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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

PLAINTIFF
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Apollo Education Group, Inc. (f/k/a Apollo
Group, Inc.), Peter V. Sperling, Gregory W.
Cappelli, Brian L. Swartz, Joseph L.
D'Amico and Gregory J. Iverson,

Defendants.

) Case No.

) CLASS ACTION

) COMPLAINT FOR VIOLATIONS OF
) THE FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

1 Plaintiff _____, individually and on behalf of all others similarly
2 situated, by plaintiff's undersigned attorneys, for plaintiff's complaint against Defendants (as
3 defined below), alleges the following based upon personal knowledge as to plaintiff and
4 plaintiff's own acts, and upon information and belief as to all other matters based on the
5 investigation conducted by and through plaintiff's attorneys, which included, among other
6 things, a review of Securities and Exchange Commission ("SEC") filings by Apollo
7 Education Group, Inc. ("Apollo" or the "Company"), as well as media and analyst reports
8 about the Company, conference call transcripts, various agreements and communications
9 with the U.S. Department of Defense ("DoD") and pleadings in lawsuits filed against the
10 Company. Plaintiff believes that substantial additional evidentiary support will exist for the
11 allegations set forth herein after a reasonable opportunity for discovery.

12 **NATURE OF THE ACTION**

13 1. This is a securities class action on behalf of all purchasers of the Class A
14 common stock of Apollo between June 26, 2013 and October 21, 2015, inclusive (the "Class
15 Period"), seeking remedies pursuant to §§10(b) and 20(a) of the Securities Exchange Act of
16 1934 ("1934 Act").

17 2. Apollo owns and operates several for-profit educational institutions throughout
18 the United States. Its largest is the University of Phoenix, which the Company characterizes
19 as "the nation's largest regionally accredited private university."

20 3. Throughout the Class Period, Apollo reported generating billions of dollars in
21 revenues while concealing that a substantial portion of those revenues were being derived
22 through recruiting tactics being undertaken at U.S. military bases across the country that
23 contradicted an Executive Order signed into law by President Barack Obama on April 27,
24 2012. The express intent of the Executive Order, which had been implemented in large part
25 by the spring of 2013, was to stop for-profit secondary education providers like the
26 University of Phoenix from continuing to take advantage of present and former members of
27 the U.S. military. During the Class Period, Defendants also concealed that Apollo was using
28 improper recruiting tactics that likely violated the express terms of the contractual

1 agreements the Company had entered into with the DoD in February 2012 and July 2014 to
2 permit the University of Phoenix to continue to participate in the DoD’s tuition assistance
3 (“TA”) programs.

4 4. In June 2014 Apollo reported having “successfully transitioned [its] online
5 classroom platform to an *industry-leading* private cloud infrastructure, *offering enhanced*
6 *scalability, reliability and performance,*” which Apollo promised would “allow[] [it] to
7 increase [its] advanced data analytics capabilities to support how [it] serve[d] students.”
8 However, unbeknownst to investors, from its inception the new platform was not functioning
9 as designed due to software compatibility problems that prevented students from signing
10 onto their online courses, which had dramatically increased student drop-out rates. Adding
11 insult to injury, in addition to repeatedly minimizing the true extent of the software
12 compatibility problems, even when later being questioned about them by stock analysts,
13 Defendants hid from the investment community the deleterious impact the software
14 compatibility problems were having not only on *retention rates* but on *new student*
15 *enrollment.*

16 5. As a result of Defendants’ false statements during the Class Period, which
17 emphasized Apollo’s financial successes and strong financial prospects, the price of Apollo’s
18 Class A common stock traded at artificially inflated levels, reaching a Class Period high of
19 \$35.92 per share in intraday trading on January 22, 2014. With the price of the Class A
20 common stock artificially inflated, certain of Apollo’s senior executives cashed in, selling
21 almost *\$42 million* of their personally held shares at artificially inflated prices.

22 6. On January 8, 2015, Apollo announced that the “conversion to a brand new
23 platform was more challenging than [they had] originally anticipated” and had “resulted in a
24 greater than expected impact on *retention.*” However, Apollo emphasized that the problem
25 was being fixed “as quickly as possible,” representing that Apollo’s “teams ha[d] already
26 made substantial progress” and were then “on track with [their] plan to aggressively address
27 the technical issues related to the classroom” and had actually “accelerated the future
28 enhancements,” including “*ensuring the classroom [was] compatible with a broader range*

1 *of browsers and other operating systems at all times*; and that course content [was] more
2 readily accessible when accessed through third-party providers.” The price of Apollo stock
3 declined moderately on these disclosures. However, due to Defendants’ other more positive
4 statements, including that the Company was experiencing strong ongoing enrollment and
5 profitability trends, the price of Apollo stock remained artificially inflated.

6 7. On March 25, 2015, Apollo finally disclosed that it had actually “experienced a
7 *significant disruption* with respect to [the] new online classroom platform,” which had not
8 only “adversely impacted retention,” but had actually decreased “second quarter *new*
9 *degreed enrollment*,” with Defendants conceding that due to having “an issue that[] [was]
10 impacting students,” Apollo had not wanted to “spend a whole lot of money on advertising to
11 attract more students into a classroom where there ha[d] been some problems.” As a result,
12 Apollo disclosed that the number of new students registering for courses in the quarter had
13 actually *declined 13%* from the same quarter in 2014, forcing Apollo to cut its annual
14 revenue forecast.

