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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

ENTERED
CLERK, U.S. DISTRICT COURT
SEP 11 2007
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
SEP 10 2007
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RYAN RODRIGUEZ, REENA B.
FRAILICH, LOREDANA NESCI,
JENNFIER BRAZIL, and LISA GINTZ,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

WEST PUBLISHING CORPORATION,
a Minnesota Corporation d/b/a
BAR/BRI, and KAPLAN, Inc., a
Delaware Corporation,
Defendants.

CASE NO. CV-05-3222 R(MC_x)
~~PROPOSED~~ FINAL ORDER AND
JUDGMENT APPROVING
SETTLEMENT

AND CONSOLIDATED ACTION

This matter came before the Court for hearing on June 18, 2007 and July 9,
2007, pursuant to the Order Granting Preliminary Approval of Class Action
Settlement and Directing Dissemination of Notice to Class dated March 26, 2007
(the "Preliminary Approval Order"), on application for approval of the proposed

429

1 Settlement¹ set forth in the Stipulation and Settlement Agreement dated February
2 2, 2007, (“Settlement Agreement”).

3 Pursuant to the Preliminary Approval Order, Notice was given to the Class.
4 The Notice advised Class Members of the opportunity to *inter alia*: object to the:
5 (1) Settlement Agreement and the Settlement; and/or (2) the Plan of Allocation.

6 On May 7, 2007 Class Counsel filed: (1) Notice of Motion and Motion For
7 Final Approval of Class Action Settlement; (2) Declaration of Sidney K.
8 Kanazawa; and (3) Memorandum of Points and Authorities in Support of Final
9 Approval.

10 On May 17, 2007, plaintiffs/objectors Ryan Rodriguez, Lisa Gintz and
11 Loredana Nesci (the “Objecting Plaintiffs”) filed an objection, *inter alia*, objecting
12 to entry of the Preliminary Approval Order (the “May 17 Objections”).

13 On May 18, 2007, Class Counsel filed a response to the May 17 Objections.

14 On May 31, 2007, the Objecting Plaintiffs filed an *ex parte* application,
15 memorandum and declaration for an order to: (1) allow Eliot Disner, Esq.
16 (“Disner”) to “speak freely” on their behalf; (2) allow access to certain files: and
17 (3) clarify the status of Disner as a “co-lead counsel” (the “*Ex Parte* Application”).

18 On June 1, 2007, Class Counsel filed an Opposition to the *Ex parte*
19 Application and defendants West Publishing Corporation (“West”) and Kaplan,
20 Inc. (“Kaplan”) filed objections to the *Ex Parte* Application (the “*Ex Parte*
21 Oppositions”).

22 On June 7, 2007, the Objecting Plaintiffs filed a reply to the *Ex Parte*
23 Application.

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26 ¹ Unless otherwise stated herein, all capitalized terms shall have the same
27 meanings as set forth in the Stipulation and Settlement Agreement dated February
2, 2007.

1 In addition to the May 17 Objections, the Class Members listed in the
 2 following table filed objections to the Settlement on the dates indicated:

	DATE FILED	CLASS MEMBER
3		
4		
5		
6	1. May 21, 2007	David Oriol
7	2. May 21, 2007	Jason Tingle Oliver Gutierrez
8	3. May 21, 2007	David Feldman Cameron Gharabiklou Emily Grant Jeff Lang Sarah McDonald Cara Patton Rachel Schwartz Greg Thomas
9		
10		
11		
12		
13		
14	4. May 21, 2007	Joseph J. Angersola
15	5. May 21, 2007	Anthony Valach
16	6. May 21, 2007	Jay M. Wolman
17	7. May 21, 2007	Joan E. Shreffler
18	8. May 21, 2007	Robert Gaudet, Jr. Sandeep Gopalan Elizabeth De Long Andrea Boggio
19		
20		
21	9. May 21, 2007	Justin Head Ryan Helfrich
22	10. May 21, 2007	George Schneider Jonathan Slomba James Puntumapanitch
23		
24	11. May 21, 2007	James Juranek Audrey Juranek Richard P Le Blanc, III.
25		
26	12. May 12, 2007	Trevino, Arcelia
27		

