

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BINA RADOSTI, *et al.*,

Plaintiffs,

v.

ENVISION EMI, LLC,

Defendant.

Civil Action No. 09-887 (CKK)

**FINAL ORDER APPROVING CLASS ACTION SETTLEMENT
AND DISMISSING CLASS ACTION WITH PREJUDICE**

(June 8, 2010)

WHEREAS, Plaintiffs and Envision EMI, LLC, have entered into a Class Action Settlement Agreement, signed by all Parties and filed with the Court on December 10, 2009, as amended by the First Amendment to Class Action Settlement Agreement, signed by the parties and filed with the Court on April 30, 2010; and

WHEREAS, the Court entered an Order dated December 17, 2009, preliminarily certifying the putative class in this Action for settlement purposes under Fed. R. Civ. P. 23(b)(3), ordering notice to potential Class Members, scheduling a Fairness Hearing and providing potential Class Members with an opportunity either to exclude themselves from the settlement class or to object to the proposed Settlement (the "Preliminary Approval Order"); and

WHEREAS, Envision provided notice of the proposed Settlement to Class Members and to the appropriate state and federal government officials under 28 U.S.C. § 1715; and

WHEREAS, the Court held a Fairness Hearing on May 25, 2010, at 11:00 a.m., to determine whether to give final approval to the proposed Settlement; and

WHEREAS, the Parties have complied with the Preliminary Approval Order and the Court is of the opinion that the Settlement Agreement is fair, adequate, and reasonable, and that it should be approved, with the exception of the administration of the potential *cy pres* fund, which the Court shall reevaluate once the amount of money in the fund is determined.

NOW THEREFORE, for the reasons stated in the accompanying Memorandum Opinion, it is, this 8th day of June, 2010, hereby **ORDERED** as follows:

1. Incorporation of Defined Terms and the Settlement Agreement. The term “Settlement Agreement” shall at all times refer to the Settlement Agreement, as amended by the First Amendment to Class Settlement Agreement. Except where otherwise noted, all capitalized terms used in this Final Order Approving Class Action Settlement and Dismissing Class Action with Prejudice (the “Final Order and Judgment”) shall have the same definitions as in the Settlement Agreement. The Settlement Agreement (and any attachments or amendments thereto) is expressly incorporated by reference into this Final Order and Judgment and made a part hereof for all purposes.

2. Jurisdiction. The Court has personal jurisdiction over the Parties and all Class Members, and has subject-matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the Settlement Class, to settle and release all claims arising out of the transactions alleged in Plaintiffs’ First Amended Class Action Complaint, and to dismiss this Action on the merits and with prejudice.

3. Final Class Certification. The Settlement Class this Court preliminarily certified in its Preliminary Approval Order is hereby finally certified for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Settlement Class consists of: (1) one parent or legal guardian of any

minor who attended one of the Conferences and who remains a minor as of the Notice date (January 7, 2010) and all other individuals who attended one of the Conferences who were at the time of the Conferences or who are as of the Notice date eighteen years of age or older, and (2) who have not prior to the date the Court certifies the Settlement Class received from Envision any refund, voucher or other compensation in settlement of a claim arising out of the Conferences. Notwithstanding the foregoing, the following Persons shall be excluded from the Class: Envision and its subsidiaries and affiliates; all Persons who, in accordance with the terms of this Agreement, properly execute and timely file during the Opt-Out Period a request for exclusion from the Settlement Class; and the judge to whom the case is assigned and any of her immediate family members. A list of those persons who have timely requested exclusion from the Class, and who therefore are not bound by this Final Order and Judgment, is attached hereto as Appendix A, which is incorporated herein and made a part hereof for all purposes.

4. Adequacy of Representation. The Court appoints Bina Radosti (on her own behalf and as next friend of Dash Radosti), Joshua Rottman, Sally Rife (on her own behalf and as next friend of Franchesca Rife), Heather Kern, Zachary Johnson Burton, and Latiana Carter to serve as Settlement Class representatives. The Court appoints James J. Pizzirusso of Hausfeld LLP and Robert F. Coleman of Coleman Law Firm to serve as Class Counsel. The appointment of Class Counsel, and the appointment of Plaintiffs as the Settlement Class representatives, is fully and finally confirmed. The Court finds that Class Counsel and Plaintiffs have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement and have satisfied the requirements of Fed. R. Civ. P. 23(a)(4).

