

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMMANUEL DUNAGAN, *et al.*,

Plaintiffs,

v.

ILLINOIS INSTITUTE OF ART-CHICAGO,
LLC, *et al.*,

Defendants.

Case No. 1:19-cv-00809

Honorable Jeffrey I. Cummings
Magistrate Judge Heather K. McShain

PRELIMINARY APPROVAL ORDER

This matter comes before the Court on the motion of Plaintiffs Emmanuel Dunagan, Jessica Muscari, Robert Infusino, Stephanie Porreca, Keishana Mahone, and Lakesha Howard-Williams (“Plaintiffs”) for preliminary approval of a classwide settlement agreement (Appendix A) and certification of a Settlement Class,¹ in which Defendants Brent Richardson, Chris Richardson, Shelly Murphy, and the Dream Center Foundation (collectively, the “Settlement Defendants”) join. The Court has fully considered the record of these proceedings; the Settlement Agreement and all exhibits thereto; the representations, arguments, and recommendation of counsel for the Parties and the requirements of law. It appears to the Court, upon preliminary examination, that adequate investigation and research has been conducted such that the counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as the delay and risks that would be presented by the further prosecution of this Litigation.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. It appears to the Court upon the preliminary examination that the proposed settlement is within the range that could be found to be fair, reasonable, and adequate, and that a hearing should be held after notice to the Class of the proposed settlement to finally determine whether the proposed Settlement is fair, reasonable and adequate and whether a Final Approval Order and Judgment should be entered in this Litigation.
2. Pursuant to the standards for settlement approval set forth in Federal Rule of Civil Procedure (“Rule”) 23(e), the Court finds that it likely will be able to approve the

¹ The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

settlement under Rule 23(e)(2)-(5) because it appears the Class Representatives and Class Counsel have adequately represented the Class and negotiated the settlement at arm's length; it appears the settlement provides adequate relief for the Class, taking into account the costs, risks, and delay of trial and appeal; the proposed method of distributing relief to the Class is effective; it appears the terms related to the award of attorneys' fees are reasonable; it appears Class Counsel have identified all required agreements related to the settlement; it appears the settlement treats all Class Members equitably relative to each other; and the settlement provides Class Members with an opportunity to object. Rule 23(e)(2)-(3), (5); *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019).

3. The Court finds that the factors for preliminary approval of the settlement and issuing notice to the Class appear to be satisfied here, including: "(1) the strength of plaintiffs' case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among effected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed." *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010).
4. The Settlement Agreement was entered into by experienced counsel after substantial adversarial proceedings, including significant discovery and motions, and only after extensive arm's length negotiations, including two settlement conferences held by the Hon. Daniel Polster, and was free of any apparent collusion.
5. For purposes of the settlement only and subject to the Settlement Agreement, the Court finds that it will likely be able to certify the Class for purposes of judgment on the settlement proposal because it appears the prerequisites for class certification under Rule 23 have been preliminarily satisfied, and conditionally certifies the following Class: all persons who were first enrolled or remained enrolled at Illinois Institute of Art-Chicago and/or the Illinois Institute of Art-Schaumburg on or any time after January 20, 2018, including students who were enrolled prior to January 20, 2018 and remained enrolled after that date, as well as students who first enrolled on or after that date, and who made a tuition payment in 2018 or for any academic term in 2018.
6. For purposes of settlement only, the Court preliminarily finds that the proposed Settlement Class satisfies the prerequisites for a class action under Rules 23(a) and 23(b)(3), and the Court, pursuant to Rule 23(b)(3), conditionally certifies the Settlement Class. The Court finds, for purposes of settlement only, that the following requirements are met: (a) the above-described Class Members are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Class Members; (c) Plaintiffs' claims are typical of Class Members' claims; (d) Plaintiffs have fairly and adequately represented the

interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced Class Counsel; (e) the questions of law and fact common to the Class Members predominate over any affecting any individual Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23 and is superior to alternative means of resolving the claims and disputes at issue in this Action. Accordingly, as required by Rule 23(e)(1)(B)(ii), the Court will likely be able to certify the class for purposes of judgment on the proposal.

