

CLASS SETTLEMENT AGREEMENT

This is an agreement to settle portions of a class action lawsuit and a representative group action brought under California Business and Professions Code section 17200 against Apollo Group, Inc., an Arizona Corporation, and University of Phoenix, Inc., an Arizona Corporation.

I. DEFINITIONS

- A. "Action" shall mean only that portion of the lawsuit entitled Davis, et al. v. Apollo Group, Inc., case number FCS 018663, filed on December 19, 2001, in Solano County, California, which is brought by Paul Stockman on behalf of himself and all others similarly situated and on behalf of the general public. "Action" shall not mean that portion of that lawsuit brought by Lori Davis and/or Michelle Smith.
- B. "Defendants" shall mean Apollo Group, Inc. and University of Phoenix, Inc. individually and collectively, and any of those entities' affiliated, parent, and/or subsidiary companies.
- C. "Preliminary Approval Order" shall mean the order described in ¶ III(H)(1) of this Settlement Agreement.
- D. "Final Approval Order" shall mean the order described in ¶ III(H)(2) of this Settlement Agreement.
- E. "Claims" shall mean any and all claims, defenses, offsets and causes of action that are asserted in the Action, including, but not limited to; (a) claims that Defendants violated California law by failing to pay overtime, claims for meal and rest period penalties, and for waiting time penalties; and (b) claims that Defendants violated California Business & Professions Code Section 17200, or any other statute, law, state or federal, known or unknown, by failing to pay overtime, claims for meal and rest period penalties, and for waiting time penalties.

- F. “Effective Date” shall mean the first day on which all of the following events shall have occurred: (a) the court has entered the Final Approval Order; (b) the Parties have not given notice of intent to withdraw from this Settlement Agreement as permitted under ¶ III(L) of this Settlement Agreement and the time for giving such notice has run; and (c) the Final Approval Order has become final and nonappealable, either through the passage of time or the exhaustion of all appeals or other methods of review by appellate courts, and it has not been modified, unless such modification is approved by all the Parties.
- G. “Plaintiff” or “Class Representative” shall mean Paul Stockman.
- H. “Parties” shall mean Plaintiff and Defendants, collectively.
- I. “Plaintiff’s Counsel” shall mean Scot Bernstein of the Law Offices of Scot Bernstein and Albert A. Erkel Jr., of the Law Offices of Albert A. Erkel, Jr.
- J. “Settlement” shall mean the terms and conditions of this Settlement Agreement.
- K. “Settlement Agreement” shall mean this agreement.
- L. “Settlement Class” shall mean all persons who were employed in California by Defendants as Enrollment Counselors at any time during the five years preceding the date of the Preliminary Approval Order and who have not, prior to the Effective Date, either (1) opted out of and thereby ceased to be members of the Settlement Class within the time requirements set forth in the Notice attached hereto as attachment “A” or (2) filed a lawsuit against Defendants for failing to pay overtime pay, meal and rest period penalties, and/or waiting time penalties. Specifically, neither Lori Davis nor Michelle Smith will be included in the Settlement Class at any time.

M. “Enrollment Counselor” shall mean and include the job titles enrollment counselor, enrollment advisor, admissions counselor, admissions advisor, enrollment counselor/advisor, enrollment representative and admissions counselor/advisor.

II. RECITALS

A. The Action

1. The Action asserts two causes of action for: (1) alleged violations of California law and the Industrial Welfare Commission’s Wage Orders, including California Labor Code sections 203 and 226.7; and (2) alleged violations of California Business & Professions Code section 17200.

2. The Action alleges, among other things, that by improperly classifying their California Enrollment Counselors as exempt employees and by failing to pay them overtime and failing to provide them with meal and rest periods, Defendants violated California law and the Industrial Welfare Commission’s Wage Orders as well as engaged in unfair competition in violation of California Business and Professions Code section 17200.

