

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ETHIEL McCLEAN and ROZELL BEPARI,
individually and on behalf of all other similarly situated,

Plaintiff,

v.

SUMMIT CAREER COLLEGE, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVDS1011407

Assigned for all purposes to:

The Hon. John M. Pacheco

Dept.: S34

**NOTICE OF CLASS ACTION
SETTLEMENT AND HEARING
DATE FOR COURT APPROVAL**

PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR RIGHTS.

I. INTRODUCTION

On July 29, 2010 Plaintiffs Ethiel McClean and Rozell Bepari (“Plaintiffs” or “Class Representatives”) initiated this class action complaint in San Bernardino Court against Defendant Summit Career College, Inc. (“Defendant”) entitled *McClean et al. v. Summit Career College, Inc.*, Case No.: CIVDS1011407 (the “Action”).

The Action alleges that Defendant misclassified its admission advisors as exempt (salaried) employees. As a result, Plaintiffs contend that Defendant violated California law for the failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to pay wages upon ending employment, failure to keep accurate payroll records, and the violation of the Unfair Competition law. Defendant denied and continues to deny each and every claim and contention alleged by the Plaintiffs.

On April 16, 2013, the Court granted class certification of the following claims: 1) failure to pay overtime wages; 2) failure to pay wages upon ending employment; 3) failure to keep accurate payroll records; and 4) violation of the Unfair Competition law.

Following class certification, Defendant concluded that the continued litigation of the Action would be protracted and expensive, and therefore it would be desirable for the Action to be fully and finally settled upon the terms and conditions set forth in the agreement (the “Settlement”). The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses.

If you are or were employed by Defendant in the State of California and have worked as a salaried admission advisor, counselor and/or those employees with the same job description within the time period of July 29, 2006 through December 19, 2014, you are a member of the class affected by this Action (“Class Member”). On December 19, 2014, the Court granted preliminary approval of the Settlement of this Action. The Court also scheduled a further hearing on March 20, 2015, at 8:30 a.m., San Bernardino Superior Court, 247 W. Third St., San Bernardino, CA 92415, Dept. S34, to determine if the Settlement should be given final approval.

II. DEFINITION OF THE CLASS

On April 16, 2013, the Court certified the following class and subclass definitions, which will be used to identify current and former employees who will be entitled to participate in the Settlement (the “Settlement Class”).

Class Definition:

All of Defendant's “salaried positions limited to Admission Advisors, Counselors, and/or those with the same job description employed by Defendant on or after four years prior to the commencement of this action who were not paid the legally requisite overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hour per workweek, and to whom Defendant failed to pay wages of terminated or resigned employees under Labor Code §§ 201-203.”

Sub-class Definitions:

The Overtime Subclass: All Summit employees who worked at or reported to one of Summit’s qualifying schools in California who worked or are currently working at Defendant’s California campuses at any time since July 29, 2006 and who were classified as exempt admission advisors, counselors, and/or those with the same job description, who worked overtime and were not paid all wages owed;

The Waiting Time Penalties Subclass: All Summit employees who worked at or reported to one of Summit’s qualifying schools in California who formerly worked at Defendant’s California campuses at any time since July 29, 2006 and who were classified as exempt admission advisors, counselors, and/or those with the same job description, who were not timely paid all wages due at the time of their separation from the company;

The Record Keeping Penalties Subclass: All Summit employees who worked at or reported to one of Summit’s qualifying schools in California who worked or are currently working at Defendant’s California campuses at any time since July 29, 2006 and who were classified as exempt admission advisors, counselors, and/or those with the same job description, whose records were not accurately maintained pursuant to Labor Code 1174 and the appropriate Industrial Welfare Commission Order.

If you are included in the Settlement Class as defined above, the Settlement will affect your rights and obligations and will entitle you to a monetary award, unless you opt out of the Settlement Class. To receive the monetary award, you must submit a valid and timely Claim Form. To opt out of the Class, you must submit a valid and timely Exclusion Form.

III. SUMMARY OF PROPOSED SETTLEMENT

Subject to Court approval, the Class Representatives acting on your behalf and Defendant have agreed upon a proposed Settlement under which this case will be resolved without a trial. The Settlement includes:

A. Monetary Relief to the Class Members

Defendant will pay a maximum of Four Hundred Fifty Thousand Dollars (\$450,000.00) ("Gross Settlement Amount") in consideration for Settlement of the Action and the release and dismissal with prejudice of the class claims.

Each Class Member that submits a valid and timely Claim Form will be a "Participating Class Member." The Gross Settlement Amount will be distributed to Participating Class Members after the following deductions are made, subject to Court approval: 1) class representative enhancement payments of Twenty Thousand Dollars (\$20,000.00) each to Ethiel McClean and Rozell Bepari; 2) Class Counsel's awarded attorneys' fees of One Hundred Fifty Thousand Dollars (\$150,000.00); 3) reasonable costs not to exceed Twenty Five Thousand Dollars (\$25,000.00); and 4) costs to administer the Settlement not to exceed Nine Thousand Eight Hundred Ninety Eight Dollars (\$9,898.00) ("Net Settlement Fund" or "NSF"). The Net Settlement Fund is estimated at Two Hundred Twenty Five Thousand One Hundred and Two Dollars (\$225,102.00). The entire Net Settlement Fund shall be distributed to Participating Class Members.

The Parties agree that thirty percent (30%) of all payments to Participating Class Members will be treated as wages subject to W-2 reporting and, therefore, normal payroll taxes and withholdings will be deducted pursuant to state and federal law from the Gross Settlement Amount. The remaining seventy percent (70%) represents interest and statutory penalties, for which Participating Class Members will be issued an IRS Form 1099 for that portion of their Individual Settlement Payments, and will assume full responsibility and liability for the payment of taxes due on such awards, if any. Defendant will be solely responsible for the payment of employer taxes and will not be deducted from the Gross Settlement Amount.

B. Distribution

The entire Net Settlement Fund estimated at Two Hundred Twenty Five Thousand One Hundred and Two Dollars (\$225,102.00) shall be distributed to Participating Class Members. The payment amount to each Participating Class Member shall be calculated by dividing the Net Settlement Fund by the total number of Qualifying Workweeks that all Class Members worked for Defendant during the Class Period (July 29, 2006 through December 19, 2014). The value for each Qualifying Workweek will then be multiplied by the Participating Class Member's total number of Qualifying Workweeks worked for the Defendant during the Class Period, resulting in the Participating Class Member's Individual Settlement Payment. The entirety of the Net Settlement Fund shall be distributed to Participating Class Members. To the extent that the administrator is unable to effect delivery of claimed settlement funds, the funds will be sent to the State of California Unclaimed Wage Fund.

C. Effective Date

The Effective Date means the date by which this settlement is finally approved and the Court's Order and Final Judgment become final.

D. Enhancement Award for Class Representatives

In consideration for Plaintiffs Ethiel McClean's and Rozell Bepari's time, effort and risk representing the Class Members, Plaintiffs will request that the Court award a class representative enhancement payment of Twenty Thousand Dollars (\$20,000.00) to each Plaintiff.

E. Attorneys' Fees and Expenses

Class Counsel will seek attorneys' fees not to exceed thirty three and 1/3 percent (33.33%) of the Gross Settlement Amount equaling One Hundred Fifty Thousand Dollars (\$150,000.00) and reasonable costs not to exceed Twenty Five Thousand Dollars (\$25,000.00) incurred in the prosecution of this Action. The amounts awarded to Class Counsel will be deducted from the Gross Settlement Amount after Court approval.

IV. RELEASE OF CLAIMS

Except for those Class Members that have opted out of the settlement, Class members will be deemed to have released any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, wages, restitution, disgorgement, equitable relief, contract obligations, overtime compensation, liquidated damages, statutory damages, penalties, attorneys' fees and costs, damages, prejudgment interest, actions or causes of action in connection with any individual or class wage and hour claim that was asserted or could have been asserted in Plaintiffs' Complaint, arising at any time during the Class Period, whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured and foreseen or unforeseen (the "Released Claims") including not only those Released Claims relating to the admissions advisor positions, but also any claims relating to any position at Summit (or any Releasee) that was held by the Plaintiffs or Settlement Class Member at any time during the class period, including without limitation: (1) any and all claims for overtime pay, regular rate pay, minimum wage pay or other pay for any and all alleged unpaid work from July 29, 2006 through the date

of the Preliminary Approval of Class Action Settlement hearing, regardless of whether the claims arise under state or federal law¹ or under any contract including any collective bargaining agreement; (2) any and all claims arising under or relating in any manner to California Business and Professions Code Sections 17200 et seq.; (3) any and all claims for penalties, wages or compensation pursuant to California Labor Code Sections 200, 201, 202, 203 and 206 and Section 20 of any and all applicable Industrial Welfare Commission orders; (4) any and all claims arising under or relating to Labor Code Section 226 or any related provisions of the applicable wage order; (5) any and all claims relating to the timeliness or accuracy of any and all wage statements; (6) any and all claims and penalties that the Plaintiffs and Class Members are entitled to under California law, including California Labor Code Sections 2699, 226.3, 226(e) and 226(a) and that any of them or their counsel are entitled to attorneys' fees under California law, including California Code of Civil Procedure Section 1021.5 and Labor Code Sections 218.5, 226(e), 1194, 2699(f) and 2802(e); and (7) any and all claims for injunctive and/or declaratory relief. Only Participating Class Members who submit Claim Forms shall also waive any Federal Labor Standards Act ("FLSA") claims whether known or unknown, arising during the class period for the Class Members based on the claims reasonably related to those alleged in the Complaint.

