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EEOC and Thornton, et al, v. University of Phoenix, Inc. and Apollo Group, Inc.

Judge Mary H. Murguia

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EEOC and Thornton, et al, v. University of Phoenix, Inc. and Apollo Group, Inc.

Keywords

EEOC, University of Phoenix, CV06-2303-PHX-MHM, Consent Decree, Disparate Treatment, Retaliation, Assignment, Promotion, Terms and Conditions, Religion, Education, Employment Law, Title VII

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

-and-

Darry Thornton, Francine Muscianisi,
Shelly Chambers Thompson,

Plaintiff-Intervenors,

vs.

University of Phoenix, Inc., an Arizona
corporation, and Apollo Group, Inc., an
Arizona corporation,

Defendants.

Case No. CV06-2303-PHX-MHM

CONSENT DECREE

I. RECITALS

1. This matter was instituted by the Plaintiff, the Equal Employment Opportunity Commission ("EEOC" or "Commission"), an agency of the United States, alleging that Defendants, the University of Phoenix, Inc. and Apollo Group, Inc. ("Defendants") violated Sections 703(a) of Title VII of the Civil Rights

1 Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e-2(a), by engaging in a
2 practice of discriminating against Robert Lein, William Davis, Harry Hamilton,
3 Darry Thornton, and a class of aggrieved persons who were not members of the
4 Church of Jesus Christ of Latter Day Saints ("LDS"). The named individuals and
5 additional class members are collectively referred to as "Class Members". The
6 alleged practice of discrimination included treating the Class Members less
7 favorably with regard to terms and conditions of employment including, but not
8 limited to, distribution and redistribution of enrollment leads, granting or denying
9 of tuition waivers, discipline, and the denial of promotions. The EEOC also
10 alleged that, after Messrs. Lein, Davis, Hamilton, and Thornton complained about
11 the discrimination, Defendants further discriminated against Messrs. Lein,
12 Hamilton, and Thornton by transferring them based on their religion, non-LDS, or
13 in retaliation for their complaints of discrimination, in violation of Sections 703(a)
14 and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 3(a). The EEOC further
15 alleged that Defendants discriminated against Mr. Lein based on his religion,
16 non-LDS, or in retaliation for his complaint of discrimination, by terminating him in
17 violation of Sections 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and
18 3(a). Defendants deny the EEOC's and Interveners' allegations in their entirety.
19 Defendants' agreement to the entry of this Consent Decree shall not be
20 construed as an admission of any statutory violation, liability, or other
21 wrongdoing.

22 2. Darry Thornton, Francine Muscianisi, and Shelly Chambers
23 Thompson are Plaintiff Interveners in this action and have filed a Complaint in
24 Intervention. The term "Class Members" includes Plaintiff Interveners.

25 3. The EEOC, Interveners, and Defendants (collectively, "the Parties"),
26 desiring to settle this action by an appropriate Consent Decree ("Decree"), agree
27 to the jurisdiction of this Court over the Parties and the subject matter of this
28 action, and agree to the power of this Court to enter a Consent Decree

1 enforceable against Defendants University of Phoenix, Inc. and Apollo Group,
2 Inc.

3 4. This Decree is final and binding upon the Parties as to the issues
4 resolved, as well as upon their successors and assigns.

5 5. The EEOC and Defendants agree that this Consent Decree fairly
6 resolves the issues alleged by the EEOC in this lawsuit, and constitutes a
7 complete resolution of all of the EEOC's claims against the Defendants asserted
8 in this lawsuit.

9 6. Plaintiff Intervenors and Defendants agree that this Consent Decree
10 fairly resolves the issues alleged by the Plaintiff Intervenors in this lawsuit, and
11 constitutes a complete resolution of all of the Plaintiff Intervenors' claims against
12 the Defendants asserted in this lawsuit.

13 II. DEFINITIONS

14 7. The following terms, when used in this Consent Decree, shall have
15 the following meanings as set forth below. All terms defined in the singular shall
16 have the same meaning when used in the plural, and all terms defined in the
17 plural shall have the same meaning when used in the singular.

18 (a) Claim Share - The settlement amount which the EEOC
19 determines will be paid to a particular Eligible Class Member.

20 (b) Claimant – An individual who requests that EEOC seek relief
21 on his or her behalf or for whom the EEOC has, in fact, sought relief.

22 (c) Class Administrator – The individual retained to carry out the
23 administrative functions necessary to distribute the Class Settlement
24 Funds, as more specifically provided in ¶ X, *infra*.

25 (d) Class Members - The Class of individuals covered by this
26 Decree consists of all non-LDS employees employed by University of
27 Phoenix Online Enrollment Department between January 1, 2001 and the
28 Effective Date of this Decree, identified by the EEOC as Class Members

1 on or before October 17, 2008.

2 (e) Eligible Class Members Entitled to Monetary Relief - To be
3 eligible for class relief under this decree, a Claimant, as defined in ¶ 7(b)
4 above, must be determined by EEOC to be a non-LDS employee,
5 employed by University of Phoenix Online Enrollment Department between
6 January 1, 2001 and the effective date of this Decree, who meets criteria
7 established by the EEOC.

