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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 RYAN RODRIGUEZ, REENA B.
12 FRAILICH, LOREDANA NESCI,
13 JENNIFER BRAZEAL and LISA
14 GINTZ, on behalf of themselves and all
others similarly situated,

15 Plaintiffs,

16 vs.

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18 WEST PUBLISHING CORPORATION,
19 a Minnesota Corporation dba BAR/BRI
20 and KAPLAN, Inc., a Delaware
Corporation.

21
22 Defendants.

23 AND CONSOLIDATED ACTION
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Case No. CV 05-3222 R(MCx)

The Honorable Manuel L. Real

**ORDER GRANTING SETTLING
CLASS PLAINTIFFS' MOTION FOR
DISTRIBUTION OF NET
SETTLEMENT FUND UPON THE
OCCURRENCE OF THE
EFFECTIVE DATE AND FOR
APPROVAL AND DISTRIBUTION
OF ATTORNEYS' FEES AND
EXPENSES**

Hrg Date: December 7, 2009
Time: 10:00 a.m.
Place: Courtroom 8

1 **WHEREAS**, on September 10, 2007, this Court finally approved the
2 parties' Stipulation and Settlement Agreement¹ and entered: (1) a Final Order and
3 Judgment Approving Settlement; and (2) an Order Granting Class Counsel
4 Attorneys' Fees and Reimbursement of Expenses ("Fee Award")

5 **WHEREAS**, on April 23, 2009, the United States Court of Appeals for the
6 Ninth Circuit affirmed this Court's approval of the Settlement, but remanded to
7 this Court the award of attorneys' fees "for consideration of the effect, if any" of
8 certain incentive agreements;

9 **WHEREAS**, the claims administration process, with respect to calculating
10 the method to distribute the Net Settlement Fund, has come to a close;

11 **WHEREAS**, this Court finds that the Claims Administrator followed the
12 procedures for identifying the Authorized Claimants;

13 **WHEREAS**, distribution of the Net Settlement Fund will therefore be
14 appropriate upon the Effective Date of the Settlement as defined in paragraph 61 of
15 the Stipulation of Settlement as the date on which all appeals have been resolved;

16 **WHEREAS**, this Court has revisited the awards of fees to Counsel as
17 required by the mandate;

18 **WHEREAS**, pursuant to the Minute Order of this Court dated December 7,
19 2009;

20 **NOW, THEREFORE**, upon consideration of the Settling Class Plaintiffs'
21 Motion for Distribution of the Net Settlement Fund Upon the Occurrence of the
22 Effective Date and for Approval of Attorneys' Fees and Reimbursement of
23 Expenses, including the accompanying Memorandum of Points and Authorities,
24 the Declaration of Sidney K. Kanazawa and attached exhibits, the Declaration of
25

26 _____
27 ¹ All capitalized phrases herein shall have the same meaning as those in the
28 Stipulation and Settlement Agreement, dated February 2, 2007.

Eric J. Miller, the Requests by Claimants for Review of Claims Determinations, and upon all prior proceedings herein and after due deliberation, the Court finds and ORDERS as follows:

1. Approval and Denial of Claims

The administrative determinations of the Claims Administrator, both rejecting and accepting claims and determining the amounts of those claims, as described in the Eric J. Miller Declaration, including claims submitted through and including August 18, 2009, have not been contested by any party except for the "Requests for Court Review" discussed below. These determinations are hereby approved, and said Claims are hereby accepted for payment on the Effective Date as outlined below.

2. Requests for Court Review

The "Requests for Court Review" submitted by Class Counsel, including the updates submitted on November 13, 2009, consist of requests by individual claimants for Court review of the determinations by the Claims Administrator to deny their claims in whole or in part, and are determined as follows:

a. Law School BAR/BRI Representatives.

The definition of the Class as certified is "All Persons who purchased a full-service bar review course from BAR/BRI in the United States from August 1, 1997 through and including July 31, 2006." The Court finds that this definition was intended to include persons who paid to BAR/BRI actual cash or its equivalent within the period between August 1, 1997 and July 31, 2006, but that it excludes persons who were offered a full-service bar review course by BAR/BRI course for reasons other than the payment of cash. BAR/BRI "law school representatives" who received the right to attend a BAR/BRI course as part of their compensation for promoting BAR/BRI on law school campuses, but did not exchange cash or its equivalent for a course cannot allege harm or damages, if any, in the same manner as actual purchasers who form the Class. Thus, Allan Kretzmar, Jor Law, Bruce

1 Susich, and Patrick Welch are not Class members and the Court affirms the
2 rejection of their Claim Forms by the Claims Administrator.

3 b. BAR/BRI Course Payments After July 31, 2006.