5. Class Notice. The Court finds that the direct electronic mail and postal mail

notice in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order, and as explained in the declarations filed before the Fairness Hearing:

- a. constituted the best practicable notice to Class Members under the circumstances of this Action;
- b. were reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this Action, (ii) their right to request exclusion from the Settlement Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness or adequacy of the proposed Settlement, the adequacy of the Settlement Class' representation by Plaintiffs or Class Counsel, and/or the award of attorneys' and Class representative fees), (iv) their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and (v) the binding effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all persons who have not requested exclusion from the Settlement Class;
- c. was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice; and
- d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws.

6. Class Action Fairness Act Notice. The Court finds that Envision provided notice of the proposed Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal

government officials the required 90-day time period (pursuant to 28 U.S.C. § 1715) to comment or object to the proposed Settlement before entering this Final Order and Judgment.

7. Final Settlement Approval. The terms and provisions of the Settlement Agreement, as amended by the First Amendment to Class Action Settlement Agreement, with the exception of the provisions relating to the distribution of proceeds from the Class Settlement Scholarship Fund, are fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, the Plaintiffs and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and any other applicable law. The Court shall **HOLD IN ABEYANCE** final approval of the provisions of the Settlement Agreement relating to the administration of the Class Settlement Scholarship Fund (“CSSF”) until the amount of money in the CSSF can be determined. Subject to that limitation, the Court overrules all Class Members’ objections and approves the Settlement Agreement as fair, adequate, and reasonable. The parties’ [24] Joint Motion for Final Approval of Class Action Settlement is **GRANTED**. The Parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. Claims Procedure. Within 30 days of this Order, Envision shall send by U.S. Postal Service or electronic mail to all Class Members and Conference attendees at their last known addresses the following: (i) a copy of this Final Order and Judgment; (ii) a letter (in the form attached as Schedule B to the Settlement Agreement) advising the Class Member of the documentation (described in ¶ 11 of the Settlement Agreement, as amended) to be provided to Envision prior issuance of his or her Settlement Payment; and (iii) a verification (in the form

attached as Schedule C to the Settlement Agreement) to be completed by the Class Member and returned to Envision by the stated deadline prior to issuance of his or her Settlement Payment.

9. Claims Payments. Upon receipt of timely and accurate verifications and documentation as described above, Envision shall reasonably promptly mail to each Class Member vouchers representing his or her Settlement Payment. Within 30 days after the Claims Period, the parties shall file a Joint Status Report with the Court indicating whether the total amount of Settlement Payments is less than \$8,000,000, and if so, proposing a plan of distribution for the Class Settlement Scholarship Fund.

10. Release. The release language contained in the Settlement Agreement (including but not limited to ¶ 17 of the Settlement Agreement) is expressly incorporated herein in all respects, is effective as of the date of this Final Order and Judgment, and forever discharges the Released Parties as set forth therein.

11. Permanent Injunction. All Class Members who have not been timely excluded from the Settlement Class (by filing and serving a properly executed request for exclusion that was received by Class Counsel by February 22, 2010) are hereby permanently barred and enjoined from (a) filing, commencing, asserting, prosecuting, maintaining, pursuing, continuing, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the matters released in the Released Claims section of the Settlement Agreement (¶ 17), and (b) organizing or soliciting the participation of any Class Members in a separate class for purposes of pursuing as a purported class action

(including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit or other proceeding based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the matters released in the Released Claims section of the Settlement Agreement (§ 17). The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action and to protect and effectuate the Court's Final Order and Judgment.

12. Enforcement of Settlement. Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Settlement Agreement; nor shall anything in this Final Order and Judgment preclude Plaintiffs or Class Members from participating in the Claims Procedure described in § 11 of the Settlement Agreement (as amended) if they are entitled to do so under the terms of the Settlement Agreement.

