

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE CURTIS E.A. KARNOW, JUDGE PRESIDING  
DEPARTMENT 304

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MATTHEW PAGOAGA and ANTHONY  
JONES, on behalf of themselves  
and all other similarly  
situated,

Plaintiffs,

vs.

No. CGC-16-551952

STEPHENS INSTITUTE d/b/a ACADEMY  
OF ART UNIVERSITY,

Defendant.

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AND RELATED CROSS-ACTION.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Tuesday, January 16, 2018

Taken before AMBER EMERICK

Certified Shorthand Reporter No. 13546

State of California

A P P E A R A N C E S

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FOR THE PLAINTIFF:

STUEVE SIEGEL HANSON

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-and-

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Jmichalowski@paulplevin.com

1 Tuesday, January 16, 2018

9:13 a.m.

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P R O C E E D I N G S

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THE CLERK: All rise. Department 304, of the Superior Court of California, County of San Francisco, is now in session. Honorable Curtis Karnow presiding.

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THE COURT: Morning.

9

MR. MICHALOWSKI: Morning.

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MR. GIRARD: Morning, Your Honor.

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MR. MOORE: Morning, Your Honor.

12

THE COURT: So I've provided a summary of what I think the remaining issues are. There are some other -- typographical and other things with respect to the Notice, which is not really worth getting into now. I thought I'd just write it up and send it out to you in an Order.

17

And I was going to summarize and discuss these issues in the Order as well; give you some time to provide some supplemental documents, if you want, to sort of explain some of this stuff.

21

But I am curious now if there's anything that we can discuss that might be helpful to you -- as you revise papers -- that we can talk about here.

24

Or if you want to explain to me sort of how some of these things will work -- try and alleviate some of

25

1 these concerns -- especially points 1 and 3, I suppose,  
2 are the most interesting ones at this point.

3 MR. MOORE: Sure, Your Honor. This is Austin  
4 Moore from Stueve Siegel Hanson, on behalf of the  
5 Plaintiff.

6 Point 1 is very well-taken, and we appreciate you  
7 pointing this out to us. I think that was just a mistake  
8 in drafting on our end, using the term "enrolling."

9 THE COURT: Right. I think so, too.

10 MR. MOORE: I think "submitting a valid claim"  
11 would be our proposal.

12 Mr. Michalowski and I, we discussed this a little  
13 bit. And I think their client will want some assurances  
14 that these people are not only signing up, but they are  
15 enrolling or activating the service.

16 But we're going to have to work on the timing  
17 there.

18 THE COURT: That's what it is; right.

19 MR. MOORE: So I think we can get that figured  
20 out pretty quickly, but we may have to do it after the  
21 hearing.

22 THE COURT: Oh. I think so, too.

23 I'm going to issue an Order which will summarize  
24 these issues.

25 MR. MOORE: Right.

1 THE COURT: And before we leave today, you'll  
2 tell me that you would like another "X" weeks, so we can  
3 at least put something on our calendar before we can  
4 expect new papers.

5 And, frankly, we may not need another hearing.

6 MR. MOORE: Right.

7 THE COURT: It may just be by supplemental  
8 materials.

9 So if you think that you've run into a situation  
10 where you just can't address this issue, or you wish I  
11 would change my mind on something, which is also fine,  
12 then you would set up a hearing so we can go back and  
13 forth or on that and talk about that.

14 But if you think, for example, on point No. 1, I  
15 think in particular -- if you can deal with that fairly  
16 simply, then you'll just file supplemental papers in the  
17 two weeks, or whatever it is, and we'll deem it submitted  
18 at that point.

19 MR. MOORE: I think from us talking about it,  
20 we're going to be able to work it out.

21 THE COURT: Okay.

22 What happens with, under issue No. 3, this  
23 "reasonably incurred" issue?

24 MR. MOORE: Yeah. That's another good point.

25 And I think our thoughts on that were, you know,

1 we want the settlement administrator to have some  
2 discretion, but we also want them to have guidance on how  
3 to exercise that discretion.

