

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

Lori Davis, Michelle Smith and Paul Stockman, on behalf of themselves and all others similarly situated and on behalf of the general public,

Plaintiffs,

vs.

Apollo Group, Inc.; University of Phoenix, Inc.; and DOES 1 through 100, Inclusive,

Defendants.

Case No. FCS 018663

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT,
HEARING ON PROPOSED SETTLEMENT AND ATTORNEYS'
FEE PETITION**

***This is a Court-authorized notice.
It is not a solicitation from a lawyer.***

TO: ALL PERSONS WHO WERE EMPLOYED IN THE STATE OF CALIFORNIA AS AN ENROLLMENT COUNSELOR, ADMISSIONS COUNSELOR, ADMISSIONS ADVISOR (OR THEIR FUNCTIONAL EQUIVALENT) BY THE UNIVERSITY OF PHOENIX ON OR AFTER MARCH 18, 1999.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT RELATES TO A PROPOSED CLASS SETTLEMENT AND, IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHTS.

SUMMARY OF SETTLEMENT

1. Purpose of this Notice

The Court is issuing this notice because you have a right to know about your options in connection with the proposed settlement of a class action. The Court has given preliminary approval to the proposed settlement. Should the Court grant final approval and after appeals (if any are filed) are resolved, funds will be distributed to eligible California settlement class members who submit timely and properly completed Claim Forms.

This notice explains the lawsuit, the settlement, your rights and the potential distribution of settlement funds.

Call toll free **1-800-916-3500** if you have questions.

Judge Harry S. Kinnicutt, of the Solano County Superior Court, is in charge of the case~ titled *Lori Davis, et al v. Apollo Group, Inc. and University of Phoenix, Inc.* Solano County Superior Court Case Number FCS 018663.

The person who is bringing this lawsuit, Paul Stockman, is called the "named plaintiff." Originally, there were three named plaintiffs, Paul Stockman, Lori Davis and Michelle Smith. That is why the case is captioned *Lori Davis, et al. v. Apollo Group, Inc. and University of Phoenix, Inc.* After filing the action, however, Lori Davis and Michelle Smith decided not to participate as settlement class members.

The named plaintiff is a former employee of University of Phoenix, Inc., and Apollo Group Inc., who worked in California as an Enrollment Counselor. He contends that he and all other Enrollment Counselors in California, by whatever title they were known at the particular campus or learning center where they worked, were not properly classified as "exempt" employees for purposes of California law and therefore should have been classified as "non-exempt" employees and paid for any overtime worked.

The companies the named plaintiff sued - University of Phoenix, Inc., and Apollo Group, Inc. - are called the "defendants."

Call toll free **1-800-916-3500** if you have questions.

The people who performed the same work in California as the named plaintiff - a job known as "enrollment counselor," "admissions advisor," "admissions counselor," etc. - are called the "settlement class members." Settlement class members deemed eligible under the terms of the settlement agreement may receive overtime pay from the settlement funds.

2. Nature of a Class Action

When large numbers of people may have similar claims, such claims can be resolved simultaneously through a procedure known as a "class action." Class actions may save litigation costs to the parties and taxpayers, and they make less likely the unfairness of individuals in identical situations receiving opposite results from the courts.

In a class action, the "named plaintiff" or "class representatives" file a lawsuit on behalf of themselves and all others similarly situated (the "class members"). The parties sued are called the "defendants." Settlement class members who do not wish to take part in the class action may exclude themselves, also known as "opting out."

3. Nature of this Lawsuit

The named plaintiff, Mr. Stockman, filed a lawsuit in the Solano Superior Court claiming that the defendants violated California's labor laws by improperly classifying their California enrollment counselors (who may have been known by other titles such as "admissions counselors," "admissions advisors," etc.) as exempt employees. Exempt employees are employees who are paid a fixed salary and who perform work of such a nature that they are paid the same salary regardless of the number of hours worked, unlike hourly employees. The lawsuit alleges that the California enrollment counselors performed work that did not qualify them as "exempt employees" for purposes of California law.

There are different standards under California law than under federal law for determining who is, and who is not, entitled to receive overtime pay. This case was filed in California, it only effects California employees, and it deals exclusively with California law governing overtime pay. For example, under the California standards, courts look at the work performed by an employee from a quantitative standpoint, i.e., how much time is spent performing exempt duties. This is different from the federal standard which looks at the work from a qualitative standard, i.e., what type of work is the employee performing. Further, in California, prior to January 1, 1998, and after December 31, 1999, non-exempt employees are entitled to overtime for hours worked in excess of 8 hours in a day. This standard does not apply under federal law. It should be noted that plaintiffs did not file their lawsuit under federal law.