15 8. Then, on June 30, 2015, the Center for Investigative Reporting (“CIR”)
16 published an exposé entitled “University of Phoenix sidesteps Obama order on recruiting
17 veterans.” In its exposé, CIR detailed how the University of Phoenix, “the proprietary
18 college that is far and away the largest recipient of taxpayer money under the post-9/11 GI
19 Bill,” was violating President Obama’s Executive Order, as well as the contractual
20 agreements the University of Phoenix had entered into with the DoD in order to continue
21 participating in the DoD’s TA programs, by, among other things, engaging in unpermitted
22 on-base recruiting by paying the military to allow it to sponsor hundreds of events on
23 military bases across the country, from rock concerts to Super Bowl parties and father-
24 daughter dances, that gave it access to recruiting on base without obtaining the required
25 approval; engaging in recruitment drives disguised as résumé workshops; paying incentives
26 to its recruiters based on their on-base recruiting successes; financially incentivizing
27 veterans’ organizations such as the American Legion to lobby for additional for-profit
28

1 educational spending from Congress; and utilizing military insignias in school marketing
2 without obtaining the required prior permission.

3 9. Also on June 30, 2015, U.S. Senator Richard J. Durbin sent a letter to Secretary
4 of Defense Ashton Carter bringing the matters raised in the CIR exposé to his attention and
5 calling for the military to investigate and put an end to the illicit recruiting tactics.

6 10. On October 7, 2015, the DoD formally placed the University of Phoenix on
7 probation, barring it from recruiting on military bases and preventing troops from using
8 federal funds for its classes, based in large part on the issues raised in the CIR exposé,
9 Senator Durbin's letter, a Civil Investigative Demand issued by the U.S. Federal Trade
10 Commission ("FTC") to the University of Phoenix in July 2015 seeking information relating
11 to advertising, marketing, and sale of secondary or postsecondary educational products or
12 services or educational accreditation products or services, and an Investigative Subpoena
13 issued by the California Attorney General's office in August 2015 seeking information
14 relating to the recruiting of U.S. military and California National Guard personnel and
15 related matters and the use of U.S. military logos and emblems in marketing.

16 11. On October 9, 2015, *The Wall Street Journal* disclosed that the U.S. Justice
17 Department ("DoJ") and the Department of Education ("DoE") were coordinating ongoing
18 investigations of the University of Phoenix's recruitment practices.

19 12. On October 22, 2015, the Company disclosed that its fourth quarter and fiscal
20 year 2015 results had been negatively impacted by actions the Company had been forced to
21 take to bring its operations into compliance with the law. The Company also disclosed that
22 its efforts to address the prior misconduct would adversely affect its revenues and profits for
23 the foreseeable future.

24 13. As the market learned of the above revelations, Apollo common stock was
25 hammered by massive sales, sending its share price down approximately **80%** from its Class
26 Period high – or nearly **\$29** per share – and erasing ***more than \$3 billion*** in market
27 capitalization.

28

1 voting stock is owned by Apollo executives and insiders, primarily by defendant Peter V.
2 Sperling.

3 20. Defendant Peter V. Sperling (“Peter Sperling”) was, throughout the Class
4 Period, Chairman of the Apollo Board of Directors. Peter Sperling is the son of non-party
5 John Sperling, who founded Apollo in 1976 and served as a member of its Board of
6 Directors and its Chairman Emeritus until his death in August 2014.

7 21. Defendant Gregory W. Cappelli (“Cappelli”) was, throughout the Class Period,
8 Apollo’s Chief Executive Officer (“CEO”) and a member of its Board of Directors.

9 22. Defendant Brian L. Swartz (“Swartz”) served as a Senior Vice President and
10 the Chief Financial Officer (“CFO”) of Apollo from 2007 until May 15, 2015.

11 23. Defendant Joseph L. D’Amico (“D’Amico”) served as Apollo’s interim CFO
12 between May 15, 2015 and October 26, 2015 and has served as a senior advisor to Apollo’s
13 CEO since October 26, 2015.

14 24. Defendant Gregory J. Iverson (“Iverson”) has served as Apollo’s CFO since
15 October 26, 2015 and as its Vice President – Finance, Chief Accounting Officer and
16 Treasurer since 2007.

17 25. Defendants Peter Sperling, Cappelli, Swartz, D’Amico and Iverson are
18 sometimes referred to herein as the “Individual Defendants.” The Individual Defendants and
19 Apollo are collectively referred to herein as “Defendants.”

20 26. During the Class Period, the Individual Defendants ran Apollo as “hands-on”
21 managers, overseeing Apollo’s operations and finances, and made the materially false and
22 misleading statements described herein. The Individual Defendants were intimately
23 knowledgeable about all aspects of Apollo’s financial and business operations, as they
24 received daily reports and had access to computerized information regarding revenues, costs
25 and expenses and regulatory and legal proceedings. They were also intimately involved in
26 deciding which disclosures would be made by Apollo. Indeed the Individual Defendants
27 made various public statements for Apollo during the Class Period, and participated in Class
28 Period investor conferences. The Individual Defendants also signed Apollo’s filings with the

1 SEC during the Class Period, with defendants Peter Sperling, Cappelli, Swartz and Iverson
2 signing the annual reports on Form 10-K for fiscal years 2013 and 2014, and defendants
3 Iverson, Swartz and D’Amico signing the Company’s interim quarterly financial reports on
4 Form 10-Q and defendants Cappelli, Swartz and D’Amico certifying the veracity of the
5 Company’s publicly reported financial reports under the Sarbanes Oxley Act of 2002.

6 **BACKGROUND**

7 27. Apollo is the holding company that owns the University of Phoenix and a
8 group of other for-profit universities. Though Apollo has operated several for-profit schools
9 over the years, historically 80% or more of its revenues – and 100% of the Company’s total
10 consolidated operating income – has been derived from the University of Phoenix.

11 28. On February 10, 2012, the University of Phoenix entered into an Alliance
12 Memorandum of Understanding with the DoD (the “2012 DoD MOU”), which governed the
13 school’s rights to continue participating in the DoD’s TA programs. One of the General
14 Terms and Conditions of the 2012 DoD MOU prohibited the University of Phoenix from
15 using the DoD’s or its affiliates’ “name and logo in writing.” While the school could “use
16 the [Defense Acquisition University’s (“DAU”)] name or logo in published materials (*e.g.*,
17 Web site and catalog) to reference [the 2012 DoD MOU] or contact information/links to
18 DAU,” the “[c]ontent and text of all such promotional information [had to be expressly]
19 approved by DAU prior to the release.” Another provision of the 2012 DoD MOU expressly
20 mandated that the University of Phoenix “abide by all applicable federal and state laws.”

