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UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
v.	:
	:
THE ALLEN SCHOOL and	:
CHRISTOPHER WARGO,	:
	:
Defendants.	:
	:
-----X	

13 Civ. 4431 (PAE)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, from July 1, 2011, through June 30, 2014 (“Covered Period”), Wargo was the Chief Operating Officer of the Allen School;

WHEREAS, during the 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 (“PPA”) with the United States Department of Education (“USDOE”), pursuant to which it agreed, among other things, that “[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.” *See also* 20 U.S.C.

§§ 1094(a)(20); 34 C.F.R. § 668.14(b)(22)(i);

WHEREAS, on June 26, 2013, a complaint was filed pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (“FCA”), alleging, *inter alia*, that, in violation of its applicable PPAs, the Allen School provided incentive payments to persons engaged in student recruiting activities based directly or indirectly on their success in securing enrollments;

WHEREAS, contemporaneous with the filing of this Stipulation, the Government is filing a complaint-in-intervention (“Complaint”), naming as defendants the Allen School and Wargo. With respect to Wargo, the Complaint asserts claims under the FCA, alleging that throughout the Covered Period, Wargo engaged in conduct that violated the Allen School’s representation in its applicable PPAs that it would not provide incentive payments to persons engaged in student recruiting activities based directly or indirectly on their success in securing enrollments (“Covered Conduct”); and

WHEREAS, the Parties have, through this Stipulation, reached a mutually-agreeable resolution addressing the claims asserted against Wargo in the 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. Wargo hereby admits, acknowledges, and accepts responsibility for the following conduct, all of which occurred throughout the Covered Period:
 - a. Wargo was employed by the Allen School as its Chief Operating Officer.

b. 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.

c. 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.

3. Wargo has executed a judgment in favor of the Government, and against him, in the amount of \$40,000 ("Judgment"). The Judgment is attached hereto as Exhibit A. Entry and execution of this Judgment shall be stayed so long as Wargo fully complies with the terms of this Stipulation. Pursuant to this Stipulation, Wargo agrees to pay \$40,000 (the "Settlement Amount"), in three annual installments of \$15,000, \$15,000 and \$10,000. The first annual payment (\$15,000) shall be paid on or before August 1, 2016. The two subsequent annual payments shall be paid on or before the first day of August of 2017 (\$15,000) and 2018 (\$10,000). Payments pursuant to this Paragraph shall be made in accordance with instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York.

4. Should Wargo comply fully with the payment schedule set forth in Paragraph 3 above, the Judgment will be deemed to be satisfied in full and, within thirty (30) calendar days of the date that Wargo makes his final payment under the payment schedule, the Government shall deliver to Wargo a document reflecting that he has satisfied the Judgment in full (a "Satisfaction of Judgment"). In the event that Wargo pays off the full amount of the Judgment faster than as

provided under the payment schedule set forth in Paragraph 3 above, the Government shall deliver to Wargo a Satisfaction of Judgment within thirty (30) calendar days of the date that Wargo makes his final installment payment.

5. Subject to Wargo's full compliance with the terms of this Stipulation, and any exceptions, reservations, or conditions set forth in this Stipulation, the Government releases Wargo from any civil or administrative monetary claim that the Government or its agencies has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, 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 other individual or entity in connection with the Covered Conduct.

6. Notwithstanding the release given in Paragraph 5 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.

7. Wargo shall be in default of this Stipulation if he fails to make any of the required payments set forth in Paragraph 3 above, or if he fails to comply with any other term of this Stipulation to which he is subject ("Default"). The Government shall provide written notice of any Default in the manner set forth in Paragraph 23 below. Wargo 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 ("Uncured Default"), the full Judgment shall immediately be due and payable and may be executed on, and interest shall accrue at the rate of 9% per annum compounded annually on the remaining unpaid principal balance, beginning ten (10) days after delivery of the notice of Default. In the event of an Uncured Default, the United States, at its option, may (a) rescind this Stipulation and reinstate the Complaint as against Wargo; (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 from any amounts due and owing Wargo 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, Wargo 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 date Wargo executed this Stipulation ("Execution Date"). Wargo 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, Wargo 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 payment that is due under the Judgment (less any amount already paid), beginning ten (10) calendar days after delivery of the notice of Default.

8. In any federal criminal prosecution or federal administrative action relating to the Covered Conduct, Wargo shall not assert and waives any defenses he 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 or Judgment, as set forth in Paragraph 3 above, for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Wargo releases the Government, its agencies, officers, agents, employees, and servants, from any claims that Wargo has asserted, could have asserted, or may assert in the future against the Government, its agencies, officers, agents, employees, or servants, related to the Covered Conduct, as well as the Government's investigation, prosecution and settlement thereof.

10. 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.

11. Wargo represents and warrants that he has reviewed his financial situation, that he is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and that he reasonably believes that he shall remain solvent following compliance with 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 Wargo 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 Wargo was or became indebted to on or after the Execution Date, within the meaning of 11 U.S.C. § 548(a)(1).