8 (f) Complaint of Religious Discrimination, Harassment or
9 Retaliation - A complaint of discrimination, religious harassment, religious
10 favoritism, or resulting retaliation, shall be any oral or written complaint
11 which comes to the attention of a supervisor or manager or the Employee
12 Relations Department and makes allegations which are appreciated by any
13 supervisor or manager or Employee Relations representative to be an
14 allegation of religious discrimination, religious harassment or resulting
15 retaliation.

16 (g) EEO - The term "EEO" shall refer to the phrase "equal
17 employment opportunity."

18 (h) Effective Date - The Effective Date of this Decree is the date
19 on which the Court gives final approval to the Decree, after hearing, if
20 required.

21 (i) Final Class Distribution Lists - The Final Class Distribution
22 Lists are the list of Eligible Class Members and the amount of each such
23 class member's Claim Share. See ¶ X, *infra*.

24 (j) Diversity Officer - A person with expertise in EEO and
25 personnel matters, selected by Defendants, and agreed to by the EEOC.
26 The Diversity Officer's primary functions are to review all policies and
27 procedures referenced in this Decree and monitor Defendants' compliance
28 with the Decree, and report to the Parties as to Defendants' compliance

1 with the Decree.

2 (k) Parties - The Parties to this Decree are Plaintiff, the U.S.
3 Equal Employment Opportunity Commission, Plaintiff Intervenors
4 Thornton, Thompson and Muscianisi, and Defendants, the University of
5 Phoenix and Apollo Group.

6 (l) Private Counsel - Attorneys representing Intervenors in this
7 action.

8 (m) Corporate Human Resources-. The primary functions are to
9 (1) review all policies and procedures referenced in this Decree, (2) to
10 review and either approve or disapprove all hiring, promotional, tuition
11 denial, and lead assignment distribution and redistribution decisions at
12 University of Phoenix Online, and (3) to investigate all complaints of
13 discrimination.

14 (n) Supervisory Employee - The terms "Supervisory Employee"
15 and/or "Management Employee" as contained herein shall mean an
16 individual employed in the Online Enrollment Department who has
17 supervisory authority.

18 (o) Non-Supervisory Employee - The term "Non-Supervisory
19 Employee" as contained herein shall mean an individual employed in the
20 Enrollment Department of Online who does not have supervisory authority.

21 **III. JURISDICTION**

22 8. The Court has jurisdiction over the Parties and the subject matter of
23 this lawsuit. This Decree conforms with the Federal Rules of Civil Procedure and
24 Title VII, and is not in derogation of the rights and privileges of any Party or
25 person. The Court shall retain jurisdiction of this action for the duration of the
26 Decree for the purposes of entering all orders, judgments and decrees which
27 may be necessary to implement the relief provided herein.

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IV. GENERAL PROVISIONS

9. This Consent Decree shall remain in effect for four (4) years from the Date of the Court's entry of this Decree. The Commission reserves the right to file an enforcement action under Paragraphs 64-68 ("Enforcement of Consent Decree") of this Decree to extend the Decree for whatever period is necessary to allow Defendants to comply fully with the terms of this Decree.

10. This Decree constitutes the complete understanding among the Parties with respect to the matters herein.

11. If one or more provisions of this Decree are rendered unlawful or unenforceable the unaffected provisions will remain enforceable.

12. Nothing in this Consent Decree shall be construed to limit or reduce Defendants' obligation to comply with Title VII, 42 U.S.C. §2000e, *et seq.*

13. The Commission reserves all rights to proceed with respect to matters not covered by this Consent Decree and to secure relief on behalf of aggrieved persons not covered by this Consent Decree. Under no circumstances shall the EEOC, by commenting or electing not to comment upon proposed policies or procedures pursuant to Section VII ("Affirmative Relief"), be deemed to have waived its right to investigate or litigate any alleged adverse effects of said policy upon equal employment opportunities. Nor shall the EEOC, by commenting or electing not to comment upon said policies or procedures, be considered to have accepted the validity of, or approved, the provisions adopted by Defendants.

14. Nothing in this Consent Decree shall be construed to preclude the Commission from filing lawsuits based on charges not resolved in this Decree.

V. INJUNCTION

15. Defendants are permanently enjoined from discriminating against any employee or applicant in assignment or reassignment of leads, approval or denial of tuition benefits, discipline, hiring, promotions, and any other term and

1 condition of employment because of that employee's religion. Defendants shall
2 afford employees the same terms and conditions of employment it affords all
3 other employees in similar positions regardless of their religion. Defendants are
4 also permanently enjoined from terminating any employee because of that
5 employee's religion.

6 16. Defendants are permanently enjoined from retaliating against any
7 applicant, employee, or Class Member for his or her participation in the EEOC
8 process, the investigation by the EEOC into this matter, participation in this
9 lawsuit, complaining about or opposing any employment practice made unlawful
10 by one or more of the statutes enforced by the Commission, asserting any rights
11 under this Decree, or filing a charge of discrimination under any of the statutes
12 enforced by the Commission.