4 So I'm trying to think of an example where a  
5 class member, you know, claims they did something -- maybe  
6 way out there, as a mitigation measure, in which the  
7 settlement administrator can say, you know, "I don't think  
8 that was a reasonable measure."

9 Now, anything like enrolling in credit freezes,  
10 signing up for their own credit monitoring services, I  
11 think anything close to that is certainly going to be  
12 reasonable. That was really to account for maybe some far  
13 out scenario, where they're claiming it was a mitigation  
14 cost, but it doesn't make a lot of sense.

15 If there's a better way to articulate that, I  
16 think we're certainly open to it.

17 THE COURT: Well, it's a classic problem.

18 How do you constrain discretion?

19 MR. MOORE: Right.

20 THE COURT: Courts have been dealing with it --  
21 appellate courts deal with it when it comes to trial  
22 judges. How do you handle trial judges?

23 And courts deal with it in the administrative law  
24 context. And it's just constant.

25 One way to -- the classic ways to deal with it is

1 you provide some constraints, sometimes by way of example  
2 -- although, usually that's counterproductive -- but more  
3 general constraints, and then you provide some sort of a  
4 review process.

5 I've seen, myself, two kinds of review process.  
6 And you might want to -- I don't want to express my  
7 preference at this point. I want you to think about, from  
8 your point of view, what's efficient and what works.

9 But the two ways are: No. 1, they can take it to  
10 the lawyers. In other words, the administrator's made an  
11 adverse determination. The class member is unhappy, and  
12 the class member then can escalate it to the lawyers  
13 involved.

14 So the defense attorneys and the plaintiff  
15 attorneys constitute the final review panel, if you will.

16 MR. MOORE: Right.

17 THE COURT: And if you all agree on how it should  
18 be handled, then that's the way it goes.

19 And, of course, the other way to handle it is  
20 that something can be filed here in court. I'll be,  
21 obviously, retaining jurisdiction over the implementation  
22 of the settlement until it's completely concluded, which  
23 might be, actually, a number of years in this case, but  
24 I'm available.

25 I just want the class members to feel that they

1 have some place to go or they have some way to understand  
2 what the constraints are.

3 So there's only two ways to do this. One is to  
4 tell them, in effect of the Notice or through the Notice,  
5 "Here's what you're going to get, but you're not going to  
6 get this."

7 It's possible, from your experience in similar  
8 cases, that you know how to draw that line. But perhaps  
9 you don't, because it's too hard -- not through any fault  
10 of the attorneys, but just because it's too hard -- in  
11 which case, you provide some guidance, and you tell them  
12 they have somewhere to go, if they're dissatisfied with an  
13 intransigent administrator.

14 Or maybe there's a third mechanism.

15 MR. MOORE: Your Honor, you know, one thing we  
16 specifically did do in this -- when negotiating this --  
17 and this was from our experience in other cases -- is to  
18 try to put together a pretty robust appeals process.

19 THE COURT: Yes. How does that work here?

20 MR. MOORE: How we have it now, in paragraph 34,  
21 is if an administrator denies a claim or says it's  
22 deficient in whole or in part, they have to notify the  
23 class member of the deficiencies, give the class member 30  
24 days to cure the deficiencies, and the Notice -- that  
25 deficiency Notice has to inform the class member that they



1 can either attempt to cure the deficiencies or dispute the  
2 determination.

3 And if the settlement class member attempts to  
4 cure the deficiencies, but doesn't do so, the settlement  
5 administrator again has to notify them that they didn't do  
6 it, and they again get an opportunity to dispute.

7 And then that dispute goes to us. And then, if  
8 we can resolve it, then it goes to a neutral claims  
9 referee.

10 THE COURT: So that's the mechanism that would  
11 occur with respect to a dispute as to whether or not  
12 something was, quote, "reasonably incurred"?

13 MR. MOORE: Yes.

14 THE COURT: And who's this third person?

15 MR. MOORE: So we didn't agree on a specific  
16 individual. We said someone at JAMS/ADR.

17 And if we can't agree on a person there that has  
18 experience as a claims referee, then we would submit it to  
19 the Court. And that's been updated in this iteration of  
20 the settlement.

21 THE COURT: Who pays for the JAMS or ADR person?

22 MR. MOORE: I don't know that that's expressly  
23 accounted for, and we may want to do that.

24 MR. MICHALOWSKI: Yeah.

25 THE COURT: I think you do. That's going to cost

1 some money. This is not going to be a very sophisticated  
2 problem. So it's not going to be one of those  
3 \$8,000-a-day issues, presumably. But it's going to be  
4 something.

5 MR. MICHALOWSKI: Right.

6 MR. MOORE: Right.

7 THE COURT: And the amount of money involved from  
8 the perspective of the class member could be relatively  
9 small. It may be a dispute over 2- or \$300.

10 I would want -- not want the class member to be  
11 on the hook for that. So --

12 MR. MOORE: It certainly wouldn't be the class  
13 member. I think our goal is to -- you know, anything that  
14 gets to the level of the attorneys -- to work it out.

15 But, if not, I think, as part of the settlement  
16 administration process, we would say a claims referee  
17 would fall into that cost, but we can clarify that  
18 expressly in the agreement.

19 THE COURT: So it would just come out of the  
20 settlement funds generally?

21 MR. MICHALOWSKI: No.

22 MR. MOORE: I think it would be an added.

23 MR. MICHALOWSKI: It would need to be paid  
24 separate from the settlement because there's no separate  
25 fund. But that's something we can think about.

1 THE COURT: I just don't want to inhibit a class  
2 member.

3 I understand that there's -- we all recognize  
4 that we're talking about outlier situations here. We're  
5 spending time on something that may never happen, and I  
6 appreciate that. But I'm just trying to get it wrapped up  
7 with a little ribbon on top.

8 So I'll leave it up to you. And tell me what you  
9 think you'd like to do.

10 Tell me, is two weeks enough time?

11 MR. MOORE: I think so.

12 MR. MICHALOWSKI: Yes.

13 THE COURT: Does that sound okay?

14 So I'll issue an Order today that will ask you to  
15 file supplemental papers in two weeks or, if not, to  
16 contact the Court with a status report.

17 And it will be deemed submitted on -- in the  
18 two-week -- when the two-week period expires.

19 And I'll put that in the Order.

20 MR. MOORE: Okay. Wonderful.

21 THE COURT: Thank you.

22 Anything else that I can do to be helpful?

23 THE CLERK: I'm sorry. Are we calling the date  
24 January 30th?

25 THE COURT: Is it the 30th, two weeks from now?

1 THE CLERK: I think so.

2 THE COURT: Okay. January 30th.

3 Happy New Year.

4 MR. MICHALOWSKI: You too.

5 MR. MOORE: You too.

6 (WHEREUPON, the proceedings concluded at 9:24 a.m.)

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CERTIFICATE OF REPORTER

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I, AMBER EMERICK, hereby certify that the said proceedings were taken in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true, and correct report of said proceedings which took place;

That I am a disinterested person to the said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January, 2018.