	DATE FILED	CLASS MEMBER
13.	May 21, 2007	Aaron Lukoff John Prendergast David Orange
14.	May 22, 2007	Daryl Chilimidos
15.	May 22, 2007	Nikki Love John Bernitz
16.	May 22, 2007	Daniel M. Schafer
17.	May 22, 2007	Evans & Mullinix, P.A.
18.	May 22, 2007	Sarah Siegel
19.	May 22, 2007	Jennifer Brown McElroy
20.	May 22, 2007	Andrew Gilman Stephen M. Vasil
21.	May 23, 2007	David Harris Kareem Kamal Matthew Kavanaugh Simon Newfield Jonathan Ricasa Abigail Treanor David Zelenski
22.	May 23, 2007	Pamela Collins
23.	April 10, 2007	Walenta Craig
24.	May 28, 2007	Richard A. Bodmer
25.	June 12, 2007	Stephen Lindholm

On June 11, 2007, Class Counsel filed: (1) a reply memorandum in support of the Settlement which addressed the May 17 Objections and the objections set forth in the preceding paragraph (hereafter, the "Objections to the Settlement"); and (2) the declarations of: (a) Sidney K. Kanazawa, (b) Christine Bartholomew, (c) Richard Sartory, and (d) Hon. Daniel Weinstein.

1 On June 11, 2007, Defendants filed "Defendants' Combined Response To
2 Various Class Members' Objections To Stipulation And Settlement Agreement."
3 Also on June 11, 2007, West filed a reply memorandum to the May 17 Objections.

4 On June 15, 2007, Kaplan filed (1) "Notice of Filing of Declaration of Lee
5 S. Taylor in Support of Motion for Final Approval of Settlement, Regarding
6 Kaplan's Compliance with the Requirements of the Class Action Fairness Act;"
7 and (2) Declaration of Lee S. Taylor, and subsequently filed (1) "Notice of Filing
8 of Revised Declaration of Lee S. Taylor in Support of Motion for Final Approval
9 of Settlement, Regarding Kaplan's Compliance with the Requirements of the Class
10 Action Fairness Act;" (2) "Revised Declaration of Lee S. Taylor; Notice of Filing
11 Under Seal;" and (3) "Declaration of Lee S. Taylor Authenticating and Attaching
12 Documents."

13 On June 18, 2007, West filed the "Declaration of James P. Tallon Regarding
14 the Class Action Fairness Act."

15 Pursuant to this Court's Order, on June 26, 2007, Class Counsel filed: (1)
16 "Settling Plaintiffs' Supplemental Briefing In Support of Motion for Final
17 Approval Re: 30% Distribution Limit to Authorized Claimants and *Cy Pres* Fund
18 for Remainder;" and (2) "Declaration of Sidney K. Kanazawa." Also, on that date,
19 Defendants filed: (1) "Defendants' Supplemental Brief Regarding Approval of
20 Proposed Settlement, Addressing *Cy Pres* Provision of Proposed Settlement;" and
21 (2) the Declaration of Stuart N. Senator.

22 In addition, on June 26, 2007, several objectors, including James Juranek,
23 Audrey Juranek, Richard P. LeBlanc, III, David Harris, Kareem Kamal, Matthew
24 Kavanaugh, Simon Newfield, Jonathan Ricasa, Abigail Treanor and David
25 Zelinski, submitted additional briefing in further opposition to final approval of the
26 Settlement.

27

1 On July 5, 2007, Eliot G. Disner filed a "Summary of Evidence Regarding
2 Defendant West Publishing Co.'s Violation of Section 2 of the Sherman Act (15
3 U.S.C. § 2)" and a "Re-Notice of Appearance of Counsel."

4 At the Final Settlement Hearing Objectors were given an opportunity to state
5 their objections to the Settlement Agreement, the Settlement and the Plan of
6 Allocation.

7 Having read and fully considered the terms of the Settlement Agreement, the
8 Plan of Allocation, and all submissions (which may include submissions not
9 specifically described above), written and oral, the Court finds the Settlement is
10 fair, reasonable and adequate:

11 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**

12 **THAT:**

13 1. **Objections to the Settlement** – The Objections to the Settlement are
14 overruled.

15 2. **Incorporation of Definitions** – This Final Order and Judgment
16 Approving Settlement (the "Judgment") incorporates by reference the definitions
17 in the Settlement Agreement, and all defined terms used herein shall have the same
18 meanings as set forth in the Settlement Agreement.

19 3. **Jurisdiction** – The Court has personal jurisdiction over all Class
20 Members (as defined below) and has subject matter jurisdiction over this Action,
21 including, without limitation, jurisdiction to (1) approve the Settlement Agreement
22 and the Plan of Allocation, (2) grant final certification of the Class, and (3) dismiss
23 the Action with prejudice.