The release will be effective as of the date the Court grants final approval of the settlement, and will cover Defendant, its existing and former employees, officers, directors, agents, servants, parent companies, subsidiaries, affiliates, stockholders, representatives, attorneys, and all their heirs, executors, successors, assignees or transferees ("Released Parties"). Plaintiffs will execute a full general release of claims related to their employment with Defendant and they will execute a Civil Code §1542 waiver. Class Members, and only those who have not opted out of the Settlement, will execute a Civil Code § 1542 waiver to only the Released Claims.

V. COUNSEL

Class Counsel:

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Sam Kim
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Counsel for Defendant:

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LAW OFFICES OF JAMES P. STONEMAN II
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Claremont, California 91711

VI. HEARING ON PROPOSED SETTLEMENT

The Court will hold a hearing on March 20, 2015, at 8:30 a.m., to determine whether the proposed Settlement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve the request of Class Counsel for attorneys' fees and costs and enhancement payments to the Class Representatives. The hearing will take place in the Courtroom of the Honorable John M. Pacheco of the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, CA 92415-0210, Dept. S34. If you are a Class Member, you will be bound by the Settlement if it is approved, unless you submit a valid and timely Exclusion Form. It is not necessary for you to attend the hearing.

VII. YOUR OPTIONS AS A CLASS MEMBER

As a Class Member, you have the following options available to you at this time:

A. Participate in the Settlement

If you are a former or current employee, you must submit a Claim Form to participate in the monetary relief of this Settlement by submitting the enclosed Claim Form to the Settlement Administrator identified on the Claim Form. To be valid, the enclosed Claim Form must be filled out accurately and in its entirety, and signed under penalty of perjury. To be timely, the enclosed Claim Form must be postmarked and/or received by the Settlement Administrator no later than February 28, 2015. If you fail to submit a valid and timely Claim Form, you will be disqualified from seeking monetary relief under the Settlement. Each Class Member's Claim Form will state the total number of Qualifying Workweeks worked by the Class Member during the Class Period and the Class Member's estimated Individual Settlement Payment. If you disagree with the information on the Claim Form, you may submit evidence to the Settlement Administrator for review by February 18, 2015.

If you submit a timely and valid Claim Form, you will receive a payment for your portion of the monetary award, subject to the Court's Final Approval of the Settlement.

¹ Only those Class Members who submit Claim Forms release the Released Parties from any and all claims under FLSA that could have been asserted based on the facts alleged in the Action, including derivative claims, up to and including the Date of Preliminary Approval.

B. Object to Settlement

You may object to the proposed Settlement. If you wish to object to the Settlement, you must file with the Court a written objection stating with particularity the grounds of objection, with copies served on all law firms identified above in Section V, not later than February 28, 2015. No Class Member shall be entitled to be heard at the final approval hearing or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the final approval hearing, unless copies of any written notice of the Class Member's intention to appear at the final approval hearing, and copies of any written objections or briefs, have been filed with the Court and served on counsel for the Parties no later than February 28, 2015. Any Class Member who fails to file and serve timely written objections within the time and in the manner specified in this paragraph will be deemed to have waived any objections and shall be foreclosed from making any objection in writing or in person (by appeal or otherwise) to the Settlement.

C. Request Exclusion from Class

You may exclude yourself from the monetary relief of the Settlement by submitting a timely and valid Exclusion Form to the Settlement Administrator identified above. To be valid, the enclosed Exclusion Form must be filled out accurately and in its entirety, and be personally signed by you. To be timely, the enclosed Exclusion Form must be mailed to the Settlement Administrator, postmarked by no later than February 28, 2015. Class Members who fail to submit a valid and timely Exclusion Form will be bound by the Settlement, any Final Approval Order, and any Final Judgment entered in this action. If you timely and validly opt out of this lawsuit, you will have no right to receive any monetary award under the Settlement, you will not be bound by the Settlement in this action and you will have no right to challenge the Settlement or participate in the Final Approval Hearing.

D. Do Nothing

You may also do nothing, if you wish. If you do nothing in response to this Notice, you may be deemed to have released any and all of the Released Claims listed in Section IV, up to and including through the date of Preliminary Approval.

VIII. ADDITIONAL INFORMATION

A. Inspection of Pleadings/Other Records

The foregoing is only a summary of this action and the Settlement and does not purport to be comprehensive. For more complete information, the pleadings and other records in this litigation, including complete copies of the Settlement, may be examined during regular court hours at the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, CA 92415-0210.

B. Questions Regarding the Settlement or This Notice

If you have any questions about the Proposed Settlement or this Notice, you may contact Phoenix Settlement Administrators, P.O. Box 27907, Santa Ana, CA 92799-7907. Telephone: 888.613.5553.

C. Contradictory Form Submissions

Submissions by Class Members of both a timely and valid Claim Form and Exclusion Form will be treated as a valid claim submission.

DO NOT CONTACT THE COURT REGARDING THIS NOTICE. THE COURT IS NOT ABLE TO PROVIDE ANY INFORMATION OR ADVICE REGARDING THIS NOTICE.