



AlaFile E-Notice

03-CV-2010-900013.00

Judge: HON. JOHNNY HARDWICK

To: BECK GEORGE LAMAR JR.
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

LISA NIX GREEN ET AL v. KAY IVEY ET AL
03-CV-2010-900013.00

The following matter was FILED on 5/5/2011 2:16:16 PM

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FLORENCE CAUTHEN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL 36104

334-832-4950



**IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA**

**LISA NIX GREEN, individually and as
next friend of Brent A. Green and
Blake A. Green,**

Plaintiffs,

v.

CASE NO.: CV-2010-900013.00

**YOUNG BOOZER, GWEN APPLING,
SENATOR ROGER BEDFORD,
DR. GREG FITCH, REPRESENTATIVE
CRAIG FORD, KAREN GANDY, DR.
DAVID BRONNER, GENERAL PAUL
HANKINS, DR. FREIDA HILL, DR.
RICHARD HUCKABY, PATTI LAMBERT
DR. WILLIAM MEEHAN, DAVID
PERRY, JAMES STUBBS, and
MARK SULLIVAN,**

Defendants.

PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

The parties having moved jointly for preliminary approval of the proposed terms set forth in the Class Action Settlement Agreement (“Settlement”), and after due deliberation and consideration of both the Settlement and the entire record in this action, and after full consideration of the totality of the circumstances, this Court upon motion of the parties and for good cause shown hereby ORDERS that:

1. To the extent necessary, Young Boozer, Gwen Appling, Senator Roger Bedford, Dr. Greg Fitch, Representative Craig Ford, Karen Gandy, Dr. David Bronner, General Paul Hankins, Dr. Freida Hill, Dr. Richard Huckaby, Patti Lambert, Dr. William Meehan, David Perry, James Stubbs, and Mark Sullivan (collectively “Defendants”) have been substituted in their official capacities pursuant to Ala. R. Civ. P. 25(d)(1) for the individuals originally named in this litigation as being members of the PACT Board.

2. The terms of the Settlement are preliminarily approved as being in the best interests of both Class A (including subclasses A1 and A2) and Class B subject to further consideration at the Settlement Hearing described below.

3. The Court finds for the purposes of the Settlement that Lisa Green, Kim Franklin, and their counsel remain adequate representatives of Class A (including subclasses A1 and A2) as certified by this Court in its December 13, 2010 Order as amended on March 4, 2011; that Brian A. McVeigh, Nina McGinnis, Allen R. Hudson, and their counsel remain adequate representatives of Class B as certified by this Court in its December 13, 2010 Order as amended on March 4, 2011; and that all requirements of Ala. R. Civ. P. 23(a), 23(b)(1)(A), 23(b)(1)(B), and 23(b)(2) continue to be met as to the claims asserted by the Classes and as to the counterclaim asserted by Defendants.

4. A Settlement Hearing shall be held on June 20, 2011 at 1:00 p.m. in Courtroom 4A of the Montgomery County Courthouse in Montgomery, Alabama. The purposes of the Settlement Hearing shall be (a) to determine whether the terms of the proposed Settlement are fair, reasonable, and adequate and should be approved by the Court; (b) to determine whether a Final Judgment should be entered approving the proposed Settlement; (c) to entertain any objections of any affected person(s) as to the certification of each Class, the proposed Settlement, or any other matter related thereto; and (d) to rule on all other matters pertaining to the Settlement and/or such other matters as the Court may deem appropriate.

5. The Court reserves the right to adjourn and reconvene the Settlement Hearing without further notice of any kind other than oral announcement at the hearing.

6. The Court reserves the right following the hearing to approve the Settlement with or without modification and with or without further notice of any kind.

7. The Defendants shall use reasonable efforts to provide notice to all members of Class A (including subclasses A1 and A2) and Class B as follows:

- a. Not later than fourteen (14) days after the entry of this Order, the Defendants shall mail (first class, postage prepaid) a Notice of Proposed Class Action Settlement substantially in the form of Exhibit A hereto to the owner of each active PACT Contract at the addresses appearing in the records of the PACT Program. The notice shall direct recipients to the PACT website, www.800alapact.com, which will contain a link through which recipients and all interested parties may view a copy of the Settlement, as well as a copy of this Order. The notice shall also provide that a copy of said materials can be obtained by calling Class Counsel as follows: J. Doyle Fuller at (334) 270-0020 (Class A) or Andrew P. Campbell at (205) 251-5900 (Class B).
- b. At least seven (7) days prior to the Settlement Hearing, the Defendants shall file or cause to be filed a proof of distribution of the notice in accordance with this paragraph 7. Said proof shall be in the form of an affidavit executed by the appropriate representative of the Defendants verifying compliance with the provisions of this paragraph.