13 **VI. MONETARY RELIEF**

14 17. In full settlement of all monetary claims asserted by the EEOC and
15 Plaintiff Intervenors on behalf of the currently identified Charging Parties,
16 Intervenors and the Class Members, Defendants agree to pay a total of
17 \$1,875,000. In addition, Defendants agree to pay Private Counsel fees in the
18 amount of \$100,000.

19 18. Defendants shall pay to each Charging Party, Intervenor, and
20 identified Class Member the amount identified in Attachment A by check no later
21 than ten (10) days from the date of the Court's entry of the Consent Decree. The
22 settlement represents payment of back pay with interest plus compensatory
23 damages, as detailed in Attachment A. The check shall be made payable to
24 each individual listed in Attachment A and mailed directly to each individual at the
25 addresses provided by the Commission. For portions designated as back
26 wages, Defendants shall be responsible for the employer's share of any
27 applicable to payments under this Decree. Defendants will pay all payroll taxes
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1 they owe on the back wages for the tax year during which payment is made, and
2 deduct the additional payroll taxes owed by each Class Member.

3 19. Defendants shall prepare and distribute tax reporting forms to the
4 Class Members who receive payment under this Decree: I.R.S. form W-2 for the
5 back wages, and I.R.S. form 1099 for the compensatory damages.

6 20. Within three (3) business days of the issuance of the check,
7 Defendants shall submit a copy of check and all related correspondence to Mary
8 Jo O'Neill, Regional Attorney, Equal Employment Opportunity Commission, 3300
9 North Central Avenue, Suite 690, Phoenix, Arizona 85012.

10 21. Defendants shall not condition the Class Members' receipt of monies
11 pursuant to this Decree upon the Class Members' agreement to (a) maintain as
12 confidential the terms of the decree, (b) waive their statutory right to file
13 additional charges of discrimination with any federal or state anti-discrimination
14 agency, or (c) waive their right to apply for a position with the Defendant.

15 **VII. AFFIRMATIVE RELIEF**

16 **Notices**

17 22. Within sixty (60) days of Entry of this Decree, Defendants shall
18 conspicuously post the Notice of Final Approval of Settlement attached hereto as
19 Attachment B, in locations where all other employee-related notices are posted,
20 at all facilities in Phoenix, Arizona where employees of the Enrollment
21 Department at Online work.

22 23. Within ninety (90) days of the entry of this Decree, Defendants shall
23 conduct Initial Orientation regarding the Consent Decree as part of its required
24 EEO training of all management and supervisory officials in the Enrollment
25 Department at Online with authority to make hiring, promotion recommendations
26 and or decisions, assign or reassign leads, approve or disapprove tuition
27 waivers, and make or recommend disciplinary actions up to and including
28 terminations; and Employee Relations employees whose responsibilities include

1 the Enrollment Department employees at Online, about the terms and conditions
2 of the Decree, its EEO Policy and of the Zero Tolerance Policy, which is attached
3 as Attachment C. At this initial orientation and training session, Defendants in
4 the persons of the highest ranking management official of the Online Division and
5 the head of the Human Resources Department shall inform all attendees that any
6 breach of, or failure to comply with, the terms and conditions set forth in this
7 Decree, its EEO Policy, or the Zero Tolerance Policy shall subject them to
8 dismissal or other appropriate disciplinary action. This training may be delivered
9 by webcast or by closed-circuit presentation and Defendants shall maintain an
10 electronic registry of attendance.

11 24. Within sixty (60) days of the date of entry of this Decree, Defendants
12 shall send an individualized "zero tolerance" notice to all supervisors, managers
13 and Employee Relations personnel in the Enrollment Department at Online,
14 which will state that, if any complaint of LDS favoritism or discrimination against
15 non-LDS employees is substantiated, the member of management who engaged
16 in the favoritism or discrimination, will be immediately terminated. The Zero
17 Tolerance Notice is attached as Attachment C.

18 **Letters of Reference**

19 25. In response to any third party inquiries, Defendants will provide
20 Class Members with nothing less than a neutral reference.

21 26. Defendants shall provide to all Charging Parties and Intervenors at
22 least a neutral letter of reference in the form attached hereto as Attachment D.
23 For any Charging Parties and/or Intervenors who received nothing less than a
24 "Meets Expectations" performance evaluation and never received any written
25 discipline, Defendants shall note this satisfactory performance in their letter.

26 **Letters of Apology**

27 27. Defendants shall execute and deliver a letter of apology attached
28 hereto as Attachment E to all Charging Parties and Intervenors.

1 **Tuition Waiver**

2 28. Defendants will provide Intervenor Shelly Chambers Thompson with
3 a tuition waiver to complete her Bachelor's Degree at the University of Phoenix,
4 Online Campus. Ms. Thompson will enroll in the University within six (6) months
5 of the entry of this Decree, maintain continuous enrollment, and comply with all
6 other standard student guidelines.

7 **Training**

8 29. Within sixty (60) days of Entry of this Decree, Defendants shall
9 select a qualified and competent trainer, who will be agreed upon by the EEOC.
10 Within one hundred and twenty (120) days of the entry of this Decree, the
11 proposed trainer shall submit to the EEOC a proposed equal employment
12 opportunity ("EEO") training program for new employees, non-supervisory
13 employees, and supervisory employees working in the Enrollment Department at
14 Online, and Employee Relations employees supporting the Enrollment
15 Department at Online. Each training program will include the following
16 information: (a) a detailed agenda; (b) curriculum vitae(s) for the individual(s)
17 who will conduct the training; (c) a copy of the materials to be handed out at the
18 training, (d) a plan to ensure that all employees receive the required training.

