

IN THE IOWA DISTRICT COURT OF DALLAS COUNTY

DUANE SMITH and BROOKE SMITH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MARTIN BROTHERS DISTRIBUTING COMPANY, INC., IOWA EDUCATORS CORPORATION d/b/a IOWA EDUCATORS CONSORTIUM, and THE IOWA ASSOCIATION FOR EDUCATIONAL PURCHASING,

Defendants.

Case No. **CVCV036641**

ORDER GRANTING MOTION TO APPROVE AMENDED NOTICE FORMS OF IEC SETTLEMENT AND FOR ENTRY OF PRELIMINARY APPROVAL ORDER OF IEC SETTLEMENT

WHEREAS, Plaintiffs have filed their Motion to Approve Amended Notice Forms of IEC Settlement and For Entry of Preliminary Approval Order of IEC Settlement;

WHEREAS, this Court has reviewed the motion, including the Settlement Agreement by and among the Plaintiffs, on behalf of themselves and all Class Members as defined therein, and the Iowa Educators Corporation and its successor The Iowa Association for Educational Purchasing (“the Settlement”);

WHEREAS, the Court finds good cause to grant the motion;

NOW, THEREFORE, for purposes of the Settlement only, the Court finds as follows:

1. The Settlement is fair, reasonable, and adequate;
2. The amended Summary Notice and Long-Form Notice (attached to the Martin Brothers Settlement Agreement as Exhibits B and C) comply with due process and satisfy Iowa Rules of Civil Procedure 1.266 and 1.271 because they are reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the proposed settlement; and (iii) their

rights, including the right to object to the settlement;

3. The Class is so numerous that joinder of all Class Members is impracticable;

4. There are questions of law and/or fact common to the Class;

5. Class certification is superior for purposes of implementing the Settlement to other available methods for the fair and efficient adjudication of the controversy; and

6. The representative parties will fairly and adequately protect the interests of the class.

7. An affirmative finding under Iowa Rule of Civil Procedure 1.263(1)(b) is warranted because prosecution of separate actions by members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the Iowa Educators Corporation and/or the Iowa Association for Educational Purchasing.

FURTHER, IT IS HEREBY ORDERED THAT:

1. Settlement Approval. The Settlement, including the amended notice forms attached to the Martin Brothers Settlement Agreement as Exhibits B and C, is preliminarily approved. Plaintiffs and Defendants Iowa Educators Corporation d/b/a Iowa Educators Consortium (“IEC”) and The Iowa Association for Educational Purchasing (“IAEP”) (collectively “the Parties”), are ordered to comply with the terms of the Settlement.

2. Provisional Certification. For settlement purposes only, the Class is provisionally certified as: All persons who paid for food, between January 1, 2000 and [the date of preliminary approval], at an Iowa-based school that, at the time of payment, (i) was a member of the Iowa Educators Corporation (IEC) or The Iowa Association for Educational Purchasing (IAEP), and (ii) had one or more grades from pre-kindergarten through 12th grade. Excluded from the Settlement Class are: the IEC and the IAEP and each of their respective affiliates, subsidiaries, and parents; each of the respective directors, officers, employees, legal representatives, successors, and assigns of the IEC, the IAEP, and their respective affiliates,

subsidiaries, and parents; persons who purchased for purposes of resale; Martin Brothers and each of their respective affiliates, subsidiaries, and parents; each of the respective directors, officers, employees, legal representatives, successors, and assigns of Martin Brothers, and their respective affiliates, subsidiaries, and parents; and any Judge to whom the Action is assigned and all members of his or her immediate family.

3. Class Notice. The Court approves the form, substance and requirements of the amended Short-Form and the Long-Form Notices. The form and method of notifying the Settlement Class of the Settlement and its terms and conditions as set forth in the Declaration of Alan Vasquez meet the requirements of due process and the Iowa Rules of Civil Procedure, are reasonably calculated to adequately apprise Class Members of this matter, and shall constitute due and sufficient notice to all persons and entities entitled thereto. Under no circumstances shall any Settlement Class Member be relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. Within 30 calendar days after entry of this Order, or by August 31, 2014, the Notice Administrator as specified in the Settlement shall cause the Class Notice to be disseminated as provided in the Declaration of Alan Vasquez. Class Counsel shall, at or before the Settlement Fairness Hearing, file with the Court an affidavit or declaration by a competent affiant or declarant, attesting that the Notice has been disseminated and published in accordance with this Order.

4. Motion for Final Approval of Settlement. Class Counsel shall file their Motion for Final Approval of the Settlement and any applications for attorneys' fees and expenses, and incentive awards for the Class Representatives within 60 days of this Order, or by September 30, 2014.

5. Objection to Settlement. Class members who wish to object to the Settlement shall file a written statement with the Court and serve copies on Class Counsel and Defense Counsel by October 3, 2014, which is within 67 days of entry of this Order. The Statement shall include: (a) the name, address, telephone number of the person objecting and, if represented by counsel, of his/her counsel; and (b) the identity of the student(s), the IEC-Member School which the student(s) attended, and the years of attendance. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he/she intends to appear at the Fairness Hearing, either with or without counsel. Any responses to the Statements shall be filed within 10 days thereafter, or by October 13, 2014.

6. Failure to Object to Settlement. Any Settlement Class Member who fails to file and serve timely a written objection and notice of whether he or she intends to appear at the Final Approval Hearing, as detailed in the Class Notice and Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement by appeal or other means.

7. Affirmative Finding Under Iowa Rule of Civil Procedure 1.263(1)(b). Prosecution of separate actions by members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the IEC and IAEP per the criteria in Rule 1.263(1)(b). Therefore, the Court orders an affirmative finding under Iowa Rule of Civil Procedure 1.263(1)(b).

8. No Opt-Out For Class Members Under Iowa Rule of Civil Procedure 1.267. As a result of the Court's affirmative finding under Iowa Rule of Civil Procedure 1.263(1)(b), Class Members may not elect pursuant to Iowa Rule of Civil Procedure 1.267 to be excluded from the action.

9. Appointment of Class Representative and Class Counsel. For settlement purposes only, Plaintiffs are conditionally certified as the Class Representatives to implement the

Settlement in accordance with its terms. The law firms of Hagens Berman Sobol & Shapiro LLP and Hudson, Mallaney, Shindler & Anderson, P.C. are appointed as Class Counsel. Plaintiffs and Class Counsel shall continue to fairly and adequately represent and protect the Class's interests.

10. Termination of Settlement. If the Settlement is not approved by the Court in its entirety or if the Settlement is terminated or fails to become effective in accordance with the terms of the Settlement, the Settling Parties will be restored to their respective positions in the Action as of the date of preliminary approval. In such event, the terms and provisions of the Settlement, except as otherwise stated therein, will have no further force and effect with respect to the Parties and will not be used in the Action, or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement will be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Attorney Fee and Expense Award to Settlement Class Counsel or Incentive Awards to the Plaintiffs will constitute grounds for cancellation or termination of the Settlement.

11. No Admissions. Nothing in this Order is or may be construed as an admission or concession on any point of fact or law by or against any Party.

12. Fairness Hearing. On November 4, 2014, at 1:30 p.m., this Court will hold a Fairness Hearing to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to class members.

SO ORDERED.



State of Iowa Courts

Type: OTHER ORDER

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DISTRIBUTING ET AL

So Ordered

A handwritten signature in black ink, appearing to read "Paul R. Huscher".

Paul R. Huscher, District Court Judge,
Fifth Judicial District of Iowa