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17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 ELIEZER WILLIAMS, a minor, by Sweetie
Williams, his guardian ad litem, *et al.*, each
21 individually and on behalf of all others
similarly situated,

22 Plaintiffs,

v.

23 STATE OF CALIFORNIA, DELAINE
EASTIN, State Superintendent of Public
24 Instruction, STATE DEPARTMENT OF
EDUCATION, STATE BOARD OF
25 EDUCATION,

26 Defendants.

No. 312236

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF
SETTLEMENT**

Hearing: Week of March 14, 2005
Time: 9 a.m.
Department: 210
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000

CLASS ACTION

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INTRODUCTION

Plaintiffs seek final approval of the settlement of this action. Plaintiffs sought to invoke the State's constitutional obligation to redress basic inequalities in the availability of instructional materials in core subjects, poor conditions and overcrowding in school facilities, and the quality of teachers in the worst California public schools. Implementing the settlement of this action, the State of California has enacted five statutes that create and fund programs on the subjects of plaintiffs' contentions. Among other new programs,

On Instructional Materials:

- The State now has a standard for "sufficient" instructional materials. The new standard is that "Each pupil, including English Learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments."
- County Superintendents of Schools have responsibility to review compliance with the instructional materials standards in the API deciles 1 - 3 schools.
- The California Department of Education is authorized to purchase instructional materials needed where those schools do not meet the State standard.
- In addition to the appropriation of \$363 million for instructional materials available to all schools, an additional appropriation of \$138.7 million for instructional materials for the bottom 20% of schools was enacted as part of the settlement.

On School Facilities:

- The State will enact a definition of "good repair" for public schools.
- School districts are required to operate programs for periodic inspections to ensure that facilities are in good repair.
- County Superintendents of Schools will be responsible for periodic inspections to ensure that schools are in good repair.
- School districts in API deciles 1 - 3 schools will receive grant monies to provide for a one-time comprehensive assessment of school facilities needs.
- The State has created a School Facilities Emergency Repair Account, authorizing the use of up to \$800 million to reimburse districts for the costs of correcting specified facilities problems that impair students health and safety in the API deciles 1 - 3 schools.
- The Concept 6 calendar, which provides 17 fewer days of instruction per year, will be phased out by 2012, during which time districts now using the calendars will increase their capacity.

On Teachers:

- The State has confirmed its commitment to meet the federal No Child Left Behind Act standard of a "highly qualified" teacher in every core class by June 2006.
- The State has enacted a new definition for teacher misassignment which clarifies that teachers must be properly authorized to teach their classes and that, in particular, teachers of English Learners must be properly trained to teach English Learners.
- County Superintendents of Schools have responsibility to investigate schools likely to have problems with misassignments, according to the new standard, giving priority to schools in API deciles 1 - 3 and to investigate school and district efforts to ensure teachers are properly trained to teach English Learners.
- The State has enacted a new standard defining unfilled teaching positions as "teacher vacancies" and requiring County Superintendents of Schools to investigate schools likely to have problems with teacher vacancies.
- Requirements for qualified out-of-state teachers to be certified in California have been revised to facilitate their certification in California.

Overall:

- Funding for the High Priority Schools Grant Program will be continued at its current level of over \$200 million, rather than being phased out as the current cohorts of participating schools complete their three-year funding cycle.
- The School Accountability Report Card will disclose information on each school's compliance with State standards on instructional materials, teacher misassignments and vacancies, and facilities conditions.
- Districts will provide complaint forms and procedures so that parents, students, and teachers can seek remedies for problems as to instructional materials, facilities, and teacher assignments.

The statute implementing the settlement have been enacted by the Legislature and signed by the Governor. No Court injunction or consent decree is involved in the settlement. Thus, approval of this settlement does not invoke the Court's equitable discretion over a remedy. Moreover, the claims of the plaintiff class are to be dismissed without prejudice but subject to a covenant not to sue during a future period. Accordingly, as the Court reviews the fairness of the settlement pursuant to Rule 1859(g) of the California Rules of Court and applicable case law, the substance of the review will focus on the fairness of subjecting the plaintiff class to the covenant not to sue, given the benefits achieved for the class. In addition, the Court must consider the

1 process used to achieve the settlement and the degree of competence and care brought to bear by
2 the representatives of the plaintiff class in reaching the settlement.

3 Plaintiffs submit that from the substantive analysis of the terms of settlement the Court
4 should conclude that the benefits provided to the class fully justify the dismissal of this action
5 without a decision on the merits and the imposition of the covenant not to sue to which we have
6 agreed. The process of settlement from which this settlement results was exemplary. After years
7 of negotiations, the new Governor convened discussions in which the plaintiffs, the State
8 education agencies, and the intervenor school districts each brought about changes to the
9 proposals, leading to a result that was so widely supported that the statutes implementing the
10 settlement were approved by a unanimous vote in the Assembly and by two-thirds of the Senate.

11 In short, both the substance of this settlement and the process that led to it establish that it
12 should be approved.

13 I. FACTUAL BACKGROUND

14 A. Procedural History

15 Nearly one hundred California schoolchildren who attended public schools with
16 substandard learning conditions filed this case on May 17, 2000. Plaintiffs brought claims against
17 the State of California, the California Board of Education, the California Department of
18 Education, and the California Superintendent of Schools (collectively “defendants”).¹ Plaintiffs’
19 Complaint included seven causes of action: (1) a claim for violation of the Equal Protection
20 Clauses of the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a); (2) a
21 claim for violation of Article IX, Sections 1 and 5 of the California Constitution (the education
22 clause and the free schools clause); (3) a claim for violation of the Due Process Clauses of the
23 California Constitution, Article I, Sections 7(a) & 15; (4) a claim for violation of Title VI of the
24 Civil Rights Act of 1964, 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(2)) (for maintaining
25 schools in a manner that has a racially discriminatory impact); (5) a claim for violation of

26
27 ¹ Plaintiffs amended their complaint on August 14, 2000. All subsequent citations herein
28 refer to the amended complaint and are cited as “Pls.’ Complaint.”

1 Education Code Section 51004; (6) a claim for violation of California Code of Civil Procedure
2 Section 526a; and (7) a claim for declaratory relief.

3 Plaintiffs' Complaint alleged:

4 The Constitution and laws of California require the State to ensure the
5 delivery of basic educational opportunities for every child in California and
6 vest the State with ultimate responsibility for the State's public elementary and
7 secondary school system. The State therefore has a nondelegable duty to
8 ensure that its statewide public education system is open on equal terms to all
9 and that no student is denied the bare essentials to obtain an opportunity to
learn. The deplorable conditions at the schools the student Plaintiffs must
attend fall fundamentally below even baseline standards for education. The
conditions enumerated here are the direct and foreseeable consequence of the
State's failure to discharge its duty; these conditions could not exist if State
officials carried out their mandate.

10 (Pls.' Complaint at 7.)

11 Plaintiffs' Complaint described the substandard conditions in which plaintiff
12 schoolchildren were being asked to learn. Plaintiffs' schools lacked basic educational tools and
13 conditions: instructional materials, safe facilities, and trained teachers. Some plaintiffs were
14 forced to attend schools on the Concept 6 calendar, under which students had 17 fewer
15 instructional days than students on a regular school calendar.

16 On September 25, 2000, the State of California filed a demurrer to plaintiffs' Complaint
17 and a motion to stay the case. The State argued that plaintiffs should be required to amend the
18 complaint to state precisely what "the State ha[d] done wrong" and what precisely it "should be
19 required to do in the future." (State's Mem. Supp. Dem. at 4.) The State also argued that
20 plaintiffs should be required to exhaust all administrative remedies before proceeding with the
21 lawsuit. (*Id.* at 5.)

