

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 6-16-11

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UNITED STATES OF AMERICA *ex rel.* :  
RACHEL GOLDBERG, :  
 :  
Plaintiff, :  
v. :  
 :  
INSTITUTE OF INTERNATIONAL :  
EDUCATION, :  
 :  
Defendant. :  
----- X

**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL**

**07 Civ. 8294 (PKC)**

UNITED STATES OF AMERICA, :  
 :  
Plaintiff-Intervenor, :  
v. :  
 :  
INSTITUTE OF INTERNATIONAL :  
EDUCATION, :  
 :  
Defendant. :  
----- X

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation" or "Agreement") is entered into among the United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and on behalf of the United States Department of State, Bureau of Educational and Cultural Affairs (the "State Department" or the "United States"), Defendant the Institute of International Education, Inc. ("IEE" or "Defendant") and Relator Rachel Goldberg ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives;

WHEREAS, IIE is a not-for-profit corporation with its principal place of business located

at 809 United Nations Plaza, New York, New York, 10017, which entered into grants or cooperative agreements with the State Department to manage and administer the Fulbright Student Exchange Program, the Fulbright Senior Scholar Program, and the Vietnam Fulbright Student Program (collectively, the "Fulbright Program") from at least fiscal year 2001 through fiscal year 2009:

WHEREAS, on September 24, 2007, Relator filed a *qui tam* action in the United States District Court for the Southern District of New York, captioned *United States ex rel. Rachel Goldberg v. Institute of International Education*, No. 07 Civ. 8294 (PKC), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and amended the Complaint on June 13, 2011 (except as otherwise specified, the Complaint in its original form and as amended are referred to herein as "Relator's Complaint," and the case in its entirety is referred to as the "Civil Action"). In her complaint, Relator alleged that from 2001 through at least 2003, IIE submitted false claims for payment to the State Department in connection with the funding it received to administer the Fulbright Program;

WHEREAS, the United States has intervened in the Civil Action and has sought to contemporaneously file the Complaint-in-Intervention of the United States of America (the "Federal Complaint");

WHEREAS, IIE's conduct as alleged in the original Relator's Complaint and the Federal Complaint shall be defined as the "Covered Conduct," except that the Covered Conduct shall not include the Relator's claim for retaliation;

WHEREAS, this Stipulation is neither an admission of liability by Defendant nor a concession by the United States that its claims are not well founded;

NOW, THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and

obligations of this Stipulation, and for other valuable consideration the adequacy of which the Parties acknowledge and shall not challenge, the Parties agree and covenant as follows:

**TERMS AND CONDITIONS**

1. The Parties consent to this Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.

2. IIE shall pay to the United States a total of one million dollars (\$1,000,000.00) (the "Settlement Amount") for the loss of the United States due to the Covered Conduct. IIE shall make the payment by electronic funds transfer no later than five business days after the Effective Date (defined below) pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

3. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon IIE's full payment of the Settlement Amount, the United States releases IIE and all of its current and former officers, directors, trustees, employees, affiliates, and assigns, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Contract Disputes Act (41 U.S.C. §601 et seq.); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of fraud, payment by mistake and unjust enrichment. The United States shall seek the simultaneous filing and dismissal with prejudice of its Complaint-in-Intervention and the dismissal with prejudice of Relator's Complaint.

4. In consideration of the obligations that IIE has assumed under this Agreement, and IIE's fulfillment of them, including IIE's full payment of the Settlement Amount, the U.S. Department of State releases and refrains from instituting, directing, or maintaining any administrative action seeking suspension or debarment as a result of the Covered Conduct.

5. Relator, for herself and for her heirs, executors, administrators, personal representatives, family members, successors, attorneys, agents, and assigns, releases and forever discharges IIE and all of its current and former officers, directors, trustees, employees, affiliates, and assigns ("IIE Released Parties"), from any and all manner of claims, proceedings and causes of action of any kind or description whatsoever, known or unknown, contingent or accrued that Relator and/or her heirs, executors, administrators, and assigns have against the IIE Released Parties arising out of or by reason of any cause, matter, thing, fact, circumstance, event or agreement whatsoever occurring prior to the execution of this Agreement, including but not limited to any claims in, relating to or arising out of Relator's Complaint or the Federal Complaint.

6. Notwithstanding the releases given in Paragraphs 3 and 4 of this Stipulation, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Stipulation, any administrative liability, including suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based upon obligations created by this Stipulation.

7. IIE shall be in default of this Stipulation if it fails to make the payment set forth in paragraph 2 on or before its due date. The United States will provide written notice of any default, to be sent by email and first-class mail to the undersigned attorney for IIE. In the event of default, the Settlement Amount shall be immediately due and payable, and interest shall

accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days after delivery of the notice of default, IIE shall agree to a Consent Judgment in the amount of the unpaid balance, and the United States, at its option, may: (a) rescind this Stipulation and reinstate the Complaint-In-Intervention filed in this action or seek specific performance of the Stipulation; (b) offset the remaining unpaid balance from any amounts due and owing Defendants by any department, agency or agent of the United States at the time of default; or (c) exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. IIE shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any State or Federal court. In addition, IIE shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, IIE 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 which relate to the Covered Conduct, except to the extent these defenses were available on August 1, 2010 (the effective date of the first tolling agreement between the United States and IIE).

8. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

9. IIE waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the

Constitution, or under the Excessive Fines Clause in 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 U.S. Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. IIE fully and finally releases the United States, and its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that IIE has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof, provided, however, that nothing in this Stipulation shall absolve the Government from any obligation to pay IIE any amounts due under any grant, cooperative agreement or contract awarded to IIE by the United States ("Government Agreements"), or prevent IIE from seeking an equitable adjustment or recovering on any claim for any amounts due to IIE under any Government Agreement, except as otherwise provided by this Stipulation.

11. 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, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of IIE, its present or former officers, directors, trustees, employees, and agents in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Stipulation;

- (3) Defendant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) the payments made to the United States pursuant to this Stipulation and any payments that IIE or any other of IIE's present or former officers, directors, trustees, employees, and agents make to Relator, including for her costs and attorney's fees.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers or categories by IIE, and IIE shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, IIE shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by IIE or any of its subsidiaries or affiliates from the United States. IIE agrees that the United States, at a minimum, shall be entitled to recoup from IIE any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine IIE's books and records and to disagree with any calculations submitted by IIE or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by IIE, or the effect of any such Unallowable Costs on the amount of such

payments.

d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine IIE's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

e. The United States reserves its right to disagree with any calculations submitted by IIE or the effect of inclusion of unallowable costs (as defined in paragraph 11) on IIE's or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on IIE or any of its subsidiaries or affiliates' cost reports, cost statements or information reports (including CFRs and appeals).

12. IIE represents and warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to IIE within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude 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 IIE was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Stipulation or of any payment made under this Stipulation, IIE commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors



(a) seeking to have any order for relief of IIE's debts, or seeking to adjudicate IIE as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for IIE or for all or any substantial part of IIE's assets, IIE agrees as follows:

a. IIE's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and IIE shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) IIE's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) IIE was insolvent at the time this Stipulation was entered into, or became insolvent as a result of the payments made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to IIE.

b. If IIE'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 United States, at its sole option, may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against IIE for the claims that would otherwise be covered by the releases provided in Paragraphs 3 and 4 above. IIE agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and IIE shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) IIE shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States within 60 calendar days of written notification to IIE that the releases have been rescinded pursuant to this paragraph,

except to the extent such defenses were available on August 1, 2010, and (iii) the United States has a valid claim against IIE in the amount of one million, four hundred and thirty-nine thousand, five hundred and twenty-three dollars (\$1,439,523), and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding.

c. IIE acknowledges that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Stipulation.

14. Subject to the exceptions in Paragraph 6, in consideration of the obligations of the Defendant in this Stipulation, conditioned upon IIE's timely full payment of the U.S. Settlement Amount, the United States shall dismiss with prejudice the Federal Complaint and the Relator shall dismiss with prejudice the Civil Action. Provided, however, that the Court shall retain jurisdiction over this Stipulation and each Party to the extent the obligations herein remain unsatisfied by that Party.

15. Except as expressly provided to the contrary in this Stipulation, 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.

16. The United States and IIE shall each bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

17. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. Each party and signatory to this Stipulation represents that it freely and voluntarily enters into this Stipulation without any degree of duress or compulsion.

19. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended except by written consent of the Parties.

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

21. 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.

22. Any failure by the United States to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the United States, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

23. Any notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or facsimile transmission followed by postage-prepaid mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

Sarah S. Normand  
Brian K. Morgan  
Assistant United States Attorneys  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, 3rd Floor  
New York, NY 10007  
Facsimile: (212) 637-2717

IF TO DEFENDANTS:

Craig S. King, Esq.  
Kevin Pinkney, Esq.  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339  
Facsimile: (202) 857-6395

IF TO RELATOR:


Timothy McInnis, Esq.  
Richard F. Bernstein, Esq.  
McInnis Law  
521 Fifth Avenue, Suite 1700  
New York, NY 10175

24. The effective date of this Stipulation is the date upon which this Stipulation is entered by this Court (the "Effective Date").

THE UNITED STATES OF AMERICA


Dated: New York, New York  
June 14, 2011

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

By:   
Sarah S. Normand  
Brian K. Morgan  
Assistant United States Attorneys  
86 Chambers Street, 3rd floor  
New York, New York 10007

Dated: New York, New York  
June 14, 2011

U.S. DEPARTMENT OF STATE

By:   
Corey Rindner  
Suspension and Debarment Official  
U.S. Department of State  
1000 Wilson Blvd, SA 27  
Suite 900  
Arlington, VA 22209

INSTITUTE OF INTERNATIONAL EDUCATION, INC.

Dated: New York, New York  
June 15, 2011

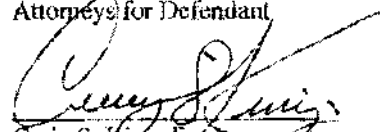


Dr. Allan Goodman  
President and Chief Executive Officer

Dated: New York, New York  
June 15, 2011

ARENT FOX LLP  
Attorneys for Defendant

By:



Craig S. King, Esq. *Not admitted in New York*  
Kevin Pinkney, Esq.  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339

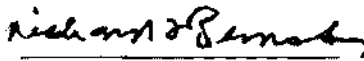
**RELATOR**

Dated: New York, New York  
June 10, 2011


  
RACHEL GOLDBERG, Relator

Dated: New York, New York  
June 12, 2011

MCINNIS LAW  
Attorneys for Relator

By:   
Timothy McInnis, Esq.  
Richard F. Bernstein, Esq.  
521 Fifth Avenue, Suite 1700  
New York, NY 10175

SO ORDERED:

  
THE HONORABLE P. KEVIN CASTEL  
United States District Judge  
6-16-11