

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*
JOSHUA CAGE,

Plaintiff-Relator,

-against-

THE ALLEN SCHOOL and JASON TEICH,
Defendants.

13 Civ. 4431 (PAE)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE ALLEN SCHOOL and
CHRISTOPHER WARGO,

Defendants.

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (“United States” or “Government”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, relator Joshua Cage (“Relator”), by his authorized representatives, and defendant The Allen School of Health Sciences (“Allen School” or “Defendant”), by its authorized representatives (collectively, “Parties”);

WHEREAS, from July 1, 2011, through June 30, 2014 (“Covered Period”), the Allen School received millions of dollars in grants and loans from the Government through its participation in federal student assistance programs authorized under Title IV of the Higher

Education Act of 1965. Participation in such programs was conditioned on the Allen School entering into a Program Participation Agreement with the United States Department of Education (“USDOE”), pursuant to which it agreed, among other things, that (1) “[i]t will not provide . . . any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments . . . to any persons . . . engaged in any student recruiting or admission activities”; and (2) if it “advertises job placement rates as a means of attracting students to enroll . . . , it will make available to prospective students, at or before the time that those students apply for enrollment[,] . . . [t]he most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements.” *See also* 20 U.S.C. §§ 1094(a)(8), (20); 34 C.F.R. §§ 668.14(b)(10), (b)(22)(i);

WHEREAS, on June 26, 2013, Relator filed a *qui tam* complaint (“Relator Complaint”) against the Allen School and the Allen School’s current President, Jason Teich, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (the “FCA”);

WHEREAS, contemporaneous with the filing of this Stipulation, the Government is filing a complaint-in-intervention (“Government Complaint”), naming as defendants the Allen School and its former Chief Operating Officer, Christopher Wargo. With respect to the Allen School, the Government Complaint asserts claims under the FCA and the common law, alleging that throughout the Covered Period, the Allen School (1) paid incentive compensation to its enrollment personnel based on their success in securing enrollments, and (2) provided false or misleading job placement rates to prospective students (collectively, the “Covered Conduct”); and

WHEREAS, the Parties have, through this Stipulation, reached a mutually-agreeable resolution addressing the claims asserted against the Allen School in the Government Complaint and the claims asserted against the Allen School and Jason Teich in the Relator Complaint;

NOW, THEREFORE, upon the Parties' agreement, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.

2. The Allen School hereby admits, acknowledges, and accepts responsibility for the following conduct, all of which occurred throughout the Covered Period:

a. The Allen School gave its enrollment advisors and other enrollment personnel daily, weekly and monthly expectations for various enrollment metrics, such as number of phone calls to prospective students, number of interviews with prospective students, and number of students enrolled.

b. The Allen School's Chief Operating Officer, Christopher Wargo ("Wargo"), and other individuals employed by the Allen School with managerial responsibility over enrollment personnel, told enrollment personnel that a primary factor in determining whether they would be eligible for promotions to higher level positions with increased salaries would be whether they had met or exceeded their numeric expectations.

c. As a result, many enrollment personnel believed that the only way they could receive promotions with corresponding salary increases was to meet or exceed their numeric expectations.

d. As a result, certain enrollment personnel who received promotions with corresponding salary increases believed that they had received the promotions and salary

increases because they had met or exceeded their numeric expectations, and they further believed that they would not have received the promotions and salary increases if they had not.

e. Certain enrollment personnel at the Allen School represented to prospective students that the Allen School had a job placement rate of 86%. The job placement rates that the Allen School reported to its institutional accrediting body in fact varied from campus to campus, program to program, and year to year.

3. The Allen School shall pay the Government \$1,500,000 within ten (10) calendar days of the Effective Date (defined below in Paragraph 30). The Allen School shall pay the Government an additional \$2,750,000 in accordance with Paragraphs 3(a) through 3(d). The \$4,250,000 referenced in the prior two sentences shall be referred to herein, collectively, as the "Settlement Amount."

a. On or before January 5, 2017, the Allen School shall pay the Government an additional \$750,000.

b. On or before March 1, 2018, the Allen School shall pay the Government an additional \$667,000.

c. On or before March 1, 2019, the Allen School shall pay the Government an additional \$667,000.

d. On or before January 5, 2020, the Allen School shall pay the Government an additional \$666,000.

4. The payments required by Paragraph 3 (including each and every subparagraph), shall be made in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York.