7. The Court finds that it has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties and all Class Members, including absent Class Members.
8. The Court appoints named Plaintiffs Emmanuel Dunagan, Jessica Muscari, Robert Infusino, Stephanie Porreca, Keishana Mahone, and Lakesha Howard-Williams as Class Representatives. The Court preliminarily finds that they will fairly and adequately represent and protect the interests of all Class Members, including absent Class Members.
9. The Court appoints Alexander S. Elson and Eric Rothschild, National Student Legal Defense Network, 1701 Rhode Island Ave. NW, Washington D.C. 20036, alex@defendstudents.org and eric@defendstudents.org, and Daniel A. Edelman and Tara L. Goodwin, Edelman, Combs, Lattuner & Goodwin, LLC, 20 South Clark Street, Suite 1800, Chicago, IL 60603-1841, courtecl@edcombs.com, as Class Counsel. The Court preliminarily finds that counsel are competent, capable of exercising all responsibilities as Class Counsel, and will fairly and adequately represent and protect the interests of all Class Members, including absent Class Members.
10. Class Counsel is authorized to act on behalf of the Settlement Class with respect to all acts or consents required by, or which may be given pursuant to, the Settlement Agreement, and such other acts reasonably necessary to consummate the Settlement Agreement. Any Settlement Class Member may enter an appearance through counsel of his or her own choosing and at his or her own expense. Any Settlement Class Member who does not enter an appearance or appear on his or her own will be represented by Class Counsel.
11. The Court approves Class-Settlement.com to serve as the Settlement Administrator, which shall fulfill the functions, duties, and responsibilities of the Settlement Administrator as set forth in the Agreement and this Order. By accepting this appointment, the Settlement Administrator has agreed to the Court's jurisdiction solely for purposes of enforcement of the Settlement Administrator's obligations under the Settlement Agreement.
12. Any information comprising or derived from the Notice Database or Class List provided to the Settlement Administrator or Class Counsel pursuant to the

Settlement Agreement shall be provided solely for the purpose of providing Notice, or following final approval, Cash Awards to Class Members and informing such Class Members about their rights under the settlement; shall be kept in strict confidence; shall not be disclosed to any third party other than as set forth in the Settlement Agreement to effectuate the terms of the Agreement or the administration process; shall be used for no other cases; and shall be used for no other purpose.

13. To the extent that any federal or state law governing the disclosure and use of consumers' financial information (including but not limited to "nonpublic personal information" within the meaning of the Graham-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*, and its implementing regulations) permits such disclosure only as required by an order of a court, this Order: (a) qualifies as "judicial process" under 15 U.S.C. § 6802(e)(8); and (b) authorizes the production of such information subject to this order's protections, in which case the producing party's production of such information in accordance with this Order constitutes compliance with the applicable law's requirements. To the extent that any such law requires a producing or requesting party to give prior notice to the subject of any consumer financial information before disclosure, the Court finds that the limitations in this Order furnish good cause to excuse any such requirement, which the Court hereby excuses.
14. Plaintiffs' counsel shall provide the class list and information obtained from the Receiver ("class list") to the Settlement Administrator on or before October 30, 2024.
15. The Settlement Administrator will send email notice in the form of Settlement Agreement Exhibit 2 to all class members for which email addresses exist on or before November 11, 2024 (10 days after the class list is provided).
16. The Settlement Administrator will send mail notice in the form of Settlement Agreement Exhibit 3 to the class on or before November 19, 2024 (20 days after the class list is provided). The class list shall consist of the list obtained from the Receiver, as updated via the National Change of Address database and based on the responses to the email notices. This date shall be the "Settlement Notice Date" within the Settlement Agreement.
17. The Court approves, as to form and content, the notices in Settlement Agreement Exhibit 2 and Exhibit 3 (as further amended by the Court).
18. In the event the Mailed Notice is returned undeliverable by U.S. Mail with a forwarding address, the Settlement Administrator shall promptly re-mail the U.S. Mailed Notice to the indicated forwarding address. The Settlement Administrator shall complete the re-mailing of U.S. Mail Notices to those Class Members who were identified as of that time through address traces or forwarding addresses promptly and no later than December 19, 2024 (30 days from the Notice

Deadline). There shall be no further obligation or attempt to obtain a forwarding address for any such returned mail or to further re-mail any such Mailed Notice or returned mail.