The defendants do not admit that they improperly classified the enrollment counselors *or* that they owe them overtime pay. This settlement does not involve the admission or concession of any liability, wrongdoing, or fault whatsoever. The Court did not decide in favor of the named plaintiff *or* the defendants. The court, however, did rule on the issue of whether to certify the case for class action status, and ruled in the *defendants' favor*.

After the court's ruling, however, the parties decided to settle the case and treat it as a class action. The parties decided on this approach in part because, in California, there is a statute known as Business and Professions Code § 17200. Under Business and Professions Code § 17200, plaintiffs may have been able to assert the allegations contained in the lawsuit on behalf of individuals other than themselves. Accordingly, to avoid the uncertainties associated with this California statute, the parties decided to settle the claim in the manner described in this notice. The settlement was a result of lengthy negotiations between defendants' counsel and named plaintiff's counsel. By settling the case, all parties avoid the uncertainty and costs of a trial. Litigation is a long and expensive process. It is also an uncertain process with risks to all sides. There is no guarantee of winning. Therefore, the parties decided to settle the case. The named plaintiff and the attorneys appointed by the Court to represent the settlement class believe that the settlement is in the best interests of the settlement class.

THE COURT HAS NOT DETERMINED THE MERITS OF PLAINTIFF'S CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IN ANY AMOUNT IF THE ACTION WERE NOT SETTLED.

4. The Settlement Class — Who May Claim Benefits

You may be entitled to settlement benefits if you worked as an enrollment counselor in California (or as an admissions counselor, admissions advisor, or any other job title by which the same duties were known, all of which are referred to as “enrollment counselors” in this notice) on or after March 18, 1999. See item 5, immediately below.

If you are not sure whether you are included in the class, you may call the toll free number-- 1-800-916-3500 -- or write to the lawyers appointed by the Court to represent the class at Law Offices of Albert A. Erkel, Jr., Albert A. Erkel, Jr., 3300 Douglas Boulevard, Suite 125, Roseville, California 95661. **DO NOT CALL THE COURT.**

5. Reasons for Settlement

Settlement class counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the settlement class members considering the amount of Settlement and the immediacy of recovery to the settlement class members. Settlement class counsel took into consideration the expense and length of continued proceedings that would be necessary to prosecute the case through trial and appeals. Settlement class counsel have also considered the uncertain outcome and the risk of any further litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in any such litigation.

6. Description of the Settlement Terms

The settlement provides that persons who worked in California as enrollment counselors or in a similar position in California for the University of Phoenix or Apollo Group, Inc., and who submit a Verified Proof of Claim Form stating the number of weeks in which they either:

- (1) worked more than forty hours during the week or
- (2) worked more than eight hours on any day during the week

will receive \$119.10 for each such week, less applicable taxes and withholdings. The maximum period for which any claimant may recover such unpaid overtime is 80 weeks. Any overtime payment will be subject to *applicable withholding taxes as required by law*. Settlement class members who submit a Claim Form will be issued an IRS Form W-2. You are only eligible for benefits for those weeks you worked overtime as a California enrollment counselor during the relevant time period.

Should the total amount of overtime claimed by all claimants exceed \$2.3 million, the previously agreed and court approved maximum, each individual claim will be reduced by a pro-rata amount so that the total amount distributed from the settlement fund does not exceed \$2.3 million, the court approved maximum amount.

The University of Phoenix will verify the accuracy of the number of weeks claimed by any class member and, if appropriate, challenge any claim submitted. Such challenges may only occur: (a) where the Claim Form claims overtime pay for more weeks than the University of Phoenix’s records show the class member making the claim to have been employed as a California enrollment counselor or in a similar position; or (b) where the claim seeks overtime pay for weeks during which, even though employed, the employee was on vacation, or sick leave, or on leave for the entire week, or otherwise was not at work during the entire work week. In the event of such a challenge, if the defendants and the employee cannot agree on the correct number of weeks, the matter will be decided by a neutral third party agreed upon by defendants’ counsel and settlement class counsel or appointed by the court. If that occurs, the defendants will pay all fees of the neutral third party and other administrative costs of any such proceeding. Defendants will not pay for the settlement class member’s attorney fees should the settlement class member choose to be represented by counsel at such a proceeding. Defendants will have no obligation to pay the settlement class member’s incidental costs which may be incurred during the participation in any conference or meeting with the designated neutral third party. Defendants further have the right to challenge a claim of overtime by any settlement class member who has already filed a claim with the California Labor Commissioner and received a payment from defendant for overtime wages, or had a finding made against them by the California Labor Commissioner’s office which has become final and unappealable.