5. The Allen School's current President and Chief Executive Officer, Jason Teich and Robert Teich, respectively, represent that, prior to becoming aware of the Government's investigation underlying this case, they had no knowledge of the conduct described in Paragraph 2(b) above, and were not exposed to facts that would have put a reasonable person on notice of the conduct described in Paragraph 2(b) above. Jason and Robert Teich further represent that, prior to becoming aware of the Government's investigation underlying this case, they did not know and were not exposed to facts that would have put a reasonable person on notice that enrollment personnel had the beliefs described in Paragraphs 2(c) and 2(d) above. Jason and Robert Teich further represent that, to the best of their actual knowledge at the time, the job placement rates provided to prospective students were accurate. The Government has relied on the foregoing representations in entering into this Stipulation, and, at its option, may rescind the releases provided to Jason Teich and Robert Teich in this Stipulation (in paragraph 8 below) if it concludes in good faith that any of those representations is false.

6. The Allen School shall, at its own expense, maintain all of the Allen School's currently existing paper and electronic records concerning the Covered Conduct until December 31, 2017. Upon request, the Allen School shall give the Government access to the above-referenced records (to the extent the requested records are not privileged), or to any requested subset of those records (to the extent the requested records are not privileged), and shall assist the Government in locating and interpreting particular records. At least sixty (60) calendar days prior to discarding any records covered by this Paragraph, the Allen School shall contact the Government pursuant to the procedure set forth in Paragraph 29 below and give the Government an opportunity to take custody of such records.

7. The Allen School shall endeavor to comply with any other reasonable requests made in good faith by the Government in connection with any further investigation relating to the Covered Conduct. Among other things, the Allen School agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, the Allen School shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. The Allen School further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

8. Subject to the Allen School making the required payments set forth in Paragraph 3 above (including each and every subparagraph) and material compliance with all other terms of this Stipulation that apply to it, and any exceptions, reservations, or conditions set forth in this Stipulation, and based on the representations from Jason and Robert Teich set forth in Paragraph 5 above, the Government releases the Allen School and Jason and Robert Teich from any civil or administrative monetary claim that the Government or its agencies has for the Covered Conduct under the FCA, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.*, the Higher Education Act, 20 U.S.C. § 1001 *et seq.* and its implementing regulations, and common law theories of payment by mistake and unjust enrichment; provided, however, that nothing in this Stipulation shall be construed as a release of any claims that the Government has, or may have,

against any current or former employee, officer, or director of the Allen School other than Jason and Robert Teich.

9. Subject to the Allen School making the required payments set forth in Paragraph 3 above (including each and every subparagraph), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases the Allen School and any of its subsidiaries and affiliates, officers, directors, employees, successors, attorneys, agents, and assigns, including Jason Teich and Robert Teich, from: (a) any claims Relator has asserted, could have asserted, or may assert in the future for any acts or omissions that predate this Stipulation; and (b) any claims that Relator has on behalf of the Government for the conduct alleged in the Relator Complaint or the Government Complaint; provided, however, that nothing in this Stipulation shall preclude Relator from seeking to recover his expenses, costs, or attorney's fees from the Allen School pursuant to 31 U.S.C. § 3730(d).

10. In consideration of Relator's execution of this Stipulation and Relator's releases as set forth in Paragraph 9 above, the Allen School and Jason and Robert Teich release Relator and his heirs, successors, attorneys, agents, and assigns, from any claims the Allen School and any of its subsidiaries and affiliates, officers, directors, employees, successors, attorneys, agents, and assigns, including Jason Teich and Robert Teich, have asserted, could have asserted, or may assert in the future for any acts or omissions that predate this Stipulation and all claims for any act, event, or conduct, known or unknown, relating to the allegations in the Relator Complaint or Government Complaint.

11. Notwithstanding the releases given in Paragraph 8 above, or any other term of this Stipulation, the following additional claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any civil or administrative liability;
- d. any liability to the Government (or its agencies) for any conduct other than the Covered Conduct; and
- e. any liability based upon obligations created by this Stipulation.