24 4. **Final Class Certification** – The Class this Court certified in the
25 Preliminary Approval Order under Fed. R. Civ. P. 23(b)(3) is hereby finally
26 certified and consists of all persons who purchased a bar review course from
27 BAR/BRI in the United States from August 1, 1997 through July 31, 2006,

1 exclusive of those individuals set forth in Exhibit A hereto who timely requested
2 exclusion pursuant to the Court's Order of August 14, 2006.

3 **5. Adequacy of Representation** – Plaintiffs and Class Counsel –
4 McGuire Woods LLP, Zwerling, Schachter & Zwerling, LLP and Finkelstein
5 Thompson LLP – have fully and adequately represented the Class and have
6 satisfied the requirements of Fed. R. Civ. P. 23(a)(4).

7 **6. Notice** – The Court finds that the distribution of the Notice, the
8 publication of the Summary Notice, the distribution of the Claim Form, and the
9 notice methodology were materially implemented in accordance with the terms of
10 the Settlement Agreement and the Preliminary Approval Order. The Court further
11 finds that the Notice, Summary Notice and Claim Form were simply written and
12 readily understandable, and that the Notice, Summary Notice, Claim Form and
13 notice methodology: (i) constituted the best practicable notice, (ii) constituted
14 notice that was reasonably calculated, under the circumstances, to apprise Class
15 Members of the Settlement, their rights to object to the Settlement and to appear at
16 the Final Settlement Hearing, (iii) were reasonable and constituted due, adequate
17 and sufficient notice to all persons entitled to notice, and (v) met all applicable
18 requirements of the Federal Rules of Civil Procedure, the United States
19 Constitution (including the Due Process Clause), the Rules of the Court and any
20 other applicable law.

21 **7. Final Settlement Approval** – The terms and provisions of the
22 Settlement Agreement have been entered into in good faith and are hereby fully
23 and finally approved as fair, reasonable and adequate as to, and in the best interest
24 of, each of the Settling Parties and the Class Members, and in full compliance with
25 all applicable requirements of the Federal Rules of Civil Procedure, the United
26 States Constitution (including the Due Process Clause), the Rules of the Court and
27 any other applicable law. With respect to the determination that the Settlement

1 Agreement is fair reasonable and adequate, the Court specifically notes that the
2 outcome of a trial on the merits was by no means certain, this Action involved
3 highly complex factual and legal issues, the Settlement Agreement was reached
4 with the participation of a highly-respected mediator and retired judge, and the
5 monetary and non-monetary terms of the Settlement reflect substantial benefits.

6 8. **Plan of Allocation** – The Court also hereby approves the Plan of
7 Allocation as a fair and reasonable method to allocate the Net Settlement Fund
8 among Class Members, and directs consummation of all its terms and provisions.

9 9. **Dismissal of Action** – The Court dismisses on the merits and with
10 prejudice the First Amended Complaint and the Released Claims as defined in the
11 Settlement Agreement as to all Class Members. Only the Persons identified in
12 Exhibit A hereto requested exclusion from the Class as of the deadline for opting
13 out. These Persons so identified shall not share in the benefits of the Settlement.
14 The Court dismisses without prejudice the claims of such Persons who have
15 properly and timely excluded themselves in full accordance with the procedures set
16 forth in the Settlement Agreement.

17 10. **Releases** – Upon the Effective Date of the Settlement, the
18 Representative Plaintiffs and each Class Member shall be deemed to have, and by
19 operation of this Final Order and Judgment shall, except as provided in paragraph
20 58 of the Agreement, (a) have released and forever discharged the released parties
21 from all manner of claims, demands, actions, suits, causes of action, whether class,
22 individual, or otherwise in nature, damages whenever incurred, liabilities of any
23 nature whatsoever, including costs, expenses, penalties and attorneys' fees, known
24 or unknown, suspected or unsuspected, in law or equity, that any member of the
25 Class (including any of their past, present or future officers, directors, agents,
26 employees, legal representatives, trustees, parents, associates, affiliates, licensees,
27 subsidiaries, partners, heirs, executors, administrators, purchasers, predecessors,

