

1 **PURPOSE OF THIS NOTICE**

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

5 The purpose of this Notice is to advise you that, pursuant to the Court’s Preliminary
6 Approval and Scheduling Order,¹ a hearing will be held on April 21, 2017 at 1:30 p.m.,
7 before the Honorable Roger Brodman, Superior Court of Arizona, East Court Building,
8 Fourth Floor, 101 W. Jefferson, Courtroom 413, Phoenix, Arizona 85003 (or at such a
9 date and time as the Court may direct without further notice) (the “Settlement Hearing”)
10 to determine whether: (i) the terms of a proposed settlement (the “Settlement”) of this
11 Action are fair, reasonable, and adequate, and in the best interests of Apollo; (ii) the
amount of attorneys’ fees and expenses award to Plaintiffs’ Counsel, as described
below, is fair and reasonable; and (iii) the incentive award to Plaintiffs, as described
below, should be approved.

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

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

17 **BACKGROUND OF THE ACTION**

18 Apollo is an Arizona corporation headquartered in Phoenix, Arizona. Through
19 its subsidiaries, including University of Phoenix, Apollo has established itself as a
20 leading provider of higher education programs and services for working adults. On
21 February 8, 2016, Apollo announced that it had agreed to be taken private by a
consortium of private investors (the “Merger”). Thereafter, on July 7, 2016, following a

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23 ¹ 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,
25 <http://investors.apollo.edu/phoenix.zhtml?c=79624&p=irol-IRHome>. The posted notice may
26 be amended from time to time to reflect developments in the progress of the Merger that may
27 be relevant to the Settlement. The capitalized terms used in this Notice and not otherwise
28 defined are defined in the Stipulation and Agreement of Settlement (the “Stipulation”) dated
January 5, 2017.

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

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

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

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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
11 Individual Defendants and Apollo are entering into this Settlement because it will
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 April 21, 2017 at 1:30 p.m., before the
14 before the Honorable Roger Brodman, Superior Court of Arizona, East Court Building,
15 Fourth Floor, 101 W. Jefferson, Courtroom 413, Phoenix, Arizona 85003 (or at such a
16 date and time as the Court may direct without further notice), for the purpose of
17 determining: (a) whether the proposed Settlement, as set forth in the Stipulation, should
18 be approved by the Court as fair, reasonable, and adequate to Apollo and its
19 shareholders, including Plaintiffs; (b) whether the Judgment should be entered
20 dismissing the Action and releasing the Defendant Released Persons from certain claims
21 discussed above that are defined as the Released Claims, pursuant to the terms of the
22 Stipulation; (c) whether the payment of attorneys' fees and expenses that Defendants
23 agree shall be paid by Apollo's insurer in a total amount of \$356,000 (the "Fee and
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
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)
whether the payment of \$1,000 from the Fee and Expense Amount to each of the two
Plaintiffs should be approved in recognition for their service in the Action.

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
26 the Settlement with or without modification, enter the Judgment, and order the payment
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: January 31, 2017

THE HONORABLE ROGER BRODMAN
SUPERIOR COURT JUDGE