21 29. On April 27, 2012, President Barack Obama signed into law Executive Order
22 13607, “Establishing Principles of Excellence for Educational Institutions Serving Service
23 Members, Veterans, Spouses, and Other Family Members,” which expressly banned all
24 deceptive and aggressive recruiting practices by for-profit colleges (“Exec. Ord. 13607”).
25 The University of Phoenix was bound to comply with Exec. Ord. 13607, particularly in light
26 of the school’s having entered into the 2012 DoD MOU, expressly agreeing to “abide by all
27 applicable federal and state laws” in order to continue participating in the DoD’s TA
28 programs.

1 30. Section 1 of Exec. Ord. 13607, “Policy,” emphasized that one of the new law’s
2 primary purposes was to prevent aggressive and misleading marketing by for-profit schools,
3 especially on military bases, stating in pertinent part as follows:

4 Since the Post-9/11 GI Bill became law, there have been reports of
5 aggressive and deceptive targeting of service members, veterans, and their
6 families by some educational institutions. For example, some institutions have
7 recruited veterans with serious brain injuries and emotional vulnerabilities
8 without providing academic support and counseling; encouraged service
9 members and veterans to take out costly institutional loans rather than
10 encouraging them to apply for Federal student loans first; ***engaged in***
misleading recruiting practices on military installations; and failed to
11 disclose meaningful information that allows potential students to determine
12 whether the institution has a good record of graduating service members,
13 veterans, and their families and positioning them for success in the workforce.

14 31. In order to formally implement Exec. Ord. 13607, §2, “Principles of
15 Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and
16 Other Family Members,” directed the DoD, Department of Veterans Affairs (“DoVA”) and
17 DoE to “establish Principles of Excellence . . . to apply to educational institutions receiving
18 funding from Federal military and veterans educational benefits programs, including benefits
19 programs provided by the Post-9/11 GI Bill and the [TA] Program,” one of which was to
20 “ensure that these educational institutions . . . ***prevent abusive and deceptive recruiting***
practices that target the recipients of Federal military and veterans educational benefits.”

21 32. Section 4 of Exec. Ord. 13607, “Strengthening Enforcement and Compliance
22 Mechanisms,” expressly directed that “[w]ithin 90 days of the date of [the] order, the
23 Secretaries of Defense and Veterans Affairs, in consultation with the Secretary of Education
24 and the Director of the CFPB, as well as with the Attorney General, as appropriate, [were to]
25 submit to the President a plan to strengthen enforcement and compliance mechanisms,”
26 including proposals expressly designed to restrict the access of for-profit school recruiters to
27 military bases and preclude them from engaging in any deceptive marketing practices
28 directed at current or former members of the military, requiring, in pertinent part, that they

 [2](c) ***end fraudulent and unduly aggressive recruiting techniques on***
and off military installations, as well as misrepresentation, payment of
incentive compensation, and failure to meet State authorization requirements,
consistent with the regulations issued by the Department of Education (34
C.F.R. 668.71–668.75, 668.14, and 600.9);

1 * * *

2 [4](e) establish new uniform rules and strengthen existing procedures
3 for access to military installations by educational institutions. These new rules
4 should ensure, at a minimum, that only those institutions that enter into a
5 memorandum of agreement pursuant to section 3(a) of this order are permitted
6 entry onto a Federal military installation for the purposes of recruitment. ***The
7 Department of Defense shall include specific steps for instructing
8 installation commanders on commercial solicitation rules and the
9 requirement of the Principles outlined in section 2(c) of this order;*** and

10 [4](f) ***take all appropriate steps to ensure that websites and programs
11 are not deceptively and fraudulently marketing educational services and
12 benefits to program beneficiaries, including initiating a process to protect
13 the term “GI Bill” and other military or veterans-related terms as
14 trademarks, as appropriate.***

15 33. On May 31, 2012, the DoVA sent a letter attaching Exec. Ord. 13607 to all for-
16 profit education providers, including the University of Phoenix. The DoVA’s May 31, 2012
17 letter required “that all schools provide a written response stating their intention to comply
18 with the Principles of Excellence” by the end of academic year 2012-2013, and “not later
19 than June 30, 2012.”

20 34. On June 26, 2012, the University of Phoenix sent a letter to the DoVA signed
21 by William Pepicello, its President, purporting to express the intent of “the entire University
22 of Phoenix community” “to comply with” Exec. Ord. 13607, which stated in pertinent part as
23 follows:

24 Office of the President
25 4615 East Elwood Street
26 Phoenix, AZ 85040



27 University of Phoenix®

28 June 26, 2012

Curtis L. Coy
Deputy Under Secretary, Office of Economic Opportunity
U.S. Department of Veterans Affairs (VA)
Veterans Benefits Administration
Washington, D.C. 20420

Cc: U.S. Department of Justice: Office of the Attorney General
U.S. Department of Defense
U.S. Department of Education
Bureau of Consumer Financial Protection

Dear Deputy Under Secretary Coy:

I write today on behalf of the entire University of Phoenix community, to express support of, and state our intent to
comply with, the President’s Executive Order 13607—Establishing Principles of Excellence for Educational
Institutions Serving Service Members, Veterans, Spouses, and Other Family Members.

