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Darby E. Shupp, Allen R. Weiss, Brian L.  
Swartz, Joseph L. D'Amico, Gregory J.  
Iverson, Sean Martin. J. Mitchell Bowling,  
and Timothy Slottow, and Nominal  
Defendant Apollo Education Group, Inc.*

[Additional Counsel Listed on Signature  
Page]

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

KEVIN J. GUINAN and CHERYL A.  
GUINAN, Derivatively and on Behalf of  
APOLLO EDUCATION GROUP, INC.,  
Plaintiffs,  
v.  
PETER V. SPERLING, GREGORY W.  
CAPPELLI, TERRI C. BISHOP, DR. DANA  
BORN, MATTHEW CARTER, JR.,  
RICHARD H. DOZER, DR. ROY A.  
HERBERGER, JR., DR. ANN KIRSCHNER,  
ROBERT S. MURLEY, MANUEL F.  
RIVELLO, DARBY E. SHUPP, ALLEN R.  
WEISS, BRIAN L. SWARTZ, JOSEPH L.  
D'AMICO, GREGORY J. IVERSON, SEAN  
MARTIN, J. MITCHELL BOWLING, and  
TIMOTHY SLOTTOW,  
Defendants,  
and  
APOLLO EDUCATION GROUP, INC.,  
Nominal Defendant.

No. CV2016-005901

**STIPULATION AND  
AGREEMENT OF  
SETTLEMENT**

(Honorable Roger Brodman)

1 Subject to the approval of the Court, this Stipulation and Agreement of Settlement (the  
2 “Stipulation”), dated January 5, 2017, is made and entered into by and among the following  
3 Settling Parties (defined herein), each by and through their respective counsel: (i) Kevin J.  
4 Guinan and Cheryl A. Guinan, who are Plaintiffs in the above-captioned shareholder derivative  
5 action (the “Action”); (ii) Peter V. Sperling, Gregory W. Cappelli, Terri C. Bishop, Dr. Dana  
6 Born, Matthew Carter, Jr., Richard H. Dozer, Dr. Roy A. Herberger, Jr., Dr. Ann Kirschner,  
7 Robert S. Murley, Manuel F. Rivelto, Darby E. Shupp, Allen R. Weiss, Brian L. Swartz, Joseph  
8 L. D’Amico, Gregory J. Iverson, Sean Martin, J. Mitchell Bowling, and Timothy Slottow, who  
9 are current or former members of the Board of Directors and/or current or former officers of  
10 nominal defendant Apollo Education Group, Inc. (“Apollo” or the “Company”), and named  
11 defendants in the Action (collectively the “Individual Defendants”); and (iii) nominal defendant  
12 Apollo (together with the Individual Defendants, “Defendants”). The parties listed in items  
13 (i), (ii), and (iii) above are the “Settling Parties.” This Stipulation is intended by the Settling  
14 Parties to fully, finally, and forever compromise, resolve, discharge, and settle the Released  
15 Claims (defined herein), upon the terms and subject to the conditions set forth herein.  
16  
17

## 18 **INTRODUCTION**

### 19 **Factual Background**

20 Apollo is an Arizona corporation headquartered in Phoenix, Arizona. Through its  
21 subsidiaries, including University of Phoenix, Apollo has established itself as a leading provider  
22 of higher education programs and services for working adults. On February 8, 2016, Apollo  
23 announced that it had agreed to be taken private by a consortium of private investors (the  
24 “Merger”). Thereafter, on July 7, 2016, following a June 10, 2016 litigation and books and  
25 records demand on Apollo’s Board of Directors (the “Demand”), Plaintiffs initiated this Action  
26 alleging that, beginning at least by June 26, 2013 and through July 7, 2016, the Individual  
27 Defendants breached their fiduciary duties by *inter alia*, causing the Company’s (1) use of  
28

1 prohibited student recruitment practices; (2) submission of false claims and information to  
2 federal officials; and (3) reliance on a new software learning platform that was unsuccessful, and  
3 (4) misrepresentations and omissions of material facts in its public statements related to, *inter*  
4 *alia*, the Company's: (a) use of prohibited student recruitment practices; (b) submission of false  
5 claims and information to federal officials; and (c) unsuccessful transition to a new software  
6 learning platform (collectively, the "Pre-Merger Claims").  
7

8 In addition, Plaintiffs allege that the Individual Defendants breached their fiduciary duties  
9 by causing the Company to enter into the proposed Merger. More specifically, Section 6.12 of  
10 the Merger Agreement (defined herein) provides that Apollo shall cause the Surviving  
11 Corporation to, after the merger:

12 indemnify and hold harmless (including advancement of expenses as incurred) the  
13 present and former officers, directors and employees of the Company and its  
14 Subsidiaries who served at the Company's or its Subsidiary's request as a director,  
15 officer, member, trustee or fiduciary of any pension or other employee benefit plan  
16 (each, an "**Indemnified Person**"), in each case, as provided in the articles of  
17 incorporation or by-laws of the Company in effect on the date hereof, to the fullest  
18 extent permitted by applicable Law, against any Liabilities (including reasonable  
19 attorneys' fees) incurred in connection with any Proceeding relating to, arising from  
20 or in connection with such Indemnified Person's services as a director or officer of  
21 the Company or its Subsidiaries or services performed by such Indemnified Person  
22 at the request of the Company or its Subsidiaries at or prior to the Effective Time,  
23 including, for the avoidance of doubt, in connection with (i) the Merger and the  
24 Transactions and (ii) actions to enforce this provision or any other indemnification  
25 or advancement right of any Indemnified Person.

26 ....

27 The rights of each Indemnified Person under this Section 6.12 shall be in addition  
28 to any rights such Person may have under the articles of incorporation or by-laws  
of the Company or any of its Subsidiaries, or under Arizona Law or any other  
applicable Law or under any agreement of any Indemnified Person with the  
Company or any of its Subsidiaries. These rights shall survive consummation of  
the Merger and are intended to benefit, and shall be enforceable by, each  
Indemnified Person.

1 (the “Indemnification Provision”). Plaintiffs also make claims that the Indemnification Provision  
2 will immunize Individual Defendants from liability for potential damages arising from the  
3 conduct that comprises the basis for the Pre-Merger Claims (the “Merger Claims”).

4 Defendants deny all allegations of wrongdoing, and disagree with Plaintiffs’  
5 interpretation of the Indemnification Provision.

### 6 **Procedural Background**

#### 7 **The Demand**

8 On June 10, 2016, Plaintiffs served their Demand on the Apollo Board, alleging that  
9 certain directors and officers had breached their fiduciary duties in connection with the conduct  
10 underlying Plaintiffs’ Pre-Merger Claims. Under Arizona law, “[n]o shareholder may commence  
11 a derivative proceeding until . . . [n]inety days have expired from the date the demand was made  
12 unless . . . irreparable injury to the corporation would result by waiting for the expiration of the  
13 ninety day period.” A.R.S. § 10-742(1). Alleging that irreparable injury would result because  
14 of the Merger, Plaintiffs filed suit prior to the expiration of the ninety day waiting period.  
15

#### 16 **The Action**

17 On July 7, 2016, Plaintiffs initiated the Action on behalf of Apollo by filing a verified  
18 shareholder derivative complaint in this Court alleging both Pre-Merger and Merger Claims for  
19 breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, and waste  
20 of corporate assets (“Complaint”). The Complaint’s prayer for relief demands that, *inter alia*,  
21 the “Board . . . remove the . . . [Indemnification Provision of] the Merger Agreement, which would  
22 cause irreparable injury to the Company and to Plaintiffs...”  
23

24 On July 26, 2016, seeking to enjoin the Merger until after Plaintiffs’ claims are tried, or,  
25 alternatively, to remove the Indemnification Provision from the Merger Agreement, Plaintiffs  
26 filed an Application for Entry of Order to Show Cause for Preliminary Injunction and  
27 Memorandum of Points and Authorities in Support (“Application for Preliminary Injunction”),  
28

1 including a request for expedited discovery. On August 15, 2016, Defendants filed an Opposition  
2 to Plaintiffs' Application for Preliminary Injunction. On August 29, 2016, Plaintiffs filed a Reply  
3 to Defendants' Opposition.

4 On July 27, 2016, Defendants filed a Motion to Dismiss Plaintiffs' Complaint ("Motion  
5 to Dismiss"). On August 15, 2016, Plaintiffs filed an Opposition to Defendants' Motion to  
6 Dismiss. On August 29, 2016, Defendants filed a Reply in Support of their Motion to Dismiss.

7  
8 On August 12, 2016, the Court ordered a dual oral argument on both the Application for  
9 Preliminary Injunction and the Motion to Dismiss for September 12, 2016 from 1:00 p.m. to 5:00  
10 p.m., that counsel will meet and discuss the discovery issues, denying Plaintiffs' request for  
11 expedited discovery, that parties will exchange lists of witnesses and exhibits that they plan to  
12 use at oral argument by August 26, 2016, that counsel shall submit testimony by affidavit of up  
13 to three witnesses by September 6, 2016, and that parties will file a joint pretrial statement by  
14 September 6, 2016.

#### 15 16 **Settlement Negotiations**

17 On August 16, 2016, the Settling Parties initiated settlement discussions, which they  
18 conducted in parallel with briefing on the Application for Preliminary Injunction and Motion to  
19 Dismiss and with discussions regarding the scope of pre-hearing discovery. On September 2,  
20 2016, the Settling Parties entered into a Confidential Agreement to Settle Derivative Action,  
21 Subject to Court Approval (the "Confidential Settlement Agreement"), which forms the basis of  
22 this Settlement, and filed a joint motion to stay the pending Application for Preliminary  
23 Injunction and Motion to Dismiss and to adjourn the related hearing. On September 8, 2016, the  
24 Court granted the joint motion to stay.