The consideration to the University of Phoenix for the payment of the settlement is: (a) the entry by the court of an order and final judgment which will (i) dismiss the class action against defendants with prejudice, (ii) bar and permanently enjoin Paul Stockman and each settlement class member who does not opt out from prosecuting the Settled Claims, and (iii) provide that any settlement class member who does not opt out by operation of that order shall have fully, finally and forever released, relinquished and discharged any and all Settled Claims; and (b) the entry of an order of final dismissal.

As used herein, "Settled Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, accrued claims and not accrued claims, foreseen claims and unforeseen claims, matured claims and not matured claims, alleged in the action brought by Paul Stockman on behalf of himself and the settlement class members or any of them against any of the released parties (i.e., any and all of the defendants, or their current or former respective agents, servants, attorneys, advisors, officers, directors, employees, subsidiaries, affiliates, successors and assigns) which arise out of or relate in any way to the allegations, facts, matters or occurrences, representations or omissions involved or referred to in the action brought by Paul Stockman on behalf of himself and the class members relating to the University's classification of California enrollment counselors as exempt employees. It is the intention of Paul Stockman to expressly waive and relinquish, to the fullest extent permitted by law; (a) the provisions, rights, and benefits of section 1542 of the California Civil Code, which provides that:

"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"; and

(b) the provisions, right and benefits of any similar statute or common law of any other jurisdiction that may become or may be asserted to be, applicable.

If the settlement is approved by the court, all Settled Claims will be dismissed on the merits and with prejudice as to all settlement class members who do not opt out and all settlement class members who do not opt out shall be forever barred from prosecuting any action raising any Settled Claims against any released party.

Distribution of the net settlement funds cannot occur unless and until all the conditions to the settlement are met, including obtaining approval of this settlement by the court.

7. How to Obtain Settlement Funds

To obtain funds from the settlement, you **MUST** fill out the enclosed claim form. Instructions for doing so are enclosed and should answer most of your questions. If you have questions, however, you may call the toll-free free number 1-800-916-3500. **DO NOT CALL THE COURT.**

Your interests as a settlement class member are represented by plaintiff and class counsel. Unless you opt out of the settlement class, you are part of the settlement class, you will be bound by the terms of the settlement agreement, and any final judgment that may be entered by the court and will be deemed to have released certain claims against the defendant as described in this notice. As a member of the settlement class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

Checks will be mailed to eligible settlement class members who have made claims shortly after the Court grants "final approval" to the settlement and appeals (if any are filed) are resolved. The Court is scheduled to consider final approval at a hearing on July 16, 2004, at 8:30 a.m. in Department 3 of the Superior Court of the State of California for the County of Solano. The time for filing an appeal would run 45 days later. If an appeal is filed, we cannot reliably estimate how long that would delay the payment of funds.

8. Opting Out of the Class

If you remain a member of the settlement class you cannot participate in another lawsuit for overtime pay against the defendants. If you want to pursue a claim for overtime pay on your own, you must exclude yourself from the settlement class, or "opt out," by completing the enclosed Request For Exclusion From Settlement Class Form. If you opt out, you will not be able to claim benefits

from the settlement. Do not submit both the Proof of Claim Form and a Request for Exclusion From Settlement Class Form. If you submit both, the Request for Exclusion From Settlement Class Form will be invalid and you will be included in the settlement.

9. Failure to Respond

If you do not respond at all, that is, if you do not submit a claim form and do not “opt out,” you still will be a member of the settlement class, but you will receive no payment from the settlement fund; and you will not be able to pursue any claim for overtime pay against the defendants. When the settlement becomes final, even if you do not submit a claim, you automatically will be releasing the defendants from any obligation to pay you for claims of the kind asserted in this case and will be bound by the release contained in the Settlement Agreement, unless you have opted out. You will be releasing the defendants from all claims for overtime pay, meal penalties, break penalties, interest, and California Labor Code section 203 waiting penalties accruing during the relevant time period.