22 The Court denied the State's demurrer and motion to stay on November 14, 2000. The
23 Court found that plaintiffs need not exhaust administrative remedies because such remedies were
24 not capable of addressing the violations that plaintiffs' attacked: that the State "does not have the
25 legally required oversight and management systems in place" to address substandard school
26 conditions. (Order at 2.) The Court stated:

27 [A]s plaintiffs represented to the Court at the hearing on the demurrer, this case
28 is exclusively about the State's system of oversight and that system's alleged

1 inadequacies and failures. The lawsuit is aimed at ensuring a system that will
2 either prevent or discover and correct such deficiencies going forward. The
3 specific deficiencies that take up so much of the Complaint are evidence of an
4 alleged breakdown in the State's management of its oversight responsibilities.
5 As such, they are the result, rather than the fact, of the allegedly
unconstitutional behavior – the consequential injury, rather than the violation.
Plaintiffs' representation, to which the Court will hold plaintiffs, has and will
have ramifications to all stages of the case, including pleading, class
certification, motion practice, trial, and remedies.

6 (*Id.*) The Court further found that plaintiffs had met the pleading requirements by alleging that
7 "the State is responsible for maintaining an educational system meeting the necessary minimum
8 standards, that it has failed to do so because its oversight and management systems are non-
9 existent or inadequate, and that the alleged educational inadequacies result from the State's
10 failure." (*Id.* at 3.)

11 On December 11, 2000, the State of California brought a cross-complaint against the 18
12 districts from which the Amended Complaint identified schools as examples of the defendants'
13 constitutional and statutory violations. The State reiterated nearly all of the factual allegations in
14 plaintiffs' Amended Complaint. The State then alleged that it has a direct interest in ensuring that
15 the districts comply with their duties and obligations since it may be required to act where the
16 districts have failed. (*See, e.g.*, Cross-Complaint at 16-17.) For each school addressed in the
17 complaint, the State alleged that if the conditions in fact exist as described by plaintiffs and result
18 in depriving students of basic educational opportunities equal to those received by children in
19 other schools, then the district has violated its duties and obligations under applicable statutes and
20 regulations and under the California Constitution. (*See, e.g., id.* at 17.) The State further alleged
21 that the districts had "the power and ability to correct each of the conditions of which plaintiffs
22 complain" and that the districts have a mandatory duty to correct conditions that deprive students
23 of "basic educational opportunities equal to those received by children in other schools." (*Id.* at
24 18.)

25 In response to the State's cross-complaint, eleven school districts moved to sever the
26 cross-complaint and stay the proceedings against the cross-defendants. The districts contended
27 that plaintiffs' Amended Complaint "involves the relatively narrow issue of whether the State has
28

1 failed to implement a constitutionally adequate process to oversee its education system.”
2 (Districts’ Mem. Supp. Mot. Sever at 2.)

3 The Court granted the districts’ and plaintiffs’ motion severing and staying the cross-
4 complaint. The Court found that the cross-complaint “raises separate and distinct issues and
5 seeks relief different in kind, quality, and scope from plaintiffs’ First Amended Complaint.”
6 (May 31, 2001 Order Granting Mots. Sever Stay Proceedings at 2.) Subsequently, the Court
7 granted motions to intervene by Los Angeles Unified School District, Long Beach School
8 District, and the California School Boards Association.²

9 On January 16, 2001, the State filed a motion for judgment on the pleadings as to
10 plaintiffs’ fifth cause of action for a violation of California Education Code § 51004. The State
11 alleged that this statute did not provide plaintiffs with a private right of action. Although
12 plaintiffs believed that a good faith argument could be made to assert a private right of action
13 pursuant to California Education Code § 51004, they did not oppose the motion. Plaintiffs’
14 decision not to oppose was based on the fact that a judgment on the fifth cause of action would
15 not have affected the remedy sought in any significant manner. Accordingly, plaintiffs believed
16 that, in the interests of judicial economy, no further adjudication of this issue was warranted.
17 Plaintiffs’ complaint was amended so as to withdraw the fifth cause of action for violation of
18 Education Code § 51004.

19 Concurrent with the State’s motion regarding plaintiffs’ fifth cause of action, the State
20 filed a motion for judgment on the pleadings as to plaintiffs’ sixth cause of action for violation of
21 California Code of Civil Procedure Section 526a. The State alleged that it was not subject to suit
22 under §526a and that the allegations contained in plaintiffs’ First Amended Complaint were
23 insufficient to state a cause of action under §526a. On February 8, 2001, the Court granted
24 defendants’ motion and dismissed plaintiffs’ sixth cause of action, but made clear that the motion
25 did not address the issue of whether the taxpayer plaintiffs in the lawsuit, Joscelyn McCauley and
26

27 ² The Court later granted San Francisco Unified School District’s motion to intervene.
28

1 Bichnoc Cao have standing. The standing of Joscelyn McCauley and Bichnoc Cao to bring
2 claims as taxpayers has not been challenged.

3 Plaintiffs filed their motion for class certification on March 23, 2001 and designated 15
4 class representatives. The class representatives attended schools in the Los Angeles,
5 San Francisco, Oakland, Ravenswood, Merced and Watsonville school districts. After extensive
6 briefing, discovery (including the depositions of the class representatives), and presentation of
7 evidence, the Court certified the case as a class action on October 1, 2001. (Order Granting Mot.
8 Certify Class.) The class was defined as:

9 All students who are attending or will attend public elementary, middle or secondary
10 schools in California who suffer from one or more deprivations of basic educational
necessities. The specific deprivations are as follows:

11 A) a lack of instructional materials such that the student does not have his or her own
12 reasonably current textbook or educational materials, in useable condition, in each core
subject (1) to use in class without sharing with another student; or (2) to use at home each
evening for homework;

13 B) a lack of qualified teachers such that (1) the student attends a class or classes for which
14 no permanent teacher is assigned; or (2) the student attends a school in which more than
20% of teachers do not have full, non-emergency teaching credentials; or (3) the student is
15 an English Language Learner ("ELL") and is assigned a teacher who has not been
specially qualified by the State to teach ELL students;

16 C) inadequate, unsafe and unhealthful school facilities such that (1) the student attends
17 classes in one or more rooms in which the temperature falls outside the 65-80 degrees
Fahrenheit range; or (2) the student attends classes in one or more rooms in which the
18 ambient or external noise levels regularly impede verbal communication between students
and teachers; or (3) there are insufficient numbers of clean, stocked and functioning toilets
19 and bathrooms; or (4) there are unsanitary and unhealthful conditions, including the
presence of vermin, mildew or rotting organic material;

20 D) a lack of educational resources such that (1) the school offers academic courses and
21 extracurricular offerings in which the student cannot participate without paying a fee or
obtaining a fee waiver; or (2) the school does not provide the student with access to
22 research materials necessary to satisfy course instruction, such as a library or the Internet;
or

23 E) overcrowded schools such that (1) the student is subject to a year-round, multi-track
24 schedule that provides for fewer days of annual instruction than schools on a traditional
calendar provide; or (2) the student is bused excessive distances from his or her
25 neighborhood school; or (3) the student attends classes in one or more rooms that are so
overcrowded that there are insufficient seats for each enrolled student to have his or her
26 own seat or where the average square footage per student is less than 25 square feet.

27 (Pls.' Mem. P. & A. Supp. Mot. Class Certification at 3-4.) In its order granting the motion, the
28 Court found that plaintiffs sought "generalized equitable relief at the state level," not "relief

1 specific to particular students, schools, or school districts.” (Order Granting Mot. Certify Class
2 at 1.) The Court found that if “Plaintiffs’ theory is correct and the Plaintiffs’ proof sufficient, any
3 relief would direct changes at the state level that would presumably require changes of some sort
4 to the way the State manages education generally.” (*Id.* at 3.) Accordingly, “relief would
5 necessarily flow to absent putative class members.” (*Id.*) The Court further found that while
6 class certification was not necessary to fashion or enforce a remedy, benefits would accrue from
7 class certification, including avoiding the risk of duplicative actions, removing the risk of
8 mootness, and protecting the State from successive suits by binding absent class members to the
9 result of the case. (*Id.*) Subsequently, plaintiffs filed voluntary dismissals of individual plaintiff
10 claims given that such plaintiffs were now members of the class. (*See* Pls.’ Mem. P. & A. Supp.
11 Mot. Voluntary Dismissals Without Prejudice, filed October 16, 2001.)