4 The definition of the Class is limited to purchases within the period of
5 August 1, 1997 through and including July 31, 2006. The Court finds that this
6 definition excludes from any person's Claim any payments made before or after the
7 Class period. Thus, the Court affirms the determination by the Claims
8 Administrator that the following Class Members' Awards (in amounts to be
9 determined later) shall be based on amounts paid only during the Class Period, as
10 follows: Paola Alvarez - \$175.00, James Renken - \$175.00, and Ori Blumenfeld -
11 \$175.00. The Court also affirms the determination of the Claims Administrator
12 that the Claim of Claimant Howard Wexfeld be denied as he did not make any
13 payments during the Class period.

14 c. Resolved But Unwithdrawn Claims.

15 The following Claimants' requests for Court Review are moot because the
16 Claims Administrator has determined that the Claim Forms identify the correct
17 course amounts: Ron Glasgow - \$950.00, Luis Michel Marchand - \$90.00,
18 Stormie Forte - \$ 1325.00, Scheila Schwallie – \$2,938.00, Thomas Hines -
19 \$1,220.00.

20 d. Insufficient Evidence Claims.

21 The Claims Administrator, with the guidance of Class Counsel, sought to
22 verify each Claim submitted. Where a Claimant failed to submit the necessary
23 evidence to the Claims Administrator, the Claims Administrator denied the claim
24 in whole or in part based on the evidence. The Court has reviewed these Claims
25 and finds that that the determination by the Claims Administrator to deny the
26 claims in whole or in part, in accordance with the evidence received, was proper.
27 The Court therefore affirms that the following Class Members' Awards (in
28 amounts to be determined later) shall be based on the Claims Administrator's

determinations to allow the following Claims: Jennifer Whipple - \$100.00, Laurie Nasky - \$378.00, Kelly Pritt - \$1,450.00, Lisa Siu Mendoza - \$201.50, Rebecca Stegman - \$1,453.00, Jeffrey Johnson - \$2,313.00, Chad Barry - \$1,790.00, and Vanessa Jarvis - \$135.00. The Court also affirms the Claims Administrator's determination that the following Claimants failed to submit the necessary evidence to support a Claim, and therefore their Claims are denied: Travis Hill, Rose Hickman, Thomas Houlihan, Susan Houlihan, Ximen Januszyk, and Gilbert Hain.

e. Other Claims.

Finally, the Court has reviewed the remaining claims submitted and affirms the determination of the Claims Administrator to deny these claims in whole or in part for the following reasons.

Amos Jones. Amos Jones requests, among other things, that the Court revisit the Settlement Agreement or that he be allowed to opt out of the Settlement. Neither request is proper at this time, and will not be considered.

Out Obot. The portion of Mr. Obot's claim relating to a "PMBR" bar review course is not allowed because that is not the "full service bar review course" specified in the Class definition.

Michael Veneziani. Mr. Veneziani's Claim for a course he purchased in 2007 is outside the Class period and is properly denied.

Emily Chew. The portion of Ms. Chew's Claim relating to a course for the patent bar examination is not allowed because that is not the "full service bar review course" specified in the Class definition.

3. Distribution of the Net Settlement Fund

The Court has considered the Miller Declaration and the submissions of Class Counsel and determined that the Net Settlement Fund shall be distributed to the Authorized Claimants upon the Effective Date of the Settlement, as specified

1 herein and the Distribution set forth in the Plan of Allocation. No claim submitted
 2 after August 18, 2009 may be accepted for any reason whatsoever. The payments
 3 to be distributed to the Authorized Claimants shall bear the notations "CASH
 4 PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION 180 DAYS
 5 AFTER ISSUE DATE."

6 **4. Discharge of Duties by Claims Administrator**

7 All persons involved in the review, verification, calculation, tabulation, or
 8 any other aspect of the processing of the Proofs of Claims submitted herein, or
 9 otherwise involved in the administration or taxation of the Settlement Fund or the
 10 Net Settlement Fund are released and discharged from any and all claims arising
 11 out of such involvement, and all Class Members, whether or not they are to receive
 12 payment from the Settlement Fund, are barred from making any further claim
 13 against the Settlement Fund or the released persons beyond the amount allocated to
 14 them pursuant to this Order.

15 Further, the Claims Administrator is hereby authorized to discard paper or
 16 hard copies of the Proofs of Claims and supporting documents not less than one
 17 year after the initial distribution of the Net Settlement Fund to the eligible
 18 claimants, and electronic or magnetic media data not less than three years after the
 19 initial distribution of the Net Settlement Fund to the eligible claimants.

20 **5. Attorney's Fees**

21 McGuireWoods, LLP entered into incentive agreements with five of the
 22 named plaintiffs, obligating the firm to seek payment for each of the five in
 23 amounts that hinged on the size of the settlement or a verdict secured on behalf of
 24 the Class. This arrangement was not disclosed to the Class, nor did
 25 McGuireWoods inform the Court of its existence during the class certification
 26 stage.