25  
26 During these negotiations, the Settling Parties did not discuss the amount of any an  
27 attorneys fee award that Plaintiffs might request or to which Defendants might agree. After the  
28

1 conclusion of the settlement negotiations and execution of the Confidential Settlement  
2 Agreement, the Settling Parties engaged in mediation before John R. Van Winkle of Van  
3 Winkle/Batten Dispute Resolution regarding the fee award to be requested by Plaintiffs. Mr.  
4 Van Winkle is the former chairperson of the American Bar Association’s Section of Dispute  
5 Resolution, and assisted the Settling Parties in reaching the terms of the fee award reflected in  
6 this stipulation.  
7

8 **PLAINTIFFS’ COUNSEL’S INVESTIGATION, RESEARCH, AND LITIGATION;**  
9 **PLAINTIFFS’ CLAIMS; AND THE BENEFIT OF SETTLEMENT**

10 Plaintiffs’ Counsel conducted an investigation relating to the claims and the underlying  
11 events alleged in the Action, including, but not limited to (1) reviewing the Defendants’ public  
12 documents, announcements made by Defendants, United States Securities and Exchange  
13 Commission (“SEC”) filings, wire and press releases published by and regarding the Company,  
14 legal filings, news reports, securities analysts’ reports and advisories about the Company, and  
15 information readily obtainable on the Internet; (2) reviewing pleadings and filings in related  
16 litigation involving Apollo, including *In re Apollo Education Group, Inc. Shareholder Litigation*,  
17 Lead Case No. CV2016-001905 (Superior Court of Arizona, Maricopa County), *Rameses Te*  
18 *Lomingkit et al. v. Apollo Education Group, Inc. et al.*, Case Number 2:16-CV-00689-JZB  
19 (U.S.D.C. District of Arizona), *United States of America ex rel. Arthur Green v. University of*  
20 *Phoenix, et al.*, Case Number 1:14 CV 1654 (U.S.D.C. Northern District of Ohio), and *Teamsters*  
21 *Local 617 Pension & Welfare Funds v. Apollo Group, Inc. et al.*, Case Number 06-cv-02674-  
22 RCB (U.S.D.C. District of Arizona); (3) researching applicable law with respect to the claims  
23 asserted (or which could be asserted) in the Action and the potential defenses thereto; (4)  
24 preparing litigation and books and records demand; (5) drafting the Complaint; (6) drafting the  
25 Application for Preliminary Injunction brief and reply to Defendants’ opposition; (7) drafting the  
26 brief in opposition to Defendants’ Motion to Dismiss; (8) engaging in settlement negotiations  
27  
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1 with counsel for the Defendants; and (9) drafting the Confidential Settlement Agreement and this  
2 Stipulation together with Defendants' Counsel.

3 Plaintiffs' Counsel believe that the claims asserted in the Action have merit and that their  
4 investigation supports the claims asserted. Without conceding the merit of any of Defendants'  
5 defenses or the lack of merit of any of their own allegations, Plaintiffs' Counsel have concluded  
6 that it is desirable that the Action be settled in the manner and upon the terms and conditions set  
7 forth in this Stipulation. Plaintiffs' Counsel's conclusion is based on decades of experience in  
8 shareholder representative litigation, and is informed by their extensive independent  
9 investigation, rigorous evaluation of the strengths and weaknesses of the claims and defenses  
10 weighed against the risks, costs, and delays that would be entailed in attempting to improve the  
11 result through continued litigation, including the already-briefed Application for Preliminary  
12 Injunction and Motion to Dismiss, a potential trial and appeal(s),  
13

14  
15 Based on Plaintiffs' Counsel's evaluation of these factors, and in light of the significant  
16 benefits that Plaintiffs' Counsel believe have been conferred upon the Company as a result of the  
17 Settlement, Plaintiffs have determined that the Settlement is in the best interests of the Plaintiffs  
18 and Apollo and have agreed to settle the Action upon the terms and subject to the conditions set  
19 forth herein.

20 **DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

21 The Individual Defendants have denied and continue to deny that they have committed  
22 or attempted to commit any violations of law, any breach of fiduciary duty owed to Apollo, or  
23 any wrongdoing whatsoever. Without admitting the validity of any of the claims Plaintiffs have  
24 asserted in the Action, or any liability with respect thereto, Defendants have concluded that it is  
25 desirable that the claims be settled on the terms and subject to the conditions set forth herein.  
26 Defendants are entering into this Settlement because it will eliminate the uncertainty, distraction,  
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1 disruption, burden, risk, and expense of further litigation of the claims so settled. Defendants  
2 believe that the Settlement is fair, reasonable, adequate, and is a benefit to Apollo.

3 Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor  
4 any document or exhibit referred or attached to this Stipulation, nor any action taken to carry out  
5 this Stipulation, is or may be construed or used as evidence of the validity of any of the Released  
6 Claims (defined herein), or as an admission by or against Defendants of any fault, wrongdoing,  
7 or concession of liability whatsoever.  
8

9 **SUMMARY OF TERMS OF THE SETTLEMENT**

10 As more fully set forth in the terms and conditions herein, the Individual Defendants and  
11 Apollo will stipulate that the Indemnification Provision shall provide officers and directors of  
12 Apollo, including the Individual Defendants, with no more protection than that which was  
13 available under the Company's current articles of incorporation and by-laws.

14 With this stipulation, Plaintiffs agree to release all of their *individual direct* Pre-Merger  
15 Claims and Merger Claims arising from the facts and circumstances alleged in their Complaint  
16 and release all of their *derivative* Merger Claims arising from the facts and circumstances related  
17 to the Merger Agreement. All of these released claims shall be dismissed with prejudice.  
18

19 All of the remaining claims, which are Plaintiffs' *derivative* Pre-Merger Claims, shall be  
20 dismissed *without* prejudice to refile by other plaintiffs having standing necessary to bring such  
21 claims and without prejudice to refile by the Surviving Corporation from the Merger, subject  
22 to any and all defenses that may be available to the defendants named in any such action.  
23

24 **TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

25 The Settling Parties, by and through their respective counsel and attorneys of record,  
26 hereby stipulate and agree that, subject to approval by the Court, (a) the Action and the Released  
27 Claims shall be finally and fully compromised, settled, and released, (b) the Released Claims  
28



1 shall be dismissed with prejudice, and (c) any derivative Pre-Merger Claims shall be dismissed  
2 without prejudice, as to all Settling Parties, upon the terms and subject to the conditions set forth  
3 herein as follows:

4 **1. Definitions**

5 As used in this Stipulation, the following terms have the meanings specified below:

6 1.1 “Action” refers to the above-captioned shareholder derivative action.

7  
8 1.2 “Apollo,” the “Company” or “Nominal Defendant” means Apollo Group, Inc. and  
9 all of its subsidiaries, predecessors, successors, affiliates, officers, directors, employees, and  
10 agents.

11 1.3 “Board” means Apollo’s Board of Directors.

12 1.4 “Court” refers to the Superior Court of Arizona in and for the County of Maricopa.

13 1.5 “Current Apollo Stockholders” means, for purposes of this Stipulation, any  
14 Persons (defined below) who own Apollo common stock as of the date of this Stipulation and  
15 who continue to hold their Apollo common stock as of the date of the Settlement Hearing,  
16 excluding the Individual Defendants (defined below), the officers and directors of Apollo,  
17 members of their immediate families, and their legal representatives, heirs, successors, or assigns,  
18 and any entity in which Individual Defendants have or had a controlling interest.

19  
20 1.6 “Defendants” means collectively, the Individual Defendants and nominal  
21 defendant Apollo.

22 1.7 “Defendants’ Counsel” means: (i) Osborn Maledon, P.A., 2929 North Central  
23 Avenue, 21st Floor, Phoenix, Arizona 85012-2793, (ii) Wilmer Cutler Pickering Hale and Dorr  
24 LLP, 60 State Street, Boston, Massachusetts 02109; (iii) Mark J. Depasquale, P.C., 3300 North  
25 Central Avenue, Suite 2070, Phoenix, Arizona 85012; and (iv) Jenner & Block LLP, 353 N.  
26 Clark Street, Chicago, IL 60654.  
27  
28

1           1.8     “Defendant Released Persons” means (i) the Individual Defendants and their  
2 Related Persons; and (ii) Apollo and each of its Related Persons.

3           1.9     “Demand” means Plaintiffs’ June 10, 2016 Shareholder Demand to the Board of  
4 Directors of Apollo.

5           1.10    “Effective Date” means the first date by which all of the events and conditions  
6 specified in ¶ 6.1 herein have been met and have occurred.

7           1.11    “Fee and Expense Amount” means the agreed upon sum of \$356,000 to be paid  
8 to Plaintiffs’ Counsel for their attorneys’ fees and expenses (including any Service Award),  
9 subject to approval by the Court, as detailed in ¶¶ 5.1-5.6.

10           1.12    “Final” means the time when a judgment that has not been reversed, vacated, or  
11 modified in any way is no longer subject to appellate review, either because of disposition on  
12 appeal and conclusion of the appellate process or because of passage, without action, of time for  
13 seeking appellate review. Specifically, it is that situation when (1) either no appeal has been filed  
14 and the time has passed for any notice of appeal to be timely filed in the Action; or (2) an appeal  
15 has been filed and the court of appeals has either affirmed the judgment or dismissed that appeal  
16 and the time for any reconsideration or further appellate review has passed; or (3) a higher court  
17 has granted further appellate review and that court has either affirmed the underlying judgment  
18 or affirmed the court of appeals’ decision affirming the judgment or dismissing the appeal and  
19 the time for any reconsideration or further appellate review has passed. For purposes of this  
20 paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be  
21 filed in connection with approval or disapproval of this Settlement, but shall not include any  
22 appeal which concerns only the issue of Plaintiffs’ Counsel’s attorneys’ fees and expenses or  
23 payments to Plaintiffs for their time and expenses,  
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1           1.13   “Final Order and Judgment” means the order and judgment to be rendered by the  
2 Court, substantially in the form attached hereto as Exhibit C, and including (i) a finding that  
3 Notice disseminated to Current Apollo Stockholders shareholders constituted the best notice  
4 practicable, and that the form of the Notice and the manner of its dissemination was adequate,  
5 sufficient, and complied with the requirements of Ariz. R. Civ. P. 23.1 and due process; (ii) final  
6 approval of the Settlement; (iii) dismissal of this Action pursuant to this Stipulation (iv) an order  
7 providing for the releases described herein; and (v) an order enjoining the Plaintiffs, the  
8 Individual Defendants, and their respective counsel, from pursuing the released claims in any  
9 forum.  
10

11           1.14   “Individual Defendants” means collectively: Peter V. Sperling, Gregory W.  
12 Cappelli, Terri C. Bishop, Dr. Dana Born, Matthew Carter, Jr., Richard H. Dozer, Dr. Roy A.  
13 Herberger, Jr., Dr. Ann Kirschner, Robert S. Murley, Manuel F. Rivelto, Darby E. Shupp, Allen  
14 R. Weiss, Brian L. Swartz, Joseph L. D’Amico, Gregory J. Iverson, Sean Martin, J. Mitchell  
15 Bowling, and Timothy Slottow.  
16

17           1.15   “Merger Agreement” means the Agreement and Plan of Merger among Apollo  
18 Education Group, Inc., AP VIII Queso Holdings, L.P., and Socrates Merger Sub, Inc., dated as  
19 of February 7, 2016, as and as may be amended.  
20

21           1.16   “Notice to Current Apollo Stockholders” or “Notice” means the Notice of  
22 Pendency and Proposed Settlement of Shareholder Action, substantially in the form of Exhibit B  
23 attached hereto.  
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25           1.17   “Person” or “Persons” means an individual, corporation, limited liability  
26 corporation, professional corporation, partnership, limited partnership, limited liability  
27 partnership, association, joint stock company, estate, legal representative, trust, unincorporated  
28

1 association, government or any political subdivision or agency thereof, and any business or legal  
2 entity, and their spouses, heirs, predecessors, successors, representatives, or assignees.

