



## AlaFile E-Notice

03-CV-2009-900351.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

LISA J GREEN v. KAY IVEY ET AL  
03-CV-2009-900351.00

The following complaint was FILED on 6/1/2009 4:29:01 PM

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**MELISSA RITTENOUR**  
**CIRCUIT COURT CLERK**  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL 36102

334-832-4950



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**LISA NIX GREEN, individually and as )  
next friend of Brent A. Green and Blake A. )  
Green, and on behalf of a class of persons )  
who purchased an Alabama Prepaid )  
Affordable College Tuition Contract prior )  
to 1995 which guaranteed payment of )  
undergraduate Instate Tuition and )  
Mandatory Fees on behalf of Qualified )  
Beneficiaries to the Alabama Public )  
Postsecondary Institution and on behalf of )  
those Qualified Beneficiaries of an )  
Alabama Prepaid Affordable College )  
Tuition Contract which was purchased )  
prior to 1995 which guaranteed payment of )  
undergraduate Instate Tuition and )  
Mandatory Fees, )**

**Plaintiffs, )**

**VS )**

**CASE NO: CV-09-900351 )**

**KAY IVEY, Chairman of the Board of the )  
Alabama Prepaid Affordable College )  
Tuition Program (PACT); RICKY )  
JONES, Vice-Chairman of PACT; JIM )  
FOLSOM, a member of the Board of )  
PACT; JOAN DAVIS, a member of the )  
Board of PACT; DR. GREGORY FITCH, )  
a member of the Board of PACT; DR. )  
HAROLD McGEE; a member of the Board )  
of PACT; WILLIE HUFF, a member of the )  
Board of PACT; TOM BROUGHTON, a )  
member of the Board of PACT; DANIEL )  
HUGHES, a member of the Board of )  
PACT; RUSSELL BUFKIN, a member of )  
the Board of PACT; HON. BOB RILEY, as )  
the Governor of Alabama and President of )  
the Board of Trustees of all Public four )  
year colleges and universities in Alabama; )  
and Fictitious Parties, A through Z are )  
those persons, firms, or corporations, )  
individuals or entities who are )**

presently unknown to the Plaintiffs who )  
acted with the named Defendants as set out )  
herein, )  
)  
Defendants )

**FIRST AMENDED AND RESTATED COMPLAINT**

Comes now the Plaintiff, and amends and restates her Complaint, in its entirety as follows:

**COMPLAINT**

**PARTIES**

1. Lisa Nix Green is over the age of 19 and is a resident of Montgomery County, Alabama. She brings this action individually, as next friend of her minor son, Brent A. Green, and on behalf of a class as meru particularly described hereafter.
2. Blake A. Green, Jr., is over the age of 19 years and is a resident of the State of Alabama.
3. Defendant Kay Ivey, Chairman of the Board of the Alabama Prepaid Affordable College Tuition Program (hereinafter “PACT”), is over the age of 19 and a resident of the State of Alabama.
4. Defendant Ricky Jones, Vice-Chairman of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
5. Jim Folsom, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
6. Joan Davis, interim Chancellor of Alabama’s two-year college system and member of the PACT Board.
7. Dr. Gregory Fitch, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.

8. Dr. Harold McGee, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
9. Willie Huff, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
10. Tom Broughton, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
11. Daniel Hughes, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
12. Russell Buffkin, a member of the Board of PACT, is over the age of 19 and a resident of the State of Alabama.
13. Fictitious Defendants A through Z are those persons, firms, corporations, individuals or entities who are presently unknown to the Plaintiff who acted with the named Defendants as set out herein.
14. The Hon. Bob Riley is the Governor of Alabama and President of the Board of Trustees of all public four year colleges and universities in Alabama.