12. 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, Wargo 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 Wargo's debts, or seeking to adjudicate Wargo as bankrupt or insolvent; or (b) seeking appointment of a trustee, custodian, or other similar official for Wargo or for all or part of Wargo's assets, Wargo agrees as follows:

a. Wargo's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Wargo shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Wargo's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Wargo 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 Wargo.

b. If any of Wargo'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 against Wargo, and pursue any civil and/or administrative claim, action, or proceeding against Wargo that would otherwise be covered by the releases in Paragraph 5 above. The Parties agree 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 Wargo shall not argue or otherwise contend that the claim, action, or proceeding is subject to an automatic stay; (ii) Wargo 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 Execution Date; and (iii) the Government has a valid claim against Wargo for the outstanding balance of the Judgment, 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. Wargo acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

13. Wargo agrees 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 Wargo or Wargo'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) Wargo'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 Wargo makes to the United States pursuant to this Stipulation,

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 Wargo, and Wargo 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 Approval Date, Wargo shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Wargo or any of his 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 Wargo's books and records and to disagree with any calculations submitted by Wargo regarding any Unallowable Costs included in payments previously sought by Wargo, or the effect of any such Unallowable Costs on the amount of such payments.

14. In connection with the negotiation of this Stipulation, Wargo represents that he has, in good faith, provided to the Government, in connection with the Government's assessment of his ability to pay a monetary settlement, information concerning his current financial condition ("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 Complaint if the Financial Information is materially false or materially misleading.

15. Each Party shall bear its own legal and other costs incurred in connection with this matter.

16. Any failure by the Government to insist upon the 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 performance of any and all of the provisions of this Stipulation.

17. 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.

18. Subject to the exceptions set forth in this Stipulation, and in consideration of the obligations of Wargo as set forth in this Stipulation, and conditioned upon Wargo's full compliance with the terms of this Stipulation, the Government shall dismiss with prejudice the claims against Wargo (and only Wargo) in the Complaint; provided, however, that nothing in this Stipulation shall require the Government to dismiss the claims it has asserted against any other individual or entity in the Complaint; and provided further that nothing in this Stipulation

shall preclude the Government from amending the Complaint to assert claims against any additional individuals or entities; 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.

19. 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.

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

21. This Stipulation is binding on Wargo's heirs and assigns.

22. 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.

23. Any notices or requests pursuant to this Stipulation shall be in writing and shall be delivered by hand, express courier, or e-mail 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
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
E-mail:christopher.harwood@usdoj.gov
andrew.krause@usdoj.gov

IF TO CHRISTOPHER WARGO:

Ronald L. Holt
Douthitt Frets Rouse Gentile & Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, MO 64106
E-mail: rholt@dfgrglaw.com

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

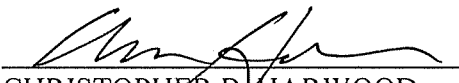
Agreed to by:

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
86 Chambers Street, Third Floor
New York, New York 10007

Attorney for the United States of America

CHRISTOPHER WARGO

Dated: Kansas City, Missouri
July 8, 2016

By: Ronald L. Holt
RONALD L. HOLT
Douthitt Frets Rouse Gentile & Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, MO 64106

Attorney for Christopher Wargo

Dated: Ilwaco, New Jersey
JULY 8, 2016

By: Christopher Wargo
CHRISTOPHER WARGO

SO ORDERED:

PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE

Dated: _____, 2016

-----X	
UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
v.	:
	:
THE ALLEN SCHOOL and	:
CHRISTOPHER WARGO,	:
	:
Defendants.	:
-----X	

13 Civ. 4431 (PAE)

CONSENT JUDGMENT

ORDERED, ADJUDGED AND DECREED that plaintiff the United States of America is awarded judgment in the sum of \$40,000, as against defendant Christopher Wargo, plus any and all applicable post-judgment interest as permitted by law.

Consented to by:

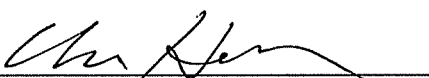
THE UNITED STATES OF AMERICA

Dated: New York, New York

July 11, 2016

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

By:



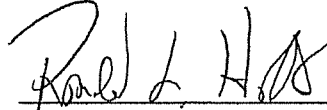
CHRISTOPHER B. HARWOOD
ANDREW E. KRAUSE
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007

Attorney for the United States of America

CHRISTOPHER WARGO

Dated: Kansas City, Missouri
July 8, 2016

By:



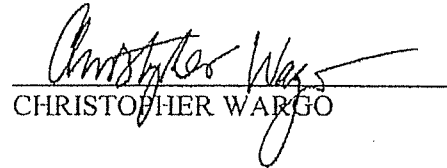
RONALD L. HOLT

Douthitt Frets Rouse Gentile & Rhodes, LLC
1100 Walnut Street, Suite 2900
Kansas City, MO 64106

Attorney for Christopher Wargo

Dated: Princeton, New Jersey
July 8, 2016

By:


CHRISTOPHER WARGO

SO ORDERED:

PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE

Dated: _____