1 35. In November 2012, the DoE held its 2012 Fall Conference, entitled “Principles
2 of Excellence – Executive Order 13607,” which detailed the ongoing efforts to implement
3 Exec. Ord. 13607. During that conference, it was represented that beginning in the Spring of
4 2013, the DoD would be enforcing the following policies at U.S. military installations to
5 limit for-profit education providers’ recruiting efforts:

- 6 • ***Institutions may access military bases to provide education, guidance,
7 and training opportunities ONLY***
- 8 • Marketing firms or ***companies that own and operate higher-learning
9 institutions will not have access to the bases***
- 10 • ***May have access to military bases to provide education guidance to
11 their students:***

11 Access ***only*** through the base education officer via a written proposal

- 12 (a) ***Have a signed MOU with DoD;***
- 13 (b) Be chartered or licensed by the State government in which the
14 services will be rendered;
- 15 (c) Be State approved for the use of veteran’s education benefits;
- 16 (d) Course offering must be provided by postsecondary institution
17 accredited by a national or regional accrediting body recognized by the
18 U.S. Department of Education; and
- 19 (e) Have an on base student population of at least 20 active duty
20 military students

21 36. In order to complete the implementation of Exec. Ord. 13607, additional, more
22 specific DoD rules were proposed and published in the Federal Register (78 F.R. 49382,
23 49383) on August 14, 2013. These additional rules included express prohibitions against
24 “us[ing] unfair, deceptive, and abusive recruiting practices” and the “[i]mplement[ation] [of]
25 rules to strengthen existing procedures for access to military installations by educational
26 institutions.” After the comment period expired, on May 15, 2014 the final version of these
27 additional rules for Voluntary Education Programs was published in the Federal Register (79
28 F.R. 27732), which would go into effect on July 14, 2014, requiring that voluntary
educational institutions sign new MOUs within 60 days.

1 37. The final rules “[i]mplement[ed] policy, assign[ed] responsibilities, and
2 prescribe[d] procedures for the operation of voluntary education programs in the DoD.”
3 They “[e]stablished policy stating the eligibility criteria for tuition assistance (TA) and the
4 requirement for a memorandum of understanding (MOU) from all educational institutions
5 providing educational programs through the DoD TA Program,” and expressly
6 “[e]stablish[ed] policy” that “[a]ll educational institutions providing education programs
7 through the DoD Tuition Assistance (TA) Program” would “*not use unfair, deceptive, and*
8 *abusive recruiting practices.*” They also expressly “[c]reate[d] rules to strengthen existing
9 procedures for access to DoD installations by educational institutions.”

10 38. In order to implement the final DoD rules, the agency published its Information
11 No. 1322.25, dated March 15, 2011, Incorporating Change 3, Effective July 7, 2014 (“DoDI
12 1322.25”), which dictated certain “Procedures for the Responsible Education Advisor, on
13 Behalf of the Installation Commander, to Provide Voluntary Education Programs and
14 Services from Postsecondary Educational Institutions,” to control the access of for-profit
15 educational providers to conduct on-base recruiting. The new procedures included the
16 following, in pertinent part:

17 b. The responsible installation education advisor will limit DoD
18 installation access to educational institutions or their agents meeting the
19 requirements as stated in the policy section of this instruction and in
20 compliance with the DoD Voluntary Education Partnership MOU. Agents
representing education institutions in the performance of contracted services
are permitted DoD installation access *only in accordance with the*
requirements of their contract and/or agreement.

21 c. Educational institutions interested in providing education,
22 guidance, training opportunities, and participating in sanctioned education
23 fairs on a DoD installation *will provide their requests to the responsible*
education advisor, who will review and analyze these requests on behalf of
the installation commander.

24 39. The “Procedures for the Responsible Education Advisor, on Behalf of the
25 Installation Commander, to Provide Voluntary Education Programs and Services from
26 Postsecondary Educational Institutions” also provided that the responsible installation
27 education advisor would:

1 e. Monitor educational institutions and its agents granted access to
2 a DoD installation *to ensure they do not:*

3 (1) *Use unfair, deceptive, abusive or fraudulent devices,*
4 *schemes, or artifices, including misleading advertising or sales*
5 *literature.*

6 (2) *Engage in unfair, deceptive, or abusive marketing*
7 *tactics, such as during unit briefings or assemblies; engaging*
8 *in open recruiting efforts; or distributing marketing materials*
9 *on the DoD installation at unapproved locations or events.*

10 40. DoDI 1322.25's "Requirements and Procedures for Educational Institutions
11 Seeking Access to the DoD Installation Solely to Provide Academic Counseling or Student
12 Support Services to Students" further provided, in pertinent part, that "[e]ducational
13 institutions must request access *through the responsible education advisor via a written*
14 *proposal,*" that the "responsible education advisor [would] review and analyze the request on
15 behalf of the installation commander," and that "[i]f a DoD installation grant[ed] access to an
16 educational institution to provide guidance to their students, *the educational institution and*
17 *its agents [would]: . . . [o]nly advise or counsel students at the education center or at a*
18 *location approved by the responsible education advisor.*"

19 41. On or about July 20, 2014, the University of Phoenix entered into an additional
20 MOU with the DoD entitled the "Department of Defense (DoD) Voluntary Education
21 Partnership Memorandum of Understanding" ("2014 DoD MOU"). As the 2012 DoD MOU
22 had, the 2014 DoD MOU "articulate[d] the commitment and agreement educational
23 institutions provide to the Department of Defense by accepting funds via each Service's
24 tuition assistance (TA) program in exchange for education services." The 2014 DoD MOU
25 further provided that "[e]ducational institutions failing to comply with the requirements set
26 forth in this MOU may receive a letter of warning, be denied the opportunity to establish
27 new programs, have their MOU terminated, be removed from the DoD installation, *and may*
28 *have the approval of the issuance of TA withdrawn by the Service concerned.*" The 2014
DoD MOU expressly stated, in pertinent part, that in order to continue participating in the
DoD's TA program, the University of Phoenix had to:

1 j. Have policies in place compliant with program integrity
2 requirements consistent with the regulations issued by ED (34 C.F.R 668.71-
3 668.75 and 668.14) related to ***restrictions on misrepresentation, recruitment,***
4 ***and payment of incentive compensation.*** This applies to the educational
5 institution itself and its agents including third party lead generators, marketing
6 firms, or companies that own or operate the educational institution. ***As part of***
7 ***efforts to eliminate unfair, deceptive, and abusive marketing aimed at***
8 ***Service members, educational institutions will:***