19 30. During each of the four (4) years in which this Decree is in effect,
20 web-based interactive training seminars shall be provided to all of the employees
21 of the Enrollment Department at Online, both managers, non-managers, and
22 Employee Relations employees who support the Enrollment Department at
23 Online. The web-based interactive seminars will be recorded for potential use in
24 subsequent years' training. The training shall be of the following durations:

25 (a) Defendants will provide non-supervisory employees at least
26 one (1) hour of EEO training, focusing on religious discrimination and
27 retaliation.

28 (b) Defendants will provide management employees at least one

1 and one-half (1½) hours of EEO training. The Commission shall have the
2 right to attend and participate in this training, focusing on religious
3 discrimination and retaliation and how to identify complaints and to process
4 EEO complaints.

5 (c) Defendants will provide Employee Relations employees who
6 support the Enrollment Department at Online at least three (3) hours of
7 EEO training, focusing on religious discrimination and retaliation and how
8 to identify complaints and how to investigate EEO complaints.

9 31. With regard to new employees hired in the period between the
10 annual training sessions, the following shall apply.

11 (a) Defendants will provide non-supervisory employees at least
12 one (1) hour of EEO training, focusing on religious discrimination and
13 retaliation, within thirty (30) days of hire, and on an annual basis thereafter.
14 This training may be by webcast purchased from an outside vendor,
15 including a copy of the recorded presentation referenced above.

16 (b) Defendants will provide management employees at least one
17 and one-half (1½) hours of EEO training within thirty (30) days of hire or
18 promotion into a supervisory position, and on an annual basis thereafter.
19 This training may be by webcast purchased from an outside vendor,
20 including a copy of the recorded presentation referenced above. The
21 Commission shall have the right to attend and participate in this training.

22 (c) Defendants will provide Employee Relations employees who
23 support the Enrollment Department at Online at least three (3) hours of
24 EEO training, focusing on religious discrimination and retaliation, within
25 thirty (30) days of hire or promotion into an Employee Relations position,
26 and on an annual basis thereafter. This training may be by webcast
27 purchased from an outside vendor, including a copy of the recorded
28 presentation referenced above. The Commission shall have the right to

1 attend and participate in this training.

2 32. Defendants shall maintain an electronic registry of attendance for
3 each training, along with a current employee list by position and title, and keep
4 these records for the duration of the Decree.

5 33. At a minimum, the EEO training programs shall include the following:

6 (a) instruction on the requirements of all applicable equal
7 employment opportunity laws including, but not limited to Title VII of the
8 Civil Rights Act of 1964, as amended, with particular focus on religious
9 discrimination and retaliation.

10 (b) a review of Defendants' non-discrimination employment
11 policies and procedures and its Zero Tolerance policy as described in
12 Paragraph 26, *infra*, and of the specific requirements of this Decree, with
13 particular emphasis on the complaint procedures and prohibitions on
14 religious discrimination and retaliation in Paragraphs 35-40 and the
15 Notices referenced in Paragraphs 24-26.

16 (c) training for supervisory, management, and human resource
17 employees shall include instruction on the proper procedures for
18 responding to employee complaints of discrimination, including but not
19 limited to how to investigate complaints of discrimination if doing so is
20 within the person's job duties.

21 (d) a strong statement about its Zero Tolerance policy shall be
22 made at every training by the highest level Online management official,
23 who will attend in person and who will emphasize the Company's
24 prohibition of any religious discrimination and consequences of violating
25 this prohibition.

26 **Adoption of Effective EEO Policies and Procedures**

27 34. Within ninety (90) days of the date of entry of this Decree,
28 Defendants' Corporate Human Resources ("HR") Officials shall review

1 Defendants' existing equal employment opportunity policies and procedures,
2 including policies proscribing religious discrimination and retaliation and develop
3 and implement new and/or revised policies and provisions to ensure equal
4 employment opportunities are afforded to all employees regardless of their
5 religion. Defendants' written policies must include, at a minimum:

6 a. A strong and clear commitment to a workplace free of religious
7 discrimination and retaliation;

8 b. A clear and strong encouragement of persons who believe
9 they have been discriminated or retaliated against to come forward;

10 c. A description of the consequences, up to and including
11 termination, that will be imposed upon violators of the policy;

12 d. An assurance of non-retaliation for persons who believe they
13 have been discriminated against and for witnesses of discrimination;

14 e. That discrimination or retaliation, by anyone, including
15 management officials, supervisors, vendors, suppliers, third parties, and
16 customers, is prohibited and will not be tolerated;

17 f. The identification of a phone number and email address where
18 employees who believe they have been subjected to discrimination can
19 report the discrimination and who have the authority to investigate
20 allegations of discrimination in a neutral and confidential (to the extent
21 practicable) manner;

22 g. A written statement that an employee may report the
23 discrimination to a designated person outside of his or her chain of
24 management should the complainant believe managers in the chain of
25 command have a conflict of interest, are implicated in the allegations, or
26 may not adequately investigate the complaint; and

27 h. Assurances that Defendants will investigate allegations of
28 discrimination, promptly, fairly, reasonably and effectively by appropriate

1 investigators and that appropriate corrective action will be taken by
2 Defendants to make victims whole and to eradicate the discrimination.
3 These policies shall be added to the Apollo Group Employee Handbook as part
4 of its next regularly scheduled revision, currently scheduled for January 2009.