3 1.18 “Plaintiffs” or “Guinans” means Kevin J. Guinan and Cheryl A. Guinan.

4 1.19 “Plaintiffs’ Counsel” means: (i) James Christian, PLC, 2415 E. Camelback Rd.,  
5 Ste. 700, Phoenix, Arizona 85016; (ii) The Rosen Law Firm, P.A., 275 Madison Avenue, 34th  
6 Floor, New York, New York 10016; and (iii) The Brown Law Firm, P.C., 240 Townsend Square,  
7 Oyster Bay, New York 11771.

8 1.20 “Plaintiff Released Persons” means Plaintiffs and their Related Persons.

9 1.21 “Preliminary Approval Order” means the Order to be entered by the Court,  
10 substantially in the form of Exhibit A attached hereto, including, *inter alia*, preliminarily  
11 approving, pursuant to Ariz. R. Civ. P. 23.1, the terms and conditions of the Settlement as set  
12 forth in this Stipulation, directing that Notice be provided, and scheduling a Settlement Hearing  
13 to consider whether the Settlement and Fee and Expense Amount should be finally approved.  
14

15 1.22 “Related Persons” means (i) all of a Person’s predecessors, successors, past,  
16 present and future parents, subsidiaries and affiliates, and their respective past or present general  
17 partners, limited partners, principals, members, officers, directors, trustees, employees, servants,  
18 attorneys, accountants, auditors, underwriters, investment advisors, families, heirs, executors,  
19 administrators, beneficiaries, representatives, agents, assigns, insurers, co-insurers, reinsurers  
20 and related or affiliated entities, in their capacities as such; and (ii) each of the Person’s present  
21 and former insurers, attorneys, legal representatives, and assigns in connection with the Action.  
22

23 1.23 “Released Claims” means collectively the Released Individual Claims and the  
24 Released Limited Derivative Claims. Released Claims shall *not* include: (i) claims to enforce the  
25 Settlement; and (ii) claims relating to insurance coverage.  
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1           1.24   “Released Individual Claims” means collectively all individual direct actions,  
2 suits, claims, causes of action or rights of recovery of every nature and description, whether  
3 known claims or Unknown Claims (as defined herein), direct or indirect, asserted or unasserted,  
4 foreseen or unforeseen, matured or unmatured, contingent or vested, whether arising under  
5 federal, state, local, statutory, common, foreign or other law, rule or regulation, that Plaintiffs (a)  
6 asserted, whether individually or derivatively on behalf of the Nominal Defendant in the Action,  
7 or (b) could have asserted or could in the future assert in any court or forum, whether individually,  
8 as a class representative, or derivatively and on behalf of the Nominal Defendant, based upon,  
9 relating to or arising from the allegations, transactions, facts, matters or occurrences, errors,  
10 representations, actions, failures to act or omissions that were alleged, set forth, or referred to in  
11 the Complaint filed in the Action.  
12

13           1.25   “Released Limited Derivative Claims” means collectively all derivative claims,  
14 causes of action or rights of recovery of every nature and description, whether known claims or  
15 Unknown Claims (as defined herein), direct or indirect, asserted or unasserted, foreseen or  
16 unforeseen, matured or unmatured, contingent or vested, whether arising under federal, state,  
17 local, statutory, common, foreign or other law, rule or regulation, that both (1) Plaintiffs (a)  
18 asserted in the Action, whether individually or derivatively and on behalf of the Nominal  
19 Defendant, or (b) could have asserted, or could in the future assert, in any court or forum, whether  
20 individually or derivatively and on behalf of the Nominal Defendant relating to the Merger  
21 Agreement, and (2) relate to or arise from the allegations, transactions, facts, matters or  
22 occurrences, errors, representations, actions, failures to act or omissions that were alleged, set  
23 forth, or referred to in the Complaint filed in the Action with regard to the Merger Agreement.  
24

25           1.26   “Settlement” means the settlement of the claims, including all Released Claims,  
26 relating to the Action as documented in this Stipulation.  
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1           1.27   “Settlement Hearing” means a hearing by the Court to review this Stipulation and  
2 determine: (i) whether to enter the Final Order and Judgment; and (ii) all other matters properly  
3 before the Court.

4           1.28   “Settling Parties” has the definition set forth in the opening paragraph of this  
5 Stipulation.

6           1.29   “Stipulation” means this Stipulation and Agreement of Settlement.

7           1.30   “Unknown Claims” means any and all claims that were alleged or could have been  
8 alleged in the Action by Plaintiffs in their individual capacities or derivatively on behalf of  
9 Apollo, which were unknown or were unsuspected to exist in his, her or its favor at the time of  
10 the release of the Defendant Released Persons, including claims which, if known, might have  
11 affected settlement with and release of the Defendant Released Persons, or might have affected  
12 a decision not to object to this settlement. With respect to any and all Released Claims, the  
13 Settling Parties stipulate and agree that, upon the Effective Date, all parties granting releases  
14 under this Stipulation shall expressly waive, and each of Apollo’ stockholders by operation of  
15 the Judgment shall have expressly waived, the provisions, rights and benefits of California Civil  
16 Code §1542, which provides:  
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19                   A general release does not extend to claims which the creditor does  
20 not know or suspect to exist in his or her favor at the time of  
21 executing the release, which if known by him or her must have  
22 materially affected his or her settlement with the debtor.

23           The Settling Parties acknowledge that they may discover facts in addition to or different  
24 from those now known or believed to be true by them, with respect to the Released Claims, as  
25 the case may be, but it is the intention of the Settling Parties to completely, fully, finally, and  
26 forever compromise, settle, release, discharge, and extinguish any and all of the Released Claims  
27 known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued,  
28

1 apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and  
2 without regard to the subsequent discovery of additional or different facts.

3 **2. Terms of the Settlement**

4 2.1 Indemnification Provision. As of the Effective Date, the Individual Defendants and  
5 the Nominal Defendant stipulate and agree that §6.12(a) of the Agreement and Plan of Merger  
6 among Apollo Education Group, Inc., AP VIII Queso Holdings, L.P., and Socrates Merger Sub,  
7 Inc., dated as of February 7, 2016, shall not provide that the Surviving Corporation will extend  
8 to the Indemnified Persons, as defined therein, any indemnification or exculpation rights that are  
9 greater in scope than those set forth in the articles of incorporation or by-laws of Apollo in effect  
10 on the date of the Merger Agreement, to the fullest extent permitted by applicable Law.  
11

12 2.2 The Settling Parties agree that: (i) the foregoing stipulation as to the meaning and  
13 effect of the Indemnification Provision was arrived at as a result of arm's-length negotiations  
14 between them; and (ii) the above-captioned litigation was a substantial material factor in Apollo's  
15 decision to adopt or agree to such stipulation.  
16

17 2.3 In order that Plaintiffs may maintain their standing throughout this Settlement,  
18 Apollo and the Individual Defendants further stipulate and agree that they shall not make or join  
19 any challenge to Plaintiffs' standing to maintain this Action until the earliest of (a) 20 days after  
20 the Effective Date, (b) Apollo and/or the Individual Plaintiffs are required by the applicable rules  
21 of civil procedure to file a response to a pleading of the Plaintiffs, (c) this proposed Settlement is  
22 terminated by a mutual agreement of all of the Settling Parties, or (d) the Court refuses to approve  
23 this Stipulation, and the terms contained therein, in any material respect (the "Settlement  
24 Standing Period"). In the event the Effective Date does not occur prior to closing of the Merger,  
25 at least three (3) business days before the closing of the Merger, the Company shall deliver, in  
26 the form attached as Exhibit A to the Confidential Settlement Agreement, an assignment to the  
27  
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1 Guinans, effective immediately upon delivery of both the assignment and the Irrevocable Return  
2 Assignment, defined below, of the Company's right to make direct claims that the Guinans made  
3 derivatively on behalf of the Company in the Action. Such assignment shall be non-transferable,  
4 except as provided in this Section (the "Non- Transferable Assignment"). Simultaneously, the  
5 Plaintiffs shall deliver to Apollo, in the form attached as Exhibit B to the Confidential Settlement  
6 Agreement, an irrevocable return assignment of said claims to Apollo, effective or deemed  
7 effective on the earlier of the last day of the Settlement Standing Period or one day before any  
8 attempted or claimed transfer or reassignment of the Non-Transferable Assignment to any person  
9 or entity other than Apollo (the "Irrevocable Return Assignment"). Apollo shall hold both the  
10 Non-Transferrable Assignment and Irrevocable Return Assignment in escrow once delivered for  
11 the benefit of the respective assignees.  
12

13           2.4    Upon the earlier of payment or any appeal of the Fee and Expense Amount, the  
14 Demand shall be deemed withdrawn.  
15

### 16           **3.        Procedure for Implementing the Settlement**

17           3.1    After the execution of this Stipulation, Plaintiffs shall submit the Stipulation  
18 together with its exhibits to the Court and shall, within ten (10) business days thereafter, submit  
19 a motion to the Court applying for entry of the Preliminary Approval Order, substantially in the  
20 form of Exhibit A attached hereto, requesting, *inter alia*: (i) preliminary approval of the  
21 Settlement set forth in this Stipulation; (ii) approval of the method of providing notice of  
22 pendency and proposed Settlement to Current Apollo Stockholders; (iii) approval of the form of  
23 Notice attached hereto as Exhibit B; and (iv) a date for the Settlement Hearing.  
24