B. Settlement of Action

1. As a result of the Parties’ investigation and consideration of the facts underlying the Action, which include numerous confidential settlement communications and meetings between counsel, and review and analysis of information provided by Defendants, the Parties have determined that settlement of certain of the claims asserted in the Action is appropriate to avoid the expense, inconvenience, and burden of further litigation, particularly in light of the benefits that the Settlement Class and the public in general will receive as a result of the Settlement between the Parties.

2. Defendants deny that any of their conduct, as alleged in the Action, was wrongful or gives rise to any liability whatsoever.

III. AGREEMENT

IT IS AGREED, by and among the Plaintiff on the one hand, and Defendants on the other, that portions of the Action be, and are, conditionally settled and compromised, and that those portions of the same shall be dismissed with prejudice, subject to the approval of the Court, in which the Action is pending on the following terms and conditions:

A. **Subject to Court Approval**

1. The Parties agree, solely for purposes of the Settlement and not for any other purpose, that their counsel will jointly request that a Settlement Class be conditionally certified in the Action pursuant to California Code of Civil Procedure section 382 and/or Civil Code section 1781(b) and that Plaintiff Paul Stockman shall be designated as Class Representative and Plaintiff's Counsel shall be jointly designated as Settlement Class counsel.

2. The Parties agree that a mutually acceptable notice of the proposed class action settlement in the form set forth in attachment "A" to this Settlement Agreement (the "Notice") shall be sent to the last known address of all members of the Settlement Class by first class mail. Defendants will pay for the cost of mailing notice to members of the Settlement Class and for costs associated with the administration of the Settlement by Defendants or an independent administrator selected by Defendants. Costs associated with the administration of the Settlement will not include attorneys' fees attributable to or relating to Plaintiff's Counsel's time, or work associated with advising members of the Settlement Class.

In the event the Notice to any member of the Settlement Class is returned by the United States Postal Service because the recipient's address is no longer valid, Defendants will use reasonable good faith efforts to promptly ascertain a current address and resend the Notice. If the court orders, Defendants will provide to the Court and/or Plaintiff's Counsel a report regarding members who have been served and/or those upon whom service has not been

achieved. Defendants will provide to the Court all information which the Court requests to enable the Court to rule on the fairness of the settlement and rule on the final approval order.

3. The Parties agree that should the court be unwilling to approve the Settlement on the terms set forth in this Agreement, the Settlement Class will not be certified and the court's previous order denying class certification will, subject to any future rulings of the court, be the operative order in the Action. Further, in the event the Settlement is not approved by the court, this Settlement Agreement will become void and any evidence of the Parties participating in this Settlement Agreement shall not be admissible for any purpose in any aspect of the Action.

B. Cessation of Litigation

Immediately upon execution of this Settlement Agreement, the Parties shall cease all litigation activity in the Action (other than any activity necessary to implement this Settlement Agreement) until each of the conditions precedent to the Parties' obligation to consummate the Settlement has been satisfied or waived, or the Settlement is disapproved by the court or an appellate court, or a material modification to the Settlement is ordered by the court or an appellate court which is unacceptable to any Party.

C. Settlement Consideration

In consideration of the release set forth in ¶ III(D) of this Settlement Agreement and the other promises made herein, Defendants agree that as soon as practicable after the Effective Date but in no event later than 14 (fourteen) days thereafter they shall:

1. Pay plaintiff Paul Stockman the sum of \$5,000.00 (five thousand dollars) as an enhancement for acting as Class Representative in addition to any overtime payments he claims pursuant to the following sections; and

2. Create a maximum settlement fund of up to \$2,300,000.00 (two million, three hundred thousand dollars) for the payment of overtime compensation to members of the Settlement Class (the “Settlement Fund”). The disposition of that fund will be subject to the following conditions:

(a) In order to participate in the Settlement Fund, a member of the Settlement Class must affirmatively elect to participate by completing the Claim Form that is included in the Notice, which includes the statement under oath that that individual had worked overtime in California and the number of weeks that the individual claims to have worked overtime in California .

