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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Rameses Te Lomingkit, Individually And
On Behalf Of All Others Similarly
Situating,

Plaintiff,

v.

Apollo Education Group, Inc. (F/K/A
Apollo Group, Inc.); Peter V. Sperling,
Gregory W. Cappelli; Brian L. Swartz; and
William Pepicello,

Defendants.

No. 2:16-cv-00689-PHX-JAT

CLASS ACTION

**[PROPOSED]
ORDER APPROVING
DISTRIBUTION PLAN**

1 WHEREAS, Lead Plaintiff Government of Guam Retirement Fund moved this
2 Court for an order approving a distribution plan for the Net Settlement Fund in the above-
3 captioned class action (the “Action”); and

4 WHEREAS, the Court having reviewed and considered all the materials and
5 arguments submitted in support of the motion, including the Memorandum of Points and
6 Authorities in Support of Lead Plaintiff’s Unopposed Motion for Approval of
7 Distribution Plan and the Declaration of Adam Walter in Support of Lead Plaintiff’s
8 Unopposed Motion for Approval of Distribution Plan (the “Walter Declaration”).

9 NOW THEREFORE, IT IS HEREBY ORDERED:

10 1. This Order incorporates by reference the definitions in the Stipulation and
11 Agreement of Settlement dated February 8, 2019 (ECF No. 109-1) (the “Stipulation”) and
12 the Walter Declaration, and all terms used in this Order shall have the same meanings as
13 defined in the Stipulation or in the Walter Declaration.

14 2. This Court has jurisdiction over the subject matter of the Action and over
15 all parties to the Action, including all Settlement Class Members.

16 3. Lead Plaintiff’s plan for distribution of the Net Settlement Fund to
17 Authorized Claimants is **APPROVED**. Accordingly:

18 (a) The administrative recommendations of the Court-approved Claims
19 Administrator, A.B. Data, Ltd. (“A.B. Data”), to accept the Timely Eligible
20 Claims stated in Exhibit D to the Walter Declaration and the Late But Otherwise
21 Eligible Claims stated in Exhibit E to the Walter Declaration, are adopted;

22 (b) The Claims Administrator’s administrative recommendations to
23 reject wholly ineligible Claims, as stated in Exhibit F to the Walter Declaration,
24 are adopted;

25 (c) A.B. Data is directed to conduct an Initial Distribution of the Net
26 Settlement Fund, after deducting all payments previously allowed and the
27 payments approved by this Order, and after deducting the payment of any
28 estimated taxes, the costs of preparing appropriate tax returns, any escrow fees,

1 while maintaining a 5% reserve from the Net Settlement Fund to address any tax
 2 liability and administration-related contingencies that may arise, as stated in
 3 paragraph 39(a) of the Walter Declaration. Specifically, as stated in paragraph
 4 39(a) of the Walter Declaration: (1) A.B. Data will calculate award amounts for all
 5 Authorized Claimants as if the entire Net Settlement Fund were to be distributed
 6 now. A.B. Data will calculate each Authorized Claimant's *pro rata* share of the
 7 Net Settlement Fund as stated in subparagraph 39(a)(1) of the Walter Declaration;
 8 (2) A.B. Data will, in accordance with the terms of the Court-approved Plan of
 9 Allocation, calculate the total amount each Authorized Claimant would recover in
 10 accordance with the calculations stated in subparagraph (c)(1) above and then it
 11 will eliminate from the distribution any Authorized Claimant whose total *pro rata*
 12 share of the Net Settlement Fund is less than \$25.00. These Claimants will not
 13 receive any payment from the Net Settlement Fund and will be so notified by A.B.
 14 Data.; (3) After eliminating Claimants who would have received less than \$25.00,
 15 A.B. Data will calculate the *pro rata* shares of the Net Settlement Fund for
 16 Authorized Claimants who would have received \$25.00 or more (the "Distribution
 17 Amount"); and (4) 95% of the remaining balance of the Net Settlement Fund will
 18 be distributed *pro rata* to Authorized Claimants whose Distribution Amount
 19 calculates to \$25.00 or more under subparagraph (c)(1) above. The remaining 5%
 20 of the Net Settlement Fund will be held in reserve (the "Reserve") to address any
 21 tax liability and administration-related contingencies that may arise. To the extent
 22 the Reserve is not depleted, the remainder will be distributed in the "Second
 23 Distribution" described in subparagraph (f) below.

24 (d) In order to encourage Authorized Claimants to cash their checks
 25 promptly, all Initial Distribution checks will bear the following notation: "CASH
 26 PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED
 27 BY [DATE 90 DAYS AFTER ISSUE DATE]." Subsequent distributions will also
 28 have a 90-day stale date. Lead Counsel and A.B. Data are authorized to take

1 appropriate action to locate and contact Authorized Claimants who have not
2 cashed their check within said time as detailed in paragraph 39(b) footnote 3 of the
3 Walter Declaration;

4 (e) Authorized Claimants who do not cash their Initial Distribution
5 checks within the time allotted or on the conditions stated in paragraph 39(b)
6 footnote 3 of the Walter Declaration will irrevocably forfeit all recovery from the
7 Settlement, and the funds allocated to all stale-dated checks will be available to be
8 distributed to other Authorized Claimants in the second distribution. Similarly,
9 Authorized Claimants who do not cash their second or subsequent distributions
10 (should such distributions occur) within the time allotted or on the conditions
11 stated in paragraph 39(b) footnote 3 of the Walter Declaration will irrevocably
12 forfeit any further recovery from the Net Settlement Fund;

13 (f) After A.B. Data has made reasonable and diligent efforts to have
14 Authorized Claimants cash their Initial Distribution checks (provided in paragraph
15 39(b) footnote 3 of the Walter Declaration), but not earlier than seven (7) months
16 after the Initial Distribution, A.B. Data will, after consulting with Lead Counsel,
17 conduct a second distribution (the "Second Distribution") within a reasonable
18 period of time, in which any amount remaining in the Net Settlement Fund after
19 the Initial Distribution (including the funds allocated for all void stale-dated
20 checks), after deducting A.B. Data's fees and expenses incurred in administering
21 the Settlement for which it has not yet been paid (including A.B. Data's estimated
22 costs of the Second Distribution), and after deducting the payment of any
23 estimated taxes, the costs of preparing appropriate tax returns, any escrow fees,
24 and appropriate reserves, will be distributed to all Authorized Claimants in the
25 Initial Distribution who cashed their Initial Distribution check and are entitled to
26 receive at least \$10.00 from the Second Distribution based on their *pro rata* share
27 of the remaining funds. Additional distributions, after deduction of costs and
28 expenses as described above and subject to the same conditions, may occur after a

1 reasonable period of time until Lead Counsel, in consultation with A.B. Data,
2 determines that further distribution is not cost-effective;

3 (g) When Lead Counsel, in consultation with A.B. Data, determines that
4 further distribution of the funds remaining in the Net Settlement Fund is not cost-
5 effective, if sufficient funds remain to warrant the processing of Claims received
6 after June 25, 2020, those Claims will be processed, and any otherwise valid
7 Claims received after June 25, 2020, as well as any earlier-received Claims for
8 which an adjustment was received after June 25, 2020, which resulted in an
9 increased Recognized Claim amount, will be paid in accordance with
10 subparagraph (h) below. If any funds remain in the Net Settlement Fund after
11 payment of these late or late-adjusted Claims, the remaining balance of the Net
12 Settlement Fund, after payment of any unpaid fees or expenses incurred in
13 administering the Net Settlement Fund and after the payment of any estimated
14 taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be
15 contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be
16 recommended by Lead Counsel and approved by the Court;

17 (h) No new Claims may be accepted for payment in the Initial
18 Distribution after June 25, 2020, and no further adjustments to Claims received on
19 or before June 25, 2020, that would result in an increased Recognized Claim
20 amount may be made for any reason after June 25, 2020, subject to the following
21 exception. If Claims are received or modified after June 25, 2020, that would have
22 been eligible for payment or additional payment under the Plan of Allocation if
23 timely received, then, at the time that Lead Counsel, in consultation with A.B.
24 Data, determines a distribution is not cost-effective as provided in subparagraph
25 (g) above, and after payment of any unpaid fees or expenses incurred in
26 connection with administering the Net Settlement Fund and after deducting the
27 payment of any estimated taxes, the costs of preparing appropriate tax returns, and
28 any escrow fees, these Claimants, at the discretion of Lead Counsel, may be paid

1 their distribution amounts or additional distribution amounts on a *pro rata* basis
2 that would bring them into parity with other Authorized Claimants who have
3 cashed all their prior distribution checks to the extent possible;

4 (i) All persons involved in the review, verification, calculation,
5 tabulation, or any other aspect of the processing of the Claims submitted, or who
6 are otherwise involved in the administration or taxation of the Settlement Fund or
7 the Net Settlement Fund, are hereby released and discharged from any and all
8 claims arising out of that involvement, and all Settlement Class Members and
9 other Claimants, whether or not they receive payment from the Net Settlement
10 Fund, are hereby barred from making any further claims against the Net
11 Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the
12 Escrow Agent, or any other agent retained by Lead Plaintiff or Lead Counsel in
13 connection with the administration or taxation of the Settlement Fund or the Net
14 Settlement Fund, or any other person released under the Settlement beyond the
15 amounts allocated to Authorized Claimants;

16 (j) All of A.B. Data's fees and expenses incurred in the administration
17 of the Settlement and estimated to be incurred in connection with the Distribution
18 of the Net Settlement Fund as stated in the invoices attached as Exhibit G to the
19 Walter Declaration are approved, and Lead Counsel is directed to pay the
20 outstanding balance of \$23,686.81 out of the Settlement Fund to A.B. Data; and

21 (k) Unless otherwise ordered by the Court, A.B. Data may destroy the
22 paper copies of the Claims and all supporting documentation one year after the
23 Second Distribution and may destroy electronic copies of the same one year after
24 all funds have been distributed.

25 4. This Court retains jurisdiction to consider any further applications
26 concerning the administration of the Settlement, and any other and further relief that this
27 Court deems appropriate.
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SO ORDERED.

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