5 35. In addition, Defendants shall review its policies and procedures to
6 guard against religious discrimination in (a) promotions; (b) assignment of leads;
7 (c) discipline and discharge; (d) tuition benefits, (e) other terms and conditions of
8 employment, and (f) terminations. Said policies and procedures shall be
9 reviewed and approved or modified by the Diversity Officer within one hundred
10 twenty days from the date of entry of this Decree.

11 36. Defendants will ensure that within sixty (60) days of the entry of this
12 Decree, Corporate Human Resources will specially assign and train at least one
13 Employee Relations Manager and four (4) University of Phoenix Online
14 Employee Relations' Representatives regarding handling of allegations and
15 complaints of religious discrimination and violations of the Zero Tolerance Policy.

16 37. Defendants will ensure that Corporate Human Resources will
17 immediately and appropriately investigate all such complaints and provide
18 complainants with written acknowledgment any such complaint.

19 38. Defendants will take appropriate remedial measures up to and
20 including terminating supervisors or managers found to have engaged in
21 religious discrimination or retaliation based upon information obtained in any
22 resulting investigation.

23 39. Defendants will retain all records regarding the adoption,
24 implementation, and revision of EEO policies and procedures.

25 **Management Evaluation and Compensation**
26 **Incorporating EEO Compliance**

27
28 40. Within ninety (90) days of the entry of this Decree, Defendants shall

1 develop and implement a written management evaluation and compensation
2 system which includes EEO compliance and compliance with this Decree as
3 factors for evaluating manager performance in the Enrollment Department at
4 Online.

5 **Consent Decree Diversity Officer**

6 41. Appointment of Diversity Officer- By the effective date of this Decree,
7 Defendants and EEOC will agree upon a Consent Decree Diversity Officer to
8 oversee the implementation by Defendants of the terms of this Decree. The
9 Diversity Officer will have broad powers to effectuate the purposes and enforce
10 the terms of this Decree, including but not limited to authority to retain experts to
11 obtain professional opinions, reports, or studies as the Diversity Officer deems
12 necessary to carry out his/her responsibilities.

13 42. Replacement of Diversity Officer - In the event the Diversity Officer is
14 unable or unwilling to continue to serve, the Parties shall jointly select a new
15 Diversity Officer.

16 43. Resolving Disputes Over Diversity Officer Appointment - If, however,
17 the EEOC and Defendants cannot agree upon a Diversity Officer by the Effective
18 Date of this Decree or within thirty days following the notification of a need to
19 replace the Diversity Officer, the EEOC shall provide Defendants with a list of at
20 least three candidates, from which list Defendants shall select the Diversity
21 Officer. If no one on the EEOC's list is acceptable to Defendants, Defendants
22 may ask the EEOC to provide another list.

23 44. Staffing - Defendants shall provide the Diversity Officer adequate
24 staff to complete all of the requirements of this Decree.

25 45. Cooperation - The Diversity Officer shall, to the maximum extent
26 practicable and consistent with the Diversity Officer's obligations, work
27 cooperatively with Defendants so as not to unduly interfere with Defendants'
28

1 operations. Defendants shall cooperate with the Diversity Officer to the
2 maximum extent practicable.

3 46. Access to Region, Premises, Employees, and Information - The
4 Diversity Officer shall have reasonable access to relevant documents and other
5 sources of information necessary to exercise his or her duties under this Decree.
6 Such documents and other sources of information shall include:

7 (a) All records documenting disciplinary actions taken during the
8 reporting period, including documents supporting the discipline,
9 investigative records, and records reflecting the decision-making process;

10 (b) All records documenting handling of employee complaints of
11 religious discrimination or retaliation made during the reporting period,
12 including any records of the complaint; any investigative records, including
13 notes of witness interviews, records gathered, investigative reports or
14 recommendations; records reflecting what, if any, remedial steps were
15 taken as a result of the complaint; and any records documenting the
16 decision-making process;

17 (c) A list of employees during the reporting period and records
18 that reflect attendance at all the EEO training required in Paragraphs 29-
19 33, above;

20 (d) Documents that reflect all of the positions, including the
21 management positions, at University of Phoenix Online filled during the
22 reporting period either by new hire or promotion, including job posting,
23 applications received, name and religious affiliation of the person selected
24 for the position, names of all decision-makers involved in the selection, and
25 any records documenting the qualifications of the selectee and the
26 decision-making process;

27 (e) Copies of any EEO policies and or procedures revised during
28 the reporting period to implement or meet the objectives of the Consent

1 Decree;

2 (f) The reports of the lead distribution and redistributions and
3 tuition waiver denial and withdrawals.

