



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-16-551952

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ORDER

**MATTHEW PAGOAGA VS. STEPHENS INSTITUTE DBA ACADEMY OF ART
UNIVERSITY**

001C06178982

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JAN 16 2018

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MATTHEW PAGOAGA, ET AL.

Plaintiffs,

vs.

STEPHENS INSTITUTE, ETC.,

Defendant.

Case No. CGC – 16- 551952

**ORDER CONTINUING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

AND

DENYING MOTION TO SEAL

AND

STRIKING EMAILS

I held a hearing today on the parties' Renewed Motion for Preliminary Approval of Class Action Settlement and Motion to Seal. The motion to seal is denied, the materials the subject of that motion are stricken, and the motion for preliminary approval is continued to **January 30, 2018**, and will be deemed submitted as of that date.

The parties are reminded that the website maintained by the Administrator must contain all papers submitted in support of preliminary approval, as well as transcripts of hearings and all orders relating to that subject.

1 *General comments*

2 While the calculation of reasonable attorney fees is likely to be affected by the nature of
3 the relief provided, and the reversionary nature of the settlement, and time over which it may be
4 provided, that issue need not be addressed at this time.

5
6 AAU promises to implement regular cybersecurity trainings for its employees who
7 handle payroll and compensation data. There is some ambiguity in this, especially with respect
8 to the timing and frequency of such trainings – the parties use the word “regularly.” It would be
9 better to have a clear specification of how frequently employee trainings will occur, but these
10 promises are not a core component of the settlement and the vagueness does not bar preliminary
11 approval.

12
13 *Outstanding Issues*

14 These issues must be addressed in supplemental papers. The parties must file and provide
15 courtesy copies of those supplemental papers not later than January 30, 2018, or else provide the
16 court with a written status report.

17 The outstanding substantive issues are:

18 (1) To be eligible to claim reimbursement for out of pocket losses during the tail period,
19 a class member must have “enrolled in the Credit Monitoring Services offered as part of this
20 Settlement on or before the Claims Deadline.” It is impossible to “enroll” in Credit Monitoring
21 Services on or before the Claims Deadline, activation codes will not be sent to claimants until
22 after the expiration of the Claims Deadline. It is possible to submit a claim for Credit
23 Monitoring Services on or before the Claims Deadline. It is also possible to enroll in Credit
24 Monitoring Services pursuant to the Proposed Settlement. To the extent such a prerequisite is
25 intended, the Proposed Settlement should be revised and a justification should be provided.
26
27

1 (2) The parties have provided a further explanation of the requirement that out of pocket
2 costs must be actually incurred and “fairly traceable” to be recoverable under the settlement.
3 Among other things, the “fairly traceable” requirement includes a requirement that the costs be
4 “reasonably incurred.” This transforms what appears to be a causation requirement into a free-
5 floating inquiry into the reasonableness of the class members’ conduct. While this may be
6 acceptable, the need for such an inquiry, and its appropriateness in the context of a reversionary
7 settlement, should be explained. The supplemental papers should explain the recourse to be had a
8 class members when disputing the denial of a claim because it was not ‘reasonably incurred’. If
9 as it appears a neutral is to have the final say, it should be clear that the disputing class member
10 will not pay for the service.
11

12 The notice has the following issues:

13 (1) Page 3 ¶ 2 and page 9 ¶ 18: The first time my name is listed one middle initial is
14 used,; the second time none was used; and two are found on the Proposed Order. Consistency
15 (with two initials) is best.
16

17 (2) Page 5 ¶ 7: “a claim for Out-of-Pocket Losses Claim” can be changed to “an Out-of-
18 Pocket Losses Claim”.

19 (3) Page 6 ¶ 11: (a) In (1), “submit the claim form online” should be changed to
20 “submit the claim form and supporting documentation online”; and (b) In (2), a “)” should be
21 added to “(available at www.AAUsettlement.com)”.

22 (4) Page 7 ¶ 13: The first two paragraphs of the revised section describing the release
23 cover much of the same ground, but they cover it slightly differently. This should be collapsed
24 into a single paragraph, which should clearly identify the release as extending to claims against
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1 AAU that relate to the E-mail Security Incident or that were or could have been brought based on
2 the facts alleged in the Complaint. This is consistent with the Proposed Settlement.

3 (5) Page 7 ¶ 13: "Paragraphs 61" should be changed to "Paragraph 61".

4 (6) Page 8 ¶ 17: "lawsuit,." should be changed to "lawsuit."

5 (7) Page 9 ¶ 18: "Complex Division" is not a necessary part of the Court's address.

6 (8) While ¶ 7 of the notice does contain a description of the pre-requisites for a claim in
7 the tail period, the fact that an individual must enroll in Credit Monitoring Services to submit a
8 claim for future out-of-pocket losses should be emphasized. One possibility is to add this
9 information to ¶ 11, which could be re-worked to detail the differences between the pre-claims
10 deadline claims process and the post-claims deadline claims process.

11 (9) Claim Form – Post Claims Deadline: In the spreadsheet, the column header entitled
12 "Description of Supporting Documentation" should be revised to make it consistent with the
13 same column header in the same spreadsheet for the pre-deadline version of the claim form.

14 (10) The notice or claim form should disclose that personal information, including Social
15 Security numbers, will be disclosed to Experian if a claim for credit monitoring services is
16 submitted.

17 The proposed order should have the procedural history updated. The findings regarding
18 the appointment of class counsel and class representatives should be for settlement purposes
19 only.

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24 *Sealing*

25 AAU moves to seal certain emails. For current purposes, counsel's description of the
26 evidence produced and the inferences plaintiffs' counsel drew from that evidence suffices. The
27

1 emails are probably inadmissible hearsay and cannot be authenticated by counsel. The emails are
2 irrelevant and so stricken. *Overstock.Com, Inc. v. Goldman Sachs Group, Inc.*, 231 Cal.App.4th
3 471, 499 (2014).
4

5
6 Dated: January 16, 2018



7 Curtis E.A. Karnow
8 Judge Of The Superior Court
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CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, WILLIAM TRUPEK, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **JAN 16 2018**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **JAN 16 2018**

T. Michael Yuen, Clerk

By: 
WILLIAM TRUPEK, Deputy Clerk