9 (1) ***Ban inducements, including any gratuity, favor, discount,***
10 ***entertainment, hospitality, loan, transportation, lodging, meals, or***
11 ***other item having a monetary value of more than a de minimis***
12 ***amount, to any individual or entity, or its agents*** including third party
13 lead generators or marketing firms other than salaries paid to
14 employees or fees paid to contractors in conformity with all applicable
15 laws for the purpose of securing enrollments of Service members or
16 obtaining access to TA funds. Educational institution sponsored
17 scholarships or grants and tuition reductions available to military
18 students are permissible

19 (2) ***Refrain from providing any commission, bonus, or other***
20 ***incentive payment based directly or indirectly on securing***
21 ***enrollments or federal financial aid (including TA funds) to any***
22 ***persons or entities engaged in any student recruiting, admission***
23 ***activities, or making decisions regarding the award of student***
24 ***financial assistance.***

25 (3) Refrain from high-pressure recruitment tactics such as making
26 multiple unsolicited contacts (3 or more), including contacts by phone,
27 email, or in-person, and engaging in same-day recruitment and
28 registration for the purpose of securing Service member enrollments[.]

42. Continuing its prior aggressive recruiting efforts on military bases that exposed
the University of Phoenix to being accused of circumventing Exec. Ord. 13607, DoDI
1322.25, the 2012 DoD MOU and the 2014 DoD MOU until exposed in June 2015, the
University of Phoenix:

(a) engaged in recruitment drives disguised as résumé workshops on
military installations;

(b) paid the U.S. Chamber of Commerce Foundation to allow the
University of Phoenix to be the sole educational institution presenting employment
workshops and “Hiring Our Heroes” job fairs around the country, many of them on military
bases, in order to market its services to current and former members of the military;

(c) used figures such as the number of leads each of its national defense
recruiting employees generated, along with the percentage of those leads who eventually

1 enrolled, to evaluate and compensate those recruiters in a fashion that has been equated to
2 paying “sales incentives”;

3 (d) cultivated relationships with veterans’ organizations such as the
4 American Legion – which had previously criticized the for-profit education industry’s
5 gouging of active military and veterans – using financial incentives to entice them into
6 opposing congressional efforts to regulate or restrict the flow of GI Bill money to for-profit
7 schools such as the University of Phoenix;

8 (e) utilized military insignias – including custom engraved “challenge
9 coins” that have held a special place in military culture for decades, with the University of
10 Phoenix logo on one side and the seals of the DoD and every branch of the military on the
11 other – in marketing activities targeted at military personnel, including having recruiters
12 hand them out on military bases, without the required prior permission; and

13 (f) paid the military an estimated \$1 million between 2010 and 2015 to
14 sponsor hundreds of events on military bases across the country, including 89 events held
15 between June 2012 and June 2015 alone, ranging from briefings for soldiers newly stationed
16 at Fort Carson in Colorado, a chocolate festival, a fashion show, a “Brunch with Santa,” an
17 Easter egg hunt at Fort Hood in Texas, rock concerts, Super Bowl parties, and father-
18 daughter dances, without obtaining the permission from the bases’ responsible education
19 advisors and while prominently displaying banners with the schools’ names claiming “30+
20 years of proud service to our military community,” in what has been called a “deliberate
21 effort to create the impression that the college is sanctioned and even recommended by the
22 armed forces.”

23 **DEFENDANTS’ FALSE AND MISLEADING**
24 **CLASS PERIOD STATEMENTS**

25 43. The Class Period starts on June 26, 2013. On June 25, 2013, after the close of
26 trading, Apollo issued a press release announcing its financial results for its third quarter of
27 2013 (“3Q 2013”), ended May 31, 2013. In addition to reporting net revenues of \$946.8
28 million and income from continuing operations of \$80 million, or \$0.71 per share, the release

1 provided the Company’s “Business Outlook,” purportedly based on then-present trends, and
2 quoted defendant Cappelli on how the Company was on track to achieve that Business
3 Outlook, stating in pertinent part as follows:

4 “This is a time of extraordinary change in higher education. At Apollo
5 Group we are creating a more nimble organization and reengineering our
6 learning solutions *to better support our student’s needs and meet the*
7 *demands of employers*. We are focused on making the necessary changes to
8 deliver *an improved set of educational offerings*,” said Apollo Group Chief
9 Executive Officer Greg Cappelli. “As education evolves, the transfer of
10 knowledge and the acquisition of skills for working adults will be delivered in
11 new and different ways. *We are working directly with employers to define the*
12 *skills students must bring to the workplace to more effectively compete in a*
13 *global economy*. The repositioning of higher education—also reflected in
14 Apollo Group’s mission to create a more educated global workforce – has
15 perhaps never been more important.”

16 * * *

17 **Business Outlook**

18 The Company offers the following outlook for fiscal year 2013 based
19 on the business trends observed during the second quarter 2013, as well as
20 management’s current expectations of future trends.

- 21 • *Net revenue of \$3.65 – \$3.75 billion*; and
- 22 • *Operating income of \$500.0 – \$550.0 million*, excluding the impact of
23 special items and restructuring and other charges.

24 *The Company continues to reengineer business processes and refine*
25 *its educational delivery structure. These restructuring activities are expected*
26 *to favorably impact annual operating expenses by at least \$400 million by*
27 *fiscal year 2014, when compared to fiscal year 2012. This is a \$50 million*
28 *increase in anticipated savings from the Company’s previous outlook.*

44. Later that afternoon, defendants Cappelli and Swartz conducted a conference
call with analysts and investors providing additional positive commentary about the
Company’s then-present business trends and its strong financial prospects.