8. The Court finds that the form and method of notice specified herein is the best notice practicable under the circumstances and, if carried out, shall constitute due and sufficient notice under Ala. R. Civ. P. 23(e) of the Settlement and all other matters addressed in the notice, including without limitation, the pendency of this action, the continued maintenance of this action as a class action pursuant to Ala. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B), and 23(b)2, the terms of Settlement, the binding effect of the Settlement on all members of each Class, and the Settlement Hearing. The notice attached hereto as Exhibit A is hereby approved.

9. Any briefs or other documents in support of the Settlement and in support of any request for an award of attorneys' fees and expenses authorized by the Settlement shall be filed with the Clerk of the Court not less than three (3) days prior to the Settlement Hearing.

10. Any member of either Class may appear at the hearing, in person or by counsel (if an appearance is filed and served as hereinafter provided), and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness, and adequacy of the Settlement and/or other aspects of the Settlement, the Final Judgment to be entered herein, the procedures adopted by the Court for its determination of whether to approve the Settlement, including but not limited to, continued maintenance of the action pursuant to Ala. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B) and 23(b)(2), the binding effect of the Settlement on all members of each Class, the content and method of delivery of the notice, any orders or findings entered by the Court, the provisions of the Settlement referable to a possible award of attorneys' fees and expenses to Class Counsel, and all other matters pertaining to this Settlement.

11. No class member shall be heard or entitled to contest such matters unless he or she has filed a written objection (along with any supporting documents) with the Circuit Clerk for Montgomery County, P.O. Box 1667, Montgomery, AL 36102, on or before June 10, 2011 (10 calendar days in advance of the Settlement Hearing). No particular form of written objection is required. A short, plain statement of each objection and the grounds therefor will be sufficient. However, any objection must identify that it is being filed in connection with Case No.: CV-2010-900013. Class members who wish to object may, but are not required to, obtain counsel at their own expense to represent them in connection with the objection.

12. Each objection filed with the Circuit Clerk, whether or not the objection is prepared or submitted by counsel, must bear the name, address, and signature of the current

PACT Contract owner, the name of the beneficiary under the PACT Contract, and the date of purchase. Handwritten objections will be accepted as long as they contain the required information and signature.

13. Additionally, no objection shall be heard unless the objecting class member also provides a copy of the objection to all counsel of record on or before June 10, 2011 (10 calendar days in advance of the Settlement Hearing). Copies to counsel shall be provided as follows:

J. Doyle Fuller
FULLER & COPELAND
2851 Zelda Road
Montgomery, Alabama 36106
jdf@fullercopeland.com

Andrew P. Campbell
LEITMAN, SIEGAL, PAYNE AND CAMPBELL
420 20 Street North, Suite 2000
Wachovia Tower
Birmingham, Alabama 35203
acampbell@lspclaw.com

Chad W. Bryan
CAPELL & HOWARD
P.O. Box 2069
Montgomery, Alabama 36102-2069
cwb@chlaw.com

14. Unless a class member shall have first served and filed written objections as prescribed above, and unless the Court otherwise directs, no member of either Class shall be entitled to be heard or object with respect to the fairness, reasonableness, or adequacy of the Settlement, the terms and conditions or other aspects of the Settlement, the Final Judgment proposed to be entered herein, the procedures adopted by the Court to consider approval of the Settlement, the binding effect of the Settlement on all members of each Class, continued maintenance to the action as a class action pursuant to Ala. R. Civ. P. 23(b)(1)(A), 23(b)(1)(B) and 23(b)(2), the content and method of delivery of the notice, or any orders or findings entered

or to be entered by the Court, or any other matter pertaining to approval or disapproval of the Settlement. Any class member who fails to object in the manner prescribed above shall be deemed to have waived all such objections (including an appeal therefrom) and any other objections (including an appeal therefrom) relating to the subject matter of the litigation or the Settlement, shall be deemed to have consented to exercise by this Court of jurisdiction over all aspects of this action and the Settlement, and shall be forever barred from raising such objections or relitigating his individual claims in these or any other action or proceeding. Each class member desiring to object must file his own objection and appear personally or by counsel. No class member will be heard to assert purported objections on behalf of any other class member.

