

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DATE FILED: 12/19/2012 (B)

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UNITED STATES and STATE OF NEW YORK :
ex rel. JANE DOE, :

Plaintiff, :

v. :

EDUCATION HOLDINGS 1, INC., f/k/a :
THE PRINCETON REVIEW, INC., and :
STEPHEN GREEN, :

Defendants. :

-----X
UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

EDUCATION HOLDINGS 1, INC., f/k/a :
THE PRINCETON REVIEW, INC., and :
ANA AZOCAR, :

Defendants. :
-----X

09 Civ. 6876 (BSJ)

**STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation") is entered into by and among plaintiff the United States of America (the "United States" or "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York; defendant Education Holdings 1, Inc., f/k/a The Princeton Review, Inc. ("Defendant" or "Princeton Review"), by its authorized representatives; and relator Dana Smith ("Relator"), by her authorized representatives (collectively, the "Parties");

WHEREAS, during the period relevant to this action, August 2006 through June 2010 (the "Covered Period"), when Defendant was doing business as The Princeton Review, Inc.,

Princeton Review was a provider of Supplemental Educational Services (“SES”) in New York City, and, as such, provided after-school tutoring to underprivileged students attending underperforming public schools in New York City. Throughout the Covered Period, the New York City Department of Education paid Princeton Review a fixed amount of money per hour for each student that it tutored, using funds provided to New York State by the federal Government pursuant to Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, 20 U.S.C. §§ 6301, *et seq.*;

WHEREAS, on August 4, 2009, Relator filed a *qui tam* complaint (the “Relator’s Complaint”) against Princeton Review and a former employee of Princeton Review, Robert Stephen Green (“Green”), in the U.S. District Court for the Southern District of New York (the “Court”) pursuant to the *qui tam* provisions of the False Claims Act (the “FCA”), 31 U.S.C. §§ 3726, *et seq.*, alleging, among other things, that Princeton Review violated the FCA by falsifying student attendance records to obtain SES funds for tutoring services that it did not provide;

WHEREAS, on April 30, 2012, the Government intervened in this case as against Princeton Review, and filed its Complaint-in-Intervention (the “Federal Complaint”) against Princeton Review and another former employee of Princeton Review, Ana Azocar (“Azocar”), alleging, among other things, that, during the Covered Period, Princeton Review falsified daily student attendance records to make it appear as though more students had attended Princeton Review’s New York City SES tutoring program than had actually attended, and, as a result, Princeton Review billed and obtained federal funds for thousands of hours of tutoring services that it never provided;

WHEREAS, in May 2012, Defendant sold the name and brand of The Princeton Review, Inc., to an unaffiliated third party,

WHEREAS, the Parties have reached a mutually-agreeable resolution addressing the claims asserted against Defendant by both the Federal Complaint and the Relator's Complaint; and

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

TERMS AND CONDITIONS

1. The Parties consent to the Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.
2. Defendant hereby admits, acknowledges, and accepts responsibility for the following conduct related to its SES program in New York City, all of which occurred during the Covered Period while Defendant was doing business as The Princeton Review, Inc.:
 - a. Princeton Review was required to record daily attendance at each of its SES tutoring classes, including having each student who attended sign a standard attendance sheet ("daily student attendance sheet"). To receive payment for its SES tutoring, Princeton Review was required to certify that its daily attendance records were "true and accurate."
 - b. Throughout the Covered Period, Princeton Review engaged in fraudulent and wrongful conduct in connection with its New York City SES program, including:
 - i. Many of the individuals who were responsible for the day-to-day operations of Princeton Review's SES tutoring program ("Site Managers") routinely falsified entries on daily student attendance sheets, including by forging student signatures, to make it appear that more students had attended Princeton Review's SES tutoring classes than had actually attended.

ii. Site Managers were repeatedly told by their supervisors (“Directors”) to meet daily quotas for student attendance, and were pressured by their Directors to meet such quotas and maintain high daily student attendance, with some being terminated or subjected to pay cuts for failing to maintain high daily student attendance.

iii. Directors were incentivized to pressure their Site Managers to report high attendance through a bonus program under which Directors received thousands of dollars in bonuses when the Site Managers they supervised reported average daily student attendance of 60% or more of total enrollees in the Site Managers’ SES classes.

iv. Additionally, a then-Vice President in charge of Princeton Review’s New York City SES program, Robert Stephen Green, was put on notice of the above-described falsifications of student attendance, failed to take adequate remedial action, and, through this and other conduct, allowed the falsifications to continue.

v. Princeton Review’s daily student attendance sheets from the Covered Period are replete with falsifications, and report that many more students had attended Princeton Review’s SES tutoring classes than had actually attended.

c. Princeton Review used the above-referenced falsified daily student attendance sheets to prepare invoices that it then submitted in connection with its SES tutoring program. Each of these invoices falsely certified that the information on the invoice was “true and accurate.” These invoices ultimately resulted in the payment to

Princeton Review of millions of dollars in federal funds for thousands of hours of SES tutoring that Princeton Review never in fact provided.

3. Defendant certifies that Princeton Review terminated its SES division in 2010 and that (a) Defendant is not currently providing SES tutoring anywhere in the United States, and (b) the individuals who engaged in any of the conduct described in Paragraph 2 above are no longer employed by, or associated with, Defendant. Defendant further certifies that in May 2012, Defendant sold its Higher Education Readiness division, including the name and brand of The Princeton Review, Inc., to an unaffiliated third party, and that as of the Effective Date of this Stipulation, Defendant's sole operating division and business asset is a distance learning company through which Defendant offers online degree and vocational programs in the United States and abroad.

4. Defendant shall pay the Government \$200,000 within five (5) business days after the Effective Date of this Stipulation.

5. Defendant shall also make additional payments to the Government in the aggregate amount of up to \$9.8 million, pursuant to the following terms:

a. Within five (5) business days of a "Change in Control" (as defined in paragraph 5.c.i hereof), Defendant shall pay to the Government \$800,000 of the Sale Proceeds (as defined in paragraph 5.c.ii hereof), as well as the following additional amounts: (i) 1% of any Sale Proceeds between \$180 million and \$200 million; (ii) 1.5% of any Sale Proceeds in excess of \$200 million and up to \$250 million; (iii) 1.75% of any Sale Proceeds in excess of \$250 million and up to \$300 million; (iv) 2.75% of any Sale Proceeds in excess of \$300 million and up to \$400 million; and (v) 4% of any Sale

Proceeds in excess of \$400 million, it being understood that the total of all such possible payments, as described in this Paragraph shall not exceed \$9.8 million.

b. Defendant shall provide written notice to the Government of any anticipated Change in Control and shall provide the Government with a written description of all material terms of any such Change in Control at least thirty (30) calendar days in advance of the consummation of any such Change in Control, in the manner set forth in Paragraph 32 below.

c. For purposes hereof, the following terms shall have the following definitions:

(i) "Change in Control" shall mean the occurrence of any of the following events:

A. any merger, reorganization, consolidation or share transfer (each a "Capital Transaction") that results in the voting securities of Education Holdings 1, Inc. outstanding immediately prior to the Capital Transaction representing immediately thereafter less than a majority of the combined voting power of Education Holdings 1, Inc. (or such surviving or acquiring entity), respectively, outstanding immediately after the Capital Transaction.

B. the disposition, transfer or sale of all or substantially all of the assets of Education Holdings 1, Inc.; or

C. the issuance or transfer of shares of capital stock of Education Holdings 1, Inc. in a single transaction or series of related

transactions, representing at least 50% of the voting securities of Education Holdings 1, Inc.

Notwithstanding the foregoing, in the event that either Defendant or a third party commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, including, but not limited to, Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") (a) seeking an order for relief of Defendant's debts, or seeking to adjudicate Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or part of Defendant's assets (a "Court-Ordered Proceeding"), such Court-Ordered Proceeding, and any change in control of Defendant that results from such Court-Ordered Proceeding, shall not constitute a Change in Control within the meaning of this Paragraph. The commencement of such Court Ordered Proceeding, or any change in control of Defendant that results from such Court-Ordered Proceeding, shall, however, enable the Government to rescind this Stipulation and reinstate the Federal Complaint and the Relator's Complaint under the terms set forth in Paragraphs 19 and 20 below.

(ii) "Sale Proceeds" shall mean the aggregate consideration paid in connection with a Change in Control; provided, however, that the amounts of any debt or equity financing that Defendant obtains in good faith to maximize Sale Proceeds through a Change in Control for the mutual benefit of the Parties and that (i) occurs after the execution of this Stipulation and is unrelated to any capital restructuring of Defendant that may occur in connection with a Court-Ordered

Proceeding commenced within 90 days of this Stipulation, and (ii) is not repaid prior to a Change of Control, shall be deducted from the consideration paid in connection with a Change of Control and such deducted amounts shall not be included in determining "Sales Proceeds."

d. Defendant represents that it will not engage in a transaction pursuant to which it sells or otherwise disposes of any of the assets of Education Holdings 1, Inc., except in the ordinary course of business (such as the sale of office equipment of de minimis value and the like), that is structured in a manner other than as set forth in Paragraph 5(c)(i) above, or such that it impairs the Government's receipt, in the manner described in this Paragraph 5, of any Sale Proceeds that derive from such transaction. Defendant further represents that it will act in good faith to maximize Sale Proceeds through a Change in Control for the mutual benefit of the Parties. In the event that Defendant breaches any of the representations in this Paragraph 5(d), the Government may rescind this Stipulation and reinstate the Federal Complaint and the Relator's Complaint. If the Government rescinds this Stipulation pursuant to this Paragraph (or any other paragraph herein), Defendant 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 conduct alleged in the Federal Complaint or the Relator's Complaint, except to the extent such defenses were available on the Effective Date.

6. Payments pursuant to Paragraphs 4 and 5 above shall be made at <http://www.pay.gov> to the U.S. Department of Justice account in accordance with instructions

provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York.

7. Defendant agrees to a voluntary exclusion from all federal procurement and nonprocurement transactions pursuant to 2 C.F.R. Parts 180 and 3485 for a period of three (3) years from the Effective Date. At the conclusion of the period of voluntary exclusion, Defendant may participate in such transactions only after providing written notice to the Government of its intention to do so and agreeing to and implementing a compliance program acceptable to the Government.

8. Defendant shall maintain all of its paper and electronic records concerning its former New York City SES business, as well as all of its paper and electronic records concerning the sale of its Higher Education Readiness division in May 2012, unless and until the Government authorizes Defendant to discard such materials. On request, Defendant shall give the Government access to the above-referenced records or to any requested subset of the records.

9. Subject to Defendant's full compliance with the terms of this Stipulation, and any exceptions set forth in this Stipulation, the Government releases Defendant, and any of Defendant's successor reorganized entities, if any (the "Successor Entities"), under the Bankruptcy Code, and all of their respective current officers, directors, employees, agents, attorneys, advisors, lenders, affiliates, subsidiaries and assigns (collectively, the "Defendant Released Parties") from any civil or administrative monetary claim that the Government has, or may have, for the conduct alleged in the Federal Complaint or the Relator's Complaint under the FCA, 31 U.S.C. §§ 3729, *et seq.*, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, *et seq.*, 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 Green, Azocar, or any other former officer, director, employee, agent, affiliate, or assign of Defendant.

10. Subject to Defendant's full compliance with the terms of this Stipulation, and any exceptions set forth in this Stipulation, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases: (a) the Defendant Released Parties from any claims Relator has asserted, or could have asserted, or may assert in the future for any acts or omissions that predated this Stipulation; and (b) the Defendant Released Parties from any claims that Relator has on behalf of the Government for the conduct alleged in the Relator's Complaint or the Federal Complaint under the FCA, 31 U.S.C. §§ 3729, *et seq.*; provided, however, that nothing in this Stipulation shall preclude Relator from pursuing, or in any way affect Relator's ability to pursue, her retaliation claim under 31 U.S.C. § 3730(h), as alleged in Count III of the Relator's Complaint; and provided further that nothing in this Stipulation shall preclude Relator from seeking to recover her expenses or attorney's fees and costs from Defendant, pursuant to 31 U.S.C. § 3730(d); and provided further that nothing in this Stipulation shall be construed as a release of any claims that Relator has, or may have, against Green, Azocar, or any other former officer, director, employee, agent, affiliate, or assign of Defendant. Defendant reserves all of its rights, claims and defenses with respect to any claims asserted by Relator against Defendant that are not released pursuant to this Stipulation.

11. In consideration of Relator's execution of this Stipulation and Relator's releases as set forth in Paragraph 10 above, Defendant, on behalf of itself and all of the other Defendant Released Parties, releases Relator, her heirs, attorneys, agents, successors, and assigns, from any

and all claims for any action, event, or conduct, known or unknown, that predates this Stipulation.

12. Notwithstanding the releases given in Paragraph 9 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 administrative liability, including the right to pursue debarment proceedings;
- d. any liability to the Government (or its agencies) for any conduct other than that described in the Federal Complaint or the Relator's Complaint; and
- e. any liability based upon obligations created by this Stipulation.

13. Defendant shall be in default of this Stipulation if it fails to make any payment set forth in Paragraphs 4 or 5 above by the due dates stated therein, or fails to comply materially with any other term of this Stipulation ("Default"). The Government shall provide written notice to Defendant of any Default in the manner set forth in Paragraph 32 below. Defendant shall then have an opportunity to cure the Default within seven (7) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within seven (7) calendar days of the delivery of the notice of Default, the United States, at its option, may (a) rescind this Stipulation and reinstate the Federal Complaint and the Relator's Complaint; (b) seek specific performance of this Stipulation to cure any Default; (c) offset the amount of any payments that are due under Paragraphs 4 or 5 above from any amounts due and owing Defendant by any

department, agency or agent of the United States at the time of Default; 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, Defendant 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 conduct alleged in the Federal Complaint or the Relator's Complaint, except to the extent such defenses were available on the Effective Date. Defendant 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, Defendant 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 any payments that are due under Paragraphs 4 or 5 above, beginning seven (7) calendar days after delivery of the notice of Default.

14. Relator and her 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 her share of the settlement amount, as set forth above in Paragraphs 4 and 5, pursuant to the Stipulation and Order of Settlement and Release between Relator and the Government, Relator, for herself individually, and for her heirs, successors, attorneys, agents, and assigns, releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims, known or unknown, arising from the filing of the Relator's Complaint and from any claims under 31 U.S.C. § 3730.

15. In any federal criminal prosecution or federal administrative action relating to the conduct alleged in the Federal Complaint or the Relator's Complaint, Defendant 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 Paragraphs 4 and 5, for purposes of the Internal Revenue laws, Title 26 of the United States Code. Nothing herein shall be construed as a waiver by Defendant of any other rights or defenses with respect to any claims asserted by Government or Relator against Defendant that are not released pursuant to this Stipulation.

16. Notwithstanding anything to the contrary herein, Defendant reserves all of its rights, claims and defenses with respect to any claims asserted by the Government against Defendant that are not released pursuant to this Stipulation. Further, except with respect to the enforcement of the terms of this Stipulation, Defendant, on behalf of itself and all of the other Defendant Released Parties, releases the Government, its agencies, employees, servants, and agents, as well as Relator, her heirs, successors, attorneys, agents, and assigns, from any claims that Defendant, or any of the other Defendant Released Parties, has asserted, could have asserted, or may assert in the future against the Government, its agencies, employees, servants, or agents, or Relator, her heirs, successors, attorneys, agents, and assigns, known or unknown, related to the conduct alleged in the Federal Complaint or the Relator's Complaint, as well as the Government's investigation and prosecution thereof.

17. 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.

18. The Parties represent and 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 Defendant, 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 Defendant was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

19. If within 90 days of the Effective Date of this Stipulation or any payment made under this Stipulation, either Defendant or a third party commences a Court-Ordered Proceeding, Defendant agrees as follows:

a. Defendant shall not argue or otherwise take the position in connection with any challenge of Defendant's obligations under this Stipulation that (i) Defendant's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Defendant 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 Defendant.

b. If any of Defendant'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 this

Stipulation and reinstate the Federal Complaint and the Relator's Complaint, and, in that event, the Government and Relator may pursue any civil and/or administrative claim, action, or proceeding against Defendant that would otherwise be covered by the releases in Paragraphs 9 and 10 above. Defendant agrees that, solely with respect to the claims settled by this Stipulation, (i) it shall not argue or otherwise take the position that any such claim, action, or proceeding brought by the Government or Relator would be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the Court-Ordered Proceeding referenced in the first clause of this Paragraph; (ii) Defendant 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 or Relator within 60 calendar days of written notification to Defendant that the Stipulation has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the Government has an allowed claim against Defendant for any amounts that are due under Paragraphs 4 or 5 above (other than for the amounts of payments theretofore made and not avoided, rescinded or otherwise restored or returned to or for the benefit of Defendant), and the Government may pursue the claim in the Court-Ordered Proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendant acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

20. If more than 90 days after the Effective Date of this Stipulation but before Defendant has fully satisfied its payment obligations under Paragraphs 4 or 5 above, either

Defendant or a third party commences a Court-Ordered Proceeding, Defendant agrees as follows:

a. If any of Defendant'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 this Stipulation and reinstate the Federal Complaint and the Relator's Complaint, and, in that event, the Government and Relator may pursue any civil and/or administrative claim, action, or proceeding against Defendant that would otherwise be covered by the releases in Paragraphs 9 and 10 above. Defendant agrees that, solely with respect to the claims settled by this Stipulation, (i) it shall not argue or otherwise take the position that any such claim, action, or proceeding brought by the Government or Relator would be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the Court-Ordered Proceeding referenced in the first clause of this Paragraph; (ii) Defendant 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 or Relator within 60 calendar days of written notification to Defendant that the Stipulation has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the Government has an allowed claim against Defendant for any amounts that are due under Paragraphs 4 or 5 above (other than for the amounts of payments theretofore made and not avoided, rescinded or otherwise restored or returned to or for the benefit of Defendant), and the Government may pursue the claim in the Court-Ordered Proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

b. Defendant acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

21. The Parties stipulate and agree that until the mutual releases set forth herein become effective, this Stipulation is, and will be deemed to be, an “executory contract” for purposes of section 365 of the Bankruptcy Code. In the event that this Stipulation is rejected by Defendant pursuant to section 365 of the Bankruptcy Code, the Parties stipulate and agree that: (a) the Government, at its option, may rescind this Stipulation and reinstate the Federal Complaint and the Relator’s Complaint, and, in that event, the Government and Relator may pursue any civil and/or administrative claim, action, or proceeding against Defendant that would otherwise be covered by the releases in Paragraphs 9 and 10 above, under the terms set forth in Paragraphs 19 and 20 above; and (b) the Government shall have an allowed claim (the “Rejection Claim”) for the amounts due under paragraphs 4 and 5 above, not subject to dispute, counterclaim or set-off (other than for the amounts of payments theretofore made and not avoided, rescinded or otherwise restored or returned to or for the benefit of Defendant), and the Government may pursue the claim in any Court Ordered Proceeding, as well as in any other case, action, or proceeding. Notwithstanding anything to the contrary contained herein, the mutual releases set forth herein shall become effective (a) upon the payment of Defendant of any Rejection Claim, as set forth above, or (b) in the event this Stipulation is assumed by Defendant pursuant to section 365 of the Bankruptcy Code, upon the payment of Defendant of all outstanding amounts due and owing in paragraphs 4 and 5 above.

22. The parties stipulate and agree that any obligations of Defendant pursuant to this Stipulation would be non-dischargeable in any Court-Ordered Proceeding, regardless of whether Defendant rejects or assumes this Stipulation as set forth in Paragraph 21 above. In the event

that any obligations of Defendant pursuant to this Stipulation are discharged, the Government, at its option, may rescind this Stipulation and reinstate the Federal Complaint and the Relator's Complaint, and, in that event, the Government and Relator may pursue any civil and/or administrative claim, action, or proceeding against Defendant that would otherwise be covered by the releases in Paragraphs 9 and 10 above, under the terms set forth in Paragraphs 19 and 20 above.

23. Defendant 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 Defendant, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (i) the matters covered by this Stipulation;
- (ii) the United States' audit(s) and civil and/or criminal investigation(s) of the matters covered by this Stipulation;
- (iii) Defendant'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 the matters covered by this Stipulation (including attorney's fees);
- (iv) the negotiation and performance of this Stipulation; and
- (v) any payments Defendant makes to the United States pursuant to this Stipulation and any payments that Defendant may make to Relator, including costs and attorney's fees,

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 Defendant, and Defendant 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, Defendant shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendant or any of its subsidiaries or affiliates from the United States. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Defendant’s books and records and to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendant, or the effect of any such Unallowable Costs on the amount of such payments.

24. In connection with the negotiation of this Stipulation, Defendant represents that: (i) it has, in good faith, provided to the Government, in connection with the Government’s assessment of Defendant’s ability to pay a monetary settlement to the Government, information concerning its current financial condition, including business projections (collectively, the “Financial Information”), that to Defendant’s knowledge is fair and accurate; (ii) Defendant’s ability to make the payments described in Paragraphs 4 and 5 above is dependent on the support of third party lenders; and (iii) in light of subparagraph (ii) above, and taking into account Defendant’s current financial condition, the payments described in Paragraphs 4 and 5 above

represent the amount that Defendant has the ability to pay to the Government by way of a monetary settlement. The Government has relied on the foregoing representations in entering into this Stipulation, and, at its option, may rescind this Stipulation and reinstate the Federal Complaint and the Relator's Complaint if any of the foregoing representations are (a) false or (b) misleading.

25. Except as set forth in Paragraph 10 above (which, among other things, preserves Relator's ability to seek attorney's fees), each Party shall bear its own legal and other costs incurred in connection with this matter.

26. 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.

27. 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.

28. Subject to the exceptions set forth in this Stipulation, and in consideration of the obligations of Defendant as set forth in this Stipulation, and conditioned upon Defendant's full compliance with the terms of this Stipulation, the Government shall dismiss with prejudice the claims against Defendant (and only Defendant) in the Federal Complaint and, subject to Relator's right to pursue her retaliation claim under 31 U.S.C. § 3730(h) as alleged in Count III of the Relator's Complaint, and to seek to recover attorney's fees, costs, and expenses from

Defendant pursuant to 31 U.S.C. § 3730(d), Relator shall dismiss with prejudice the claims against Defendant (and only Defendant) in the Relator's Complaint; provided, however, that nothing in this Stipulation shall require the Government or Relator to dismiss the claims they have asserted against any former employees of Defendant; and provided further that nothing in this Stipulation shall preclude the Government from further amending the Federal Complaint to assert claims against any additional former officer, director, employee, agent, or assign of Defendant; 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.

29. 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.

30. 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 entities indicated below.

31. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

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

IF TO THE UNITED STATES:

Christopher B. Harwood
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
Facsimile: (212) 637-2786

IF TO DEFENDANT:

Guy Petrillo
Petrillo Klein & Boxer LLP
655 Third Avenue
22nd Floor
New York, New York 10017
Facsimile: 212 370-0391

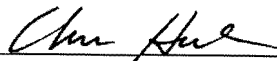
33. The Effective Date of this Stipulation is the date upon which this Stipulation is entered by the Court.

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
December 19, 2012


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

By: 
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Attorney for the United States of America

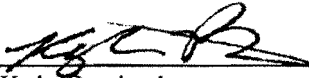
DEFENDANT

Dated: New York, New York
December 19, 2012

By: 
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Attorney for Education Holdings 1, Inc.

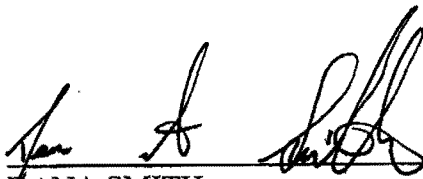
Dated: Framingham, Massachusetts
December 19, 2012

By: 
Kyle Bettigole
Title: Senior Vice President & General Counsel

Education Holdings 1, Inc.

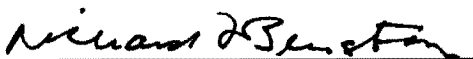
RELATOR

Dated: New York, New York
December 19, 2012

By: 
DANA SMITH

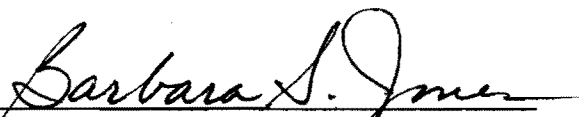
Relator

Dated: New York, New York
December 19, 2012

By: 
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Attorneys for Relator

SO ORDERED:


THE HONORABLE BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

12/19/12