#### **CLASS ACTION ALLEGATIONS**

15. The Plaintiff Lisa Green brings this Class Action, individually and as next friend of Brent A. Green, and under Rule 23 ARCP on behalf of a class defined as those persons who have prepaid the college tuition of their children or other “qualified beneficiaries”, as well as those “qualified beneficiaries”.
16. Plaintiff seeks to have herself appointed as representative of the Class.
17. The claims of the respective Plaintiff are typical of the claims of the Class.

18. The exact size of the Class is not known at this time but Plaintiff estimates that there are thousands of persons who meet the definition of the Class.
19. The members of the Class are sufficiently numerous in that joinder of all members is impractical.
20. Common questions of law exist.
21. The interest of the Class will be fairly and adequately protected. The interest of the Class representative is consistent with those of the members of the Class.
22. The Class is represented by experienced and able counsel knowledgeable with respect to Class Actions, and who have represented Plaintiff Classes on numerous occasions.
23. Certification of a Class is appropriate under the provisions of Rule 23(b)(1), A.R.Civ.P. as the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties opposing the Class, or adjudication with respect to individual members of the Class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
24. Certification of the Class is also appropriate under the provisions of Rule 23(b)(2), A.R.Civ.P., in that the Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief of corresponding declaratory relief with regard to the Class as a whole.

## FACTUAL ALLEGATIONS

25. In 1989, the Alabama Legislature passed Act No. 89-862 which established the Wallace-Folsom Prepaid College Tuition Trust Fund to assist individuals in paying costs and expenses of attending colleges and universities through the PACT Program. (said Act was originally codified as § 16-33c-1 Code of Ala. 1975)
26. The PACT Program, Act # 89-862, was created as an agency and instrumentality of the State of Alabama, for the express purpose “to establish an educational trust fund through which many of the costs associated with attending a state college or university may be paid in advance for the full term of undergraduate enrollment.” (see Act # 89-862, Sec. 1).
27. On April 19, 1990, Act # 90-570 became the law of this State. This Act amended the provisions of Act # 89-862 (then codified as § 16-33c-1 et seq. Code of Ala. 1975) to some extent. For instance, Act # 90-570 constitutes the PACT Trust Fund as an “agency and instrumentality of the State of Alabama.” Additionally the 1990 Act provides that the assets of the PACT trust are “public funds of the state.” The express, stated purpose and intent of the act is to provide a method by which students “pay in advance the tuition costs.”
28. Since the PACT Program was established, thousands of individuals have through the PACT Program and on behalf of Qualified Beneficiaries prepaid the college tuition of those beneficiaries. Typically, these prepayments are made by parents and grandparents who pay in advance the college tuition of their “beneficiaries” under the terms of state law.

29. During the year 1990, Plaintiff Lisa Nix Green purchased a PACT Program Contract for each of her children, namely, Blake A. Green and Brent A. Green, Jr.. Such contracts are attached as Exhibit 1 and 2 to this Complaint.
30. From 1990 through 1995, the Plaintiff made timely payments to the PACT Program as required by the Contracts according to the five-year plan set up for her at the time of the execution of the Contract, and thereby paid said contracts in full.
31. Thus, the eligible tuition and fees of Brent A. Green and Blake A. Green, Jr., and those of all other beneficiaries for whom fully paid “contracts” for PACT benefits have been paid have in fact and law fully paid, in advance, their tuition and fees (as defined by law) at any eligible college (either 4 year or 2 year) in the State of Alabama and corresponding appropriate amounts for non-public colleges.
32. In March of 2009, the PACT Program has publicly announced that it no longer has the funds to meet its obligations under the contracts executed by the PACT Program.
33. Plaintiff’s child, Brent A. Green, has been accepted for admission at the University of Alabama for admission in the Fall of 2009 and intends to attend the University of Alabama in the Fall. Time is of the essence in this case because of the uncertainty of payments to the relevant institution pursuant to the Plaintiff’s Contract.
34. Blake A. Green, plans to return to college in the near future.
35. Because of the actions of the Defendants, the Plaintiff’s children, Brent A. Green and Blake A. Green, and thousands of other Qualified Beneficiaries, may be

unable to attend a college or university, contrary to the intention of ACT No. 89-862, and subsequent acts of the legislature.