15. Pending final determination of whether the Settlement should be approved, the named Plaintiffs and all members of Class A (including subclasses A1 and A2) and Class B are hereby enjoined and prohibited from commencing or prosecuting any action, either directly, individually, representatively, or in any capacity, asserting any claims which are proposed to be released under the Settlement.

16. If the Settlement (including any modification thereto with the consent of the parties) is approved by the Court following the hearing, an Order and Final Judgment will be entered which: (i) approves the final certification of the Classes described in the Settlement; (ii) approves the Settlement and all transactions preparatory or incidental thereto and all terms and conditions of the Settlement as valid, fair, reasonable, and adequate, and directing consummation of the Settlement in accordance with the terms thereof; (iii) enters a final injunction and other declaratory and equitable relief permanently enjoining and requiring the Defendants and each member of both Classes to perform their respective obligations set forth in the Settlement, and subject to said injunction and the right to enforcement thereof pursuant to the continuing

jurisdiction reserved by the Court, approves the release of, and dismisses with prejudice, all claims asserted or which could have been asserted in this litigation by or on behalf of the class members or any of them against the Defendants relating to the released claims as defined in paragraph 13 of the Settlement; (iv) permanently bars and enjoins each and all class members from filing or participating as a litigant in any individual lawsuit or class action relating to any of the released claims (as defined in paragraph 13 of the Settlement); and (v) reserves jurisdiction over all matters relating to this action and the administration, consummation, interpretation, and enforcement of the Settlement and Final Judgment.

17. If the Settlement is not approved by the Court or shall not become effective for any reason whatsoever, then, and in that event, the Settlement and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and have no further force.

18. This Court's orders in this case are made pursuant to its inherent equitable powers, the powers granted it pursuant to § 6-5-640 et seq., Code of Alabama 1975 and Rule 23, Ala. R. Civ. P., the powers granted it under the Alabama Uniform Trust Code, § 19-3B-101 et seq., Code of Alabama 1975, and the powers granted under all other applicable Alabama statutory and common law.

DONE, ORDERED, ADJUDGED AND DECREED, this 5th day of May, 2011.



CIRCUIT JUDGE

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A proposed class action settlement ("Settlement") has been reached in the litigation styled *Lisa Nix Green, et al. v. Kay Ivey, et al.*, Circuit Court of Montgomery County, Alabama, Case No.: CV-2010-900013. The proposed Settlement would change the manner in which tuition and fees are paid by PACT. Among other things, the Settlement would use Fall 2010 rates as the baseline amount to be paid in the future for tuition and fees, regardless of the year that PACT Contract benefits are used. Any tuition and fees charged above that baseline amount would not be paid by PACT, but would be the exclusive responsibility of the PACT Contract purchaser or beneficiary. A complete copy of the proposed Settlement, along with the court's preliminary approval of the Settlement, can be obtained on the PACT website, www.800alapact.com, or by contacting J. Doyle Fuller for Class A at (334) 270-0020, jdf@fullercopeiland.com, or Andrew P. Campbell for Class B at (205) 251-5900, acampbell@lspclaw.com. You are encouraged to review these documents in full.

The court has scheduled a hearing for June 20, 2011 at 1:00 p.m. to consider whether to grant final approval of the Settlement. If the proposed Settlement receives final approval by the court, you will be bound by the terms thereof. The approval hearing will be held in Courtroom 4A of the Montgomery County Courthouse, located at 100 South Lawrence Street, Montgomery, Alabama. You may appear at the hearing to object to the Settlement. However, in order to be heard at the hearing, you must file a written objection with the court no later than June 10, 2011. Any objections not timely filed shall be deemed waived. For further details, please contact class counsel or see the PACT website under "Proposed Class Action Settlement Information".

Exhibit A