(b) Defendants will have a limited right to challenge claims for overtime compensation submitted by Settlement Class members in two situations: (1) where the claim form submitted by a participating Settlement Class member claims overtime for more weeks than the records of Defendants indicate that individual was in their employ as an Enrollment Counselor; and (2) where it appears from the records of Defendants that a Settlement Class member submitted a claim for the receipt of overtime compensation for weeks during which that Settlement Class member did not perform any work. In the event that Defendants challenge any claim under this section and the Settlement Class member disputes Defendants’ challenge, then the matter shall be decided by a neutral third party agreed upon by counsel for Plaintiff and counsel for Defendants or, failing such agreement, appointed by the Court. Fees of the neutral third party and all other costs of any such proceeding shall be paid by Defendants, but will not include attorney’s fees of claimant.

(c) Settlement Class members who submit a claim form as described above will be entitled to receive five hours of overtime pay at the rate of \$23.82 per hour for each week that they claim to have worked overtime, subject to the maximum described below.

(d) The maximum amount which any Settlement Class member will be entitled to receive from the Settlement Fund is for a period of 80 weeks.

(e) There will be no payment of meal or break penalties.

(f) If the claims submitted by Settlement Class members exceed \$2,300,000.00 (two million, three hundred thousand dollars) the maximum amount of the Settlement Fund that is available for distribution to members of the Settlement Class, then such claims will be reduced on a pro rata basis.

(g) If claims submitted by Settlement Class members do not exceed \$2,300,000.00 (two million, three hundred thousand dollars), the maximum amount of the Settlement Fund, then Defendants obligations under ¶ III C(2) of the Agreement will be satisfied by the payment of the claims that are submitted in accordance with the terms of this Agreement.

3. If, and only if, this Settlement is agreed to and approved by the Court, Defendants will reclassify the Enrollment Counselor position as non-exempt on a nationwide basis.

4. A member of the Settlement Class who excludes himself or herself or 'opts out' by completing and timely returning Request for Exclusion form that is included in the Notice which is attached hereto as Attachment "A" will cease to be a member of the Settlement Class as of the date on which his or her claim form is returned. The claim form and the Request for Exclusion form will be deemed returned on the date on which it is postmarked if deposited in the

U.S. Mail, or the date actually received if delivered by any other means. If more than 20% of the individuals who are members of the Settlement Class on the date of the Preliminary Approval Order (currently estimated to be approximately 133 individuals), opt out of participation in the Settlement entirely, then Defendants will, in their sole discretion, have the right to withdraw from the Settlement.

5. Lori Davis and Michelle Smith are not members of the Settlement Class, are not Parties to this Settlement Agreement, and need not take any further actions to exclude themselves from the Settlement Class.

6. Upon request, Defendants shall provide the Court and Plaintiff's Counsel with information regarding any disputes or disagreements described in ¶ III(C)(2)(b) with members of the Settlement Class.

7. It is Defendants' policy not to retaliate against any member or potential member of the Settlement Class to the Settlement, including, but not limited to, the decision whether or not to submit a claim and whether or not to opt out. If a member or potential member of the Settlement Class inquires of Defendants' Human Resources personnel for California regarding any aspect of the Settlement, Defendants shall provide the inquiring individual with his or her number of weeks worked as an Enrollment Counselor in California and the number of weeks of vacation/sick, or leave time taken while working as an Enrollment Counselor in California. This paragraph does not limit Defendants' ability to express its view that the Settlement was entered into to avoid the expense of litigation, and without the admission of any liability.