45. On October 22, 2013, Apollo issued a press release announcing its financial
results for its 4Q 2013 and fiscal year (“FY”) 2013, ended August 31, 2013. In addition to
reporting 4Q 2013 revenues of \$845 million and income from continuing operations of \$21.6
million, or \$0.19 per share, and reporting FY 2013 revenues of \$3.7 billion and income from
continuing operations of \$248.5 million, or \$2.19 per share, the release provided the
Company’s “Business Outlook,” purportedly based on then-present trends, and quoted

1 defendant Cappelli on how the Company was on track to achieve that Business Outlook,
2 stating in pertinent part as follows:

3 “We set out this year to differentiate University of Phoenix, diversify Apollo
4 Group and build a more efficient organization. *We have made meaningful*
5 *progress in each of these areas.* With hundreds of millions of worldwide
6 learners in need of higher education in this decade alone, *we are well*
7 *positioned for 2014 and beyond to help create a more educated global*
8 *workforce and strengthen our great partnerships across four continents.”*

9 * * *

10 **Business Outlook**

11 The Company offers the following outlook for fiscal year 2014 based
12 on the business trends observed during the fourth quarter of fiscal year 2013,
13 as well as management’s current expectations of future trends.

- 14 • *Net revenue of \$2.95 - \$3.05 billion;* and
- 15 • *Operating income of \$375 - \$450 million,* excluding the impact of
16 special items including restructuring and other charges.

17 In fiscal year 2014, the Company expects to further reduce its fixed
18 operating costs by a minimum of \$300 million, which would result in a total
19 decline of \$650 million, or 18%, compared to the fiscal year 2012 cost base.

20 46. Later that afternoon, defendants Cappelli and Swartz conducted a conference
21 call with analysts and investors providing additional positive commentary about the
22 Company’s then-present business trends and its strong financial prospects. During the Q&A
23 session, defendants Cappelli and Swartz expressly refused to divulge any “quantification of
24 how big [military education spending aid was] as a portion of enrollment.”

25 47. On October 22, 2013, Apollo also filed its 2013 annual financial report on
26 Form 10-K with the SEC, which was signed by defendants Peter Sperling, Cappelli, Swartz
27 and Iverson and certified as to veracity under the Sarbanes Oxley Act of 2002 by defendants
28 Swartz and Cappelli. Concerning the Company’s regulatory compliance, and specifically its
compliance with Exec. Ord. 13607, while the Form 10-K stated that compliance “*could*
increase *the cost* of delivering educational services to . . . military and veteran students,” it
concealed that the Company *was then in violation* of Exec. Ord. 13607, and thus its 2012
DoD MOU, and that the Company was then deriving substantial *revenues* as a result of its

- 1 • ***Operating income of \$400 - \$450 million***, excluding the impact of
2 special items and restructuring and other charges.

3 49. Later that afternoon, defendants Cappelli and Swartz conducted a conference
4 call with analysts and investors providing additional positive commentary about the
5 Company's then-present business trends and its strong financial prospects.

6 50. The price of Apollo common stock reached a Class Period high on January 22,
7 2014, trading as high as \$35.92 per share in intraday trading.

8 51. On April 1, 2014, Apollo issued a press release announcing its financial results
9 for its 2Q 2014, ended February 28, 2014. In addition to reporting net revenues of \$679.1
10 million and income from continuing operations of \$14.6 million, or \$0.13 per share, the
11 release provided the Company's "Business Outlook," purportedly based on then-present
12 trends, and quoted defendant Cappelli on how the Company was on track to achieve that
13 Business Outlook, stating in pertinent part as follows:

14 "At Apollo Education Group *we are continuing to make progress on*
15 *our long-term strategic plan which includes providing our students with a*
16 *differentiated and high-quality experience, diversifying our company and*
17 *becoming a more efficient organization through operational excellence,"*
18 said Apollo Education Group Chief Executive Officer Greg Cappelli. "As the
19 global community becomes more competitive, so does the need for a more
20 competitive workforce. *Our institutions are committed to improving student*
21 *outcomes, delivering differentiated programs, and providing students with*
22 *the right form of postsecondary education to help them prepare for career*
23 *success globally."*

24 * * *

25 **Business Outlook**

26 The Company offers the following outlook for fiscal year 2014 based
27 on the business trends observed during the second quarter 2014, as well as
28 management's current expectations of future trends.

- 29 • ***Net revenue of \$3.0 - \$3.1 billion***; and
30 • ***Operating income of \$400 - \$450 million***, excluding the impact of
31 special items.

32 52. Later that afternoon, defendants Cappelli and Swartz conducted a conference
33 call with analysts and investors providing additional positive commentary about the
34 Company's then-present business trends and its strong financial prospects.

1 **Business Outlook**

2 The Company offers the following outlook for fiscal year 2015 based
3 on the business trends observed during the fourth quarter of fiscal year 2014,
4 as well as management’s current expectations of future trends.

- 5 • *Net revenue of \$2.80 to \$2.85 billion*; and
- 6 • *Operating income of \$300 to \$325 million*, excluding the impact of
7 special items.

8 The Company also provides the following outlook for the first quarter
9 of fiscal year 2015.

- 10 • *Net revenue of \$720 to \$730 million*; and
- 11 • *Operating income of \$70 to \$75 million*, excluding the impact of
12 special items.

13 58. Later that afternoon, defendants Cappelli and Swartz conducted a conference
14 call with analysts and investors providing additional positive commentary about the
15 Company’s then-present business trends and its strong financial prospects.

16 59. On October 21, 2014, the Company filed its 2014 annual financial report on
17 Form 10-K with the SEC, which was signed by defendants Peter Sperling, Cappelli, Swartz
18 and Iverson and certified as to veracity under the Sarbanes Oxley Act of 2002 by defendants
19 Swartz and Cappelli. The Form 10-K represented that “qualifying U.S. active military and
20 veterans and their family members *are eligible for federal student aid* from various
21 Departments of Defense and Veterans Affairs programs,” referring to “the financial aid
22 programs administered by these Departments as ‘military benefit’ programs.”