10. Legal Representation of the Class

The Court has appointed the Law Offices of Scot Bernstein and the Law Offices of Albert A. Erkel, Jr., to represent the settlement class. Those firms are located near Sacramento, California, in Mather Field and Roseville, respectively. They will not be paid from settlement proceeds. Their fees will not reduce the \$2,300,000 available for the claims of settlement class members.

If you want to be represented instead by your own lawyer, you may hire one at your own expense.

11. Payment of Attorneys’ Fees and Costs to Class Counsel

Plaintiffs’ counsel have not received any payment for their services in conducting this litigation, nor have they been reimbursed for their out-of-pocket expenditures. Settlement class counsel intends to apply to the Court for an award of attorneys’ fees and expenses in the amount of \$450,000. Settlement class counsel also intends to apply to the Court for an award of up to \$5,000 for the named plaintiff as compensation for his time, and in addition to his benefits as a class member. The defendants have agreed to a payment in the above amount and will not oppose it. The Court will evaluate settlement class counsel’s request and award those fees and expenses that it concludes are reasonable. The defendants will pay the costs of administering the settlement. The amount paid to settlement class counsel will not reduce the payments made to settlement class members.

12. Objecting to the Settlement or the Attorneys’ Fee Request

If you are a settlement class member, you can object to the settlement, including the amount of settlement class counsel’s attorneys’ fees. The Court will consider your views. To object, you must file an objection with the Court and serve a copy of that objection as set forth below. The notice must include the case name and number, the reasons why you object, and your name, address, telephone number and signature. The notice must be filed with the Court and received by settlement class counsel and defense counsel no later than May 7, 2004, in order to be considered.

The notice must be filed with the Clerk of the Court
Solano County Superior Court
600 Union Avenue
Fairfield, California 94533

At the time you file, you must send an identical copy to the following persons:

Class Counsel:

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

Albert A. Erkel, Jr.
Law Offices of Albert A. Erkel, Jr.
3300 Douglas Boulevard, Suite 125
Roseville, California 95678

Defense Counsel:

Dan McAuliffe, Esq.
Christy Joseph, Esq.
Snell & Wilmer
1920 Main Street, Suite 1200
Irvine, California 92614-7230

Any written objection shall state each specific reason in support of your objection and any legal support and/or evidence for each objection. If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the clerk of the Solano County Superior Court, and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than May 7, 2004. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney, and will be solely responsible for the fees and costs of your attorney.

13. Hearing Regarding Court Approval of the Settlement

The Court has scheduled a hearing at 8:30 a.m. on July 16, 2004, at the Solano County Superior Court, Department 3, 600 Union Street, Fairfield, California 94533. At that hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court also may decide how much to pay to settlement class counsel. After the hearing, the Court will decide whether to grant final approval to the settlement.

You may attend the hearing at your own expense. If you file a written objection, you do not have to come to Court. If your written objection has been filed and received on time the Court will consider it. You also may pay your own lawyer to attend, but it is not necessary. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file a letter with the Court saying it is your, "Notice of Intention to Appear in Davis et al v. Apollo Group, Inc., and University of Phoenix, Inc." Your letter must include the case number (FCS 018663) and your name, address, telephone number and signature.

Your letter must be filed with the Court and received by settlement class counsel and defense counsel at the addresses set forth in item 12 no later than May 7, 2004.

14. Obtaining Additional Information About the Settlement

This notice summarizes the proposed settlement. More details of the settlement are in the Settlement Agreement, which can be reviewed online at www.sbernsteinlaw.com or obtained by calling the toll-free number: 1-800-916-3500. You also may write with questions to the lawyers appointed by the Court to represent the class at either of the addresses for class counsel in item 12, above. **DO NOT CALL THE COURT.**

Additional copies of the claim form can be obtained online at www.sbernsteinlaw.com or by calling the toll-free number: **1-800-916-3500.**

15. Summary of Options

As discussed in more detail above, your options are:

- A. Submit a timely Claim Form and thereby affirmatively become a settlement class member, be legally bound by the terms of this settlement, and be eligible for benefits.
- B. Affirmatively opt out of becoming a member of this settlement class by completing, signing and returning the Request for Exclusion From Class Form contained in this packet.
- C. Appear at the Court Hearing in order to address to the Court any comments you may have about the terms of the settlement or the attorneys' fees to be paid.
- D. Do nothing and thereby make no claim for past overtime pay but still be bound by the settlement and release, if approved by the Court.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!