4 The Diversity Officer and the EEOC shall have reasonable access to
5 review all non-privileged records maintained by Defendants relating to the
6 implementation or administration of this Decree.

7 47. Diversity Officer Responsibilities - During the term of the Decree, the
8 Diversity Officer will have the following responsibilities to be completed at least
9 every six months, unless otherwise noted:

10 (a) Evaluate whether Defendants have taken appropriate and
11 reasonable action to protect non-LDS employees from religious
12 discrimination and retaliation;

13 (b) Review records documenting employee complaints of
14 discrimination or harassment based on religion, including oral and written
15 complaints, charges of discrimination, and investigative records relating to
16 such complaints.

17 (c) Review and analyze the data regarding hiring, discipline, and
18 promotions to management positions to determine whether University of
19 Phoenix Online is making progress in hiring and promoting non-LDS
20 employees in a nondiscriminatory manner.

21 (d) Review all hiring and management-level promotion decisions
22 to analyze in depth the selection process for potentially discriminatory
23 decision-making.

24 (e) Meet with University of Phoenix Online's President at least
25 quarterly to make recommendations regarding compliance with this Decree
26 and other EEO matters;

27 (f) Assist in review and revision of existing employment policies
28 and procedures;

1 (g) Review the University of Phoenix Online's policies and
2 procedures related to distribution and redistribution of lead data, as
3 discussed in Paragraphs 49-50 below, and the data regarding the
4 distribution and redistribution of leads to make any further
5 recommendations to ensure that it is being done impartially without regard
6 to religion;

7 (h) Review the University of Phoenix Online's tuition waiver
8 policies and procedures and all denials and withdrawals, as set forth in
9 Paragraphs 50-52 below and make any further recommendations;

10 (i) Review and ensure the recruiting, screening, and selection of
11 all positions, including management positions in the Online Division all
12 done without discrimination.

13 (j) In combination with the Reporting required under Section VII
14 below, report to the EEOC every six months on all of its activities,
15 observations and recommendations about further conduct by Defendants,
16 if any.

17 48. In combination with the first semi-annual Report required under
18 Section VII below, the Defendants shall ensure that the Diversity Officer shall
19 provide to the EEOC with the following:

20 (a) a status report on the project to review and revise existing
21 policies as necessary to ensure equal employment opportunities, as
22 required in Paragraphs 34-39 above;

23 (b) proposed EEO training programs, as required in Paragraphs
24 29-33, above; and

25 (c) the location(s) and dates of the posting of the Notice required
26 in Paragraph 23, above;

27 (d) the dates and certification of the hand delivery of the Notices
28 required in Paragraph 25, above;

1 (e) any and all revisions to the University of Phoenix Online's lead
2 distributions and tuition waivers policies and procedures, as explained in
3 Paragraphs 48-52 below.

4 49. No later than thirty (30) days prior to any scheduled training, as
5 required under Paragraphs 29-33, above, Defendants shall inform the EEOC and
6 the Diversity Officer of the date, time, and location when the training is scheduled
7 to be conducted.

8 **Hiring and Promotions Procedures**

9 50. For the duration of the Decree, the Corporate Human Resources
10 Department shall review and oversee the filling of all hiring and promotional
11 opportunities at the University of Phoenix Online.

12 51. For the duration of the Decree, the Corporate Human Resources
13 Department shall be responsible for ensuring that all Enrollment Department
14 hiring and promotional opportunities are appropriately posted and/or advertised.

15 52. For the duration of the Decree, the Corporate Human Resources
16 Department shall be responsible for identifying the most qualified candidates for
17 hiring and promotion and referring these candidates to the hiring manager(s) for
18 selection.

19 53. For the duration of the Decree, Defendants shall maintain all records
20 of all University of Phoenix applicants/candidates considered for hiring and
21 promotion.

22 54. For the duration of this Decree, Defendants shall make all hiring and
23 promotion decisions in a non-discriminatory manner without regard to religion.

24 **Review and Monitoring of Lead Distribution by** 25 **Diversity Officer**

26 55. The Diversity Officer shall review the lead distribution and
27 redistribution process at the University of Phoenix Online to assess whether the
28

1 lead distribution and redistribution is being made impartially without regard to
2 religion. The Diversity Officer shall ensure that all leads are being distributed and
3 re-distributed without regard to any employee's religion and consistent with the
4 Company's published policies and procedures, which shall be based solely on
5 legitimate business-related factors.

6 56. The Diversity Officer shall have all access to Defendants' lead
7 information and personnel necessary to ensure the foregoing. The Diversity
8 Officer shall review and approve all distribution policies and procedures to ensure
9 that the lead distribution and redistribution be done in a non-discriminatory
10 manner. The Diversity Officer shall review lead distribution and redistribution no
11 less than every six months for the entire term of the Decree.

12 **Review and Monitoring of Tuition Waivers by**
13 **Diversity Officer and Corporate Human Resources**

14 57. The Diversity Officer shall review the policies and procedures for
15 approval and denial of tuition waiver requests, and make recommendations to
16 Defendants and the EEOC about any necessary changes in the policies and
17 procedures to ensure that the tuition waiver benefit is being made available to all
18 employees on a non-discriminatory basis.