23 60. On January 8, 2015, Apollo issued a press release announcing its financial
24 results for its 1Q 2015, ended November 30, 2014. In addition to reporting net revenues of
25 \$719.1 million and income from continuing operations of \$47.8 million, or \$0.44 per share,
26 the release provided the Company’s “Business Outlook,” purportedly based on then-present
27 trends, and quoted defendant Cappelli on how the Company was on track to achieve that
28 Business Outlook, stating in pertinent part as follows:

“Apollo Education Group is committed to leading the *positive transformation of higher education to more effectively connect students’ education with their career aspirations*,” said Greg Cappelli, Chief Executive Officer, Apollo Education Group. “*Our strategy is designed to provide an*

1 *outstanding student experience through innovative and engaging*
2 *curriculum delivered with a focus on meeting the needs of today's busy*
3 *working learners. We also are dedicated to helping employers identify,*
4 *recruit and develop a more skilled workforce globally."*

5 * * *

6 **Business Outlook**

7 The Company offers the following outlook for fiscal year 2015 based
8 on the business trends observed during the first quarter of fiscal year 2015, as
9 well as management's current expectations of future trends.

- 10 • *Net revenue of \$2.74 to \$2.80 billion;* and
- 11 • *Operating income of \$250 to \$290 million,* excluding the impact of
12 special items.

13 The Company also provides the following outlook for the second
14 quarter of fiscal year 2015.

- 15 • *Net revenue of \$580 to \$595 million;* and
- 16 • *Operating loss of \$25 to \$35 million,* excluding the impact of special
17 items.

18 61. Later that afternoon, defendants Cappelli and Swartz conducted a conference
19 call with analysts and investors providing additional positive commentary about the
20 Company's then-present business trends and its strong financial prospects.

21 62. On March 25, 2015, Apollo issued a press release announcing its financial
22 results for its 2Q 2015, ended February 28, 2015. In addition to reporting net revenues of
23 \$578.6 million and a loss from continuing operations of \$10.4 million, or \$0.10 per share, the
24 release provided the Company's "Business Outlook," purportedly based on then-present
25 trends, and quoted defendant Cappelli on how the Company was on track to achieve that
26 Business Outlook, stating in pertinent part as follows:

27 "While we faced challenges in the second quarter, *we believe Apollo*
28 *Education Group has the right long-term strategy in place,*" said Greg
Cappelli, Chief Executive Officer, Apollo Education Group. "In a time of
unprecedented change in the higher education industry, *we are focused on*
enhancing outcomes through a deep understanding of student and employer
needs. This includes differentiating University of Phoenix through its
program-based colleges and diversifying our organization *with the expansion*
of Apollo Global and other targeted growth initiatives. We are aligning
education to careers, offering students tangible skills and helping employers
develop a high-performance workforce."

2 **Business Outlook**

3 The Company offers the following outlook for fiscal year 2015 based
4 on the business trends observed during the second quarter of fiscal year 2015,
as well as management’s current expectations of future trends.

- 5 • *Net revenue of \$2.63 to \$2.68 billion*; and
6 • *Operating income of \$200 to \$230 million*, excluding the impact of
7 special items.

8 The Company also provides the following outlook for the third quarter
of fiscal year 2015.

- 9 • *Net revenue of \$690 to \$705 million*; and
10 • *Operating income of \$85 to \$95 million*, excluding the impact of
11 special items

12 63. Later that afternoon, defendants Cappelli and Swartz conducted a conference
13 call with analysts and investors providing additional positive commentary about the
14 Company’s then-present business trends and its strong financial prospects.

15 64. On April 28, 2015, Apollo announced that defendant Swartz was resigning as
16 Apollo’s CFO effective May 15, 2015, to be replaced by defendant D’Amico, who would
17 serve as its interim CFO until a permanent CFO could be located.

18 65. On June 29, 2015, Apollo issued a press release announcing its financial results
19 for its 3Q 2015, ended May 31, 2015. In addition to reporting net revenues of \$681.5 million
20 and income from continuing operations of \$57.5 million, or \$0.53 per share, the release
21 provided the Company’s “Business Outlook,” purportedly based on then-present trends, and
22 quoted defendant Cappelli on how the Company was on track to achieve that Business
23 Outlook, stating in pertinent part as follows:

24 “At Apollo Education Group, *we are building a diversified global*
25 *network committed to academic excellence and strong student support*, as we
26 work to change lives through higher education,” said Greg Cappelli, Chief
27 Executive Officer, Apollo Education Group. “In a time of transformation,
28 University of Phoenix, our largest subsidiary, is working to become a more
focused, higher retaining and less complex institution. *Our commitment*
across all of our institutions is to deliver world-class experiences and
outcomes, connecting students’ education with their career aspirations, and
helping employers recruit, retain, and develop a highly engaged and
productive workforce.”

Business Outlook

The Company offers the following revised outlook for fiscal year 2015 based on the business trends observed during the third quarter of fiscal year 2015, as well as management’s current expectations of future trends.

- *Net revenue of \$2.60 billion to \$2.62 billion*; and
- *Operating income of \$190 to \$200 million*, excluding the impact of special items.

66. Later that afternoon, defendants Cappelli and D’Amico conducted a conference call with analysts and investors providing additional positive commentary about the Company’s then-present business trends and its strong financial prospects.