12 On January 15, 2002, the State filed a motion for summary adjudication of no duty to
13 police or monitor district fees. The State alleged that “no agency or official of the State owes any
14 plaintiff a duty to police or monitor the fees charged by school districts.” (State’s Mem. P. & A.
15 Supp. Mot. Summ. Adjudication No Duty to Police or Monitor District Fees at 1.) Following a
16 seven-month stay of the litigation, plaintiffs moved for dismissal of plaintiffs’ claim that
17 defendants had failed to take effective measures to address fees charged in California schools in
18 violation of Article IX, section 5 of the California Constitution (the “Free and Common Schools
19 Clause”) (a component of plaintiffs’ Second Cause of Action). Plaintiffs’ decision to dismiss the
20 fees claim was based on an interest in streamlining the case by focusing on the claims that go to
21 the core of the remedies sought. The Court affirmed plaintiffs’ dismissal of this claim without
22 prejudice. In light of this dismissal, the State withdrew its motion for summary adjudication of
23 no duty to police or monitor district fees.

24 On November 25, 2002, plaintiffs also moved to dismiss plaintiffs’ Title VI claim
25 (plaintiffs’ Fourth Cause of Action). Plaintiffs moved to dismiss this claim in light of the United
26 States Supreme Court’s ruling indicating that there is no private right of action under Title VI
27 with respect to regulations that forbid funding recipients from relying on criteria that have a
28 discriminatory effect. *See Alexander v. Sandoval*, 532 U.S. 275 (2001). The *Sandoval* case thus

1 appeared to limit plaintiffs' chance for success under this claim. Subsequently, plaintiffs moved
2 for leave to add a cause of action under the recently amended California analog to Title VI,
3 Government Code § 11135, which provides a private right of action against the State or a State
4 agency that carries out programs or activities that have a racially discriminatory impact. Since
5 the filing of plaintiffs' complaint, this statute had been amended to explicitly recognize that
6 administrative exhaustion is not required. The Court denied plaintiffs' motion finding that "to
7 add this claim into the case at this point would substantially delay getting to trial in this case."
8 (May 1, 2003 hearing transcript at 28:6-7.)

9 On May 5, 2003, the State filed its motion for judgment on the pleadings as to the second
10 cause of action. The State alleged that article IX, § 1 and § 5 of the California Constitution was
11 not governed by *Butt v. State*, was not self-executing, and did not create a right to "basic
12 educational equality." (State's Mem. Supp. Mot. J. on Pleadings as to Second Cause of Action at
13 1-2.) On July 10, 2003, the Court granted the State's motion finding that plaintiffs had not stated
14 a cause of action given that the thrust of plaintiffs' claim was that the "State's failure adequately
15 to oversee and manage California's public system of public education deprives Plaintiffs of their
16 rights under Article IX, Sections 1 and 5." (Order Granting Mot. J. on Pleadings as to Second
17 Cause of Action at 1.) The Court stated:

18 [T]he violation alleged in this case is limited to the failure of the State's system
19 of oversight and management of public education. Plaintiffs specifically
20 eschewed a challenge based on the specific failings of particular schools and
21 districts to provide education necessities, perhaps recognizing the risk that such
22 a suit might have had to give way, at least in the first instance, to available
23 administrative remedies. Thus, this is not a case to require any particular level,
24 kind, or quality of teachers, facilities, or textbooks to be provided to the
25 Plaintiffs. Nor does it address the level of funding for education provided
26 generally in the state or particularly for the Plaintiffs. The narrow focus on the
27 state's oversight and management of public education distinguishes this case
28 from the other cases decided under California's constitution and from the
various out-of-state cases decided under arguably similar constitutional
provisions that plaintiffs have cited. This Court need not decide the broad
question whether Section 5 creates a 'substantive actionable right to education'
(Plaintiffs' Opposition at 1) nor the more specific question whether students
could rely on Section 5 to argue that the constitution requires they receive
better teachers, facilities, or textbooks. This Court need only decide whether
plaintiffs have stated a cause of action and may sue under this provision to
redress the alleged deficiencies in the State's system of oversight and
management.

1 *(Id. at 4.)*

2 On June 10, 2003, plaintiffs filed a motion for summary adjudication of state's duty to
3 ensure equal access to instructional materials.³ The Court denied a summary judgment on the
4 issue, concluding that "the Court has determined there are material factual issues in dispute."
5 (Order Re Motion for Summary Adjudication of the State's Duty to Ensure Equal Access to
6 Instructional Materials and Motion Re Precedence of Issues at 1.)

7 As discussed in detail above, both sides have filed numerous dispositive motions in an
8 attempt to narrow and define the legal issues in the case. As a result of the State's dispositive
9 motions and plaintiffs' voluntary dismissal of various claims, at the time plaintiffs began the most
10 recent round of negotiations, plaintiffs' active claims were: plaintiffs' first cause of action for
11 violation of the Equal Protection Clauses of the California Constitution, plaintiffs' third cause of
12 action for violation of the Due Process Clauses of the California Constitution⁴, and plaintiffs'
13 seventh cause of action for declaratory relief.

14 Over the past four years of litigation, the parties have also engaged in extensive discovery.
15 Nearly one hundred and fifty witnesses testified in depositions, over one thousand document
16 requests have been propounded resulting in production of nearly 800,000 pages of documents,
17 and nearly two thousand interrogatories have been served. Plaintiffs and defendants have also
18 conducted extensive expert discovery involving more than 30 expert witnesses.

19 **B. Settlement Process**

20 On October 22, 2001, the Court ordered the parties to engage in settlement negotiations,
21 recommending that the Honorable Patrick J. Mahoney act as mediator. (Pretrial Scheduling
22 Order.) Judge Mahoney held mediation sessions on December 17, 2001, January 3, 2002,

23 _____
24 ³ Plaintiffs subsequently filed similar motions relating to facilities and instructional days,
25 but these motions were taken off calendar following the Court's Order regarding the instructional
26 materials motion.

27 ⁴ During a brief gap during the time the case was stayed, the State filed a Motion for
28 Judgment on the Pleadings as to the Third Cause of Action. This motion was taken off calendar
29 when the stay resumed and was never heard by the Court.

1 January 16, 2002, January 26, 2002, and January 31, 2002. (Londen Decl. at ¶ 2.) During these
2 sessions, lead counsel for the parties were present and negotiations generally lasted the entire day.
3 (*Id.*) When it appeared that progress toward settlement was possible, the parties agreed to stay
4 the litigation. (*Id.*)

5 On February 1, 2002, the Court ordered a stay of the litigation to allow the parties an
6 opportunity to focus exclusively on mediation. (*Id.* at ¶ 3.) Over the following seven months, the
7 parties continued to attend mediation sessions with Judge Mahoney. (*Id.*) The parties met on:
8 February 22, 2002, March 1, 2002, April 8, 2002, April 17, 2002, May 20, 2002, June 24, 2002,
9 July 12, 2002, August 9, 2002, and August 29, 2002. (*Id.*) The parties negotiated vigorously,
10 prepared lengthy submissions to the mediator responding to his questions, and exchanged
11 multiple settlement proposals. (*Id.*) The parties also held many discussions regarding settlement
12 among the entire group and among subsets of the group. (*Id.*) Ultimately, however, the parties
13 were unable to reach agreement on settlement and decided to return to litigation in October, 2002.
14 (*Id.*)

15 While litigation continued at a fast pace, the parties agreed to continue mediation
16 discussions with Judge Mahoney in the Spring of 2003. (*Id.* at ¶ 4.) Judge Mahoney held
17 mediation sessions with the parties on March 3, 2003, June 2, 2003, June 18, 2003, August 1,
18 2003, and September 5, 2003. (*Id.*) In addition to the in-person meetings, the parties also
19 engaged in extensive telephonic meetings both among the entire group and among subsets of the
20 group whom Judge Mahoney brought together. (*Id.*)

21 When Governor Arnold Schwarzenegger was voted into office, the parties postponed
22 pending settlement discussions until the new administration had an opportunity to review the
23 substance and status of the litigation. (*Id.*) On November 24, 2003, at the request of the parties,
24 the Court ordered another stay of the litigation again to focus on settlement. (*Id.*) With the
25 approval of Judge Mahoney, plaintiffs accepted the invitation of the Office of Governor
26 Schwarzenegger to negotiate directly. (*Id.* at ¶ 5.)