19 58. Within one-hundred twenty (120) days of the date of entry of this
20 Decree, the Diversity Officer shall review all relevant records to determine if the
21 approval or the denial of tuition waivers is being made impartially without regard
22 to religion. The Diversity Officer shall have all access to Defendants' tuition
23 waiver information and personnel necessary to make this assessment. The
24 Diversity Officer shall include in the reports required herein the results of the
25 foregoing review.

26 59. All Online Enrollment Counselors will be subject to the same formally
27 announced policies and procedures regarding Tuition Waivers. Unless
28 Defendants elect to change their Tuition Waiver policy for all Online Enrollment

1 Counselors, all Enrollment Counselors will become eligible for the Tuition Waiver
2 immediately upon hire. No Enrollment Counselor will be denied or lose their
3 Tuition Waiver benefit unless: (1) that action is totally consistent with the policies
4 and practices then in place for all Online Enrollment Counselors; and (2) that
5 action has been reviewed and approved in advance by Corporate Human
6 Resources and/or the Diversity Officer. A record of the basis of the decision shall
7 be created and retained by Defendants.

8 **VII. REPORTING AND RECORD KEEPING**

9 60. For the duration of the Decree, Defendants agree to maintain such
10 records as are necessary to demonstrate their compliance with this Decree and
11 verify that the reports submitted are accurate, including but not limited to the
12 documents specifically identified below.

13 61. For the four (4) years in which the Decree is in effect, Defendants
14 shall retain the following hard-copy and computer records and the EEOC shall
15 have access to the information with reasonable advance written notice:

16 (a) all personnel files including all hiring, performance appraisals,
17 promotions, tuition waivers, discipline, lead distributions and
18 redistributions, and termination records;

19 (b) all complaints of discrimination or favoritism based upon
20 religion and all records of the investigation of those complaints;

21 (c) all complaints of retaliation prohibited by statutes enforced by
22 the EEOC, and all records of the investigation of those complaints;

23 (d) all records reflecting the transfer or redistribution of leads from
24 one Enrollment Counselor to another as well as records that reflect any
25 lead assigned to an Enrollment Counselor by an Enrollment Manager or
26 any other Defendant supervisor and/or management official;

27 (e) all records of employee discipline and discharge, including any
28 investigative records supporting the decision;

1 (f) all records of hiring and promotions, including the position
2 announcements, the names of the candidates for the position, the name of
3 the person selected for the position, and any records relied upon
4 Defendant in making their selection.

5 (g) all records relating to all denials and withdrawals of the tuition
6 waiver benefits.

7 **VIII. ENFORCEMENT OF CONSENT DECREE**

8 62. It is expressly agreed that if EEOC concludes that Defendants have
9 breached this Consent Decree, EEOC may initiate a lawsuit in this Court, after
10 complying with the informal resolution procedures set forth in Paragraphs 63-66,
11 below.

12 63. Prior to initiating an action to enforce the Decree, the Commission
13 shall provide written notice ("Notice of Dispute") to Defendants of the nature of
14 the dispute. This notice shall specify the particular provision(s) believed to have
15 been breached and a statement of the issues in dispute. The notice may also
16 include a reasonable request for documents or information relevant to the
17 dispute. Service of the Notice of Dispute and any Responses shall be made by
18 hand-delivery, facsimile transmission, or electronic mail.

19 64. Within fourteen (14) days after service of the Notice of Dispute,
20 Defendants shall provide a written response and provide the requested
21 documents or information.

22 65. After service of the Responses, the Parties will schedule a telephone
23 or in-person meeting to attempt to resolve the dispute.

24 66. If the dispute has not been resolved within forty-five (45) days after
25 service of the Notice of Dispute, an action to enforce the Decree may be brought
26 in this Court.

27 **IX. MISCELLANEOUS PROVISIONS**

28 67. The Commission and Defendants agree to take all steps that may be

1 necessary to fully effectuate the terms of this Decree.

2 68. Each party shall be responsible for and shall pay its own costs and
3 attorney's fees as of the date the Parties execute this Consent Decree, except as
4 noted in Paragraph 16, above.

5 **X. SIGNATURES**

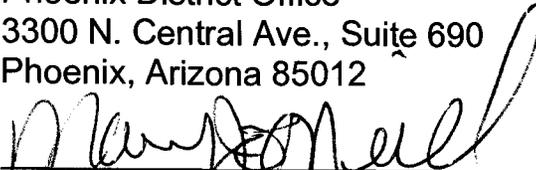
6 Approve as to form and content:

7 MARY JO O'NEILL
8 Regional Attorney

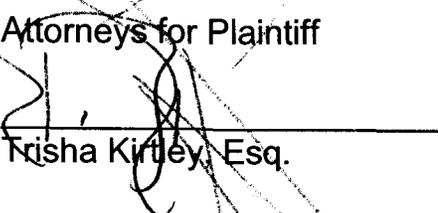
9 SALLY C. SHANLEY
10 Supervisory Trial Attorney

11 **U.S. EQUAL EMPLOYMENT
12 OPPORTUNITY COMMISSION**

13 Phoenix District Office
14 3300 N. Central Ave., Suite 690
15 Phoenix, Arizona 85012

16 
LUCILA G. ROSAS

17 
KATHERINE J. KRUSE

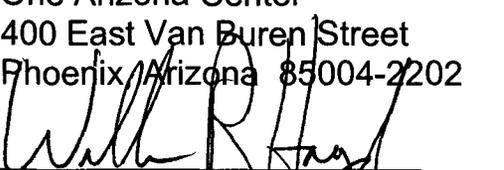
18 
19 Attorneys for Plaintiff

20
21 Trisha Kirtley, Esq.