D. Release

1. In full, complete, and final compromise and settlement of the Claims of Plaintiff Paul Stockman, for the individuals who are members of the Settlement Class on the date of the

Final Approval Order, their children, heirs, successors in interest, assigns agrees to release, acquit and discharge Defendants and their affiliated, parent, and/or subsidiary companies and all of their employees, agents, representatives, officers, directors, and attorneys (collectively the “Releasees”), from the Claims, and any and all other claims, obligations, liabilities, expenses, costs, attorneys’ fees, damages, demands, rights and causes of action, known or unknown, arising at any time, that arise from or are related to or connected with the Claims. Plaintiff further agrees that, to the maximum extent allowable by law, this Settlement is intended to settle his claims on behalf of the general public pursuant to California Business and Professions Code Section 17200 *et. seq.* In the event that an individual or entity other than Paul Stockman threatens or brings litigation against Defendants pursuant to California Business and Professions Code 17200 *et. seq.*, Defendants will not seek indemnification from Paul Stockman, and/or Plaintiff’s counsel. This release shall become effective at such time as Defendants have complied with all of their obligations pursuant to this Settlement Agreement.

2. In full, complete and final compromise and settlement, Defendants agree to release, acquit and discharge Plaintiff Paul Stockman in his individual capacity and his agents, representatives, attorneys from any and all claims, obligations, liabilities, expenses, costs, attorneys’ fees, damages, demands, rights and causes of action, known or unknown, arising at any time, that arise from or are related to or connected with the Claims, and/or the allegations in the Action.

E. Publicity

If contacted by the media, Plaintiffs and Defendants shall respond only that the matter has been resolved to the satisfaction of all parties. Plaintiff and his counsel shall not issue any press release to the media, conduct any press conference or otherwise attempt to publicize the

fact of this Settlement Agreement or its terms. Their response to inquiries from members of the press or other media shall be limited to stating that the Parties have agreed to make no comment. No information regarding this Settlement Agreement will be provided to Jury Verdicts Weekly or similar publications. Notwithstanding the above, however, Plaintiffs' Counsel shall be permitted to include reference to the Action and this Settlement on any document to be submitted to a court with respect to their qualification to represent plaintiffs' classes and/or with respect to any fee application in other class actions in which they may be acting as plaintiffs' counsel now or in the future. Plaintiff's Counsel shall be permitted to include reference to the Action and this Settlement on their resumes, curriculum vitae, and biographical information.

F. Plaintiff's Counsels' Fees

The Parties have agreed that in satisfaction of any and all claims for attorneys' fees in the Action, Defendants shall pay Plaintiff's Counsel collectively \$450,000.00 (four hundred, fifty thousand dollars), to be divided at their discretion. This payment shall be made by check payable jointly to Plaintiff's Counsel or as otherwise jointly designated by them, and shall be made no later than 15 days after the Effective Date. Defendants will have no responsibility for any other fees or costs incurred by Plaintiff or his counsel.

G. Waiver of California Civil Code Section 1542

It is a condition of the consideration hereof, and is the intention of the Plaintiff, individually, and Defendants in executing this Settlement Agreement, that this Settlement Agreement shall be effective as a complete release and settlement of all claims, demands, liens, assignments, contracts, covenants, actions, suits, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, controversies, judgments, orders and liabilities, including but not limited to those claims arising out of or relating to or connected with the Action and the

Claims, which the Plaintiff, individually, or Defendants now have, or had in the past, or might have in the future against one another. In furtherance of this intention, which may be asserted by and between the Parties, and/or their successors, heirs and/or assigns, Plaintiff and Defendants expressly, knowingly and voluntarily waive any and all rights and/or benefits conferred upon the Plaintiff and Defendants by Section 1542 of the California Civil Code.

Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that they have been advised by their respective counsel of and that they are familiar with the provisions of Section 1542 of the California Civil Code, and that, being aware of that section, the Plaintiff and Defendants expressly waive any and all rights and benefits conferred by that section. This waiver and release applies only to the claims arising out of the Action and the Claims and does not extend to any other action, pending or otherwise. This provision shall become effective at such time as Defendants have complied with all of their obligations pursuant to this Settlement Agreement.

