UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MICHAEL HOLMAN, et al.,

      Plaintiff,

v.   CASE NO.: 8:08-cv-305-T-23MAP

STUDENT LOAN XPRESS, INC.,

      Defendant.

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<u>ORDER</u>

A November 19, 2009, order (Doc. 87) (1) preliminarily approves a proposed

class action settlement, (2) approves the manner and form of notice to class members,

(3) establishes a schedule for final approval of the settlement, (4) enjoins any parallel

action pending a review of the proposed settlement, (5) conditionally certifies a class for

settlement purposes, and (6) appoints both lead counsel and class representatives.

The conditionally certified class contains six sub-classes based on the number of

Federal Aviation Administration ("FAA") certifications earned by the class member.

After a March 22, 2010, fairness hearing (at which the sub-class three representative,

Kevin Wilhelmy, expressed disapproval of the settlement) and pending a decision on

final approval of the settlement, the parties informed the court that the parties agreed to

a revised settlement, which provides greater relief for the class and addresses some

issues raised at the hearing. A September 29, 2010, order (Doc. 116) appoints

additional representatives for sub-class three, because the parties sought to execute

the new settlement agreement. The parties move (Doc. 120) for approval (1) of the

manner and form (Doc. 120-3) of supplemental notice to sub-class three and (2) of a proposed schedule for final approval of the amended settlement agreement.

The supplemental notice explains (1) the addition of sub-class three representatives, (2) the potential $1,500 "service award" for each new sub-class three representative, (3) the right of each sub-class member to object to both the appointment of a new sub-class three representative and the service award for each new sub-class three representative, and (4) the submission deadline and other requirements for an objection. One hundred and fifty-six of the 164 sub-class three members declined exclusion from the class and will receive the supplemental notice. The supplemental notice provides no second[1] opportunity for a sub-class three member to opt out of the settlement.

The parties propose a schedule that consists of the following deadlines: (1) October 29, 2010, for dissemination of the supplemental notice; (2) November 29, 2010, for objections to either the new sub-class three representatives or the service award; and (3) December 14, 2010, for papers in support of the amended settlement and responses to any objection by a sub-class three member. A hearing, if warranted, will occur after December 14, 2010.

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[1] The decision to provide a second opportunity to opt out of the settlement is discretionary. See FED. R. CIV. P. 23(e)(4) (stating that "If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so."); In re HealthSouth Corp. Securities Litig., 334 Fed. App'x 248, 254 n.12 (11th Cir. 2009); Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 635 (9th Cir. 1982).

Conclusion

The motion (Doc. 120) is **GRANTED**, and, in accord with Rule 23, Federal Rules of Civil Procedure, both the manner and form (Doc. 120-3) of supplemental notice and the proposed schedule for final approval of the settlement are **APPROVED**. The parties shall disseminate the supplemental notice (in the proposed form) to sub-class three members no later than **October 29, 2010**. Objections to either the new sub-class representatives or to the potential service award are due no later than **November 29, 2010**, and the parties shall submit both papers in support of the amended settlement and a response to any objection by a sub-class three member no later than **December 14, 2010**.

ORDERED in Tampa, Florida, on October 14, 2010.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE