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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Mass Plaintiff/Petitioner(s) vs. The Regents of the University of California Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG17879223</u> Order Motion for Approval of Class Notice Granted
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The Motion for Approval of Class Notice was set for hearing on 08/21/2020 at 10:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of plaintiffs for approval of class notice is **GRANTED IN PART**.

Timing of class notice. The Regents argues that the court should defer class notice until after the Regents has the opportunity to file a demurrer to the certified claim. The court will not defer class notice. "Plaintiffs should seek certification before moving for any resolution of the merits. ... To prevent one-way intervention, courts must ensure that affected parties are bound before the merits are decided; to bind absent plaintiffs, courts must give them notice; and to give plaintiffs notice, courts must first resolve whether and on what scale a class is appropriate." (Fireside Bank v. Superior Court (2007) 40 Cal.4th 1069, 1083.)

The court's order of 5/5/20 certified the class, the Regents filed a petition for writ review, and the Court of Appeal has denied the petition. The case can move forward to trial as a class case and that requires notice to the members of the class.

Content of class notice. The court **ORDERS** that the class notice in Plaintiffs' Exhibit A is approved.


Distribution of class notice. The court **ORDERS** that plaintiffs distribute the class notice by mail and email. Plaintiffs have agreed to pay the cost of class notice.

The court does not order the Regents to provide class notice through its "New Dimensions" publication. There are first amendment issues about whether the court can compel a party to use its publication to distribute messages with which it disagrees. (Pacific Gas & Electric Co. v. Public Utilities Com'n (1986) 475 U.S. 1, 18.) Compelled class notice in a defendant's publication might be permissible if the notice does not suggest that the defendant adopts or endorses the message. (Beeman v. Anthem Prescription Management, LLC (2013) 58 Cal.4th 329, 363.) Other courts have required class action notices in billing statements. (Mountain States Tel. and Tel. Co. v. District Court, City and County of Denver (Co. Sup. Ct. 1989) 778 P.2d 667, 673-677.)

The requirement of class notice in the text of a publication carries more of a suggestion of endorsement

than the inclusion of a separate insert in a billing statement. The Regents did not actively oppose notice in the publication, but did not expressly consent either. The court will not require constitutionally questionable compelled speech to effect notice when plaintiffs can provide adequate notice through mail and email. The court does not restrict the Regents from providing class notice through its "New Dimensions" publication. (Pacific Gas and Elec. Co. v. Public Utilities Com'n (2000) 85 Cal.App.4th 86, 93.)

Dated: 08/21/2020

Facsimile


Judge Winifred Y. Smith

SHORT TITLE:

Mass VS The Regents of the University of California

CASE NUMBER:

RG17879223

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