12. The Allen School shall be in default of this Stipulation if the Allen School fails to make the required payments set forth in Paragraph 3 above (including each and every subparagraph), or if it fails to comply materially with any other term of this Stipulation that applies to it ("Default"), except that the Government's good faith conclusion that any representation made in Paragraph 5 above is false shall not be considered to be a Default for purposes of this Paragraph. The Government shall provide written notice of any Default in the manner set forth in Paragraph 29 below. The Allen School shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default, the United States, at its option, may (a) rescind this Stipulation and reinstate the Government Complaint and the Relator Complaint; (b) seek specific performance of this Stipulation to cure any Default; (c) offset the amount of the payment that is due and outstanding under Paragraph 3 above (including each and every subparagraph) from any amounts due and owing the Allen School by any department, agency or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at

common law or in equity. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, the Allen School shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defenses were available on the Effective Date. The Allen School shall not contest any offset imposed or any collection action undertaken by the Government pursuant to this Paragraph, either administratively or in any court. In addition, the Allen School shall pay to the Government all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses. In the event that the United States opts to seek specific performance of this Stipulation, interest shall accrue at the rate of 9% per annum compounded annually on the payments that are due under Paragraph 3 above (including each and every subparagraph), beginning ten (10) calendar days after delivery of the notice of Default.

13. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation, and agree and confirm that this Stipulation is fair, adequate, and reasonable, pursuant to 31 U.S.C. § 3730(c)(2)(B). Subject to any claims that Relator may have under 31 U.S.C. § 3730(d) for his share of the Settlement Amount under a Stipulation and Order of Settlement and Release between Relator and the Government, dated July 8, 2016, Relator, for himself individually, and for his heirs, successors, attorneys, agents, and assigns, releases, waives, and forever discharges the United States, its agencies, officers, agents, employees, and servants, from any claims, known or unknown, arising from the filing of the Relator Complaint and from any claims under 31 U.S.C. § 3730.

14. In any federal criminal prosecution or federal administrative action relating to the Covered Conduct, the Allen School shall not assert and waives any defenses it may have based

in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount, as set forth above in Paragraph 3 above (including each and every subparagraph), for purposes of the Internal Revenue laws, Title 26 of the United States Code.

15. The Allen School and Jason and Robert Teich release the United States, its agencies, officers, agents, employees, and servants, from any claims that the Allen School or Jason or Robert Teich has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, or servants, related to the Covered Conduct, as well as the Government's investigation, prosecution and settlement thereof. In the event that the Government rescinds the release provided to Jason Teich and Robert Teich in paragraph 8 above, the releases set forth in this Paragraph 15 given on behalf of Jason Teich and Robert Teich will be void as of the date of rescission.

16. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

17. The Allen School represents and warrants that it has reviewed its financial situation, that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and that it reasonably believes as of the date hereof that it shall remain solvent following compliance with its obligations under this Stipulation. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for

new value given to the Allen School within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which the Allen School was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

18. If within 91 days of the Effective Date of this Stipulation, or within 91 days of the date of any payment made pursuant to this Stipulation, the Allen School commences, or a third party commences, any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of the Allen School's debts, or seeking to adjudicate the Allen School as bankrupt or insolvent; or (b) seeking appointment of a trustee, custodian, or other similar official for the Allen School or for all or part of the Allen School's assets, the Allen School agrees as follows:

a. The Allen School's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and the Allen School shall not argue or otherwise take the position in any such case, action, or proceeding that (i) the Allen School's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) the Allen School was insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to the Allen School.

b. If any of the Allen School's obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers

under the Bankruptcy Code, the Government, at its option, may rescind the releases in this Stipulation as to the Allen School and pursue any civil and/or administrative claim, action, or proceeding against the Allen School that would otherwise be covered by the releases in Paragraphs 8 and 9 above. The Allen School agrees that (i) any such claim, action, or proceeding brought by the Government would not be subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first clause of this Paragraph, and the Allen School shall not argue or otherwise contend that the claim, action, or proceeding is subject to an automatic stay; (ii) the Allen School shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the Government has a valid claim against the Allen School for the full Settlement Amount, and the Government may pursue the claim in the case, action, or proceeding described in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. The Allen School acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

19. The Allen School and Jason and Robert Teich (for purposes of this paragraph only, referred to collectively as “the Allen School”) agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the Allen School or the Allen School’s agents in connection with:

(1) the matters covered by this Stipulation;

(2) the United States' audit(s) and civil and/or criminal investigation(s) of matters covered by this Stipulation;

(3) the Allen School's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and/or criminal investigation(s) in connection with matters covered by this Stipulation (including attorney's fees);

(4) the negotiation and performance of this Stipulation; and

(5) any payments the Allen School makes to the United States pursuant to this Stipulation or to Relator in connection with the Relator Complaint,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the Allen School, and the Allen School shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, the Allen School shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the Allen School or any of its agents from the United States. The United States, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine the Allen School's books and records and to disagree with any calculations submitted by any of those

persons or entities regarding any Unallowable Costs included in payments previously sought by those entities, or the effect of any such Unallowable Costs on the amount of such payments.