19. Prior to the Final Approval Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice provisions.
20. If the settlement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class and appointment of the Class Representatives and Class Counsel shall be void and of no further effect, and the Parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order, without prejudice to any legal argument that any of the parties to the settlement might have asserted but for the settlement.
21. A Final Approval Hearing shall be held before this Court on February 3, 2025 at 11:00 a.m. (c.s.t.) to address, among other things: (a) whether the Court should finally certify the Settlement Class and whether the Class Representatives and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed settlement should be finally approved as fair, reasonable and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class should be dismissed on the merits and with prejudice; (d) whether Class Counsel's Motion for Attorneys' Fees and Costs and the Class Representatives' Service Award should be approved; and (e) such other matters as the Court may deem necessary or appropriate.
22. Papers in support of final approval of the settlement, the Class Representatives' Service Award, and Class Counsel's Motion for Attorneys' Fees and Costs shall be filed with the Court on January 8, 2025, with objections due by January 22, 2025.
23. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class except such notice as may be provided through the Settlement Website.
24. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members with respect to the Released Claims being settled. The Court may finally approve the settlement at or after the Final Approval Hearing with any modifications agreed to by the Settlement Defendants and the Class Representatives and without further notice to the Settlement Class, except such notice as may be provided through the Settlement Website.
25. The Settlement Administrator shall have the discretion to revise the format of the notices in a reasonable manner to reduce mailing or administrative costs. Non-

substantive changes may be made to the Class Notices by agreement of the Parties without further order of the Court.

26. The Notices, as directed in this Order and set forth in the Settlement Agreement, constitute the best notice practicable under the unique circumstances of this case and are reasonably calculated to apprise the members of the Settlement Class of the pendency of this Action, and of their right to object to the settlement or exclude themselves from the Settlement Class. The Court further finds that the Notice Program is reasonable; that it constitutes due, adequate, and sufficient notice to all persons entitled to receive such notice; and that it meets the requirements of due process and of Rule 23.
27. The cost of Notice, claim verification, and settlement administration shall be paid from the Settlement Fund, with notice costs paid for in the manner provided for in the Settlement Agreement.
28. Any member of the Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions and requirements set forth in the Notice, a timely and valid written request for exclusion postmarked no later than December 24, 2024 (35 days after the Settlement Notice Date).
29. Any member of the Settlement Class who submits a valid and timely request for exclusion or, "Opt-Out," shall not be entitled to receive any of the benefits of the Settlement, shall not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to the settlement or appear at the Final Approval Hearing.
30. Any Class Member who does not submit a valid and timely request for exclusion may object to the proposed settlement. Any such Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Class Member's own expense. Any such Class Member must file with the Court and mail or hand-deliver to the Settlement Administrator and Counsel for the Parties a written and detailed statement of the specific objections made, delivered or postmarked no later than the Objection Deadline of January 22, 2025. Each Objection must (i) state the case name and case number of this Litigation; (ii) set forth the Settlement Class Member's full name, current physical and e-mail address, (iii) contain the signature of the Objector or counsel; (iv) state that the objector objects to the settlement, in whole or in part; (v) set forth the reasons why the objector objects to the settlement along with copies of any supporting materials; (vi) set forth the identity of any attorney who assisted, provided advice, or represents the objector as to this Litigation or such objection; and (vii) state whether the objector intends to appear at the Final Approval Hearing either *pro se* or through counsel and whether the

objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

31. All proceedings in the Litigation as between Plaintiffs and Defendants are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.
32. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

Notice to be completed by: November 19, 2024.

Exclusion Deadline: December 24, 2024.


Papers in support of final approval of the settlement and the Application for Fees, Costs and Class Representative Service Award: January 8, 2025.

Objection Deadline: January 22, 2025.

Final Approval Hearing: February 3, 2025.

IT IS SO ORDERED.

Date: October 28, 2024


United States District Judge