25           3.2    Proposed Form of Notice: Subject to Court approval as described in paragraph  
26 3.1 above, within ten (10) days of the Court's entry of the Preliminary Approval Order, Apollo  
27 shall: (i) issue a press release announcing the Preliminary Approval Order and Notice; (ii) post a  
28



1 link to the Notice and this Stipulation on the Investor Relations portion of Apollo's website,  
2 which posting shall be maintained through the date of the Settlement Hearing; and (iii) if Apollo  
3 is a public company at the time Notice is to be given, cause a copy of the press release and Notice  
4 to be filed with the SEC on Form 8-K. In language mutually agreeable to the Settling Parties,  
5 the form of Notice posted on the Investor Relations portion of Apollo's website may be amended  
6 from time to time to reflect developments in the progress of the Merger. All costs of such Notice  
7 and the filing, publishing and posting set forth above shall be paid by Apollo and/or its insurers.  
8 The Settling Parties believe the content and manner of such procedure constitutes adequate and  
9 reasonable notice to Current Apollo Stockholders pursuant to applicable law, and such procedure  
10 shall be the only notice provided pursuant to paragraph 3.1 above.  
11

12           3.3     Plaintiffs' Counsel shall request that the Court hold a final Settlement Hearing not  
13 less than 55 days after entry of the Preliminary Approval Order as described above for the Court  
14 to consider whether to approve the Settlement and the Fee and Expense Amount.  
15

#### 16           **4.     Releases**

17           4.1     Upon the earlier of payment or any appeal of the Fee and Expense Amount, (a)  
18 Plaintiffs shall be deemed to have, and by operation of the Judgment shall have, fully, finally,  
19 and forever released, relinquished and discharged the Released Claims against the Defendant  
20 Released Persons, and (b) Apollo and Current Apollo Stockholders (solely in their capacity as  
21 Apollo stockholders) shall be deemed to have, and by operation of the Judgment shall have, fully,  
22 finally, and forever released, relinquished and discharged the Released Limited Derivative  
23 Claims against the Defendant Released Persons. Plaintiffs shall be deemed to have, and by  
24 operation of the Judgment shall have, covenanted not to sue any Defendant Released Person with  
25 respect to any claims relating to or arising from the allegations, transactions, facts, matters or  
26 occurrences, errors, representations, actions, failures to act or omissions that were alleged, set  
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1 forth, or referred to in the Complaint filed in the Action, and shall be permanently barred and  
2 enjoined from instituting, commencing or prosecuting any such claims, whether individually or  
3 derivatively on behalf of the Nominal Defendant, against the Defendant Released Persons.  
4 Apollo and Current Apollo Stockholders (solely in their capacity as Apollo stockholders) shall  
5 be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any  
6 Defendant Released Person with respect to the Released Limited Derivative Claims, and shall be  
7 permanently barred and enjoined from instituting, commencing or prosecuting the Released  
8 Limited Derivative Claims against the Defendant Released Persons. For the sake of clarity, none  
9 of the releases provided herein shall include direct claims arising from the facts and  
10 circumstances alleged in support of the Pre-Merger Claims that could be made by the Company  
11 against any Individual Defendant or derivative claims arising from the facts and circumstances  
12 alleged in support of the Pre-Merger Claims that could be made by Current Apollo Stockholders  
13 against any Individual Defendant.  
14

15  
16 4.2 Upon the earlier of payment or any appeal of the Fee and Expense Amount, and  
17 except as otherwise provided in this Stipulation, each of the Defendants shall be deemed to have,  
18 and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and  
19 discharged all Plaintiff Released Persons from all claims, causes of action or rights of recovery  
20 of every nature and description, whether known claims or Unknown Claims (as defined herein),  
21 whether direct or indirect, asserted or unasserted, foreseen or unforeseen, matured or unmatured,  
22 contingent or vested, whether arising under federal, state, local, statutory, common, foreign or  
23 other law, rule or regulation that arise out of or relate in any way to the institution, prosecution,  
24 or settlement of the claims against the Individual Defendants, including all claims for malicious  
25 prosecution or sanctions, except for claims relating to the enforcement of the Settlement.  
26  
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28

1           4.3     Nothing herein shall in any way impair or restrict the rights of any Settling Party  
2 to enforce the terms of the Stipulation.

3           **5.     Plaintiffs' Counsel's Attorneys' Fees and Expenses**

4           5.1     Defendants agree that Apollo (directly or through its insurers) will pay Plaintiffs'  
5 Counsel the Fee and Expense Amount of \$356,000, subject to Court approval. Negotiations  
6 about the amount of the Fee and Expense Amount did not begin until after the Settling Parties  
7 had agreed upon all of the other terms of the Settlement as provided herein, including those  
8 pertaining to the Indemnification Provision. Defendants agree that Apollo (directly or through  
9 its insurers) shall pay, and shall be the sole party responsible for paying the Fee and Expense  
10 Amount, and, shall not be responsible for payment of any sums greater than those so awarded by  
11 the Court.  
12

13           5.2     The Settling Parties agree that the Fee and Expense Amount is fair and reasonable.

14           5.3     The Fee and Expense Amount shall be transferred to Plaintiffs' Counsel no later  
15 than 10 business days of the Effective Date by wire transfer, as long as Plaintiffs' Counsel first  
16 provide all necessary payment details, including bank account number, name of bank, bank  
17 address, a Sort Code or ABA Routing Number, wire transfer instructions, the Tax Identification  
18 Number, and an executed Form W-9. Should the Court order the payment of attorneys' fees and  
19 expenses to Plaintiffs' Counsel in an amount less than the agreed Fee and Expense Amount prior  
20 to, or at the time of, entry of the Final Order and Judgment, then only the Court-approved amount  
21 shall be paid to Plaintiffs' Counsel.  
22

23           5.4     Payment of the Fee and Expense in the amount approved by the Court shall  
24 constitute final and complete payment for the Plaintiffs' attorneys' fees and expenses that have  
25 been incurred or will be incurred in connection with the filing and prosecution of the Action and  
26 the resolution of the claims alleged therein. Defendants and/or its insurers shall have no  
27  
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1 obligation to make any payment other than as provided herein to any of Plaintiffs' Counsel.  
2 Defendants and Defendants' Counsel shall have no responsibility for the allocation of the Fee  
3 and Expense Amount among Plaintiffs' Counsel.

4           5.5 This Settlement is not contingent upon: (i) the Settling Parties agreeing to  
5 the amount of a Fee Award, or (ii) any particular amount of Fee Award being awarded by  
6 the Court. Thus, Plaintiffs shall not have the ability to terminate this Settlement on the  
7 ground that the Court awards a lesser Fee Award than is sought. Except as otherwise  
8 provided herein, each of the Settling Parties shall bear his, her, or its own costs and attorneys'  
9 fees.  
10

11           5.6 Plaintiffs' Counsel may seek Court-approved service awards in the amount of  
12 \$1,000 (the "Service Awards") payable each to Kevin J. Guinan and Cheryl A. Guinan. The  
13 Service Awards shall be funded solely from the Fee and Expense Amount. Defendants will have  
14 no obligation to directly pay any part of the Service Awards. Subject to those conditions,  
15 Defendants shall take no position on the Service Awards.  
16

17           **4. Conditions of Settlement, Effect of Disapproval, Cancellation, or**  
18           **Termination**

19           6.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of  
20 all of the following events:

21                   (a) pursuant to paragraph 14 of the Confidential Settlement Agreement,  
22 Apollo has issued to Plaintiffs a Non-Transferable Assignment, delivery of the Irrevocable  
23 Return Assignment;

24                   (b) the entry by the Court of the Final Order and Judgment; and

25                   (c) the Final Order and Judgment has become Final.  
26

27           6.2 If any of the conditions specified in ¶ 6.1 are not met, then the Stipulation shall  
28 be canceled and terminated subject to ¶ 6.3, and the Settling Parties shall be restored to their

1        respective positions in the Action as of the date of this Stipulation, unless Plaintiffs’ Counsel  
2        and counsel for the Defendants mutually agree in writing to proceed with the Stipulation.

3            6.3        In the event that the Stipulation is not approved by the Court, or the Settlement  
4        is terminated for any reason, the Settling Parties shall be restored to their respective positions  
5        as of the date of this Stipulation, and all negotiations, proceedings, documents prepared and  
6        statements made in connection herewith shall be without prejudice to the Settling Parties, shall  
7        not be deemed or construed to be an admission by any of the Settling Parties of any act, matter,  
8        or proposition, and shall not be used in any manner for any purpose in any subsequent  
9        proceeding in the Action or in any other action or proceeding. In such event, the terms and  
10       provisions of the Stipulation, with the exception of ¶¶ 1.1-1.30, 6.2, 8.4, 8.6, 8.9, 8.10, and 8.11  
11       herein, shall have no further force and effect with respect to the Settling Parties and shall not  
12       be used in the Action or in any other proceeding for any purpose, and any judgment or orders  
13       entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated,  
14       *nunc pro tunc*.

15  
16  
17            **5.        Bankruptcy**

18            7.1        In the event any proceedings by or on behalf of Apollo, whether voluntary or  
19        involuntary, are initiated under any chapter of the United States Bankruptcy Code, including any  
20        act of receivership, asset seizure, or similar federal or state law action (“Bankruptcy  
21        Proceedings”), the Settling Parties agree to use their reasonable best efforts to obtain all necessary  
22        orders, consents, releases, and approvals for effectuation of this Stipulation in a timely and  
23        expeditious manner.  
24

25            7.2        In the event of any Bankruptcy Proceedings by or on behalf of Apollo, the Settling  
26        Parties agree that all dates and deadlines set forth herein will be extended for such periods of  
27  
28

1 time as are necessary to obtain necessary orders, consents, releases and approvals from the  
2 Bankruptcy Court to carry out the terms and conditions of the Stipulation.

