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Attorneys for Plaintiffs [Additional Counsel on the Following Page]

17 **UNITED STATES DISTRICT COURT**  
18 **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.  
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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 University”) and  
2 Jacqueline Castaneda, Raina Dyer, Justine Certeza, Eric Tandoc, Gregory McConnell, Jr., Oakland  
3 Imani Youth Council, California League of United Latin American Citizens, and the Kababayan  
4 Alliance (collectively, “Plaintiffs”)<sup>1</sup> have agreed to settle this action in accordance with the following  
5 terms and conditions of this Consent Decree.

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

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

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19 consent, all class allegations are deemed withdrawn and dismissed.

20 **II. PROVISION OF ADMISSIONS INFORMATION**

21 The Regents shall maintain and provide information to Plaintiffs through Plaintiffs’ counsel in the  
22 manner set forth in this Decree. Nothing in this Decree is intended to or shall limit the University’s  
23 authority and discretion over its admissions policy, or to require that The Regents employ any particular  
24 admissions criteria or that they require applicants for undergraduate admission to submit any particular  
25 academic information. This Decree shall not be construed as an endorsement by Plaintiffs of any  
26 particular standardized test over another nor as an endorsement of UC Berkeley’s decision to require

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28 <sup>1</sup> Kareema Williams, Jesus Rios and Joanna Espina withdrew as plaintiffs.

1 applicants to submit any particular standardized scores. For the duration of its disclosure obligations  
2 under this Decree, The Regents shall continue to maintain and collect the information described in this  
3 Decree in a manner that permits its production to Plaintiffs disaggregated in the manner described  
4 below.

5 **A. Compliance With Confidentiality Requirements**

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

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

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

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

21 **C. Preliminary Admission Statistics**

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

- 27 1. total UC Berkeley freshman Fall applicants; and



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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 "comprehensive admissions" process in which all candidates are assessed and selected based on both academic and non-academic criteria including their personal circumstances, hardships and challenges they have overcome, and demonstrated leadership, tenacity, and talent. Dr. Sternberg will consult with The Regents regarding the most effective means of defining the concept of "merit" to reflect the full range of a UC Berkeley applicant's academic and personal achievements and likely contribution to the

1 Berkeley community. Dr. Sternberg will advise The Regents on implementation of the undergraduate  
2 admissions policy of UC Berkeley (and, at the University's discretion, other UC campuses) in a manner  
3 consistent with the goals of the policy and will provide analyses requested by The Regents to assist it in  
4 determining whether the policy is consistent with applicable federal and state law. It is anticipated that  
5 Dr. Sternberg will review the University's admissions procedures and criteria and will be asked to  
6 provide advice and comment on such subjects as the recruitment, selection, and training of readers,  
7 design of instructions and materials used by readers in the admissions process, reader "norming,"  
8 admissions policies and procedures, selection, evaluation, and weighting of admissions criteria, reader  
9 scoring of applicants, and approaches to studying, validating or justifying various admissions criteria.  
10 Consistent with the scope of work set forth in this paragraph, The Regents may direct Dr. Sternberg's  
11 work on UC Berkeley admissions and may limit dissemination of information or analysis he obtains or  
12 conducts in connection with this appointment. The Regents shall be entitled in its sole discretion to  
13 incorporate or refrain from incorporating Dr. Sternberg's advice in its admissions policies and  
14 procedures. Should Dr. Sternberg become unavailable for this assignment prior to the end of the first  
15 two years of his retention, The Regents shall retain an alternate consultant of its choosing for the  
16 remainder of the four-year term.

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18 **IV. CONTINUING JURISDICTION**

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

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22 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
HONORABLE SUSAN ILLSTON  
UNITED STATES DISTRICT JUDGE

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26 Stipulated and Agreed to by:

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28 Dated: \_\_\_\_\_, 2003

MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND

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FOUNDATION OF NORTHERN  
CALIFORNIA

By: \_\_\_\_\_  
Kimberly West-Faulcon  
Attorneys for Plaintiffs  
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Dated: \_\_\_\_\_, 2003

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