27 Upon learning of the agreements this Court found them to run afoul of the
 28 California Rules of Professional Conduct. Moreover, the agreements gave rise to a

1 conflict of interest that tainted the McGuireWoods representation. That a fair
 2 settlement was ultimately reached does not bear upon the seriousness of the ethical
 3 violation. This is all according to, at least, the Ninth Circuit. Under California law
 4 in the absence of informed written consent, the simultaneous representation of
 5 clients with conflicting interest constitutes an automatic ethics violation that results
 6 in the forfeiture of attorneys' fees. *Image Technical Service, Inc. v. Eastman*
 7 *Kodak*, 136 F.3d 1354 (9th Cir. 1998). Moreover, quantum meruit recovery is
 8 barred where an attorney has violated an ethical rule that proscribed the very
 9 conduct for which compensation was sought. *Huskinson & Brown, LLP v. Wolfe*,
 10 32 Cal.4th 453 (2004).

11 Accordingly, McGuireWoods LLP is not entitled to any fees for its
 12 representation in this matter. However, because the forfeiture is predicated upon a
 13 theory that payment is not due for services not properly performed,
 14 McGuireWoods LLP may be reimbursed for the expenses it incurred during the
 15 course of its representation given that such expenses would be unaffected by any
 16 conflict.

17 Because the law firms of Finkelstein Thompson, LLP and Zwerling,
 18 Schachter & Zwerling, LLP were non-conflicted in this matter, their fees may
 19 properly be awarded by this Court. After reviewing the fees sought by the
 20 Finkelstein and Zwerling firms, the Court has reduced the lodestar by ten percent
 21 and eliminated the multiplier to account for excessive fees and noncompensable
 22 work, including work done to preserve the award of attorneys' fees, work done in
 23 connection with the *Park* litigation², and other work performed that conferred no
 24 benefits on the Class. Thus, the Finkelstein firm is awarded \$1,597,560.84 in
 25 attorneys' fees and the Zwerling firm is awarded \$1,532,706.40 in attorneys' fees,

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 27 ² *Anthony S. Park, et al., v. The Thomson Corporation and Thomson Legal and*
 28 *Regulatory, Inc.*, Case No. 05 Civ. 2931 (WHP).

1 based upon a ten percent reduction of the requested lodestar, to be paid from the
2 Gross Settlement Fund upon the Effective Date.

3 The Court has determined that no further reductions are necessary given that
4 counsel achieved a result for the Class that was eminently fair and the fact that fees
5 sought do not approach, much less reach, the twenty-five percent cap contained in
6 the Settlement Agreement that was already approved by this Court.

7 Fees for John William Davis in the amount of \$8,125.00, and C. Benjamin
8 Nutley in the amount of \$8,125.00, attorneys for certain objectors, have already
9 been awarded by this Court pursuant to the mandate of the Ninth Circuit. These
10 fee awards shall be distributed from the Gross Settlement Fund upon the Effective
11 Date, which is the day upon which all appeals are resolved pursuant to paragraph
12 61 of the Stipulation and Settlement Agreement.

13 **6. Expenses**

14 The Court further determines that the request for expenses is reasonable in
15 light of the size and complexity of this matter. Accordingly, the Court grants the
16 request for expenses in the following amounts: McGuireWoods, LLP -
17 \$1,259,861.64³; Finkelstein Thompson, LLP - \$118,259.86; and Zwerling,
18 Schachter & Zwerling, LLP - \$35,237.48 as reimbursement of reasonable expenses
19 incurred in connection with the Settlement, to be paid from the Gross Settlement
20 Fund.

21 **7. Claims Administrator**

22 The Claims Administrator, Rust Consulting, Inc., shall be paid the sum of
23 \$252,236.64 from the Gross Settlement Fund for the balance of its fees and
24 expenses incurred and the amounts estimated to be incurred in connection with the
25 services performed and to be performed in giving notice to the Class, preparing tax

26 _____
27 ³ This figure is less than the amount awarded on the record on December 7, 2009
28 and is based upon the revised calculation set forth in the Declaration of Darrel C.
Menthe submitted November 13, 2009.

1 returns for the Settlement Fund, processing the Proofs of Claim, and administering
2 and distributing the Settlement Fund.

3 **8. Retention of Jurisdiction**

4 This Court retains jurisdiction over any further application or matter which
5 may arise in connection with the Action.

6 **IT IS SO ORDERED.**

7
8 Dated: __Feb. 3, 2010__



9 The Honorable Manuel L. Real
10 United States District Judge

11
12 Submitted by:

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