3 **6. Miscellaneous Provisions**

4 8.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this  
5 Stipulation; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and  
6 implement all terms and conditions of the Stipulation and to exercise their best efforts to  
7 accomplish the foregoing terms and conditions of the Stipulation.  
8

9 8.2 The Settling Parties agree that the terms of the Settlement were negotiated in good  
10 faith by the Settling Parties. The Settling Parties further agree that, based upon the publicly  
11 available information at the time, the Action was filed in good faith and with an adequate basis  
12 in fact, was not frivolous and is being settled voluntarily after consultation with competent legal  
13 counsel in a fashion that reflects the merits of the claims. The Settling Parties will request that  
14 the Final Order and Judgment in the Action will contain a finding that, during the course of the  
15 Action, the Settling Parties and their respective counsel at all times complied with the  
16 requirements of Ariz. R. Civ. P. 11 and all other similar rules of professional conduct. The  
17 Settling Parties reserve their right to rebut, in a manner that such party determines to be  
18 appropriate, any contention made in any public forum that the Action was brought or defended  
19 in bad faith or without a reasonable basis.  
20

21 8.3 In the event that any part of the Settlement is found to be unlawful, void,  
22 unconscionable, or against public policy by a court of competent jurisdiction, the remaining terms  
23 and conditions of the Settlement shall remain in effect.  
24

25 8.4 Neither the Stipulation (including any exhibits attached hereto) nor the  
26 Settlement, nor any act performed or document executed pursuant to or in furtherance of the  
27 Stipulation or the Settlement: (a) is or may be deemed to be or may be offered, attempted to be  
28

1 offered or used in any way by the Settling Parties as a presumption, a concession or an admission  
2 of, or evidence of, the validity or invalidity of any claim or defense, any fault, wrongdoing or  
3 liability of the Settling Parties or of the validity of any Released Claims; or (b) is or may be  
4 deemed to be or may be used as a presumption, concession, admission or evidence of any  
5 liability, fault, or omission of any of the Defendant Released Persons in any civil, criminal, or  
6 administrative proceeding in any court, administrative agency, or other tribunal. Neither this  
7 Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in  
8 furtherance of this Stipulation, or the Settlement, shall be admissible in any proceeding for any  
9 purpose, except to enforce the terms of the Settlement, and except that the Defendant Released  
10 Persons may file the Stipulation and/or the Judgment in any action that may be brought against  
11 them in order to support a defense or counterclaim based on principles of *res judicata*, collateral  
12 estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction  
13 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.  
14 However, the Settling Parties, Plaintiff Released Persons, and Defendant Released Persons shall  
15 be fully empowered to offer this Stipulation and any associated documentation in any proceeding  
16 in order to evidence or enforce the releases, stipulation, covenants, and injunctions provided for  
17 in the Settlement.

20 8.5 The exhibits to the Stipulation are material and integral parts hereof and are fully  
21 incorporated herein by this reference. In the event of a conflict, this Stipulation controls.

23 8.6 The Stipulation may be amended or modified only by a written instrument signed  
24 by or on behalf of all the Settling Parties or their respective successors-in-interest.

25 8.7 The Stipulation and the exhibits attached hereto represent the complete and final  
26 resolution of all disputes among the Settling Parties with respect to the Released Claims,  
27 constitute the entire agreement among the Settling Parties, and supersede any and all prior  
28

1 negotiations, discussions, agreements, or undertakings, whether oral or written, with respect to  
2 such matters, except to the extent this Stipulation refers to specific terms set forth the Confidential  
3 Settlement Agreement.

4           8.8     The Stipulation and the Settlement shall be binding upon, and inure to the benefit  
5 of, the successors and assigns of the Settling Parties, the Plaintiff Released Persons, and the  
6 Defendant Released Persons. The Settling Parties agree that this Stipulation will run to their  
7 respective successors-in-interest, and they further agree that any planned, proposed or actual sale,  
8 merger or change-in-control of Apollo shall not void this Stipulation, and that in the event of a  
9 planned, proposed or actual sale, merger or change-in-control of Apollo, they will continue to  
10 seek final approval of this Stipulation expeditiously, including but not limited to the Settlement  
11 terms reflected in this Stipulation and the Fee and Expense Amount.

12           8.9     The Stipulation and the exhibits attached hereto shall be considered to have been  
13 negotiated, executed, and delivered, and to be wholly performed, in the State of Arizona and the  
14 rights and obligations of the Settling Parties to the Stipulation shall be construed and enforced in  
15 accordance with, and governed by, the internal, substantive laws of the State of Arizona without  
16 regard for choice of law principles. No representations, warranties, or inducements have been  
17 made to any party concerning the Stipulation or its exhibits other than the representations,  
18 warranties, and covenants contained and memorialized in such documents.

19           8.10    All agreements made and orders entered during the course of the Action relating  
20 to the confidentiality of information and documents shall survive this Stipulation.

21           8.11    Each counsel or other Person executing the Stipulation or its exhibits on behalf of  
22 any of the Settling Parties hereby warrants that such Person has the full authority to do so. The  
23 Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the  
24 Settling Parties, the Plaintiff Released Persons, and the Defendant Released Persons.  
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8.12 The Stipulation may be executed by facsimile and in one or more counterparts.  
All executed counterparts and each of them shall be deemed to be one and the same instrument.  
A complete set of original executed counterparts shall be filed with the Court.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Stipulation to be  
executed, by their duly authorized attorneys, dated as of January 5, 2017.

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**Kevin A. Guinan and Cheryl A. Guinan, derivatively  
and on behalf of Apollo Education Group, Inc.,**

By their attorneys

By s/Timothy Brown

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Swartz, Joseph L. D'Amico, Gregory J.  
Iverson, Sean Martin. J. Mitchell Bowling,  
and Timothy Slottow, and Nominal Defendant  
Apollo Education Group, Inc.*

[Additional Counsel Listed on Last Page]

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

KEVIN J. GUINAN and CHERYL A.  
GUINAN, Derivatively and on Behalf of  
APOLLO EDUCATION GROUP, INC.,  
Plaintiffs,  
v.  
PETER V. SPERLING, GREGORY W.  
CAPPELLI, TERRI C. BISHOP, DR. DANA  
BORN, MATTHEW CARTER, JR.,  
RICHARD H. DOZER, DR. ROY A.  
HERBERGER, JR., DR. ANN KIRSCHNER,  
ROBERT S. MURLEY, MANUEL F.  
RIVELLO, DARBY E. SHUPP, ALLEN R.  
WEISS, BRIAN L. SWARTZ, JOSEPH L.  
D'AMICO, GREGORY J. IVERSON, SEAN  
MARTIN, J. MITCHELL BOWLING, and  
TIMOTHY SLOTTOW,  
Defendants,  
and  
APOLLO EDUCATION GROUP, INC.,  
Nominal Defendant.

No. CV2016-005901

**[PROPOSED] PRELIMINARY  
APPROVAL AND SCHEDULING  
ORDER**

(Honorable Roger Brodman)

1  
2 WHEREAS, the Settling Parties have made application, pursuant to Ariz. R. Civ. P.  
3 23.1, for an order (i) preliminarily approving the proposed settlement (“Settlement”) of the  
4 above-captioned shareholder derivative action (the “Action”), in accordance with a Stipulation  
5 and Agreement of Settlement, dated January 5, 2017, and the Exhibits thereto (the  
6 “Stipulation”), (ii) approving the form and manner of the Notice of Pendency and Proposed  
7 Settlement of Shareholder Action (the “Notice”), and (iii) setting a date for the final Settlement  
8 hearing;

9  
10 WHEREAS, the Stipulation sets forth the terms and conditions of the Settlement;

11  
12 WHEREAS, the Settlement appears to be the product of serious, informed, non-  
13 collusive negotiations and falls within the range of possible approval;

14  
15 WHEREAS, all capitalized terms contained herein shall have the same meanings as  
16 set forth in the Stipulation (in addition to those capitalized terms defined herein); and

17  
18 WHEREAS, this Court, having considered the Stipulation and the Exhibits annexed  
19 thereto and Plaintiffs’ submissions in support of the motion for preliminary approval of the  
20 Settlement;

21 NOW THEREFORE, IT IS ORDERED:

22  
23 1. This Court does hereby preliminarily approve, subject to further consideration at  
24 the Settlement Hearing described below, the Stipulation and the terms of the Settlement set  
25 forth therein.





1 thereon approving the same, unless that Person has, at least fourteen (14) days prior to the  
2 Settlement Hearing, filed with the Clerk of the Court at the address listed below and served on  
3 the following counsel (delivered by hand or sent by first class mail) appropriate proof of stock  
4 ownership, written objections stating the case name and number *Guinan v. Sterling, et al*, Civil  
5 Action No. CV2016-005901 and the basis therefore, and copies of any papers and briefs in  
6 support thereof:  
7

8 **Clerk of the Court:**

9 CLERK OF SUPERIOR COURT'S OFFICE  
10 East Court Building  
11 101 West Jefferson  
12 Phoenix, Arizona 85003

13 ***Counsel for Plaintiffs:***

14 Phillip Kim, Esq.  
15 The Rosen Law Firm, P.A.  
16 275 Madison Avenue, 34th Floor  
17 New York, New York 10016

18 -and-

19 Timothy W. Brown  
20 The Brown Law Firm, P.C.  
21 240 Townsend Square  
22 Oyster Bay, New York 11771

23 ***Counsel for Defendants:***

24 Michael G. Bongiorno, Esq.  
25 Wilmer Cutler Pickering Hale and Dorr, LLP  
26 7 World Trade Center  
27 250 Greenwich Street  
28 New York, New York 10007

-and -

Howard S. Suskin, Esq.  
Jenner & Block LLP



1           353 N. Clark Street  
2           Chicago, Illinois 60654

3 Any Current Apollo Stockholder who does not make his, her, or its objection in the manner  
4 provided herein shall be deemed to have waived such objection and shall forever be  
5 foreclosed from making any objection to the fairness, reasonableness, or adequacy of the  
6 Settlement as incorporated in the Stipulation, unless otherwise ordered by the Court, but shall  
7 otherwise be bound by the Order and Final Judgment to be entered and the releases to be  
8 given.  
9

10           13.     Neither the Stipulation nor the Settlement, nor any act performed or document  
11 executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be  
12 deemed to be or may be offered, attempted to be offered or used in any way by the Settling  
13 Parties as a presumption, a concession or an admission of, or evidence of, the validity or  
14 invalidity of any claim or defense, any fault, wrongdoing, liability or omission of the Settling  
15 Parties or of the validity of any Released Claims; or (b) is or may be deemed to be or may be  
16 used as a presumption, concession, admission or evidence of any fault, wrongdoing, liability or  
17 omission of any of the Defendant Released Persons in any civil, criminal, or administrative  
18 proceeding in any court, administrative agency, or other tribunal. Neither the Stipulation nor  
19 the Settlement, nor any act performed or document executed pursuant to or in furtherance of the  
20 Stipulation, or the Settlement, shall be admissible in any proceeding for any purpose, except to  
21 enforce the terms of the Settlement, and except that the Defendant Released Persons may file  
22 the Stipulation and/or the Judgment in any action that may be brought against them in order to  
23 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full  
24 faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other  
25  
26  
27  
28

1 theory of claim preclusion or issue preclusion or similar defense or counterclaim. Further, the  
2 Settling Parties, Plaintiff Released Persons, and Defendant Released Persons shall be fully  
3 empowered to offer the Stipulation and any associated documentation in any proceeding in  
4 order to evidence or enforce the releases, stipulation, covenants, and injunctions provided for in  
5 the Settlement.