H. Orders Approving Settlement Agreement

1. Preliminary Approval Order. The Parties agree that this Settlement Agreement is contingent upon the Court's entry of a Preliminary Approval Order containing the following provisions:

a. Preliminarily certifying the Action for settlement purposes only as a class action on behalf of the Settlement Class, designating Plaintiff Paul Stockman as Class Representative, and designating Plaintiff's Counsel as class counsel.

b. Preliminarily approving this Settlement and adjudging its terms to be fair, reasonable and adequate for the reasons stated above, among others, and directing that the Notice be sent to all members of the Settlement Class as provided in ¶ III(A)(2) within twenty (20) days after the Preliminary Approval Order, and further providing that members of the Settlement Class shall have until sixty (60) days after the date of mailing of the Notice to return the claim form. The claim form will be deemed returned on the date it is postmarked if deposited in the U.S. Mail, or the date actually received if delivered by any other means.

2. Final Approval Order. The Parties agree that this Settlement Agreement is contingent upon the Court's entry of a Final Approval Order containing the following provisions:

a. Certifying the Action for settlement purposes only as a class action on behalf of the Settlement Class, designating Plaintiff Paul Stockman as Class Representative, and designating Plaintiff's Counsel as class counsel.

b. Approving this Settlement and adjudging its terms to be fair, reasonable and adequate for the reasons stated above, among others, and directing that all sums provided by ¶ III(C) and ¶ III(F) be paid by Defendants.

c. Providing for the ultimate dismissal, after all provisions of this Settlement Agreement have been complied with, of all claims asserted in the Action by Paul Stockman. It is the intent of the Parties that this Settlement Agreement is also contingent upon Lori Davis and Michelle Smith releasing and dismissing with prejudice their claims as asserted in the second cause of action in the Action.

d. Effective after all provisions of this Settlement Agreement have been complied with, permanently barring and enjoining all members of the Settlement Class from the

institution, maintenance, prosecution or enforcement of, either directly or indirectly, the Claims and/or all other claims discharged by this Settlement Agreement.

e. Apart from Releasees' obligations under the Settlement Agreement, and effective upon all of those obligations being met, releasing, acquitting and discharging the Releasees from any and all claims, obligations, liabilities, expenses, costs, attorneys' fees, damages, demands, rights and causes of action, known or unknown, arising at any time, that arise from or are related to or connected with the Claims including, without limitation, all allegations referenced in the recitals to the Settlement Agreement.

I. Continuing Jurisdiction

The court shall have continuing jurisdiction to supervise and effectuate the implementation of this Settlement Agreement and/or to resolve any disputes between the Parties with respect to the interpretation of this Settlement Agreement.

J. No Admissions

This Settlement Agreement, its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession by any person, including any of Defendants, and shall not be offered or received in evidence or requested in discovery in the Action or any other action or proceeding as evidence of such an admission or concession.

K. Settlement Not Approved

This Settlement Agreement shall be withdrawn and terminated and shall be deemed null and void if (a) the court does not approve the Settlement or (b) no Final Approval Order becomes effective. Should the court not issue a Final Approval Order or should the Final Approval Order be rescinded by an appellate court, or materially modified in such a manner that is unacceptable

to any Party, no class will be certified pursuant to this Settlement Agreement or, such certification will be deemed to have been only for purposes of this Settlement Agreement and shall be void for all other purposes, and the court shall decertify the class, subject to any subsequent orders of the Court. Even if no court order decertifying the class has been entered, the Settlement Class will be deemed to have been decertified. In such event, Defendants will not be deemed to have consented to certification of any class, and the court's prior order denying class certification will be the operative order, subject to any subsequent orders of the Court.

L. Parties' Right to Set Aside Settlement

It is agreed that any of the Parties have the right to set aside or rescind this Settlement Agreement if material modifications to this Settlement Agreement are required by the court or by any appellate court, which are determined by said Party in its sole discretion to be material.

M. Cooperation

The Parties agree to cooperate to the extent necessary to effectuate the terms and conditions of this Settlement.

N. Entire Agreement; Amendment

This Settlement Agreement and its attachment constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all other agreements and understandings among or between any of the Parties hereto relating to the subject matter hereof. This Settlement Agreement cannot be changed or modified except in a writing signed by all Parties.

