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17 Attorneys for Plaintiffs [Additional Counsel on the Following Page]

18 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

19
20 JACQUELINE CASTANEDA, *et al.*,

21 Plaintiffs,

22 vs.

23 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, *et al.*,

24 Defendants.

CASE NO. C 99-0525 SI

[PROPOSED] CONSENT DECREE

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1 Defendant, The Regents of the University of California ("The Regents" or "the
2 University") and Jacqueline Castaneda, Raina Dyer, Justine Certeza, Eric Tandoc, Gregory
3 McConnell, Jr., Oakland Imani Youth Council, California League of United Latin American
4 Citizens, and the Kababayan Alliance (collectively, "Plaintiffs")¹ have agreed to settle this action
5 in accordance with the following terms and conditions of this Consent Decree.

6 This Consent Decree constitutes the judgment in this matter pursuant to Federal Rule of
7 Civil Procedure 54, and the entry of this Consent Decree on the docket shall constitute the entry
8 of judgment pursuant to Federal Rule of Civil Procedure 58. No class shall be certified in this
9 matter, and this Consent Decree shall have no effect on absent members of any putative class in
10 this litigation.

11 **I. DISMISSAL OF CERTAIN DEFENDANTS AND WITHDRAWAL OF CLASS**
12 **CLAIMS**

13 All claims against defendants William T. Bagley, Frank W. Clark, Jr., Ward Connerly,
14 John Davies, S. Sue Johnson, Meredith J. Khachigian, Joanne Kozberg, Howard H. Leach, David
15 S. Lee, Velma Montoya, S. Stephen Nakashima, Gerald L. Parsky, Peter Preuss, Tom Sayles,
16 Richard Atkinson, and Robert Berdahl are hereby dismissed with prejudice. The terms of this
17 Consent Decree apply to the remaining defendant, The Regents. Although Plaintiffs filed this
18 case as a putative class action, it has not been certified as a class action. Plaintiffs have settled
19 this matter on behalf of themselves only, and not on behalf of a class or any absent members of a
20 putative class. With Plaintiff's consent, all class allegations are deemed withdrawn and
21 dismissed.

22 **II. PROVISION OF ADMISSIONS INFORMATION**

23 The Regents shall maintain and provide information to Plaintiffs through Plaintiffs'
24 counsel in the manner set forth in this Decree. Nothing in this Decree is intended to or shall limit
25 the University's authority and discretion over its admissions policy, or to require that The
26 Regents employ any particular admissions criteria or that they require applicants for

27
28 ¹ Kareema Williams, Jesus Rios and Joanna Espina withdrew as plaintiffs.

1 undergraduate admission to submit any particular academic information. This Decree shall not
2 be construed as an endorsement by Plaintiffs of any particular standardized test over another nor
3 as an endorsement of UC Berkeley's decision to require applicants to submit any particular
4 standardized scores. For the duration of its disclosure obligations under this Decree, The
5 Regents shall continue to maintain and collect the information described in this Decree in a
6 manner that permits its production to Plaintiffs disaggregated in the manner described below.

7 **A. Compliance With Confidentiality Requirements**

8 To ensure compliance with the federal Family Education Rights and Privacy Act
9 (20 U.S.C. § 1232g) and California's Information Practices Act (Cal. Civ. Code, § 1798.24), The
10 Regents shall code any personally identifiable information produced to plaintiffs pursuant to this
11 Decree in accordance with this Court's June 8, 1999, Stipulation and Order Re the Defendants'
12 Initial Disclosures.

13 **B. Final Admissions Policy and Final Reader Training Materials**

14 No later than January 1 of each year for a period of five years, The Regents shall
15 produce to Plaintiffs' counsel the following materials for the admissions cycle then in progress:

- 16 1. the current version of the UC Berkeley freshman admissions criteria,
17 admissions policies, and guidelines; and
- 18 2. the current versions of all written instructions and training materials given
19 to individuals involved in evaluating applications ("Readers") and
20 individuals involved in training Readers ("Lead Readers"), including but
21 not limited to instructions and training materials distributed in the Reader
22 and Lead Reader "norming" processes that have occurred as of that time.

23 **C. Preliminary Admission Statistics**

24 On the day of publication, but no later than May 15 of each year, for a period of
25 five years, The Regents shall produce to Plaintiffs' counsel then-current statistical information
26 for the admissions cycle then in progress, disaggregated by African-American/Black; American
27 Indian/Alaska Native; Non-Filipino Asian; Filipino; Chicano/Latino; White/Caucasian; and No
28

1 Ethnic Data, the following:

- 2 1. total UC Berkeley freshman Fall applicants; and
- 3 2. total UC Berkeley freshman Fall admissions.

4 ***D. Electronic Admissions Databases***

5 No later than June 1 of each year for a period of five years, beginning 2003
6 through 2007, The Regents shall produce, to Plaintiffs' counsel the following data tables, for the
7 current and/or just-completed admissions cycle, which are maintained by the UC Berkeley Office
8 of Undergraduate Admissions:

- 9 1. the Applicant file;
- 10 2. the Reading file;
- 11 3. the High School file; and
- 12 4. dictionaries and decoders applicable to the data tables listed in 1-3 above.

13 All tables and files listed in 1-4 above shall be provided on DVD. Data tables listed in 1-3 above
14 shall be provided in the Microsoft Visual FoxPro dbase format that is native to the Office of
15 Undergraduate Admissions. The Regents shall concurrently provide a written description that
16 maps every piece of information displayed in the admissions application viewer and read sheet to
17 its corresponding field in the data tables listed in 1-3 above.

18 ***E. Annual Report***

19 No later than July 31 of each year for a period of five years, The Regents shall
20 produce to Plaintiffs' counsel a report that provides the following information, disaggregated by
21 African-American/Black; American Indian/Alaska Native; Chinese/Chinese-American; East
22 Indian/Pakistani; Filipino/Filipino-American; Japanese/Japanese-American; Korean/Korean-
23 American; Other Asian; Vietnamese; Pacific Islander; Mexican/Mexican-American/Chicano;
24 Other Spanish-American/Latino; No Ethnic Data, Other; White/Caucasian, for the admissions
25 cycle just completed:

- 26 1. total UC Berkeley freshman applicants, admits and SIR's (applicants'
27 Statement of Intent to Register);

28

2. total UC Berkeley freshman applicants, admits and SIR's by College of Letters & Sciences, College of Engineering and College of Chemistry;
3. total UC Berkeley freshman applicants who appealed denial of their application and total number of appeals granted; and
4. total UC Berkeley freshman applicants, admits and SIR's within average GPA ranges (1) 4.0 and above, (2) 3.5 and above and (3) 3.5 to 3.99.

F. Draft Admissions Policy and Training Materials

No later than November 10 of each year for a period of five years, The Regents shall produce to Plaintiffs' counsel:

1. the most current draft of UC Berkeley admissions criteria, admissions policy and guidelines;
2. the most current drafts of Reader instruction and training materials and Reader and Lead Reader "norming" materials;
3. a written description of significant changes currently anticipated in items (1) and (2) above from the prior year and the reasons for those anticipated changes. Plaintiffs may comment on the policy and anticipated changes; and
4. any non-attorney-client/non-attorney-work product final drafts of reports or studies, including, but not limited to, statistical and psychometric studies, upon which any significant changes to the UC Berkeley admissions policy are based.

Disclosure of the materials produced pursuant to this paragraph shall be limited to Plaintiffs, counsel and consultants retained by counsel to assist in evaluating the material.

III. RETENTION OF CONSULTANT

The Regents shall, for a period of four years from the entry of this Decree, contract with Dr. Robert J. Sternberg, Yale University IBM Professor of Psychology and Education, to serve as a consultant to The Regents in anticipation of litigation challenging the recent adoption of a

1 "comprehensive admissions" process in which all candidates are assessed and selected based on
2 both academic and non-academic criteria including their personal circumstances, hardships and
3 challenges they have overcome, and demonstrated leadership, tenacity, and talent. Dr. Sternberg
4 will consult with The Regents regarding the most effective means of defining the concept of
5 "merit" to reflect the full range of a UC Berkeley applicant's academic and personal
6 achievements and likely contribution to the Berkeley community. Dr. Sternberg will advise The
7 Regents on implementation of the undergraduate admissions policy of UC Berkeley (and, at the
8 University's discretion, other UC campuses) in a manner consistent with the goals of the policy
9 and will provide analyses requested by The Regents to assist it in determining whether the policy
10 is consistent with applicable federal and state law. It is anticipated that Dr. Sternberg will review
11 the University's admissions procedures and criteria and will be asked to provide advice and
12 comment on such subjects as the recruitment, selection, and training of readers, design of
13 instructions and materials used by readers in the admissions process, reader "norming,"
14 admissions policies and procedures, selection, evaluation, and weighting of admissions criteria,
15 reader scoring of applicants, and approaches to studying, validating or justifying various
16 admissions criteria. Consistent with the scope of work set forth in this paragraph, The Regents
17 may direct Dr. Sternberg's work on UC Berkeley admissions and may limit dissemination of
18 information or analysis he obtains or conducts in connection with this appointment. The Regents
19 shall be entitled in its sole discretion to incorporate or refrain from incorporating Dr. Sternberg's
20 advice in its admissions policies and procedures. Should Dr. Sternberg become unavailable for
21 this assignment prior to the end of the first two years of his retention, The Regents shall retain an
22 alternate consultant of its choosing for the remainder of the four-year term.

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24 ***IV. CONTINUING JURISDICTION***

25 The district court shall retain jurisdiction over the parties to enforce this Consent Decree
26 for the duration of this Consent Decree.

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1 IT IS SO ORDERED, ADJUDGED AND DECREED.

2 Dated: _____, 2003

HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

4 Stipulated and Agreed to by:

5 Dated: _____, 2003

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

NAACP LEGAL DEFENSE AND
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ASIAN PACIFIC AMERICAN LEGAL
CENTER OF SOUTHERN CALIFORNIA

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY
AREA

AMERICAN CIVIL LIBERTIES UNION
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By: _____
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18 Dated: _____, 2003

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