6  
7 14. The Court reserves the right to adjourn the date of the Settlement Hearing or  
8 modify any other dates set forth herein without further notice to Current Apollo Stockholders,  
9 and retains jurisdiction to consider all further applications arising out of or connected with the  
10 Settlement. The Court may approve the Settlement, with such modifications as may be agreed  
11 to by the Settling Parties, if appropriate, without further notice to Current Apollo Stockholders.  
12

13 IT IS SO ORDERED.

14 Dated this \_\_\_ day of \_\_\_\_\_, 2017.

15  
16 \_\_\_\_\_  
Honorable Roger Brodman  
Maricopa County Superior Court Judge

17 **Additional Defendants' Counsel:**

18 Howard S. Suskin (*Pro Hac Vice*)  
19 Jenner & Block LLP  
20 353 N. Clark Street  
Chicago, IL 60654  
21 Tel: (312) 222-9350  
hsuskin@jenner.com

22 Mark J. DePasquale  
23 Mark J. DePasquale, P.C  
3300 North Central Avenue, Suite 2070  
24 Phoenix, Arizona 85012  
Tel: (602) 744-7777  
25 mjd@markdepasquale.com

26 *Attorneys for Individual Defendants*  
27 *Dr. Dana Born, Dr. Ann Kirschner,*  
*and Manuel F. Ravelo*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

KEVIN J. GUINAN and CHERYL A. GUINAN, Derivatively and on Behalf of APOLLO EDUCATION GROUP, INC.,  
Plaintiffs,

v.

PETER V. SPERLING, GREGORY W. CAPPELLI, TERRI C. BISHOP, DR. DANA BORN, MATTHEW CARTER, JR., RICHARD H. DOZER, DR. ROY A. HERBERGER, JR., DR. ANN KIRSCHNER, ROBERT S. MURLEY, MANUEL F. RIVELLO, DARBY E. SHUPP, ALLEN R. WEISS, BRIAN L. SWARTZ, JOSEPH L. D'AMICO, GREGORY J. IVERSON, SEAN MARTIN, J. MITCHELL BOWLING, and TIMOTHY SLOTTOW,  
Defendants,  
and  
APOLLO EDUCATION GROUP, INC.,  
Nominal Defendant.

No. CV2016-005901

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF SHAREHOLDER DERIVATIVE ACTION**

(Honorable Roger Brodman)

**TO: ALL RECORD OR BENEFICIAL OWNERS OF COMMON STOCK OF APOLLO EDUCATION GROUP, INC. AS OF JANUARY 5, 2017:**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS.**

**THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A SHAREHOLDER DERIVATIVE ACTION (THE "ACTION") AND CLAIMS ASSERTED ON BEHALF OF APOLLO EDUCATION GROUP, INC. ("APOLLO" OR THE "COMPANY").**

**IF THE COURT APPROVES THE SETTLEMENT AND ORDERS DISMISSAL OF THE ACTION, SHAREHOLDERS OF APOLLO WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING CERTAIN CLAIMS THAT ARE SETTLED CLAIMS.**

**THIS ACTION IS NOT A "CLASS ACTION." THEREFORE, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY PAYMENT.**

**PURPOSE OF THIS NOTICE**

1 This Notice of Pendency and Proposed Settlement of Shareholder Derivative  
2 Action (the “Notice”) is provided to Apollo stockholders pursuant to an order of the  
3 Superior Court of Arizona in and for the County of Maricopa (the “Court”). This is not  
4 a solicitation from a lawyer.

5 The purpose of this Notice is to advise you that, pursuant to the Court’s  
6 Preliminary Approval and Scheduling Order,<sup>1</sup> a hearing will be held on  
7 \_\_\_\_\_, 2017 at \_\_\_\_\_ a./p.m., before the Honorable Roger  
8 Brodman, Superior Court of Arizona, East Court Building, Fourth Floor, 101 W.  
9 Jefferson, Courtroom 413, Phoenix, Arizona 85003 (or at such a date and time as the  
10 Court may direct without further notice) (the “Settlement Hearing”) to determine  
11 whether: (i) the terms of a proposed settlement (the “Settlement”) of this Action are fair,  
12 reasonable, and adequate, and in the best interests of Apollo; (ii) the amount of  
13 attorneys’ fees and expenses award to Plaintiffs’ Counsel, as described below, is fair  
14 and reasonable; and (iii) the incentive award to Plaintiffs, as described below, should be  
15 approved.

16 The terms and conditions of the proposed Settlement are summarized in this  
17 Notice and set forth in full in the Stipulation. You have an opportunity to be heard at  
18 this hearing.

19 The Court has not determined the merits of Plaintiffs’ claims or Defendants’  
20 defenses. By this Notice, the Court does not express any opinion as to the merits of any  
21 claim or defense asserted by any party in this action.

## 22 **BACKGROUND OF THE ACTION**

23 Apollo is an Arizona corporation headquartered in Phoenix, Arizona. Through  
24 its subsidiaries, including University of Phoenix, Apollo has established itself as a  
25 leading provider of higher education programs and services for working adults. On  
26 February 8, 2016, Apollo announced that it had agreed to be taken private by a  
27 consortium of private investors (the “Merger”). Thereafter, on July 7, 2016, following a  
28 a June 10, 2016 litigation and books and records demand on Apollo’s Board of

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23 <sup>1</sup> This notice should be read in conjunction with the Stipulation, which has been filed with the  
24 Court and posted at the investor relations portion of Apollo’s website, [http://  
25 http://investors.apollo.edu/phoenix.zhtml?c=79624&p=irol-IRHome](http://http://investors.apollo.edu/phoenix.zhtml?c=79624&p=irol-IRHome). The posted notice may be  
26 amended from time to time to reflect developments in the progress of the Merger that may be  
27 relevant to the Settlement. The capitalized terms used in this Notice and not otherwise defined  
28 are defined in the Stipulation and Agreement of Settlement (the “Stipulation”) dated January 5,  
2017.

1 Directors (the “Demand”), Plaintiffs initiated this Action alleging that, beginning at  
2 least by June 26, 2013 and through July 7, 2016, the Individual Defendants, who are  
3 current or former officers of Apollo, breached their fiduciary duties by, among other  
4 things, causing the Company’s (1) use of prohibited student recruitment practices; (2)  
5 submission of false claims and information to federal officials; and (3) reliance on a  
6 new software learning platform that was unsuccessful, and (4) misrepresentations and  
7 omissions of material facts in its public statements related to, among other things, the  
8 Company’s: (a) use of prohibited student recruitment practices; (b) submission of false  
9 claims and information to federal officials; and (c) unsuccessful transition to a new  
10 software learning platform (collectively, the “Pre-Merger-Claims”).

11 In addition, Plaintiffs allege that the Individual Defendants breached their  
12 fiduciary duties by causing the Company to enter into the proposed Merger. More  
13 specifically, Section 6.12 of the Merger Agreement provides that Apollo shall cause the  
14 Surviving Corporation to, after the Merger:

15 indemnify and hold harmless (including advancement of expenses as  
16 incurred) the present and former officers, directors and employees of the  
17 Company and its Subsidiaries who served at the Company’s or its  
18 Subsidiary’s request as a director, officer, member, trustee or fiduciary of  
19 any pension or other employee benefit plan (each, an “**Indemnified  
20 Person**”), in each case, as provided in the articles of incorporation or by-  
21 laws of the Company in effect on the date hereof, to the fullest extent  
22 permitted by applicable Law, against any Liabilities (including reasonable  
23 attorneys’ fees) incurred in connection with any Proceeding relating to,  
24 arising from or in connection with such Indemnified Person’s services as a  
25 director or officer of the Company or its Subsidiaries or services performed  
26 by such Indemnified Person at the request of the Company or its  
27 Subsidiaries at or prior to the Effective Time, including, for the avoidance  
28 of doubt, in connection with (i) the Merger and the Transactions and (ii)  
actions to enforce this provision or any other indemnification or  
advancement right of any Indemnified Person.

....

The rights of each Indemnified Person under this Section 6.12 shall be in  
addition to any rights such Person may have under the articles of  
incorporation or by-laws of the Company or any of its Subsidiaries, or  
under Arizona Law or any other applicable Law or under any agreement of  
any Indemnified Person with the Company or any of its Subsidiaries. These  
rights shall survive consummation of the Merger and are intended to

1 benefit, and shall be enforceable by, each Indemnified Person.  
2 (the “Indemnification Provision”). Plaintiffs also make claims that the Indemnification  
3 Provision will immunize Individual Defendants from liability for potential damages  
4 arising from the conduct that comprises the basis for the Pre-Merger Claims (the  
5 “Merger Claims”).

6 Defendants deny all allegations of wrongdoing, and disagree with Plaintiffs’  
7 interpretation of the Indemnification Provision.

8 On June 10, 2016, Plaintiffs served their Demand on the Apollo Board, alleging  
9 that certain directors and officers had breached their fiduciary duties in connection with  
10 the conduct underlying Plaintiffs’ Pre-Merger Claims. Under Arizona law, “[n]o  
11 shareholder may commence a derivative proceeding until . . . [n]inety days have expired  
12 from the date the demand was made unless . . . irreparable injury to the corporation  
13 would result by waiting for the expiration of the ninety day period.” A.R.S. § 10-  
14 742(1). Alleging that irreparable injury would result because of the Merger, Plaintiffs  
15 filed suit prior to the expiration of the ninety day waiting period.

16 On July 7, 2016, Plaintiffs initiated the Action on behalf of Apollo by filing a  
17 verified shareholder derivative complaint in this Court alleging both Pre-Merger and  
18 Merger Claims for breach of fiduciary duty, unjust enrichment, abuse of control, gross  
19 mismanagement, and waste of corporate assets (“Complaint”). The Complaint’s prayer  
20 for relief demands that, inter alia, the “Board ... remove the ... [Indemnification  
21 Provision of] the Merger Agreement, which would cause irreparable injury to the  
22 Company and to Plaintiffs...”

