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San Francisco County Superior Court

SEP 07 2023

CLERK OF THE COURT
BY: *Stacia Shell*
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

ERIC BOTCHER and SAMUEL D. GALIZIA,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MAKE SCHOOL PBC f/k/a MAKE SCHOOL
INC., MAKE SCHOOL ABC, LLC, MAKE
SCHOOL ISA SPV, LLC, VEMO
EDUCATION, INC., and DOES 1 through 10,

Defendants.

Case No. CGC-21-592710

ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING
CLASS, AND APPOINTING CLASS
COUNSEL

1 WHEREAS, Plaintiffs Eric Botcher and Samuel Galizia (the “Settlement Class
2 Representatives”) and Defendants Make School PBC f/k/a Make School Inc., Make School ABC,
3 LLC, Make School ISA SPV, LLC, and Vemo Education, Inc. (the “Defendants”), have agreed,
4 subject to Court approval after notice and a hearing, to settle this Action upon the terms and
5 conditions set forth in the Amended Settlement Agreement dated July 28, 2023, and the
6 Amendment to the Amended Settlement Agreement dated September 5, 2023 (collectively, the
7 “Agreement”) filed with this Court; and

8 WHEREAS, for purposes of this Order, capitalized terms not defined herein shall have the
9 meaning ascribed to them in the Agreement.

10 NOW, THEREFORE, based upon this Court’s review of the Agreement and the file,
11 records, and proceedings herein, and it appearing to the Court, upon preliminary examination, that
12 the Agreement and Settlement appear fair, reasonable, and adequate, and within the range of
13 possible approval, and that a hearing should and will be held after notice to the Settlement Class
14 to confirm that the Agreement and Settlement are fair, reasonable, and adequate, and to determine
15 whether the Settlement should be approved and final judgment entered in this Action based upon
16 the Agreement;

17 IT IS HEREBY ORDERED THAT:

18 **1. Preliminary Approval of Proposed Settlement.** The Agreement, including all
19 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate and within the range
20 of possible approval. The Court finds that: (a) the Agreement resulted from extensive arm’s-
21 length negotiations; and (b) the Agreement is sufficient to warrant notice thereof to Settlement
22 Class Members and a full hearing on the approval of the Settlement.

23 **2. Class Certification for Settlement Purposes.** Pursuant to California Code of
24 Civil Procedure Section 382, the Court conditionally certifies, for settlement purposes only, the
25 following Settlement Class:

26 All Persons who obtained at least one income share agreement from Make School
27 on or after June 1, 2015 that remained outstanding as of April 28, 2023. Excluded
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1 from the Settlement Class are the judges to whom the Action is assigned and the
2 members of their staff or immediate family.

3 In connection with this conditional certification, the Court makes the following preliminary
4 findings:

5 (a) The members of the Settlement Class appear to be so numerous that joinder
6 of all members is impracticable;

7 (b) There appear to be questions of law or fact common to the Settlement Class
8 for purposes of determining whether this Settlement should be approved;

9 (c) The claims of the Settlement Class Representatives appear to be typical of
10 the claims being resolved through the proposed Settlement;

11 (d) The Settlement Class Representatives appear to be capable of fairly and
12 adequately protecting the interests of the Settlement Class Members in connection with the
13 proposed Settlement;

14 (e) For purposes of determining whether the Settlement is fair, reasonable, and
15 adequate, common questions of law and fact appear to predominate over questions affecting only
16 individual Settlement Class Members. Accordingly, the Settlement Class appears to be
17 sufficiently cohesive to warrant settlement by representation;

18 (f) For purposes of settlement, certification of the Settlement Class appears to
19 be superior to other available methods for the fair and efficient settlement of the claims of the
20 Settlement Class Members.

21 **3. Class Representatives.** Eric Botcher and Sam Galizia are preliminarily
22 designated as class representatives for the Settlement Class.

23 **4. Class Counsel.** The Court preliminarily appoints Melody L. Sequoia of The
24 Sequoia Law Firm, and William E. Kennedy of The Consumer Law Office of William E.
25 Kennedy as counsel for the Settlement Class. The Court finds that counsel is competent and
26 capable of exercising all responsibilities as Class Counsel.

27 **5. Settlement Administrator.** The Court hereby appoints CPT Group as the
28 Settlement Administrator.

1 **6. Settlement Hearing.** A final approval hearing (the “Settlement Hearing”) shall be
2 held before the Honorable Ethan P. Schulman, in Department 304 of the Superior Court for the
3 County of San Francisco, 400 McAllister Street, San Francisco, CA 94102 on March 1, 2024 at
4 9:00 a.m., as set forth in the notice to the Settlement Class, to determine whether the Agreement
5 is fair, reasonable, and adequate and should be approved. Papers in support of final approval of
6 the Agreement and Class Counsel’s application for an award of attorneys’ fees and costs and
7 incentive awards for the Settlement Class Representative and Plaintiffs Eric Botcher and Sam
8 Galizia (the “Fee Application”) shall be filed with the Court according to the schedule set forth in
9 Paragraph 13 below. The Settlement Hearing may be postponed, adjourned, or continued by
10 order of the Court without further notice to the Settlement Class. However, if a Settlement Class
11 Member objects to the Settlement, Class Counsel shall provide notice of the continued hearing to
12 the objecting Settlement Class Member. After the Settlement Hearing, the Court may enter a
13 settlement order and final judgment in accordance with the Agreement that will adjudicate the
14 rights of the Settlement Class Members with respect to the claims being settled.

15 **7. Class Notice.** Within fifteen (15) Days after entry of this Order, the Servicer shall
16 provide the Settlement Administrator with the Settlement Class List in a format reasonably
17 requested by the Settlement Administrator. Class Notice shall be provided by the Settlement
18 Administrator within forty-five (45) Days following entry of this Order (the “Notice Deadline”).

19 **(a) E-Mailed Notice.** No later than the Class Notice Deadline, the Settlement
20 Administrator shall e-mail the E-Mail Notice substantially in the form appended to the Agreement
21 as Exhibit D to all Settlement Class Members for whom an e-mail address was provided. A
22 reminder e-mail of the E-Mail Notice shall be sent at least seven (7) Days after the Notice
23 Deadline. In providing the foregoing E-Mail Notice, the Settlement Administrator shall seek to
24 maximize the chances of messages being received and opened by sending e-mails on dates the
25 Settlement Administrator believes are optimal, by using sending methods likely to avoid spam
26 filters (such as sending e-mails in small batches), and by updating addresses on the Settlement
27 Class List using methods customary in the settlement administration industry, provided that such
28 methods are cost-effective and reasonable under the circumstances.

1 **(b) Mailed Notice.** No later than the Class Notice Deadline, the Settlement
2 Administrator shall mail the Mailed Notice substantially in the form appended to the Agreement
3 as Attachment No. 2 to all Settlement Class Members in accordance with the terms of the
4 Settlement Agreement. The Settlement Administrator shall seek to maximize the effectiveness of
5 the mailing by conducting a National Change of Address search and a skip trace using the
6 Accurint database to update mailing addresses before mailing. The Settlement Administrator
7 shall send Mailed Notices to any forwarding addresses provided on mail returned to sender within
8 five (5) Days of receipt of the returned mail. If, prior to the Opt-Out and Objection Deadline, any
9 Mailed Notice is returned as having been undelivered by the U.S. Postal Service, the Settlement
10 Administrator shall perform a skip trace using a database other than Accurint and re-send the
11 Mailed Notice and Claim Form to the new or different address within three (3) Days. However, if
12 a determination is made in good faith by the Settlement Administrator that it is not possible to
13 further update any particular Settlement Class Member's address in sufficient time to mail the
14 Class Notice at least ten (10) Days before the Opt-Out and Objection Deadline, then the
15 Settlement Administrator need make no further efforts to provide further notice to such Class
16 Member.

17 **(c) Internet Notice.** The Settlement Administrator shall establish an Internet
18 website for communications with Class Members, using a domain name and content approved in
19 writing by Class Counsel and Defendants' counsel. The website shall prominently display the
20 Internet Notice substantially in the form appended to the Agreement as Attachment No. 2 and the
21 Claim Form substantially in the form appended to the Agreement as Exhibit F. The website shall
22 also make available the Agreement, the Third Amended Class Action Complaint, this Order,
23 documents filed in connection with the Motion for Preliminary Approval, Plaintiffs' Motion for
24 Attorneys' Fees and Incentive Awards, the toll-free number for the Settlement Administrator,
25 contact information for Class Counsel, and any other materials the Parties agree in writing to
26 include. The Settlement Website shall include a web portal in which Settlement Class Members
27 can access individualized information by using a unique identifier and password (provided in the
28 E-Mail and Mailed Notices) so they can understand how specifically the Settlement will impact

1 them, including which ISAs would be canceled, if any; the funding amounts, payment caps, and
2 income share percentages for each ISA; the New Agreement's principal balance and monthly
3 payment amounts for the New Agreement for such Settlement Class Member assuming a 180-
4 month term; and the Early Payoff Amount, with appropriate qualifications such that the numbers
5 are based on data as of a specific date. The Settlement Website shall be made accessible by the
6 date E-Mail Notice is e-mailed, and shall remain accessible for not less than 180 days after the
7 Effective Date. The Settlement Website shall allow Settlement Class Members to submit Claim
8 Forms electronically, but Settlement Class Members also may submit Claim Forms by e-mail or
9 U.S. mail.

10 **(d) Toll-Free Number.** The Settlement Administrator shall establish a
11 toll-free telephone number Settlement Class Members may call to obtain additional information
12 such as answers to frequently asked questions. The toll-free number may utilize interactive voice
13 response technology and recorded messages rather than live operators, but the Settlement
14 Administrator shall ensure that Settlement Class Members who call the toll-free number may
15 request (and receive) copies of any of the materials on the Internet website. The toll-free number
16 shall be operational by the date the E-Mail Notice initially is e-mailed, and shall remain
17 operational for not less than 180 days after the Effective Date.

18 **8. Findings Concerning Class Notice.** The Court finds that the foregoing form of
19 Class Notice and the manner of its dissemination is the best practicable notice under the
20 circumstances and is reasonably calculated, under all the circumstances, to apprise Settlement
21 Class Members of the pendency of this Action and their right to object to or exclude themselves
22 from the Settlement Class. The Court further finds that the Class Notice program is reasonable,
23 that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and
24 that it meets the requirements of due process and California Rules of Court, rule 3.769.

25 **9. Exclusion from Settlement Class.** Each Settlement Class Member who wishes to
26 be excluded from the Settlement Class and follows the procedures set forth in this Paragraph shall
27 be excluded. Any potential member of the Settlement Class must mail or e-mail a written request
28 for exclusion to the Settlement Administrator using the contact information designated in the

1 Class Notice. All such written requests must be postmarked or e-mailed by the Opt-Out and
2 Objection Deadline of 90 days after the Class Notice Deadline. The exclusion request must: (i)
3 be physically or electronically signed by the Settlement Class Member; (ii) include the full name,
4 address, and (if known) Launch Servicing, LLC account number(s) of the Settlement Class
5 Member requesting exclusion; and (iii) include a request to be excluded from the Settlement
6 Class in *Aguocha, et al. v. Make School PBC, et al.* In the event of any dispute as to whether or
7 not a Settlement Class Member has properly opted out, the parties shall meet and confer and
8 attempt to resolve the dispute; any such dispute the parties are not able to resolve may be
9 submitted to the Settlement Administrator for resolution. The Settlement Administrator shall
10 inform the Settlement Class Member and counsel for the Parties of the outcome of any such
11 submitted dispute within fourteen (14) Days of receiving the dispute from the Parties for
12 resolution.

13 **10.** All persons who properly make requests for exclusion from the Settlement Class
14 shall not be Settlement Class Members and shall have no rights with respect to the Settlement
15 should it be approved. All Settlement Class Members who do not opt out in accordance with the
16 terms set forth herein will be bound by all determinations and judgments in the Action.

17 **11.** If the number of Settlement Class Members who opt out exceeds fifteen percent
18 (15%) of the total number of Settlement Class Members, then Defendants in their sole discretion
19 will have the right to terminate the Settlement by giving written notice to Class Counsel within
20 twenty-one (21) Days after the Opt-Out and Objection Deadline. In the event that the Settlement
21 is terminated pursuant to this provision, the Parties will be returned to the status quo ante as if no
22 settlement had been negotiated or entered into; provided, however, that all costs of Class Notice
23 and all costs of administering the Settlement paid or incurred prior to termination shall be
24 nonrefundable.

25 **12. Objections and Appearances.**

26 **(a) Written Objections.** Any potential member of the Settlement Class who
27 has not timely submitted a written request for exclusion from the Settlement Class, and thus is a
28 Settlement Class Member, may object to the fairness, reasonableness, or adequacy of the

1 Settlement or the Fee Application. Settlement Class Members may do so either on their own or
2 through counsel hired at their own expense. Any Settlement Class Member who wishes to object
3 to the Settlement or the Fee Application should, on or before January 25, 2024, submit a written
4 objection by mail or e-mail to the Settlement Administrator. If any objection is rejected or
5 overruled, the objecting Settlement Class Member will be bound by the Judgment as if he or she
6 had not objected. Any person who requests exclusion from the Settlement Class may not object.
7 If any Settlement Class Member submits a request for exclusion and also an objection, the request
8 for exclusion shall take precedence and that person shall not be a Settlement Class Member.

9 **(b) Appearance at Settlement Hearing.** Whether or not a written objection is
10 made, any Settlement Class Member may appear at the Settlement Hearing, either in person or
11 through counsel hired at the Settlement Class Member's expense, to object to the proposed
12 Settlement and/or to the application of Class Counsel for an award of attorneys' fees and costs
13 and/or incentive awards.

14 **13. Further Briefing.** Class Counsel's application for attorneys' fees and costs, and
15 the Settlement Class Representatives' application for incentive awards (together, the "Fee
16 Requests"), shall be filed no later than three (3) days prior to the Class Notice Deadline. Any
17 written objections to the Settlement and/or Fee Requests shall be filed with the Court on or before
18 January 25, 2024. Briefing in support of final approval of the Settlement, responding to any
19 objections, and in further support of the Fee Requests shall be filed with the Court on or before
20 February 6, 2024.

21 **14. Effect of Failure to Approve the Agreement.** In the event the Settlement is not
22 approved by the Court, or for any reason the Parties fail to obtain a Judgment as contemplated in
23 the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the
24 following shall apply:

25 **(a)** All orders and findings entered in connection with the Agreement shall
26 become null and void and have no further force and effect, shall not be used or referred to for any
27 purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
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1 (b) The conditional certification of the Settlement Class pursuant to this Order
2 shall be vacated automatically and void; no doctrine of waiver, estoppel or preclusion shall be
3 asserted in any litigated certification proceedings in the Action; and the Agreement and its
4 existence shall be inadmissible to establish any fact relevant to class certification or any alleged
5 liability of the Defendants for the matters alleged in the Actions or for any other purpose;

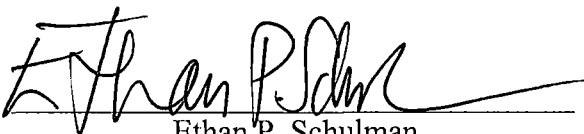
6 (c) Nothing contained in this Order is, or may be construed as, any admission
7 or concession by or against the Defendants or the Settlement Class Representatives on any point
8 of fact or law; and

9 (d) Neither the terms of the Agreement nor any publicly disseminated
10 information regarding the Settlement, including, without limitation, the Class Notice, court
11 filings, orders or public statements, may be used as evidence for any purpose whatsoever. In
12 addition, neither the fact of, nor any documents relating to, Defendants' termination of the
13 Agreement, any failure of the Court to approve the Settlement, or any objections or interventions
14 may be used as evidence for any purpose whatsoever.

15 **15. Stay of Proceedings.** All proceedings in this Action are stayed until further order
16 of the Court, except as may be necessary to implement the Settlement or comply with the terms of
17 the Settlement. Pending determination of whether the Settlement should be granted final
18 approval, no party shall pursue in this Action any claims or defenses otherwise available to them
19 in the Action, and no Settlement Class Member, either directly, on a representative basis, or in
20 any other capacity, will commence or prosecute against any of the Released Parties any action or
21 proceeding asserting any of the Released Claims.

22 IT IS SO ORDERED.

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25 Dated: September 7, 2023

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Ethan P. Schulman
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On September 7, 2023, I electronically served ORDER PRELIMINARY APPROVING CLASS ACTION SETTLEMENT, CONDITIONALLY CERTIFYING CLASS, AND APPOINTING CLASS COUNSEL via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **SEP 07 2023**

Brandon E. Riley, Court Executive Officer

By: 
Felicia Green, Deputy Clerk