22 Attorney for Intervenor

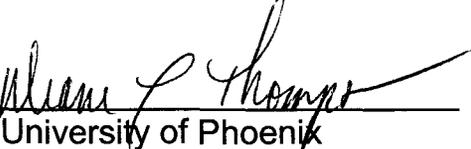
23 **SNELL & WILMER L.L.P.**

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Phoenix, Inc.

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Apollo Group

30 
Diane P. Thompson
University of Phoenix

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ATTACHEMENT A – FILED UNDER SEAL

ATTACHMENT B

NOTICE TO ALL EMPLOYEES OF Apollo Group and University of Phoenix

This Notice is being posted in part as a result of a Court Order and Consent Decree in the case, *EEOC v. Apollo Group and University of Phoenix*, CIV 06-2303-PHX-MHM. The EEOC sued Apollo Group and University of Phoenix alleging religious discrimination based on the fact that certain employees were non-LDS. The EEOC also alleged the Apollo Group and University of Phoenix retaliated against certain employees because they opposed the religious discrimination. Apollo Group and University of Phoenix deny these allegations. The EEOC and Apollo have agreed to the entry of the above-referenced Court Order and Consent Decree.

This Notice is also being posted as a result of conciliation agreements entered into by the EEOC and Apollo Group.

It is unlawful under federal law Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of religion--by preferring an employee in any way because his/ her religion or by treating an employee worse because he/ she does not belong to a certain religion.

It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Apollo Group and University of Phoenix will not discriminate against any employee on the basis of religion or any other protected category (ethnicity, race, national origin, gender, age, disability and veteran status) and will not retaliate against any employee.

If you believe you have been discriminated against by Apollo Group and University of Phoenix based upon your religion, you should immediately contact one of the following Senior Employee Relations Consultants in the Human Resources Department:

1. April Alcorn – (602) 557-1086
2. Beata Buddukiewicz – (602) 557-1360
3. William Posey – (602) 557-1626
4. Diane Hoogesteger – (602) 557-3040

Whether you do or do not contact the Employee Relations Department, you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or
- (2) Arizona Civil Rights Division (ACRD) of the Attorney General's Office, 1275 W. Washington, Phoenix, Arizona, 85007, (602) 255-5263.

or have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Apollo Group or University of Phoenix for (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD and the address or telephone numbers listed above.

Dated:

Diane Thompson, Chief Human Resources Officer

DO NOT DEFACE OR TAKE DOWN

ATTACHMENT C

FORM OF ZERO TOLERANCE NOTICE

Any form of religious discrimination or favoritism has long been prohibited by federal law (Title VII of the Civil Rights Act of 1964), Arizona state law (the Arizona civil Rights Act), as well as by Apollo corporate personnel policy. Apollo and the University of Phoenix are now subject to a federal Court Order and Consent Decree expressly prohibiting any form of religious discrimination or favoritism at its Online Division. Any violation of this Court Order subjects the violator, and Apollo, to being held in contempt of court by the Federal District Court of Arizona.

For these reasons, Apollo has put in place a "Zero Tolerance" Policy at its Online Division. Pursuant to this Policy, if any supervisor or manager at Online has a complaint of religious discrimination or favoritism against him or her substantiated, that supervisor or manager will be immediately terminated from employment with the Apollo Group.

Training regarding this Zero Tolerance Policy will be conducted at Online in the near future. Also, pursuant to the Court's Order, Online Supervisors and Managers will have their job performance evaluated at least annually on their overall compliance with Apollo's Equal Employment Opportunity personnel policies and the terms of the Court Order and Consent Decree.

Vince Grell

[Title]

Diane Thompson

[Title]

ATTACHMENT D

[Date]

Dear Employer,

[Name] was an employee of the University of Phoenix from [Date] until [Date]. He/she last served in the position of Enrollment Counselor and was a full time regular employee.

The University of Phoenix prides itself on encouraging professional excellence through training and example, and we hope you find this candidate suitable for your needs.

Sincerely,

Tracy Bonjean
VP/Director of Employee Services

ATTACHMENT E

[Date]

[Employee]
[address]
[address]

Re: University of Phoenix

Dear [Name]:

On behalf of the University of Phoenix and myself personally, I wish to express my sincere apology that some aspects of your experience while employed at the University of Phoenix failed to meet your expectations. In particular, I am sorry that you believe that your religious beliefs may have been taken into consideration regarding various aspects of your employment.

Thank you for the contributions you made while employed at the University of Phoenix and we wish you nothing but success in your future endeavors.

Sincerely,

Diane L. Thompson
Chief Human Resources Officer