAFA”), within ten days of the Parties’ filing of the Motion for Preliminary
4 Approval, the Defendant caused the mailing of the CAFA Notice to the Attorney
5 General of the United States and the appropriate state official in each state in which
6 a Class Member reportedly resides at the time of CAFA Notice according to
7 Defendant’s records. If Defendant later learns that a Class Member resides in a
8 state other than the state noted in Defendant’s records, Defendant will provide or
9 supplement the CAFA Notice to the appropriate state official in each state where a
10 Class Member is then-found to reside. Accordingly, the Court finds that Defendant
11 has discharged its obligations under CAFA to provide notice to the appropriate
12 federal and state officials.

13 14. A final hearing will be held on **April 2, 2020, at 9:00 a.m.**, in
14 Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe to determine
15 whether the Settlement should be granted final approval as fair, reasonable, and
16 adequate as to the Class Members. The Court will hear all evidence and argument
17 necessary to evaluate the Settlement, and will consider the request for approval of
18 attorneys’ fees and costs and for approval of the Class Representative Service
19 Payment. Class Members and their counsel may support or oppose the Settlement
20 and the motion for an award of attorneys’ fees and costs and the Class
21 Representative Service Payment, if they so desire, as set forth in the Class Notice.

22 15. Any Class Member may appear at the final approval hearing in person
23 or by his or her own attorney and show cause why the Court should not approve the
24 Settlement, or object to the motion for an award of attorneys’ fees and costs and the
25 Class Representative Service Payment. For any comments or objections to be
26 considered at the hearing, the Class Member must timely submit a written objection
27 and describe the nature of the Class Member’s comments, support or objection.
28 Comments or objections to the Settlement or to the attorneys’ fees and costs must
be submitted to the Settlement Administrator not later than 45 days after mailing of

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the Class Notice.

16. The Court reserves the right to continue the date of the final approval hearing without further notice to Class Members. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement.

IT IS SO ORDERED.

Dated: December 13, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE