

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CAROLINE CASTELLAW, CHERYL CARNES,  
KATHRYN ROSE, AMANDA WILSON, HELEN  
SPOSATO, KACY MCDONOUGH, SHERRY TAITZ,  
MARLA HUBER, JOY MARIE CZAPSKI, DANIEL  
QUICK, CHARITY RICHERT, DIANE RUBENS,  
KAREN BLANKEN, WANDA PENNINO, JILLIAN  
PHELAN, DEBORAH MCCARVER and DEBORAH  
ALEXANDER, *ET AL.*

Plaintiffs,

-against-

EXCELSIOR COLLEGE,

Defendant.

**FILED**  
CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ JUL 17 2015 ★  
BROOKLYN OFFICE

Civil Action No.:

1:14-CV-01048-JBW-RLM

(and related action Nos.:

- 14-cv-4989
- 14-cv-5038
- 14-cv-5040
- 14-cv-5041
- 14-cv-5103
- 14-cv-5176
- 14-cv-5355
- 14-cv-5357
- 14-cv-5519
- 14-cv-5520
- 14-cv-6180
- 14-cv-6187
- 14-cv-5012
- 14-cv-6582
- 14-cv-7355
- 15-cv-00150
- 15-cv-00152
- 15-cv-00153
- 15-cv-00154
- 15-cv-00151)

**FINAL  APPROVAL ORDER AS MODIFIED** *JBW*

This matter comes before the Court on the joint request of Plaintiffs and Class Representatives ("Class Representatives" or "Plaintiffs") set forth in Exhibit "A" to the Stipulation of Settlement ("Stipulation") on behalf of themselves and the class, and Defendant Excelsior College ("Excelsior") for: (1) an Order granting final approval of the Parties' Stipulation of Settlement resolving this class action on a nationwide basis, and (2) entry of a Judgment and Order dismissing this action with prejudice;

The Court has considered all matters submitted to it at the Fairness and Final Approval Hearing held on July 15, 2015 at 11:00 a.m. and otherwise;

The Court entered an Amended Preliminary Approval Order dated March 30, 2015, preliminarily certifying the proposed Class for settlement purposes under Federal Rule of Civil

Procedure 23, ordering Notice to Class Members, and preliminarily approving the Parties' Stipulation of Settlement;

The Parties confirmed to the Court that the Claims Administrator mailed and/or e-mailed Notice to Class Members of the pendency of the class action and the proposed settlement, in the form approved by the Court, to all persons and entities reasonably identifiable who fit within the Settlement Class definition set forth in the Preliminary Approval Order;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. Jurisdiction. The Court has jurisdiction over the subject matter of this litigation, Plaintiffs, all Class Members, and Excelsior. Without affecting the finality of the Judgment, the Court reserves exclusive and continuing jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Stipulation and/or Judgment.

2. Definitions. For purposes of this Order, the Court adopts by reference the definitions set forth in the "Definitions" section of the Stipulation.

3. Class Action Requirements. The Court finds that the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) have been met, in that:

- A. The Settlement Class is so numerous that the joinder of all members is impracticable;
  - B. There are questions of law or fact common to the Settlement Class;
  - C. The Settlement Class Representatives' claims are typical of the other Settlement Class Members' claims;
  - D. The Settlement Class Representatives and Settlement Class Counsel have fairly and adequately protected the interests of the Settlement Class and absent Settlement Class members. The Settlement Class Representatives retained counsel experienced in bringing class actions; and
  - E. The questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and the settlement class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- 3a. Requirements of the Class Action Fairness Act and case law have been met.
- 3b. Notice to appropriate State Attorney Generals have been properly given.

3c. Full and adequate notice was given to all those with potential claims.

3d. With the Court's assistance, opt outs will be given appropriate relief as indicated in an Order marked "Opt Out Order."

4. Certification of Settlement Class. The requirements of Federal Rule of Civil Procedure 23 having been met, the Court certifies the following Settlement Class for the purpose of effectuating the Settlement:

All current or former students of Excelsior College's Associate Degree in Nursing ("ADN") distance-learning program who took the Clinical Performance in Nursing Exam ("CPNE") at any time, failed the CPNE, and then paid for and took the CPNE on another occasion during the Class Period, from February 19, 2011 to March 5, 2015, and did not pass the CPNE on at least one more occasion during the Class Period.

5. Final Approval of the Agreement. The Court finds that the proposed Stipulation is approved as fair, reasonable, and adequate, pursuant to Federal Rule of Civil Procedure 23(e)(2). The Court further finds that each term, provision, condition, and agreement of the Stipulation, including all exhibits and amendments thereto, apply and are adopted, incorporated, and made part of this Order, as if copied herein and shall be effective, implemented, and enforced as provided in the Stipulation.

6. Non-Monetary Relief. Excelsior shall effect, implement, and enforce all non-monetary relief provided for in the provision on Disclosure Modification – Non-Monetary Relief described in Section XII.B of the Stipulation.

7. Monetary Relief. Excelsior shall pay the monetary amounts to the Class Representatives as set forth in the Stipulation of Settlement in accordance with the terms and conditions set forth.

8. Attorneys' Fees, Costs and Expenses. The Court awards to Settlement Class Counsel, Attorneys' Fees as set pursuant to Section XIII of the Stipulation, which the amount the Court finds is fair, adequate, and reasonable. This amount shall be paid by Excelsior within ten (10) business days after the Effective Date as defined in Section XIII.B of the Stipulation.

9. Dismissal with Prejudice. The Court dismisses with prejudice the Class Action—which includes all related actions set forth in Exhibit "1"—on the Final Approval Date as defined in Section VIII.D of the Stipulation.

10. Release of Claims. Pursuant to Section VIII.A-C, all Class Representatives, the Settlement Class, and each member of the Settlement Class, with respect to each Released Claim, release and forever relinquish and discharge, and are forever enjoined from

prosecuting all Released Claims against any of the Released Parties. The Released Parties' liability to the Class Representatives, the Settlement Class, and all Settlement Class members is expressly extinguished under the Stipulation.

10a. Counsel for all parties have, with the aid of the Magistrate Judge and Court, constructed a just and commendable settlement. Excelsior College is now in a position to carry forward its work supporting an effective nursing profession and assisting competent and dedicated nurses in increasing their contribution to good medical practice in the United States.

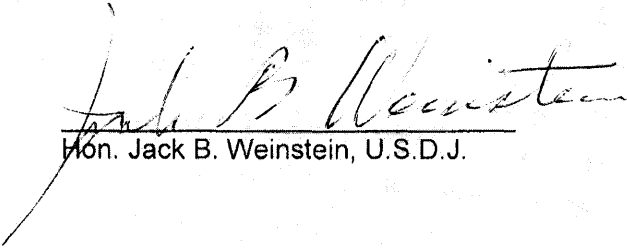
11. Entry of Judgment. There being no just reason to delay entry of this Judgment, the Clerk of the Court is ordered to enter this Judgment forthwith pursuant to Federal Rule of Civil Procedure 54(b).

12. This Order shall become effective ten days from today unless a written objection is filed with the Court.

13. This Order shall be filed and docketed forthwith. Five copies shall be deposited forthwith in the Court's press office.

**IT IS SO ORDERED.**

7/17/15

  
Hon. Jack B. Weinstein, U.S.D.J.

**EXHIBIT 1**

**List of Class Representatives and  
Civil Action Numbers for Related Cases**

<b>Civil Action No.</b>	<b>Last Name</b>	<b>First</b>
14-cv-1048	Alexander	Debra
14-cv-1048	Austin	Carol
14-cv-1048	Baker	Heike
14-cv-1048	Bal	Zavida
14-cv-1048	Bataille	Lily
14-cv-1048	Berner	Rebecca
14-cv-1048	Bertucci	Brenda
14-cv-1048	Blanken	Karen
14-cv-1048	Bolton	Robin
14-cv-1048	Briones	Anna
14-cv-1048	Brown	Marcia
14-cv-1048	Cain	Rhonda
14-cv-1048	Carnes	Cheryl
14-cv-1048	Castellaw	Caroline
14-cv-1048	Cessna	Robbin
14-cv-1048	Childress	Aaron
14-cv-1048	Colletti-Huber	Marla
14-cv-1048	Craig	Christina
14-cv-1048	Crowley	Ollette
14-cv-1048	Czapski	Joy Marie
14-cv-1048	Davis	Charlotte
14-cv-1048	Dawson	Christi
14-cv-1048	Dorr	Stacey

14-cv-1048	Frye	Christina
14-cv-1048	Giganti	Vincent
14-cv-1048	Gilmore	Ernest J.
14-cv-1048	Gombeda	Lynelle
14-cv-1048	Halcovage	William
14-cv-1048	Hershman	Deborah
14-cv-1048	Hoban	Celeste
14-cv-1048	Hurt	Tricia
14-cv-1048	Hutter	Charlotte
14-cv-1048	Irby	Kelsay
14-cv-1048	Johnson	Sharma
14-cv-1048	Jolly	Maketa
14-cv-1048	Jones, Jr.	Ray D.
14-cv-1048	Kemble	Tod
14-cv-1048	Kent	Kathy
14-cv-1048	Krabbe	Charles
14-cv-1048	Lamp	Justin
14-cv-1048	Lawes-Burgos	Nadine
14-cv-1048	Lockshier	Roger
14-cv-1048	Marin	Ileana
14-cv-1048	Mbu	Vivian
14-cv-1048	McCarty	Staci
14-cv-1048	McCarver	Deborah
14-cv-1048	McDonough	Kacy
14-cv-1048	McFadden	Elizabeth
14-cv-1048	Murk	Lisa
14-cv-1048	Myer	Nathan



14-cv-1048	Nestor	Julie
14-cv-1048	Norton	Lacie
14-cv-1048	Ogborn	Ann
14-cv-1048	Pennino	Wanda
14-cv-1048	Phelan	Jillian
14-cv-1048	Quick	Daniel
14-cv-1048	Rawson	Simon
14-cv-1048	Reynolds	Barbara V.
14-cv-1048	Richard	Carmen
14-cv-1048	Richert	Charity
14-cv-1048	Rose	Kathryn
14-cv-1048	Rubens	Diane
14-cv-1048	Schimshock	Lori
14-cv-1048	Simpson	Jeffery
14-cv-1048	Sposato	Helen
14-cv-1048	St. Aubin	Jenny
14-cv-1048	Taitz	Sherry
14-cv-1048	Taylor	Nicole
14-cv-1048	Togarepi	Leann
14-cv-1048	Tudor	Johnathan
14-cv-1048	Welch	Archie
14-cv-1048	Wells	Donald
14-cv-1048	Williams	Mary
14-cv-1048	Wilson	Amanda
14-cv-1048	Wright	Robin
14-cv-4989	Richardson	Felicia
14-cv-5038	Hedgepath	Ladonna



14-cv-5040	Parker	Andrea
14-cv-5041	Upegui	Cristina
14-cv-5103	Finch	Timothy
14-cv-5176	Ramirez	Roxanne
14-cv-5355	Bodell	Patricia
14-cv-5357	Shelton	Fallen
14-cv-5519	Kirker	Brianne
14-cv-5520	Machetta	Sally
14-cv-6180	Dowburd	Julie
14-cv-6187	Dickerson	Paul
14-cv-5012	Parham	Rita
14-cv-6582	Fraser	Rebecca
14-cv-7355	Stephens	Keena
15-cv-00150	Bryant	Lindsay
15-cv-00152	Reeves	Michael
15-cv-00153	Torres	Carmen
15-cv-00154	Trammell	Kelly L.
15-cv-00151	Cassa-Brewster	Andrea
15-cv-00151	Koch	Tina
15-cv-00151	Pretti	Kathleen
15-cv-00151	Spielman	Jacqueline