27 From the start, the new administration approached settlement discussions as an
28 opportunity to deal with problems in public education. (*Id.*) During the discussions, the

1 administration's team included senior officials in the Office of the Governor with regular direct
2 supervision by Governor Schwarzenegger himself. (*Id.*) In May 2004, the Governor's Legal
3 Affairs Secretary notified counsel for the parties that these discussions had progressed to the point
4 where an agreement to resolve the litigation was possible and within reach. (*Id.* at ¶ 6.) His letter
5 set forth Governor Schwarzenegger's principles of educational reform, which the parties agreed
6 would form the basis for legislative solutions to specific problems facing California schools. (*Id.*)
7 Throughout May and June, the parties held settlement meetings in which they continued to
8 discuss various proposals that would further the Governor's principles. (*Id.*)

9 On June 30, 2004, counsel for all parties appeared before this Court for a status
10 conference regarding the parties' efforts to settle this case. (*Id.* at ¶ 7.) The parties reported on
11 their work together to draft proposals for legislation on the substantive issues raised by plaintiffs'
12 case. (*Id.*) The parties further reported that, on several issues, the proposals had reached the
13 stage that plaintiffs' counsel could recommend to the plaintiff class representatives that the
14 proposals should be the basis for a settlement. (*Id.*)

15 The parties continued to negotiate after the status conference, meeting many times and
16 circulating numerous drafts. (*Id.* at ¶ 8.) Settlement negotiations were attended by lead counsel,
17 negotiations were vigorous, and proposals were thoroughly analyzed and debated. (*Id.*) Counsel
18 for all parties worked hard to advocate for their clients' positions on how best to improve
19 California's schools. (*Id.*) In late July, the State's counsel presented the parties with the State's
20 final proposal for settling the case. (*Id.*) This proposal provides benefits to the class that far
21 exceed those to which the State had agreed previously. (*Id.*) The intervenors' advocacy for
22 increased funding to support education reform substantially benefited the class. (*Id.*) In addition,
23 LAUSD, in particular, has committed significant effort and resources to expanding its facilities
24 capacity in order to phase out the use of Concept 6. (*Id.*)

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1 In late July and August, counsel for plaintiffs spoke with eleven of the thirteen class
2 representatives about the parties' Settlement Agreement.⁵ (*Id.* at ¶ 9, 10.) Counsel explained the
3 settlement terms and the settlement process, and discussed why they believed the settlement to be
4 a fair and reasonable resolution of the case. (*Id.*) All of these class representatives approved the
5 proposed settlement and authorized plaintiffs' counsel to move forward with the proposed
6 agreement. (*Id.*)

7 C. Terms of the Settlement

8 On August 13, 2004, the parties reached agreement on the terms of the proposed
9 settlement. (*Id.* at 11.) The Settlement Agreement provided for a package of legislative
10 proposals aimed at ensuring that all students will have books in specified subjects and that their
11 schools will be clean and in safe condition, and that they will have improved access to qualified
12 teachers. (*Id.*) (Attached as Exh. A to the Londen Decl. are the Settlement Implementation
13 Agreement, Covenant Not to Sue and Provision Regarding Attorneys Fees.)

14 On August 17, 23, and 24, 2004, the California Legislature's Joint Committee to Develop
15 a Master Plan heard testimony regarding the package of legislative proposals. (*Id.* at 12.) On
16 August 24, 2004, four of the bills in the legislative package were proposed; the fifth bill was
17 proposed on August 27, 2004. (*Id.*) The Legislature passed all five bills in the legislative
18 package on August 27, 2004. (*Id.*)

19 On September 29, 2004, Governor Schwarzenegger signed laws implementing the
20 legislative proposals set forth in the parties' Settlement Agreement. (*See* 9/29/04 Press Release

21 ⁵ Plaintiffs' counsel have discussed settlement with Cindy Diego; Lizette Ruiz; the
22 guardians for Moises Canel; the guardian for Krystal Ruiz; Manuel Ortiz and his guardian; the
23 guardian for Carlos and Richard Ramirez; D'Andre Lampkin, Delwin Lampkin, and their
24 guardian; and the guardian for Samuel and Jonathan Tellechea. (Londen Decl. at ¶ 9.) Plaintiffs'
25 counsel have been unable to schedule meetings with Silas Moultrie despite repeated attempts and
26 letters sent to his last known address. (*Id.* at ¶ 10.) As mentioned in plaintiffs' Notice of
27 Settlement, plaintiffs' counsel has been informed by the guardian for Carlos Santos, Marcelino
28 Lopez, that he does not feel comfortable discussing the details of the Settlement Agreement
because he is now a member of the Ravenswood District school board, and lawyers for the district
have advised him that there is an appearance of a conflict. (*Id.*) Mr. Lopez has stated that he
trusts that counsel will do what is right for the class and approves of settlement. (*Id.*)

1 from the Office of the Governor, *Governor Schwarzenegger Signs Landmark Education Reforms*
2 *Into Law* attached as Exh. B to Londen Decl.) The education laws included:

- 3 • SB 550 & AB 2727 (establishing minimum standards regarding school facilities,
4 teacher quality, and instructional materials and an accountability system to enforce
5 these standards);
- 6 • AB 1550 (phasing out the use of the Concept 6 calendar by July 1, 2012 and setting
7 benchmarks for districts to reach this goal);
- 8 • AB 3001 (encouraging placement of qualified teachers in low performing schools,
9 enhancing an existing oversight mechanism to ensure that teachers are qualified to
10 teach the subject matter to which they have been assigned and qualified to teach
11 English learners; and streamlining the process for teachers from out-of-state to teach
12 in California schools); and
- 13 • SB 6 (providing up to \$800 million beginning in the 2005-06 fiscal year for districts to
14 address emergent facility repair projects and approximately \$25 million in 2004-05 to
15 assess the condition of schools in the bottom three deciles).

16 (*Id.*; see also SB 550 & AB 2727, AB 1550, AB 3001, and SB 6 attached as Exhs. C - G to
17 Londen Decl.⁶)

18 The settlement includes a covenant not to sue under which members of the plaintiff class
19 may not initiate new suits against defendants based on the claims pursued in this litigation.⁷ The
20 covenant not to sue will be in effect for four years from the date of approval of the settlement,
21 except that the covenant not to sue extends through September 30, 2006, for claims of
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25 ⁶ All bills are from the 2003-2004 Session of the California Legislature and are referred to
26 by their short forms of SB 550, SB 2727, AB 1550, AB 3001 and SB 6.

27 ⁷ The Covenant Not to Sue expressly disclaims coverage of claims based on denial of high
28 school graduation based on results of the California High School Exit Examination.

1 constitutional violations regarding deficiencies in the quality of teachers.⁸ As is discussed further
2 below, the shorter period for the covenant not to sue as to claims regarding teachers reflects the
3 Federal deadline for compliance with provisions of the No Child Left Behind Act as to teacher
4 quality.

5 The 2004-05 State budget includes funding for some of the financial terms of the
6 settlement by including \$138.7 million for new instructional materials in decile 1-2 schools and
7 approximately \$50 million to implement other settlement goals. (Londen Decl. at ¶ 15.) The
8 budget also maintains the instructional materials categorical program, with funding for this year
9 of \$363 million before the addition of the new instructional materials funding for decile 1 and 2
10 schools. (*Id.*)

11 D. Preliminary Approval

12 On August 23, 2004, the Court preliminarily approved the parties' Settlement Agreement.
13 (Order re Proposed Settlement at 1.) The Court ordered plaintiffs to submit a motion for approval
14 of the content, form, and manner of giving notice to the class once the legislative proposals set
15 forth in the Settlement Agreement were enacted into law. (*Id.* at 1.) The Court further ordered
16 plaintiffs to prepare a schedule for submission of comments on the Settlement Agreement by
17 class members and the parties and a final approval hearing.

18 Following the enactment of the legislation discussed above, plaintiffs submitted a Motion
19 for Approval of Class Notice and Schedule. Plaintiffs await the Court's approval of the proposed
20 notice.

21 II. THE PROPOSED SETTLEMENT IS FAIR AND 22 DESERVES APPROVAL.

23 The final approval of a class action settlement is a matter within the broad discretion of
24 the trial court based upon the circumstances of the case. *Dunk v. Ford Motor Co.*, 48 Cal.
25 App. 4th 1794, 1801 (1996) (citation omitted). Courts are guided, however, by the judicial policy

26 ⁸ This earlier end date for the covenant not to sue does not apply to claims about the
27 quality of teachers in rural schools for which the No Child Left Behind Act provides an extended
28 compliance deadline.

1 favoring settlements. *See Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1607-08 (1991).
2 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution . . .
3 especially . . . in complex class action litigation.” *Officers for Justice v. Civil Serv. Comm’n*,
4 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983).

5 The Court’s role in reviewing a class action settlement is “limited to the extent necessary
6 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
7 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
8 reasonable and adequate to all concerned.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801
9 (citation omitted). In making this determination, the court should consider relevant factors,
10 including “the strength of plaintiffs’ case”; “the risk, expense, complexity and likely duration of
11 further litigation”; “the amount offered in settlement”; “the extent of discovery completed and the
12 stage of the proceedings”; “the experience and views of counsel”; and “the reaction of class
13 members to the proposed settlement.” *Id.* at 1801. Furthermore, courts have found that a
14 presumption of fairness exists where “(1) the settlement is reached through arm’s-length
15 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
16 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
17 small.” *Id.* at 1802 (citation omitted). As explained below, consideration of these factors weighs
18 strongly in favor of final approval of the settlement in this case.

19 **A. The Settlement Benefits the Class.**

20 This settlement should be approved because it favorably resolves the case. The settlement
21 benefits the class both by providing for improvements in their schools and by providing
22 additional funding. Class members will benefit from new standards requiring provision of
23 instructional materials, setting a floor for quality of school facilities, and relating to teacher
24 training, as well as from the elimination of the Concept 6 calendar. Class members will also
25 benefit from new accountability mechanisms and complaint procedures to encourage compliance
26 with the standards. In addition, approximately \$1 billion will be available to address the systemic
27 problems raised in the lawsuit. These settlement terms compare favorably with the theory of
28 liability on which plaintiffs based the suit.

1 The lawsuit was premised principally on the theory that the State’s “ultimate
2 responsibility” for education, as recognized in more than a hundred years of decisions from
3 California state courts⁹ and most directly reaffirmed in *Butt v. State*, 4 Cal. 4th 668, 681, 684
4 (1992), includes responsibility to ensure equal access to basic tools and conditions for learning,
5 including provision of instructional materials, decent school facilities, and trained teachers, for all
6 California public school students. (Pls.’ Complaint at 7-12; Pls.’ Liability Disclosure Statement
7 at 1, 26-27.) Plaintiffs argued, therefore, that the State has a duty to intervene to ensure provision
8 to each public school student of, at least: (1) textbooks or other instructional materials to use in
9 class and at home for homework, (2) school facilities that are not crowded and that are clean and
10 safe, and (3) trained teachers. (Pls.’ Complaint at 7-12, 67-69; Pls.’ Liability Disclosure
11 Statement at 26-32.)¹⁰ Plaintiffs criticized the existing oversight structure for public education for
12 failing to assess students’ access to these critical tools and conditions for learning and for failing
13

14 ⁹ See *Salazar v. Eastin*, 9 Cal. 4th 836, 858 (1995) (“the state has ultimate responsibility
15 for the constitutional operation of its schools”); *Kennedy v. Miller*, 97 Cal. 429, 431 (1893)
16 (“Article IX of the constitution makes education and the management and control of the public
17 schools a matter of state care and supervision.”); see also *San Francisco Unified Sch. Dist. v.*
18 *Johnson*, 3 Cal. 3d 937, 951 (1971) (“Education, including the assignment of pupils to schools, is
19 plainly a state function.”); *Hall v. City of Taft*, 47 Cal. 2d 177, 181 (1956) (“[t]he public school
20 system is of statewide supervision and concern”); *Piper v. Big Pine Sch. Dist.*, 193 Cal. 664, 669
21 (1924) (Public schooling “is in a sense exclusively the function of the state which cannot be
22 delegated to any other agency. The education of the children of the state is an obligation which
23 the state took over to itself by the adoption of the constitution.”); *City of El Monte v. Comm’n on*
24 *State Mandates*, 83 Cal. App. 4th 266, 278-279 (2000) (“[E]ducation is the ultimate responsibility
25 of the state. The principle is undeniable”); *Cal. Teachers Ass’n. v. Hayes*, 5 Cal. App. 4th
26 1513, 1534 (1992) (“In this state, education is a matter of statewide rather than local or municipal
27 concern.”); *Johnson v. San Diego Unified Sch. Dist.*, 217 Cal. App. 3d 692, 698 (1990) (same);
28 *Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal. App. 3d 871, 903 (1979) (“[I]t is clear that in
California, . . . the responsibility for furnishing constitutionally equal educational opportunities to
the youth of the state is with the state, not solely in the local entities it has created.”).

24 ¹⁰ See also Pls.’ Mem. P. & A. Supp. Mot. Summ Adjudication of State’s Duty to Ensure
25 Equal Access to Instructional Materials (hereinafter “Pls.’ Mem. P. & A. Supp. Mot.
26 Textbooks”), Pls.’ Mem. P. & A. Supp. Mot. Summ. Adjudication of State’s Duty to Ensure
27 Equal Access to Decent School Facilities (hereinafter “Pls.’ Mem. P. & A. Supp. Mot.
28 Facilities”), Pls.’ Mem. P. & A. Supp. Mot. Summ. Adjudication of State’s Duty to Ensure Equal
Access to Instructional Days (hereinafter “Pls.’ Mem. P. & A. Supp. Mot. Concept 6”).

1 to rectify deprivations when those deprivations occurred. (Pls.' Liability Disclosure Statement at
2 234-324; Pls.' Mem. P. & A. Supp. Mot. Textbooks at 19-23; Pls.' Mem. P. & A. Supp. Mot.
3 Facilities at 55-59.)

4 Regarding instructional materials, plaintiffs charged that Education Code § 60119, which
5 required district governing boards to hold a hearing once a year and notify classroom teachers and
6 the public if the governing board determines that schools have "insufficient textbooks or
7 instructional materials," was constitutionally deficient because the statute did not define textbook
8 sufficiency, did not provide a mechanism for ensuring that textbook insufficiency problems be
9 solved, and allowed textbook shortages to languish unremedied for two years. (Pls.' Liability
10 Disclosure Statement at 260-65; Pls.' Mem. P. & A. Supp. Mot. Textbooks at 20-21.)

11 Regarding school facilities and overcrowding, plaintiffs charged that the State lacked
12 minimum standards for facilities maintenance and failed to monitor and collect data regarding
13 facilities needs in schools. (Pls.' Liability Disclosure Statement at 285-90; Pls.' Mem. P. & A.
14 Supp. Mot. Facilities at 55-57.) In addition, plaintiffs criticized the State system of funding
15 school facilities needs for failing to provide sufficient funds to satisfy needs, for failing to target
16 those funds it does provide to schools with greatest need, and for failing to monitor how funds are
17 used and whether facilities maintenance repairs are completed. (Pls.' Mem. P. & A. Supp. Mot.
18 Facilities at 57-58.) Plaintiffs charged that the State failed to account for local mismanagement or
19 failure, instead providing facilities dollars on the basis of district success in completing
20 applications for funds rather than on the basis of need. (Pls.' Mem. P. & A. Supp. Mot. Facilities
21 at 58-59.) Finally, plaintiffs charged that the State actively encouraged districts' use of the
22 educationally detrimental Concept 6 multitrack, year-round calendar that shortens the school year
23 by 17 days and operates in severely overcrowded schools. (Pls.' Mem. P. & A. Supp. Mot.
24 Concept 6 at 27-28.)

25 Regarding teachers, plaintiffs charged that, although the State has had notice at least since
26 1977 that students have suffered dramatically unequal access to fully credentialed teachers and,
27 similarly, has for decades been aware that English Language Learners lack access to teachers who
28 train them, the State nonetheless has not developed an oversight system that could prevent,

1 correct, or compensate for those inequalities. (Pls.' Liability Disclosure Statement at 46, 236.)
2 Plaintiffs criticized the State for not having set standards regarding distribution of qualified
3 teachers, for not having taken sufficient steps to recruit and retain trained teachers, including
4 teachers of English Learners, for creating unnecessarily onerous requirements for out-of-state
5 teachers to obtain teaching credentials in California, and for permitting the use of
6 undercredentialed teachers to become the norm in many schools and districts. (Pls.' Liability
7 Disclosure Statement at 236-258.)

8 For all three content areas, plaintiffs charged that existing systems for reviewing schools
9 did not require review of the availability of textbooks, teacher qualifications, or facilities quality.
10 (Pls.' Mem. P. & A. Supp. Mot. Textbooks at 21-22.) Likewise, plaintiffs criticized the
11 statutorily required School Accountability Report Cards for not including requirements that
12 schools report on the availability of textbooks, teacher qualifications, or facilities quality. (*See*,
13 *e.g.*, Pls.' Mem. P. & A. Supp. Mot. Textbooks at 21; Pls.' Liability Disclosure Statement at 265.)

14 **1. The Settlement Terms Address the Subjects of Plaintiffs'**
15 **Contentions.**

16 The terms of the settlement resolve many of the critical oversight failures plaintiffs
17 identified in the litigation and represent a fair compromise of the suit. Whereas plaintiffs
18 complained that the State failed to take ultimate responsibility for ensuring fundamentally equal
19 access to basic educational tools and conditions, the settlement provides a statewide system of
20 standards regarding these basic educational tools and conditions, monitoring for satisfaction of
21 those standards, and targeted intervention, focused primarily on the lowest-performing schools, to
22 correct failure to satisfy the standards.

23 **a. Under the Settlement Legislation There Will Be State**
24 **Standards for Educational Conditions.**

25 Specifically, the implementing legislation sets specific minimum standards for school
26 facilities and for provision of textbooks and instructional materials. Senate Bill 550 provides a
27 new statutory definition of "good repair" for school facilities that requires that "the facility is
28 maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to
an interim evaluation instrument developed by the Office of Public School Construction" and that

1 that instrument must be developed by January 25, 2005. (SB 550, § 3.) In addition, SB 550
2 requires that by September 1, 2006, “the Legislature and Governor shall, by statute, determine the
3 state standard [for good repair of school facilities] that shall apply for subsequent fiscal years.”
4 (SB 550, § 3.) Likewise, SB 550 defines “sufficient textbooks or instructional materials” to mean
5 that “each pupil, including English learners, has a textbook or instructional materials, or both, to
6 use in class and to take home to complete required homework assignments.” (SB 550, § 18.)

7 The defendants were not willing to adopt plaintiffs’ proposal that there should be a ceiling
8 on the percentage of teachers in any school who lack full credentials. Defendants argued that the
9 requirements of the federal No Child Left Behind Act that every teacher be highly qualified and
10 compliance with those requirements, in accordance with the federal deadline, by the end of 2006,
11 is sufficient. (Londen Decl. at ¶ 16.) The State has enacted new definitions for teacher
12 “misassignments” and “teacher vacancies” which will help to ensure that teachers are properly
13 trained to teach their subject matter and to teach English Learners, and which will work to limit
14 the practice of creating classes without a permanent teacher assigned. (*Id.*)

15 **b. The Settlement Legislation Enhances Oversight to**
16 **Prevent or Detect and Correct Educational Inequalities.**

17 The settlement legislation provides for multiple levels of oversight to ensure compliance
18 with those standards. The legislation requires that each classroom contain a notice articulating
19 students’ right to sufficient instructional materials and to schools that are safe and clean and
20 where to obtain a form to file a complaint if necessary. (SB 550, § 12 and AB 2727, § 1). The
21 legislation also requires that each school district hold a public hearing no later than the eighth
22 week of the school year to determine whether each pupil in the district has sufficient textbooks or
23 instructional materials. (SB 550, § 18.) The legislation requires each district to maintain its own
24 facilities inspection program to monitor facilities maintenance. (SB 550, § 7.) The legislation
25 requires that each school include in its annual School Accountability Report Card, which is
26 published on the Internet and is made available in paper form to parents who request it, accurate
27 information regarding sufficiency of instructional materials, the quality of facilities maintenance,
28 and teacher quality. (SB 550, § 10-11.)

1 In addition, the legislation requires County Superintendents to inspect, within the first four
2 weeks of the school year, each of the schools in the bottom three Academic Performance Index
3 deciles in the county to determine whether the school facilities are in good repair and whether
4 each student has sufficient textbooks and instructional materials.¹¹ (SB 550, § 1.) At least one
5 quarter of these visits must be unannounced and County Superintendents must report the results
6 of these visits to each school district's school board on a quarterly basis. (SB 550, § 1.) If a
7 County Superintendent determines that a school lacks sufficient instructional materials, the
8 legislation provides a series of steps for corrective action, culminating in the actual purchase and
9 distribution of books. (SB 550, § 1.) This bill also requires a compliance audit to include the
10 verification of the reporting requirements for the sufficiency of textbooks and instructions
11 materials, teacher assignments and the accuracy of information reported on the school
12 accountability report card. (SB 550, § 2.)

13 The implementing legislation also creates oversight for teaching hiring, retention and
14 misassignment.¹² The implementing legislation structures a system of oversight by requiring
15 review and reporting of detailed information on teacher hiring, retention and assignment amongst
16 various administrative bodies including the county superintendent, the Commission on Teacher
17 Credentialing, the Legislature, the Governor, the Department, and the school districts. For
18 example, Assembly Bill 3001 requires that the Commission on Teacher Credentialing report to
19 the Legislature and the Governor specific information regarding the number of classroom

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23 ¹¹ For single-school-district counties, including Alpine, Amador, Del Norte, Mariposa,
24 Plumas, Sierra, and the City and County of San Francisco, the legislation provides that the
County Superintendent must contract with another county office of education or an independent
auditor to satisfy these obligations. (SB 550, § 1.)

25

26 ¹² Misassignment means the placement of a certified employee in a teaching or services
27 position for which the employee does not hold a legally recognized certificate or credential to the
placement of a certified employee in a teaching or services position that the employee is not
otherwise authorized by statute to hold. (AB 2727, § 1.)

28

1 teachers who have received credentials, internships and emergency permits in the previous fiscal
2 year and the total number of teachers who do not meet certain requirements and credentials.¹³

3 The bill requires the county superintendents of schools, who already monitor and review
4 school districts' certification and assignment practices, to give priority to schools ranked in
5 deciles 1 to 3 on the state Academic Performance Index and to investigate schools' and districts'
6 efforts to ensure that any credentialed teacher in an assignment requiring a certificate or training
7 to teach English learners has completed the necessary requirements. (AB 3001, § 3, 9, 11.) This
8 bill also provides the option for county superintendents to assign the Fiscal Crisis & Management
9 Assistance Team to districts to review hiring, credentialing, retention and assignment practices.
10 (*Id.*, § 1.) The bill requires that the county superintendent submit an annual report summarizing
11 the results of assignment and monitoring to the California Department of Education identifying
12 whether, in any classes in which 20% or more pupils are English learners, the assigned teachers
13 possess the proper training to teach English learners. (*Id.*, § 3.)

14 The bill contemplates continued involvement by the Legislature. The Superintendent of
15 Public Instruction must submit a summary of the reports submitted by county superintendents of
16 schools to the Legislature and the Legislature, in turn, may hold public hearings regarding the
17 distribution of credentialed and highly qualified teachers. (*Id.*, § 3.)

18 In addition to the foregoing checks and balances and levels of oversight, the Legislature
19 provides the following mechanisms to make schools accountable with regard to teacher hiring,
20 credentialing and assignment: providing parents, teachers, and students a formal complaint
21 process to identify and resolve teacher vacancy or misassignment (SB 550, § 12); requiring each

22 ¹³ Assembly Bill 3001 also facilitates teacher hiring by removing several requirements
23 that have impeded the credentialing in California of some teachers from out-of-state. (Londen
24 Decl. at ¶ 16.) For example this new law waives the basic skills proficiency test if the
25 Commission determines that the teacher licensing body of that state requires an applicant to
26 demonstrate a level of basic skills proficiency that is at least comparable to passage of the state
27 basic skills proficiency examination. Applicants from another state would not be required to meet
28 the fifth-year program or induction program completion requirements if the commission
determines that preparation in another state is comparable and equivalent to the specific
requirement. (AB 3001, § 5.)

1 school's accountability report card to include information on misassignments of teachers and
2 teacher vacancies; requiring each school to comply with an audit that includes verification of the
3 reporting requirements for teacher misassignments and the accuracy of information reported on
4 the school accountability report card (SB 550, §§ 2, 10, 13); and, by making funding contingent
5 upon schools having action plans that contain strategies to attract, retain, and fairly distribute the
6 highest quality teachers at each school. (SB 550, § 15.)

7 **c. Districts Will Provide Formal Complaint Procedures on**
8 **the Subjects of the Settlement.**

9 In addition to these levels of oversight, the legislation provides for a formal complaint
10 mechanism for parents, teachers, and students. Complaints may be filed if students do not receive
11 sufficient instructional materials, if facilities issues rise to the level of health and safety risks, or if
12 classes lack permanent teachers or teachers who are trained in the subject matter they are assigned
13 to teach, including training to teach English Language Learners. (SB 550, § 12 & AB 2727, § 1)
14 Each school must use a uniform complaint. Complainants may write as much as they would like
15 on the complaint and then file the complaint with the principal. The principal or the designee of
16 the district superintendent shall make all reasonable efforts to investigate any problem and
17 remedy a valid complaint in a reasonable time not to exceed 30 working days from receipt of
18 complaint. (SB 550, § 12.) The principal or the designee shall report the remedy to the
19 complainants within 45 working days of the initial filing of the complaint. A complainant who is
20 not satisfied has the right to describe the problem to the governing board of the school district at a
21 regularly scheduled hearing. The complainant can appeal a decision that poses an emergency or
22 urgent threat directly to the Superintendent of Public Instruction. (*Id.*)

23 **d. Substantial Funding is Targeted for Implementing the**
24 **New Programs.**

25 In addition to these levels of oversight, the legislation provides for funding to be directed
26 specifically to provision of instructional materials, identification and correction of facilities needs,
27 and appropriate County Superintendent oversight of schools. (SB 550 & SB 6.)
28

1 e. The State Has Committed to Eliminate Concept 6.

2 The settlement legislation also provides that the Concept 6 multitrack, year-round
3 calendar, which truncates the school year by 17 days, be eliminated by 2012. (AB 1550, § 3.) In
4 addition, the legislation requires that districts that operate schools on the Concept 6 calendar
5 report to the public and to the State Board of Education regarding progress toward elimination of
6 the calendar to ensure that the districts make satisfactory progress toward the final elimination
7 date. (*Id.*)

8 2. The Settlement Provides Remedies Now, Including Programs
9 and Funding Beyond a Court's Authority to Order.

10 Had plaintiffs established their case at trial, a remedy would have been subject to a
11 possible stay pending appeal. If a stay was granted, it would have taken years for the class to
12 receive the benefits of the remedy. The settlement process has facilitated remedial action that has
13 taken place more quickly than any court-ordered remedy. Even before final approval of the
14 settlement, the California Legislature has passed law implementing the parties' Settlement
15 Agreement stating,

16 It is the intent of the Legislature to memorialize and to implement the State of
17 California's settlement agreement in the case of *Williams v. California*
18 (citations omitted) and that the provisions of law added or modified by this act
19 be substantially preserved as a matter of state policy in settlement of this case.
20 The state is not, however, precluded from taking additional measures in
21 furtherance of the settlement agreement and to improve the quality of education
22 for pupils, in ways consistent with the provisions of the settlement
23 agreement....[I]t is the intent of the Governor and the Legislature in enacting
24 this act to establish these minimum thresholds for teacher quality, instructional
25 materials, and school facilities. The Legislature finds and the Governor agrees
26 that these minimum thresholds are essential in order to ensure that all of
27 California's public school pupils have access to the basic elements of a quality
28 public education.

(SB 550, § 25.)

23 In addition, because the power of appropriation belongs exclusively to the Legislature, *see*
24 *Butt*, 4 Cal. 4th at 697-98, a remedy imposed by Court order would not have guaranteed the
25 amount of funding that is being dedicated to this settlement. In consideration of the discretion
26 that should be accorded to the administrators responsible for carrying out a remedy, the Court
27 likely would have ordered defendants to formulate a remedial plan. As the New Hampshire
28

1 Supreme Court recognized, ““there are many different ways the Legislature could fashion an
2 educational system while still meeting the mandates of the Constitution.”” *Claremont Sch. Dist.*
3 *v. Governor*, 794 A.2d 744, 758 (N.H. 2002) (citations omitted); *see also Rose v. Council for*
4 *Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989) (directing the General Assembly to “recreate and
5 redesign a new system that . . . will guarantee to all children the opportunity for an adequate
6 education, through a state system”); *McDuffy v. Sec’y of Educ.*, 615 N.E.2d 516, 554-55 (Mass.
7 1993) (“leave it to the magistrates and Legislatures to define the precise nature of the task which
8 they face in fulfilling their constitutional duty to educate children today, and in the future”).

9 The Governor and the Legislature have created the settlement program in a spirit that is
10 quite different than might have resulted if defendants had been found liable at the end of a trial.
11 This legislation is neither confined to the parameters of a court mandate nor merely reactive. For
12 example, in SB 550, the Legislature stated:

13 [T]hese minimum thresholds in no way reflect the full extent of the
14 Legislature’s and the Governor’s expectations of what California’s public
15 schools are capable of achieving. Instead, these thresholds for teacher quality,
16 instructional materials, and school facilities are intended by the Legislature and
by the Governor to be a floor, rather than a ceiling, and a beginning, not an end,
to the State of California’s commitment and effort to ensure that all California
school pupils have access to the basic elements of a quality public education.

17 (SB 550, § 25.)

18 **B. The Covenant Not To Sue Is Fair.**

19 The covenant not to sue that is included in the settlement appropriately binds the plaintiff
20 class not to initiate litigation against the defendants regarding the issues raised in the complaint
21 for lengths of time that are commensurate with the contentions on behalf of the class and the
22 specific terms of the settlement. The covenant binds the class not to bring new suits until four
23 years after approval of the settlement against the State, the State Department of Education, the
24 State Board of Education, or the State Superintendent of Public Instruction based on claims that
25 were pursued in this litigation, except that a different time period applies with respect to claims
26 regarding teachers; and certain claims about the High School Exit Exam are not subject to the
27 covenant. (Covenant ¶ I, attached at Londen Decl., Exh. A.) Claims based on allegations as to
28 deficiencies in the quality of teachers (except for such claims with regard to public schools in

1 rural settings to which the No Child Left Behind Act accords an extended compliance deadline)
2 lasts until September 30, 2006. Claims regarding these schools in rural settings are subject to the
3 four-year covenant not to sue period. (Covenant ¶ 2.) In addition, the covenant explicitly does
4 not restrict actions contesting the denial of graduation from high school based on results of the
5 High School Exit Examination. (Covenant ¶ 4.)

6 The four year basic period is not much longer than, realistically, the period that could have
7 elapsed before an effective remedy would have been in place after a trial and appeal — if a stay
8 pending appeal were granted. Plaintiffs obtained a shorter covenant not to sue period for claims
9 based on teacher quality because the settlement provides less extensive remedies for inequalities
10 in teacher quality than as to instructional materials and facilities. The defendants' position on
11 teachers was that the State's efforts on teacher quality would focus on complying with the federal
12 No Child Left Behind Act rather than creating new remedies in the settlement for some of the
13 same problems. Plaintiffs responded to this position by convincing the defendants to accept a
14 covenant not to sue period reflecting the deadline for compliance with the federal law. This was
15 an appropriate compromise.

16 C. The Settlement Was Reached Through an 17 Exemplary Process.

18 As discussed in detail above, the parties' settlement was the product of vigorous
19 negotiations that were mediated by Judge Patrick J. Mahoney, an experienced and dedicated
20 Superior Court judge. Initial settlement negotiations began three years ago and intensified at
21 several points in the litigation. In 2002 and 2003, the parties met with Judge Mahoney many
22 times and spent significant time and effort trying to agree on mutually acceptable settlement
23 terms.

24 In the discussions led by the Office of Governor Schwarzenegger, plaintiffs and
25 defendants advanced these discussions to the point that settlement appeared possible. There were
26 dozens of settlement meetings. Plaintiffs' counsel met with senior Administration officials (the
27 Governor's Senior Policy Advisor, the Governor's Legal Affairs Secretary and Deputy Legal
28 Affairs Secretary, the Governor's Deputy Legislative Affairs Secretary, the Governor's Deputy

1 Cabinet Secretary, the Governor's Deputy Press Secretary, the Secretary for Education and three
2 of his senior staff), representatives of the Superintendent of Public Instruction, the State Board of
3 Education, the Department of Education, the Department of Finance, two Deputies Attorney
4 General, officials of the intervenor school districts (counsel from and the Executive Director of
5 the California School Boards Association, General Counsel for San Francisco Unified School
6 District as well as senior district employees, the Superintendent and General Counsel for Los
7 Angeles Unified School District and senior district employees, and counsel for Long Beach
8 Unified School District). The parties exchanged many drafts proposing and modifying settlement
9 terms.

10 All of this effort focused on substance: what should and could be done to remedy the
11 problems about which plaintiffs had complained. From the outset of the case, it was plaintiffs'
12 ambition to invoke the State's constitutional obligation to overcome institutional obstacles that
13 have impeded exactly this kind of joint effort to improve educational conditions for students in
14 the worst public schools. Counsel for all parties vigorously advocated their clients' views on how
15 to go about addressing the problems. The parties ultimately agreed to the settlement that has been
16 enacted in state law and is now before this Court. From this history, there is no room for doubt
17 that the settlement is the product of a process that deserves approval.

18 **D. The Parties Conducted Discovery and Motion**
19 **Practice Sufficient To Facilitate Informed and**
Forceful Positions on the Merits.

20 In addition to the arms-length negotiations to arrive at the settlement terms, this settlement
21 also is the result of extensive discovery and motion practice by plaintiffs and defendants. As
22 discussed above, this case involved an unparalleled amount of discovery. Using extensive
23 document requests, interrogatories, and depositions, plaintiffs developed a thorough
24 understanding of the factual and legal issues involved in this case. In addition, over thirty experts
25 offered expert testimony — providing in-depth analysis of the issues and remedies sought through
26 this case. Moreover, the parties engaged in several rounds of motion practice that brought further
27 definition to issues in the case. Through detailed discovery, expert analysis, and motion practice
28

1 plaintiffs had considerable information with which to assess our case and the reasonableness and
2 fairness of this settlement.

3 **E. Experienced Counsel Favor the Settlement.**

4 The question whether a proposed settlement is fair, reasonable and adequate necessarily
5 requires a judgment evaluation by the attorneys for the parties based upon a comparison of “the
6 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*,
7 698 F.2d 61, 73 (2d Cir. 1982) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
8 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, courts recognize that the
9 opinion of experienced counsel supporting the settlement is entitled to great weight. *See, e.g., In*
10 *re Mfrs. Life Ins. Co. Premium Litig.*, 1998 U.S. Dist. LEXIS 23217, at *23-24 (S.D. Cal. 1998).

11 Here, lead counsel for plaintiffs are very experienced in class action and civil rights
12 litigation. (Londen Decl. at ¶ 17-31.) Plaintiffs’ counsel believe that the probability of the
13 concrete benefits afforded to the class now through the new legislation outweigh the uncertain
14 benefits of what could have been accomplished through protracted litigation and the appellate
15 process that surely would follow. Because this Court could not appropriate money nor manage
16 schools, a ruling would have solved the problems identified by plaintiffs only by ordering the
17 defendants to take steps to address the problems. After protracted arms-length negotiations,
18 plaintiffs’ counsel believe that this settlement is fair, reasonable, and adequate. The parties’
19 Settlement Judge also views the settlement very favorably. These conclusions should be afforded
20 considerable weight by the Court.

21 **F. Additional Litigation Would Be Complex and Expensive.**

22 Courts also consider the complexity, expense, and likely duration of the litigation.
23 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. Additional discovery and preparation for, and
24 trial of, this action would be complex and expensive. As of the time the stay went into effect,
25 trial was still weeks away. Expert discovery was on-going; motion practice was active; and the
26 trial was sure to last many months. In the event that plaintiffs were successful at trial, defendants
27 would appeal any unfavorable judgment, and there is no guarantee that the judgment would
28 ultimately be sustained. In addition, if defendants did not prevail on appeal, the remedy to the

1 class would not be realized for many years and would result in increased litigation costs for
2 defense of the case. *See* 4 Newberg on Class Actions § 11:50 (4th ed. 2002) (“In most situations,
3 unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy
4 and expensive litigation with uncertain results.”). Accordingly, consideration of this factor also
5 weighs in favor of settlement.

6
7 **G. The Reactions of Class Members Will Also Be a Relevant
Consideration.**

8 Courts also consider the reaction of class members in reviewing the fairness of settlement.
9 Class representatives have given the settlement their approval without reservation. (Londen Decl.
10 at ¶ 9.) Plaintiffs will address the positions of absent class members after the period for their
11 comments.

12 **CONCLUSION**

13 For all of the reasons stated above, the proposed settlement reached by the parties offers a
14 fair, adequate, and reasonable resolution of a complex and significant case. Plaintiffs request that
15 this Court approve this historic settlement.

16 Dated: December 2, 2004

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