13. Attorneys' and Class Representative's Fees and Expenses. The Settlement Agreement provides for attorneys' fees and reimbursements of costs in an amount up to \$1,455,000.00 and stipends to the Settlement Class representatives as follows: \$2,500.00 each to Bina Radosti (on her own behalf and as next friend of Dash Radosti), Joshua Rottman, Sally Rife (on her own behalf and as next friend of Franchesca Rife), Heather Kern, Zachary Johnson Burton, and Latiana Carter. The Court shall issue a separate order addressing these fees, costs, and stipend requests. Plaintiffs' [25] Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards is **HELD IN ABEYANCE**.

14. No Other Payments. The preceding paragraph of this Final Order and Judgment and any subsequent order on fees, costs, and stipends, covers, without limitation, any and all

claims for attorneys' fees and expenses, representative fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members, or incurred by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to this Action, the Settlement Agreement the administration of same, and/or the matters released in the Released Claims section of the Settlement Agreement (¶ 17), except as otherwise specified in this Final Order and Judgment or the Settlement Agreement. Any additional costs of Court are taxed against the Parties incurring same.

15. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court expressly retains exclusive and continuing jurisdiction over the Parties, including the Settlement Class, and all matters relating to the administration, consummation, validity, enforcement and interpretation of the Settlement Agreement and of this Final Order and Judgment, including, without limitation, for the purpose of:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, and/or this Final Order and Judgment (including, without limitation, whether any person is or is not a Class Member, whether claims or causes of action allegedly related to this Action are or are not barred or released by this Final Order and Judgment, and whether persons or entities are enjoined from pursuing any claims against Envision);

b. entering such additional orders, if any, as may be necessary or appropriate to protect or effectuate this Final Order and Judgment and the Settlement Agreement (including, without limitation, orders enjoining persons or entities from pursuing any claims against

Envision), or to ensure the fair and orderly administration of the Settlement Agreement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction over the Settlement Agreement, the Parties, and the Class Members.

16. No Admissions. Neither this Final Order and Judgment nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against Envision as to the validity of any claim or any actual or potential fault, wrongdoing or liability whatsoever. Additionally, neither the Settlement Agreement, nor any negotiations, actions, or proceedings related to it, shall be offered or received in evidence in any action or proceeding against Envision in any court, administrative agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Order and Judgment and the Settlement Agreement. This Final Order and Judgment and the Settlement Agreement may be filed and used by Envision or the Released Parties to seek an injunction and to support a defense of *res judicata*, collateral estoppel, estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

Certification shall be automatically vacated and this Final Order and Judgment shall become null and void if the Settlement Agreement is disapproved by any appellate court and/or any other court of review, in which event this Final Order and Judgment, the Settlement Agreement and the fact that they were entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the "certification" of any class. The

Settlement Agreement itself, actions in conformance with same, and the other documents prepared or executed by any party in negotiating or implementing the Settlement Agreement, including any of the terms of any such documents, shall not be construed as an admission, waiver or estoppel by Envision and shall not be offered in evidence in or shared with any party to any civil, criminal, administrative, or other action or proceeding without Envision's express written consent.

17. Dismissal of Action. This Action, including all individual and Settlement Class claims resolved in it, is hereby dismissed on the merits and with prejudice against Plaintiffs and all other Class Members, without fees or costs to any party except as otherwise provided in this Final Order and Judgment and in the Court's separate order regarding attorneys' fees and costs and Settlement Class representative stipends.

18. Final Judgment. This is a Final Judgment disposing of all claims and all parties.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

APPENDIX A - LIST OF OPT-OUTS EXCLUDED FROM THE CLASS

Denise Baker (on behalf of C. Brown)
Sarah Baker
William Conlon, Jr.
Connie Whitley (on behalf of Debra Whitley)
Satu Ferentz
Stephanie Fischer
Debbie Gong-Guy
Kathy Hayes (on behalf of Clarence Hayes)
Jennifer Liberator
Phillip James Martinez Cortes
Claudia M. Mendez
Nathaniel Mireles
Melissa Munoz
Mike & Kelli Poortenga
Kaitlyn Roach
Katherine Schultz
Nancie & Jeffrey Scudder
LaToya Sheals
Lindsay Sparks
Alexandra Spurway
Leonora van Rooijen
Danielle White
Patrick White
Joyce & Jose Yulo