36. The PACT plans and trust are agencies and instrumentalities of the State of Alabama. The State supported public two and four year college and universities are also agencies of the State of Alabama under the law of this State. Thus, the advanced payment of covered tuition and fees under the PACT program binds all state officers, employees, and agents, and agencies. In other words, since the Plaintiffs and the class they seek to represent have paid their tuition and fees in advance, any and all state supported public colleges and universities are bound to admit those students without any further payment of the tuition and fees covered by these advanced payments.

#### **JURISDICTION AND VENUE**

37. Jurisdiction and venue of this case are proper in Montgomery County, Alabama.

#### **COUNT I – BREACH OF CONTRACT**

38. Plaintiff realleges all allegations in the preceding paragraphs as if set forth in full herein.

39. The Defendants had a contractual duty to those persons who entered into contracts with the PACT Program and advanced paid undergraduate tuition and mandatory fees on behalf of Qualified Beneficiaries.

40. The Plaintiff fulfilled her obligation under the Contracts by paying all amounts required of her under the Contract in a timely manner.

41. The Defendants breached the Contracts by announcing the PACT Program could no longer meet its obligation under the subject contracts.

42. The Plaintiffs have been damaged in that the PACT Program will not be able to fulfill its obligation to her and her Qualified Beneficiaries, Brent A. and Blake A. Green, under the contract, contrary to the intent of the Legislature in enacting ACT No. 89-862.

### **COUNT II – DECLARATORY JUDGMENT**

43. Plaintiff realleges all allegations in the preceding paragraphs as if set out in full herein.

44. A justiciable controversy exists between the Plaintiff and the Defendants with regard to the parties' rights, duties and liabilities by virtue of Act 89-962 as amended and Exhibits 1 and 2.

### **COUNT III – 42 U.S.C. SEC 1983**

45. The allegations of paragraphs 1 through 42 are incorporated herein as if fully set forth below.

46. The action of Defendants set out herein are under color of state law, custom and usage and deprive Plaintiff and members of the Plaintiff's class of rights secured to them by the Constitution and laws of the United States. Defendants are therefore liable to Plaintiff pursuant to 42 U.S.C. Sec. 1983.

### **PRAYER FOR RELIEF**

WHEREFORE, premises considered, Plaintiff prays that this Court shall (1) certify this case as a class action; (2) enter a judgment on behalf of the Plaintiff and the Class for compensatory damages as a result of the Defendants' breach of contract; (3) enter a judgment declaring that the Defendants are liable to the Plaintiff and the Class for the tuition and fees pursuant to the relevant contracts and that the public

universities and colleges of the State are bound to accept all students, who are otherwise qualified for admission, without any further payment of tuition and fees covered by the relevant PACT statutes and contracts (4) enter an order granting Plaintiff's attorney fees and costs associated with this action; and (5) such further and other relief as this Court shall deem.

Respectfully submitted this the 1<sup>st</sup> day of June, 2009.

/s/ J. Doyle Fuller  
Of Counsel

**J. DOYLE FULLER** (FUL005)  
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334-270-0020  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing First Amended and Restated Complaint has been electronically served upon counsel for all parties who are Alafile registrants and/or by placing a copy of same in the United States mail, properly addressed and postage prepaid, this the 1<sup>st</sup> day of June, 2009.

J. MICHAEL MANASCO, ESQ.  
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/s/ J. Doyle Fuller  
Of Counsel

PLEASE SERVE THE ADDITIONAL DEFENDANTS AS FOLLOWS VIA  
CERTIFIED MAIL:

HON. BOB RILEY, GOVERNOR  
State Capitol  
600 Dexter Avenue  
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JOAN DAVIS  
Interim Chancellor  
Alabama College System  
401 Adams Avenue Suite 290  
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