23 On July 26, 2016, seeking to enjoin the merger until after Plaintiffs’ claims are  
24 tried, or, alternatively, to remove the Indemnification Provision from the Merger  
25 Agreement, Plaintiffs filed an Application for Entry of Order to Show Cause for  
26 Preliminary Injunction and Memorandum of Points and Authorities in Support  
27 (“Application for Preliminary Injunction”), including a request for expedited discovery.  
28 On July 27, 2016, Defendants filed a Motion to Dismiss Plaintiffs’ complaint (“Motion  
to Dismiss”).

On August 12, 2016, the Court ordered a dual oral argument on both the  
Application for Preliminary Injunction and the Motion to Dismiss for September 12,  
2016 from 1:00 p.m. to 5:00 p.m., that counsel will meet and discuss the discovery  
issues, denying Plaintiffs’ request for expedited discovery, that parties will exchange  
lists of witnesses and exhibits that they plan to use at oral argument by August 26, 2016,  
that counsel shall submit testimony by affidavit of up to three witnesses by September  
6, 2016, and that parties will file a joint pretrial statement by September 6, 2016.

1 On August 15, 2016, Defendants filed an Opposition to Plaintiffs' Application  
2 for Preliminary Injunction, and Plaintiffs filed an Opposition to Defendants' Motion to  
3 Dismiss. On August 29, 2016, Plaintiffs filed a Reply to Defendants' Opposition to  
4 Plaintiffs' Application for Preliminary Injunction, and Defendants filed a Reply in  
Support of their Motion to Dismiss.

5 On August 16, 2016, the Settling Parties initiated settlement discussions, which  
6 they conducted in parallel with briefing on the Application for Preliminary Injunction  
7 and Motion to Dismiss and with discussions regarding the scope of pre-hearing  
8 discovery. On September 2, 2016, the Settling Parties entered into a Confidential  
9 Agreement to Settle Derivative Action, Subject to Court Approval (the "Confidential  
10 Settlement Agreement"), which forms the basis of this Settlement, and filed a joint  
11 motion to stay the pending Application for Preliminary Injunction and Motion to  
Dismiss and to adjourn the related hearing. On September 8, 2016, the Court granted  
the joint motion to stay.

## 12 **TERMS OF THE SETTLEMENT**

13 As a result of the filing, prosecution, and settlement of the Action, the Settling  
14 Parties stipulate and agree that, as of the Effective Date, §6.12(a) of the Agreement and  
15 Plan of Merger among Apollo Education Group, Inc., AP VIII Queso Holdings, L.P.,  
16 and Socrates Merger Sub, Inc., dated as of February 7, 2016, shall not provide that the  
17 Surviving Corporation will extend to the Indemnified Persons any indemnification or  
18 exculpation rights that are greater in scope than those set forth in the articles of  
incorporation or by-laws of Apollo in effect on the date of the Merger Agreement, to the  
fullest extent permitted by applicable Law.

19 In plain language, the Individual Defendants and Apollo stipulate that the  
20 Indemnification Provision of the Merger Agreement shall provide the officers and  
21 directors of Apollo, including the Individual Defendants, with no more protection than  
22 that which was available under the Company's current articles of incorporation and by-  
laws.

23 With this stipulation, Plaintiffs agree to withdraw their Demand and to release all  
24 of their *individual direct* Pre-Merger Claims and Merger Claims arising from the facts  
25 and circumstances alleged in their Complaint and release all *derivative* Merger Claims  
arising from the facts and circumstances related to the Merger Agreement. All of these  
released claims shall be dismissed with prejudice.

26 All of the remaining claims, which are Plaintiffs' *derivative* Pre-Merger Claims,  
27

1 shall be dismissed *without* prejudice to refile by other plaintiffs having standing  
2 necessary to bring such claims and without prejudice to refile by the Surviving  
3 Corporation from the Merger, subject to any and all defenses that may be available to  
4 the defendants named in any such action.

#### 4 **PLAINTIFFS' COUNSEL'S POSITION CONCERNING SETTLEMENT**

5 Plaintiffs' Counsel conducted an investigation relating to the claims and the  
6 underlying events alleged in the Action, including, but not limited to (1) reviewing the  
7 Defendants' public documents, announcements made by Defendants, United States  
8 Securities and Exchange Commission ("SEC") filings, wire and press releases published  
9 by and regarding the Company, legal filings, news reports, securities analysts' reports  
10 and advisories about the Company, and information readily obtainable on the Internet;  
11 (2) reviewing pleadings and filings in related litigation involving Apollo, including *In re*  
12 *Apollo Education Group, Inc. Shareholder Litigation*, Lead Case No. CV2016-001905  
13 (Superior Court of Arizona, Maricopa County), *Rameses Te Lomingkit et al. v. Apollo*  
14 *Education Group, Inc. et al.*, Case Number 2:16-CV-00689-JZB (U.S.D.C. District of  
15 Arizona), *United States of America ex rel. Arthur Green v. University of Phoenix, et al.*,  
16 Case Number 1:14 CV 1654 (U.S.D.C. Northern District of Ohio), and *Teamsters Local*  
17 *617 Pension & Welfare Funds v. Apollo Group, Inc. et al.*, Case Number 06-cv-02674-  
18 RCB (U.S.D.C. District of Arizona); (3) researching applicable law with respect to the  
19 claims asserted (or which could be asserted) in the Action and the potential defenses  
20 thereto; (4) preparing litigation and books and records demand; (5) drafting the  
21 Complaint; (6) drafting the Application for Preliminary Injunction brief and reply to  
22 Defendants' opposition; (7) drafting the brief in opposition to Defendants' Motion to  
23 Dismiss; (8) engaging in settlement negotiations with counsel for the Defendants; and  
24 (9) drafting the documentation of the Settlement together with Defendants' Counsel.

18 Plaintiffs' Counsel believe that the claims asserted in the Action have merit and  
19 that their investigation supports the claims asserted. Without conceding the merit of any  
20 of Defendants' defenses or the lack of merit of any of their own allegations, Plaintiffs'  
21 Counsel have concluded that it is desirable that the Action be settled in the manner and  
22 upon the terms and conditions set forth in this Stipulation. Plaintiffs' Counsel's  
23 conclusion is based on decades of experience in shareholder representative litigation,  
24 and is informed by their extensive independent investigation, rigorous evaluation of the  
25 strengths and weaknesses of the claims and defenses weighed against the risks, costs,  
26 and delays that would be entailed in attempting to improve the result through continued  
27 litigation, including the already-briefed Application for Preliminary Injunction and  
28 Motion to Dismiss, a potential trial and appeal(s),

Based on Plaintiffs' Counsel's evaluation of these factors, and in light of the  
significant benefits that Plaintiffs' Counsel believe have been conferred upon the



1 Company as a result of the Settlement, Plaintiffs have determined that the Settlement is  
2 in the best interests of the Plaintiffs and Apollo and have agreed to settle the Action  
upon the terms and subject to the conditions set forth herein.

3 **DEFENDANTS' POSITION CONCERNING SETTLEMENT**

4  
5 The Individual Defendants have denied and continue to deny that they have  
6 committed, threatened, or attempted to commit, any violations of law, or breached any  
7 duty owed to Apollo, or any wrongdoing whatsoever. Without admitting the validity of  
8 any allegations made in the Action, or any liability with respect thereto, the Individual  
9 Defendants and Apollo have concluded that it is desirable that the claims against  
10 Individual Defendants be settled on the terms reflected in the Stipulation. The  
Individual Defendants and Apollo are entering into this Settlement because it will  
11 eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further  
litigation of the claims so settled. The Individual Defendants and Apollo believe that  
the Settlement is fair, reasonable, adequate, and is a benefit to Apollo.

12 **NOTICE OF HEARING ON PROPOSED SETTLEMENT**

13 A Settlement Hearing will be held on \_\_\_\_\_, 2017 at \_\_:\_\_ a./p.m., before  
14 the before the Honorable Roger Brodman, Superior Court of Arizona, East Court  
Building, Fourth Floor, 101 W. Jefferson, Courtroom 413, Phoenix, Arizona 85003 (or  
15 at such a date and time as the Court may direct without further notice), for the purpose  
of determining: (a) whether the proposed Settlement, as set forth in the Stipulation,  
16 should be approved by the Court as fair, reasonable, and adequate to Apollo and its  
shareholders, including Plaintiffs; (b) whether the Judgment should be entered  
17 dismissing the Action and releasing the Defendant Released Persons from certain claims  
discussed above that are defined as the Released Claims, pursuant to the terms of the  
18 Stipulation; (c) whether the payment of attorneys' fees and expenses that Defendants  
agree shall be paid by Apollo's insurer in a total amount of \$356,000 (the "Fee and  
19 Expense Amount") to Plaintiffs' Counsel in the Action should be approved in  
recognition of the benefits conferred upon Apollo as a direct result of the litigation and  
20 Settlement of the Action, of the substantial time they spent litigating, as well as settling,  
the Action, and of the risks they took without guarantee of any payment; and (d)  
21 whether the payment of \$1,000 from the Fee and Expense Amount to each of the two  
22 Plaintiffs should be approved in recognition for their service in the Action.  
23

24 The Court may adjourn the Settlement Hearing by oral announcement at such  
25 hearing or any adjournment without further notice of any kind. The Court may approve  
the Settlement with or without modification, enter the Judgment, and order the payment  
26 of the Fee and Expense Amount without further notice of any kind.