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AMBER EMERICK CSR No. 13546

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<p>able 5:20  <b>ACADEMY</b> 1:12  account 6:12  accounted 9:23  action 13:13  activating 4:15  added 10:22  address 5:10  <b>administration</b>  10:16  <b>administrative</b>  6:23  <b>administrator</b> 6:1  6:7 8:13,21 9:5  <b>administrator's</b>  7:10  <b>ADR</b> 9:21  <b>adverse</b> 7:11  <b>agree</b> 7:17 9:15,17  <b>agreement</b> 10:18  <b>alleviate</b> 3:25  <b>AMBER</b> 1:22 13:4  13:20  <b>amount</b> 10:7  <b>ANTHONY</b> 1:7  <b>appeals</b> 8:18  <b>appellate</b> 6:21  <b>appreciate</b> 4:6 11:6  <b>ART</b> 1:12  <b>articulate</b> 6:15  <b>assurances</b> 4:13  <b>attempt</b> 9:1  <b>attempts</b> 9:3  <b>attorneys</b> 7:14,15  8:10 10:14  <b>Austin</b> 2:4 4:3  <b>available</b> 7:24  <b>a.m</b> 3:1 12:6</p>	<p>C 2:1,8 3:3  <b>calendar</b> 5:3  <b>California</b> 1:1,24  2:9,9,13 3:6 13:6  <b>calling</b> 11:23  <b>case</b> 7:23 8:11  <b>cases</b> 8:8,17  <b>certainly</b> 6:11,16  10:12  <b>CERTIFICATE</b>  13:1  <b>Certified</b> 1:23 13:5  <b>certify</b> 13:4  <b>CGC-16-551952</b>  1:10  <b>change</b> 5:11  <b>City</b> 2:5  <b>claim</b> 4:10 8:21  <b>claiming</b> 6:13  <b>claims</b> 6:5 9:8,18  10:16  <b>clarify</b> 10:17  <b>class</b> 6:5 7:11,12,25  8:23,23,25 9:3  10:8,10,12 11:1  <b>classic</b> 6:17,25  <b>CLERK</b> 3:5 11:23  12:1  <b>client</b> 4:13  <b>close</b> 6:11  <b>come</b> 10:19  <b>comes</b> 6:21  <b>completely</b> 7:22  <b>concerns</b> 4:1  <b>concluded</b> 7:22  12:6  <b>CONNAUGHTON</b>  2:12  <b>constant</b> 6:24  <b>constitute</b> 7:15  <b>constitutes</b> 13:8  <b>constrain</b> 6:18  <b>constraints</b> 7:1,3  8:2</p>	<p><b>contact</b> 11:16  <b>context</b> 6:24  <b>correct</b> 13:8  <b>cost</b> 6:14 9:25  10:17  <b>counterproductive</b>  7:2  <b>County</b> 1:2 3:6  <b>course</b> 7:19  <b>court</b> 1:1 3:6,8,12  4:9,18,22 5:1,7,21  6:17,20 7:17,20  8:19 9:10,14,19  9:21,25 10:7,19  11:1,13,16,21,25  12:2  <b>courts</b> 6:20,21,23  <b>credit</b> 6:9,10  <b>CROSS-ACTION</b>  1:15  <b>CSR</b> 13:20  <b>cure</b> 8:24 9:1,4  <b>curious</b> 3:21  <b>Curtis</b> 1:3 3:7</p>	<p><b>Department</b> 1:4  3:5  <b>determination</b> 7:11  9:2  <b>Diego</b> 2:13  <b>discretion</b> 6:2,3,18  <b>discuss</b> 3:17,22  <b>discussed</b> 4:12  <b>disinterested</b> 13:12  <b>dispute</b> 9:1,6,7,11  10:9  <b>dissatisfied</b> 8:12  <b>documents</b> 3:19  <b>drafting</b> 4:8  <b>draw</b> 8:8  <b>d/b/a</b> 1:12</p>	<p><b>feel</b> 7:25  <b>figured</b> 4:19  <b>file</b> 5:16 11:15  <b>filed</b> 7:20  <b>final</b> 7:15  <b>fine</b> 5:11  <b>Floor</b> 2:13  <b>foregoing</b> 13:8  <b>forth</b> 5:13  <b>Francisco</b> 1:2 2:9  3:6  <b>frankly</b> 5:5  <b>freezes</b> 6:9  <b>full</b> 13:8  <b>fund</b> 10:25  <b>funds</b> 10:20</p>
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