O. Counterpart Execution

This Settlement Agreement may be executed in any number of counterparts and will be binding when it has been executed by the final signatory party hereto to execute a counterpart.

After execution of counterparts by each designated signatory party, Defendants agree to furnish each party with a composite conformed copy of this Settlement Agreement reflecting all counterpart signatures.

P. Voluntary Agreement

The signatories hereto warrant and represent that they each are effecting this Settlement and executing this Settlement Agreement after having received full legal advice as to their respective rights from their attorneys. The Parties hereto further represent and declare that they have carefully read this Settlement Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

Q. Construction of Agreement

This Settlement Agreement is the product of negotiation and preparation by and among each party and the Parties' respective counsel. Therefore, the Parties acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another and should be construed accordingly.

R. Severability

In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision unless the effect of the determination that the provision is invalid, illegal, or unenforceable, has the effect of depriving any of the parties to this Settlement Agreement of material benefits under the Settlement Agreement. In that event, unless the Parties are able to reach a mutual agreement to revise the Settlement Agreement satisfactorily to all within 30 (thirty) days of notice of the declaration of

invalidity, illegality or unenforceability, of any provision(s), then the entire Settlement Agreement shall be deemed invalid, unenforceable, and automatically rescinded.

S. Controlling Law

This Settlement Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

T. Waiver and Agreement

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or other provisions hereof. This Settlement Agreement may be amended only by a written agreement executed by the Parties at the time of the modification.

U. Captions

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision thereof. No provision in this Settlement Agreement is to be interpreted for or against any party because that party or its legal representative drafted such provision.

V. Mutual Interpretation

The Parties agree and stipulate that this Settlement Agreement was negotiated on an arm's-length basis between parties of equal bargaining power. This Settlement Agreement has been drafted jointly by Plaintiff's Counsel and counsel for Defendants. Accordingly, this Settlement Agreement shall be mutually interpreted and not construed in favor or against any of the Parties. It is the intent of all Parties that this Settlement have full res judicata and collateral estoppel effect with respect to the Claims and all allegations in the Action.

W. Notice

Whenever any written notice is required or permitted by the terms of this Settlement Agreement, it shall be deemed effective on the date of its mailing, postage prepaid, or prepaid delivery to a recognized overnight courier service addressed as follows:

If to Defendants:

Daniel J. McAuliffe
Snell & Wilmer LLP
400 East Van Buren
One Arizona Center
Phoenix, AZ 85004-2202

And to

Christy D. Joseph
Snell & Wilmer LLP
1920 Main Street, Suite 1200
Irvine, CA 92614-7230

If to the Plaintiffs, or the Settlement Class:

Scot Bernstein
Law Offices of Scot Bernstein
10510 Superfortress Avenue, Suite C
Mather Field, California 95655

And to

Albert A. Erkel, Jr.
Law Offices of Albert A. Erkel, Jr.
3300 Douglas Boulevard, Suite 125
Roseville, CA 95661

X. Successors and Assigns.

This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.

IN WITNESS WHEREOF, the undersigned parties have executed this Settlement Agreement as of the date noted beside their signature.

Dated: _____, 2004

Paul Stockman

DEFENDANT'S' SIGNATURES

Dated: _____, 2004

APOLLO GROUP, INC.
UNIVERSITY OF PHOENIX, INC.

By: _____

Diane Thompson
Vice President of Human Resources

Approved as To Form and Content

Dated: _____, 2004

SNELL & WILMER LLP

By: _____
Daniel J. McAuliffe
Christy D. Joseph
Attorneys for Defendants Apollo Group,
Inc. and University of Phoenix, Inc.

Dated: _____, 2004

LAW OFFICES OF SCOT BERNSTEIN

By: _____
Scot Bernstein
Attorneys for Plaintiffs

Dated: _____, 2004

LAW OFFICES OF ALBERT A. ERKEL, JR.

By: _____
Albert A. Erkel, Jr.
Attorneys for Plaintiffs

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