20. In connection with the negotiation of this Stipulation, the Allen School represents that it has, in good faith, provided to the Government, in connection with the Government's assessment of the Allen School's ability to pay a monetary settlement, financial information requested by the Government concerning the Allen School's current financial condition (the "Financial Information"). The Government has relied on the Financial Information in entering into this Stipulation, and, at its option, may rescind this Stipulation and reinstate the Government Complaint and the Relator Complaint if the Financial Information is materially false or materially misleading.

21. Except as set forth in Paragraph 9 above (which preserves Relator's ability to seek expenses, costs, and attorney's fees), each Party shall bear its own legal and other costs incurred in connection with this matter.

22. Any failure by the Government to insist upon the material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon material performance of any and all of the provisions of this Stipulation.

23. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party in any subsequent dispute.

24. Subject to the Allen School making the required payments set forth in Paragraph 3 above (including each and every subparagraph) and material compliance with all other terms of this Stipulation that apply to it, and any exceptions, reservations, or conditions set forth in this Stipulation, and based on the representations from Jason and Robert Teich set forth in Paragraph 5 above, and in consideration of the obligations of the Allen School as set forth in this Stipulation, the Government shall dismiss with prejudice the claims against the Allen School (and only the Allen School) in the Government Complaint and, subject to Relator's right to seek to recover costs, expenses, and attorney's fees from the Allen School pursuant to 31 U.S.C. § 3730(d), Relator shall dismiss with prejudice the claims against the Allen School and Jason Teich in the Relator Complaint; provided, however, that nothing in this Stipulation shall require the Government to dismiss the claims it has asserted against any other individual in the Government Complaint; and provided further that nothing in this Stipulation shall preclude the Government from further amending the Government Complaint to assert claims against any additional individuals other than Jason and Robert Teich; and provided further that the Court shall retain jurisdiction over this Stipulation and each Party to enforce the obligations of each Party under this Stipulation.

25. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

26. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the entities indicated below.

27. The Stipulation is binding on the Allen School's successors, transferees, heirs and assigns. This Stipulation is also binding on Relator's successors, transferees, heirs and assigns.

28. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

29. Any notices or requests pursuant to this Stipulation shall be in writing and shall be delivered by hand, express courier, or email transmission followed by postage-prepaid mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

Christopher B. Harwood
Andrew E. Krause
Assistant United States Attorneys
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Southern District of New York
86 Chambers Street, Third Floor
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IF TO THE ALLEN SCHOOL:

Jason Teich
Allen School of Health Sciences
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Larry Gondelman
Joel M. Rudnick
Powers Pyles Sutter & Verville, PC
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7th Floor
Washington, DC 20005
Email: larry.gondelman@ppsv.com
joel.rudnick@ppsv.com

30. The Effective Date of this Stipulation is the date upon which the Stipulation is approved and entered by the Court.

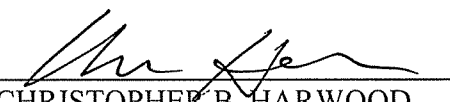
Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
July 11, 2016

PREET BHARARA
United States Attorney for the
Southern District of New York

By:


CHRISTOPHER B. HARWOOD
ANDREW E. KRAUSE
Assistant United States Attorneys
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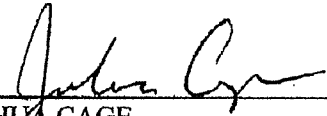
Attorney for the United States of America

RELATOR

Dated:

Peoria, AZ
July 7th, 2016

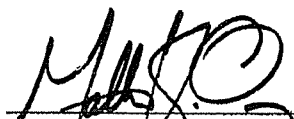
By:


JOSHUA CAGE
Relator

Dated:

Chicago, IL
7/8, 2016

By:

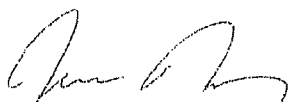

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Attorneys for Relator

THE ALLEN SCHOOL

Dated: Washington, D.C.
July 11, 2016

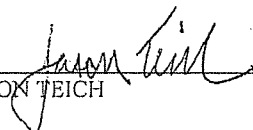
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Attorneys for the Allen School

Dated: Queens, New York
July 11, 2016

By:


JASON TEICH

President, Allen School of Health Sciences

SO ORDERED:

PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE

Dated: _____, 2016