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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10 **SACRAMENTO DIVISION**

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12 DIANE ADOMA, an individual, and  
13 MICHELLE ABBASZADEH, an  
14 individual, on behalf of themselves and  
15 others similarly situated and on behalf of  
16 The State of California Labor and  
17 Workforce Development Agency as a  
18 Private Attorney General

19 Plaintiff,

20 vs.

21 THE UNIVERSITY OF PHOENIX, INC.  
22 , AN ARIZONA CORPORATION;  
23 APOLLO GROUP, INC., AN ARIZONA  
24 CORPORATION;

25 Defendants.

Case No.: CV10-00059-LKK-GGH

**ORDER GRANTING  
PRELIMINARY APPROVAL AND  
CERTIFICATION OF A  
CONDITIONAL SETTLEMENT  
CLASS**

Hearing Date: May 21, 2012

Time: 10:00a.m.

Ctrm: 4

Judge: Hon. Lawrence K. Karlton

Date Filed: January 8, 2010

Trial Date: June 12, 2012

26 This matter coming before the Court on Joint Motion for Preliminary  
27 Approval of Class Action Settlement Agreement (the “Preliminary Approval  
28 Motion”), and after review and consideration of the Joint Stipulation of Settlement  
and Release (“Settlement Agreement”), the papers in support of the Preliminary

1 Approval Motion, and the arguments of counsel, , IT IS HEREBY ORDERED as  
2 follows:

- 3 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"), the  
4 proposed Settlement of this action, as embodied in the terms of the Settlement  
5 Agreement attached to the Preliminary Approval Motion, is hereby  
6 preliminarily approved as a fair, reasonable, and adequate settlement of this  
7 case in the best interests of the Settlement Class, in light of the factual, legal,  
8 practical, and procedural considerations raised by this case. The Settlement  
9 Agreement is incorporated by reference into this Order and is hereby  
10 preliminarily adopted as an Order of this Court.
- 11 2. Solely for the purpose of Settlement, and pursuant to Rule 23, the Court  
12 hereby preliminarily certifies the following classes for the period from April 5,  
13 2005 through the date the Court enters an Order preliminarily approving the  
14 settlement: (a) all current and former Enrollment Counselors in California who  
15 were previously sent a class notice in the above-captioned case, but who did  
16 not opt out of the class; (b) all Enrollment Counselors in California hired from  
17 August 13, 2010 to and including the Preliminary Approval Date ("Interim  
18 Class Members") who were not previously sent a class notice; (c) all  
19 Enrollment Counselors in California who originally opted into the action  
20 entitled *Sabol, et al., v. Apollo Group, Inc., et al.*, United States District Court,  
21 Eastern District of Pennsylvania, Civil Action No. 2:09-cv-03439-JCJ,  
22 ("*Sabol*") and who subsequently excluded themselves from the *Sabol*  
23 settlement; and (d) one individual (Angelica Michelle Lee) who has  
24 communicated to Class Counsel her intent to opt in to the Pennsylvania  
25 Action. "Class" shall exclude all Enrollment Counselors in California who  
26 opted into *Sabol* but who did not exclude themselves from the *Sabol*  
27 settlement.  
28

- 1 3. Solely for the purpose of settlement, Class Members who submit claim forms  
2 will also be deemed to have consented to join the Fair Labor Standards Act  
3 (“FLSA”) claims pursuant to Section 216(b) of the FLSA for purposes of  
4 achieving a Court-approved release of FLSA claims. If the settlement does  
5 not become final, these consents to join will have no force and effect in the  
6 action.
- 7 4. The Court orders that the Settlement Class is preliminarily certified for  
8 settlement purposes only. If the settlement does not become final for any  
9 reason, the fact that the Parties were willing to stipulate to class action  
10 certification for settlement purposes shall have no bearing on, and will not be  
11 admissible in connection with, the issue of whether a class action is properly  
12 certified in a non-settlement context. The Court’s findings are for purposes of  
13 conditionally certifying a Settlement Class and will not have any claim, issue,  
14 or evidentiary preclusion or estoppel effect in any other action against the  
15 Company Releasees, or in this litigation if the settlement is not finally  
16 approved.
- 17 5. The Court finds that certification of the Settlement Class solely for purposes of  
18 Settlement is appropriate in that: (a) the Settlement Class Members are so  
19 numerous that joinder of all Settlement Class Members is impracticable; (b)  
20 there are questions of law and fact common to the Settlement Class which  
21 predominate over any individual questions; (c) claims of the named Plaintiff  
22 are typical of the claims of the Settlement Class; (d) the named Plaintiff and  
23 class counsel have fairly and adequately represented and protected the interests  
24 of the Settlement Class; and (e) a class action settlement is superior to other  
25 available methods for the fair and efficient adjudication of the controversy.
- 26 6. The Court hereby preliminarily appoints the Plaintiffs as Representatives of  
27 the Class and finds that they meet the requirements of Rule 23.
- 28 7. The Court preliminarily appoints the following lawyers as counsel to the

1 Settlement Class, and finds that counsel meets the requirements of Rule 23:

2  
3 MICHAEL L. TRACY, ESQ., SBN 237779  
4 MTRACY@MICHAELTRACYLAW.COM  
5 LAW OFFICES OF MICHAEL TRACY  
6 2030 Main Street, Suite 1300  
7 Irvine, CA 92614  
8 T: (949) 260-9171  
9 F: (866) 365-3051


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8. The Court finds that the Settlement Agreement’s plan for class notice is the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. That plan is approved and adopted. This Court further finds that the Notices of Pendency of Class Action Settlement (the “Class Notices”) comply with Rule 23(c)(2) and Rule 23(e), and are appropriate as part of the Notice Plan, and are approved and adopted.
  9. The Court finds that Simpluris, Inc. is qualified to act as the Claims Administrator for this settlement.
  10. The Court finds and orders that no other notice is necessary.
  11. The Court orders that pending final determination as to whether the Settlement should be approved, the Class Representatives and other Class Members, whether or not such persons have appeared in this action, shall not institute or prosecute any claims or actions against the Company Releasees (as defined in the Settlement Agreement) that fall within the definition of the Released Claims (as defined in the Settlement Agreement) for the Class Period, and any other pending actions by Class Members against the Company Releasees, whether in court, arbitration, or pending before any state or federal governmental administrative agency, are stayed on an interim basis as to any claims that fall within the definition of the Released Claims for the Class Period.

1 12.To effectuate the settlement, the Court hereby establishes the following  
 2 deadlines and dates for the acts and events as set forth in the Settlement  
 3 Agreement, and directs the parties to incorporate the deadlines and dates in the  
 4 Notice and required forms:

5 Deadline for Defendants to provide to 6 Claims Administrator a database of all 7 putative Class Members, including names, , last known addresses, social security numbers, and dates of employment.	Within 20 business days after preliminary Court approval. See Settlement Agreement ¶ 7.2.1.
8 Deadline for mailing of Class Notices by 9 Claims Administrator	Within 35 business days after preliminary Court approval. See Settlement Agreement ¶ 7.2.2.
11 Last day to file motion for attorney’s fees 12 and costs.	13 Fourteen (14) calendar days 14 prior to the deadline for 15 Class Members to object to the Settlement, Class Counsel shall file a motion seeking approval of attorneys’ fees and costs. See Settlement Agreement ¶ 7.3.2.
16 Last day for Class Members to submit 17 Claim Forms or opt out of the Settlement or 18 to submit written objections to the Settlement	Within 60 calendar days after the date of initial mailing of Class Notice. See Settlement Agreement ¶ 7.2.4.
19 Last day to file motion for final approval 20 and approval of Class Representatives’ 21 service payments.	22 28 calendar days prior to date set for final fairness hearing.

23 13.The fairness hearing and hearing for Final Approval set forth in the Class  
 24 Notices is hereby scheduled for November 5, 2012 at 10:00 a.m.  
 25 IT IS SO ORDERED.

26 DATED: June 19, 2012

27   
 28 LAWRENCE K. KARLTON  
 SENIOR JUDGE  
 UNITED STATES DISTRICT COURT