1 successors and assigns), whether or not he, she or it objects to the settlement and
2 whether or not he, she or it makes a claim upon or participates in the Settlement
3 Fund, whether directly, representatively, derivatively or in any other capacity, ever
4 had, now has or hereafter can, shall or may have concerning or relating to any
5 conduct alleged in the Complaint in this Action, and including without limitation
6 all claims that have been asserted or could have been asserted in any litigation
7 against the Released Parties or any of them for any conduct alleged in the
8 Complaint and Amended Complaint in this Action; and (b) in addition, upon the
9 Effective Date of the Settlement, the Representative Plaintiffs and each Class
10 Member shall be deemed to have, and by operation of this Final Order and
11 Judgment shall have waived and released any and all provisions, rights and
12 benefits conferred by § 1542 of the California Civil Code, which states:

13 **Section 1542. Certain Claims not Affected by General Release. A**
14 **general release does not extend to claims which the creditor does**
15 **not know or suspect to exist in his favor at the time of executing**
16 **the release, which if known by him must have materially affected**
17 **his settlement with the debtor;**

18 or by any law of any state or territory of the United States, or principle of common
19 law, which is similar, comparable or equivalent to § 1542 of the California Civil
20 Code. The Court has considered that each member of the Class may hereafter
21 discover facts other than or different from those which he, she or it knows or
22 believes to be true with respect to the claims which are the subject matter of
23 Paragraph 56 of the Agreement, but each member of the Class by operation of this
24 Final Order and Judgment has waived and fully, finally and forever settled and
25 released any known or unknown, suspected or unsuspected, contingent or non-
26 contingent claim with respect to the subject matter of Paragraph 56 of the
27

1 Agreement, whether or not concealed or hidden, without regard to the subsequent
2 discovery or existence of such different or additional facts.

3 11. **Permanent Injunction** – All members of the Class who did not duly
4 request exclusion from the Class in the time and manner provided in the Class
5 Action Notice (which includes all members of the Class who are not listed on
6 Exhibit A hereto) are permanently enjoined, and restrained from commencing or
7 prosecuting any action, suit, proceeding, claim, or cause of action in any
8 jurisdiction or court against Defendants or any of the other entities or persons who
9 are to be discharged as noticed above in Paragraph 10, based upon, relating to, or
10 arising out of, any of the matters which are discharged and released pursuant to
11 paragraph 10 thereof, except as provided in paragraph 58 of the Settlement
12 Agreement.

13 12. **Retention of Jurisdiction** – The Court has jurisdiction to enter this
14 Judgment. Without in any way affecting the finality of this Judgment, this Court
15 expressly retains exclusive and continuing jurisdiction as to all matters relating to
16 the administration, consummation, enforcement and interpretation of the
17 Settlement Agreement, and of this Judgment, and for any other necessary purposes,
18 including, without limitation:

19 (i) enforcing the terms and conditions of the Settlement
20 Agreement and resolving any disputes, claims or causes of action that, in whole or
21 in part, are related to or arise out of the Settlement Agreement, or the Judgment
22 including, without limitation, whether a Person is or is not a Class Member; and

23 (ii) entering such additional orders as may be necessary or
24 appropriate to project or effectuate the Judgment approving the Settlement
25 Agreement, dismissing all claims with prejudice, and permanently enjoining Class
26 Members from imitating or pursuing related proceedings, or to ensure the fair and
27 overly administration of this Settlement.

1 13. **Dismissal of Action** – This Action, including all individual claims,
2 and Class claims resolved by it, are hereby dismissed with prejudice against
3 Defendants and all Class Members, without fees or cost except as otherwise
4 provided by this Court.

5 14. **Non-Effect on Judgment** – Neither any modification or appellate
6 reversal of the Plan of Allocation, the Fee Award or Incentive Awards, nor any
7 orders entered by this Court thereon, shall in any way disturb nor affect the finality
8 of the Settlement, and all such matters shall be considered separate from this
9 Judgment.


10 15. **Effective Date** – If: (i) the Effective Date does not occur for any
11 reason whatsoever; or (ii) the Settlement Agreement becomes null and void
12 pursuant to the terms of the Settlement Agreement, this Judgment shall be deemed
13 vacated and shall have no force or effect whatsoever.

14 16. **No Admissions** – Nothing in this Judgment, the Settlement
15 Agreement or any aspect of the Settlement is or shall be deemed or construed to be
16 an admission, concession or evidence of any violation of any statute or law or any
17 liability or wrongdoing by any Defendant or Released Party or of the truth of any
18 of the factual or legal claims or allegations relating to the subject matter of the
19 Released Claims.


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1 The Clerk is directed to enter this Final Order and Judgment forthwith as the
2 final judgment of the Court.

3
4 Dated: Sept 10, 2007


Honorable Manuel L. Real
United States District Court Judge

5
6
7 Submitted By:

8 

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09/10/07

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