1 **THE RIGHT TO BE HEARD AT THE SETTLEMENT HEARING**

2 Any Apollo shareholder may appear and show cause, if he, she, or it has any  
3 reason why the Settlement of the Action embodied in the Stipulation should not be  
4 approved as fair, reasonable, and adequate, or why the Judgment should or should not  
5 be entered hereon, or why the Fee and Expense Amount or Plaintiffs' Service Award  
6 should not be awarded. To object, the shareholder must do the following: (a) provide in  
7 writing his, her, or its name, legal address, and telephone number; (b) file a written  
8 objection, stating the case name and number *Guinan v. Sterling, et al*, Civil Action No.  
9 CV2016-005901, and stating all reasons for the objection; (c) clearly identify any such  
10 all evidence that would be presented at the Settlement Hearing in connection with such  
11 objections; (d) provide the names of any witness(es) he, she, or it intends to call to  
12 testify at the Settlement Hearing and the subject(s) of their testimony; (e) provide  
13 written notice of whether he, she, or it intends to appear at the Settlement Hearing; (f)  
14 identify any case, by name, court, and docket number, in which the objector or their  
15 attorney, if any, has objected to a settlement in the last three years; and (g) give  
16 documentary evidence of his, her, or its current ownership of Apollo stock, including  
17 the number of shares of Apollo stock and the date such stock ownership was acquired.  
18 Any written objections shall be filed with Clerk of the Court *at least fourteen calendar*  
19 *days prior to the Settlement Hearing*, at the below address:

14 CLERK OF SUPERIOR COURT'S OFFICE  
15 East Court Building  
16 101 West Jefferson  
17 Phoenix, Arizona 85003

17 and copies of such objections shall be served at the same time upon the following by  
18 first-class mail:

1 **Counsel for Plaintiffs:**

2 Phillip Kim, Esq.  
3 THE ROSEN LAW FIRM, P.A.  
4 275 Madison Avenue, 34th Floor  
5 New York, New York 10016  
6 Tel: (212) 686-1060  
7 Fax: (212) 202-3827

8 -and-

9 Timothy W. Brown  
10 THE BROWN LAW FIRM, P.C.  
11 240 Townsend Square  
12 Oyster Bay, New York 11771  
13 Tel: (516) 922-5427  
14 Fax: (516) 344-6204

**Counsel for Defendants:**

Michael G. Bongiorno, Esq.  
Wilmer Cutler Pickering Hale and Dorr,  
LLP  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007  
Tel: (212) 937-7220  
Fax: (212) 937-7300

-and -

Howard S. Suskin, Esq.  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, Illinois 60654

15 Any Apollo shareholder wishing to be heard at the Settlement Hearing is  
16 required to include a notice of intention to appear at the Settlement Hearing together  
17 with his, her, or its written objection. Any Apollo shareholder who does not make his,  
18 her, or its objection in the manner provided in the preceding paragraphs of this Notice  
19 shall be deemed to have waived such objection and shall forever be foreclosed from  
20 making any objections to the fairness, adequacy, or reasonableness of any aspect of the  
21 Settlement.

22 **FURTHER INFORMATION**

23 Further information regarding the Action and this Notice may be obtained by  
24 writing to Plaintiffs' Counsel: Phillip Kim, The Rosen Law Firm, P.A., 275 Madison  
25 Avenue, 34th Floor, New York, New York 10016, Telephone: (212) 686-1060,  
26 Facsimile: (212) 202-3827.

27 The pleadings and other records of the Action as well as the Stipulation filed  
28 with the Court may be examined and copied at any time during regular office hours at  
the Clerk of Superior Court's Office, East Court Building, 101 West Jefferson, Phoenix,  
Arizona 85003, or through the Court's website at  
<https://www.superiorcourt.maricopa.gov/>.

**PLEASE DO NOT TELEPHONE THE COURT OR THE CLERK'S OFFICE  
REGARDING THIS NOTICE.**

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IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE ROGER BRODMAN  
SUPERIOR COURT JUDGE

1 James Christian, State Bar No. 023614  
2 JAMES CHRISTIAN, PLC  
3 2415 E. Camelback Rd., Ste. 700  
4 Phoenix, Arizona 85016  
(602) 478-6828  
5 jsc@jameschristianlaw.com

6 *Liaison Counsel for Plaintiffs*

7 Phillip Kim  
8 THE ROSEN LAW FIRM, P.A.  
9 275 Madison Avenue, 34th Floor  
10 New York, New York 10016  
11 (212) 686-1060  
12 pkim@rosenlegal.com

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14 THE BROWN LAW FIRM, P.C.  
15 240 Townsend Square  
16 Oyster Bay, New York 11771  
17 (516) 922-5427  
18 tbrown@thebrownlawfirm.net

19 *Counsel for Plaintiffs*

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Darby E. Shupp, Allen R. Weiss, Brian L.  
Swartz, Joseph L. D'Amico, Gregory J.  
Iverson, Sean Martin. J. Mitchell Bowling,  
and Timothy Slottow, and Nominal Defendant  
Apollo Education Group, Inc.*

[Additional Counsel Listed on Last Page]

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

18 KEVIN J. GUINAN and CHERYL A.  
19 GUINAN, Derivatively and on Behalf of  
20 APOLLO EDUCATION GROUP, INC.,  
21 Plaintiffs,  
22 v.  
23 PETER V. SPERLING, GREGORY W.  
24 CAPPELLI, TERRI C. BISHOP, DR. DANA  
25 BORN, MATTHEW CARTER, JR.,  
26 RICHARD H. DOZER, DR. ROY A.  
27 HERBERGER, JR., DR. ANN KIRSCHNER,  
28 ROBERT S. MURLEY, MANUEL F.  
RIVELLO, DARBY E. SHUPP, ALLEN R.  
WEISS, BRIAN L. SWARTZ, JOSEPH L.  
D'AMICO, GREGORY J. IVERSON, SEAN  
MARTIN, J. MITCHELL BOWLING, and  
TIMOTHY SLOTTOW,  
Defendants,  
and  
APOLLO EDUCATION GROUP, INC.,  
Nominal Defendant.

No. CV2016-005901

**[PROPOSED] FINAL ORDER AND  
JUDGMENT**

(Honorable Roger Brodman)

1 This matter came before the Court for hearing on                     , 2017, to consider  
2 approval of the proposed settlement (“Settlement”) set forth in the Stipulation and Agreement  
3 of Settlement dated January 5, 2017, and the exhibits thereto (the “Stipulation”). The Court has  
4 reviewed and considered all documents, evidence, objections (if any), and arguments presented  
5 in support of or against the Settlement. Good cause appearing therefore, the Court enters this  
6 Order and Final Judgment (“Judgment”).  
7

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

9  
10 1. Unless otherwise stated herein, all capitalized terms contained in this Judgment  
11 shall have the same meaning and effect as stated in the Stipulation.

12 2. This Court has jurisdiction over the subject matter of the Action and over the  
13 Settling Parties to the Action.

14 3. This Court hereby approves the Settlement set forth in the Stipulation and finds  
15 that the Settlement is, in all respects, fair, reasonable, and adequate to each of the Settling  
16 Parties, Apollo Education Group, Inc. (“Apollo”), and Current Apollo Stockholders, and hereby  
17 directs the Settling Parties to perform the terms of the Settlement as set forth in the Stipulation.  
18

19 4. This Court hereby dismisses, with prejudice, the Released Claims, and without  
20 costs to Defendants, except as otherwise provided below.

21 5. The Court hereby dismisses, without prejudice, the Pre-Merger Claims asserted  
22 by Plaintiffs derivatively on behalf of Apollo, and without costs to Defendants, except as  
23 otherwise provided below.

24 6. Upon the Effective Date, (a) Plaintiffs shall be deemed to have, and by operation  
25 of this Judgment shall have, fully, finally, and forever released, relinquished and discharged the  
26

1 Released Claims against the Defendant Released Persons, and (b) Apollo and Current Apollo  
2 Stockholders (solely in their capacity as Apollo stockholders) shall be deemed to have, and by  
3 operation of the Judgment shall have, fully, finally, and forever released, relinquished and  
4 discharged the Released Limited Derivative Claims against the Defendant Released Persons.  
5 Apollo, Plaintiffs, and Current Apollo Stockholders (solely in their capacity as Apollo  
6 stockholders) shall be deemed to have, and by operation of the Judgment shall have,  
7 covenanted not to sue any Defendant Released Person with respect to the claims released in this  
8 paragraph, and shall be permanently barred and enjoined from instituting, commencing or  
9 prosecuting the claims released in this paragraph against the Defendant Released Persons. For  
10 the sake of clarity, none of the releases provided herein shall include direct claims that could be  
11 made by the Company against any Individual Defendant or derivative claims arising from the  
12 facts and circumstances alleged in support of the Pre-Merger Claims that could be made by  
13 Current Apollo Stockholders against any Individual Defendant.  
14

15  
16 7. Upon the Effective Date, and except as otherwise provided in this Stipulation,  
17 each of the Defendants shall be deemed to have, and by operation of the Judgment shall have,  
18 fully, finally, and forever released, relinquished and discharged all Plaintiff Released Persons  
19 from all claims, causes of action or rights of recovery of every nature and description, whether  
20 known claims or Unknown Claims (as defined herein), whether direct or indirect, asserted or  
21 unasserted, foreseen or unforeseen, matured or unmatured, contingent or vested, whether  
22 arising under federal, state, local, statutory, common, foreign or other law, rule or regulation  
23 that arise out of or relate in any way to the institution, prosecution, or settlement of the claims  
24 against the Individual Defendants, including all claims for malicious prosecution or sanctions,  
25 except for claims relating to the enforcement of the Settlement.  
26





1 Court's jurisdiction over the Defendant Released Persons for purpose of the Released Claims or  
2 for any other purpose; (b) an admission or concession by Plaintiffs or any Apollo stockholder  
3 of any infirmity in the claims asserted in the Complaint; or (c) an admission of, or evidence of,  
4 any fault or omission of any of the Defendant Released Persons in any civil, criminal, or  
5 administrative proceeding in any court, administrative agency, or other tribunal. The  
6 Defendant Released Persons may file the Stipulation and/or this Judgment in any action that  
7 may be brought against them in order to support a defense or counterclaim based on principles  
8 of *res judicata*, collateral estoppel, equitable estoppel, judicial estoppel, release, good-faith  
9 settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or  
10 similar defense or counterclaim. The Settling Parties may file the Stipulation and documents  
11 executed pursuant and in furtherance thereto in any action to enforce the Settlement.  
12

13 13. Without affecting the finality of this Judgment in any way, this Court hereby  
14 retains continuing jurisdiction over: (a) implementation of this Settlement; and (b) all Settling  
15 Parties and the Settling Parties' counsel hereto for the sole purpose of construing, enforcing,  
16 and administering the Stipulation and this Order and Final Judgment.  
17

18 14. This Judgment having resolved all claims is a final judgment entered pursuant to  
19 Ariz. R. Civ. P. 54(c).  
20

21 IT IS SO ORDERED.

22 Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

23 \_\_\_\_\_  
24 Honorable Roger Brodman  
Maricopa County Superior Court Judge

25 **Additional Defendants' Counsel:**

26 Howard S. Suskin (*Pro Hac Vice*)  
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