67. The statements referenced above in ¶¶43-66 were materially false and misleading because they misrepresented and failed to disclose the following adverse facts, which were known to Defendants or recklessly disregarded by them:

(a) that the University of Phoenix had exposed itself to being accused of violating Exec. Ord. 13607, and thus its 2012 and 2014 DoD MOUs to comply with the law in order to continue its participation in DoD TA programs, through its aggressive enrollment campaigns, by repeatedly paying the military for exclusive access to bases for recruiting purposes; holding recruitment events disguised as résumé workshops on military bases; paying what has been characterized as “incentive pay” to recruiters to recruit on military bases; financially incentivizing entities such as the American Legion to lobby Congress for additional spending on for-profit education; and using military insignias in school marketing without obtaining the required prior permission;

(b) that Apollo had been deriving substantial revenues from the University of Phoenix’s participation in TA programs as a result of its improper recruiting efforts potentially in violation of Exec. Ord. 13607, the 2012 and 2014 DoD MOUs, and DoDI 1322.25 – revenues that it would not have obtained had it not engaged in these aggressive recruitment tactics;

1 (c) that Apollo’s new online classroom platform was not functioning as
2 designed from inception due to software compatibility problems that precluded students from
3 signing on, which was dramatically increasing student drop-out rates;

4 (d) that in addition to repeatedly minimizing the true extent of the software
5 compatibility problems, even when later questioned about them by stock analysts,
6 Defendants were concealing the deleterious impacts being experienced not only on *retention*
7 but on *enrollment*, as Apollo had been forced to cut back on marketing the new online
8 platform while it remained essentially inaccessible to large numbers of potential students;
9 and

10 (e) that as a result of the foregoing, the Company’s ability to maintain its
11 revenues and profits was significantly diminished and the Company was not on track to
12 achieve the results it had led the investment community to expect during the Class Period.

13 **THE FRAUD BEGINS TO BE REVEALED**

14 68. On October 21, 2014, Apollo disclosed that it had “experienced a short-term
15 disruption with the massive student conversion from [the] old online classroom” that had
16 caused a moderate decline in the Company’s reported revenue per student (“RPS”), but
17 thoroughly downplayed the actual impact. In addition to concealing the adverse impact on
18 new student enrollment, Defendants mischaracterized the software compatibility problem as
19 being just “a few bugs and things in the system that are being worked out,” emphasizing that
20 “remediating these issues” was the Company’s “top *near-term* priority” and that “[t]his
21 [was] not a huge part of the student body, by any means.” Defendants equated the online
22 platform transition to the experience of upgrading from an analog phone to an iPhone,
23 stating that RPS would decline a little in the short-term due to the fact that students were
24 attending class fewer nights on the new platform, but promising that RPS would “stabilize as
25 the year moves on.” As intended, Defendants’ strong statements about the Company’s
26 improving enrollment and profitability trends mollified investors and the market took little
27 notice of the issue.

28

1 69. On January 8, 2015, Defendants disclosed that the “conversion to a brand new
2 platform was more challenging than [they] had originally anticipated” and had “resulted in a
3 greater than expected impact on *retention*.” However, they continued to emphasize that the
4 problem was being fixed “as quickly as possible,” stating that Apollo’s “teams ha[d] already
5 made *substantial progress*” and were then “on track with [their] plan to aggressively address
6 the technical issues related to the classroom” and had actually “accelerated the future
7 enhancements,” including “*ensuring the classroom [was] compatible with a broader range*
8 *of browsers and other operating systems at all times*; and that course content *[was] more*
9 *readily accessible* when accessed through third-party providers.” Defendants also stated that
10 “[b]eginning in January,” Apollo had already “started to roll out a focused effort to help
11 bring some of those students impacted by the classroom back into the university.”

12 70. While the price of Apollo stock declined moderately on these disclosures,
13 *falling approximately \$4 per share* on January 8, 2015 to close at \$27.55 per share, due to
14 Defendants’ other more positive statements, including that the Company was experiencing
15 strong ongoing enrollment and profitability trends, the price of Apollo stock remained
16 artificially inflated.

17 71. When, however, Apollo finally disclosed on March 25, 2015 that it had
18 actually “experienced a significant disruption with respect to [the] new online classroom
19 platform” that had not only “adversely impacted retention and reduced the effect of
20 [Apollo’s] retention initiatives over the past year,” but had actually decreased “second
21 quarter *new degreed enrollment*,” Defendants conceded that due to having “an issue that
22 [was] impacting students,” Apollo had not wanted to “spend a whole lot of money on
23 advertising to attract more students into a classroom where there ha[d] been some problems.”
24 As a result, Apollo disclosed that the number of new students registering for courses in the
25 quarter had actually *declined 13%* from the same quarter in 2014, forcing Apollo to cut its
26 annual revenue forecast for the year ending August 31, 2015 down from its prior target of
27 between \$2.74-\$2.8 billion to a new target of between \$2.63-\$2.68 billion.

28

1 72. On this news, the price of Apollo common stock plummeted, *falling*
2 *approximately \$8 per share, or 28%*, to close at \$20.04 per share on unusually high volume
3 of more than 15 million shares traded, or more than 21 times the average daily volume over
4 the preceding ten trading days.

5 73. On June 9, 2015, two former University of Phoenix recruiters, a/k/a “military
6 liaisons,” Marlena Aldrich, a National Defense Liaison (“Aldrich”), and Kristen Nolan, a
7 National Defense Liaison Manager (“Nolan”), filed a class action lawsuit in a Kentucky
8 circuit court against the University of Phoenix alleging that they had been improperly fired.¹
9 The former recruiters alleged that they were both fired during 2014 for failing to adhere to
10 the University of Phoenix’s demands that they lie to recruits and recruit enough service
11 members, alleging in pertinent part that the University of Phoenix “knowingly engages in
12 substantial misrepresentation and other unlawful behavior in the course of its recruitment
13 activities” and “requires and/or directs its military liaisons to engage in substantial
14 misrepresentation or other unlawful behavior in the course [of] their employment as
15 recruiters” under threat of termination, and that the “failure of the military liaison to meet
16 his/her recruitment goal results in termination.”

17 74. Aldrich and Nolan also disclosed that a University of Phoenix resume
18 workshop program, Hiring Our Heroes, was actually a cover designed to skirt the ban on on-
19 base recruiting by permitting University of Phoenix recruiters to recruit on U.S. military
20 bases. They alleged that they were “expressly required to utilize the job fair as a vehicle for
21 recruitment.” Aldrich and Nolan also alleged that they were “required to operate
22 stealthfully,” as they used the job fair “not to aid the soldier/veteran in finding employment
23 as represented but as a tool for surreptitiously obtaining personal information and/or

24
25 ¹ Aldrich was employed at the University of Phoenix from 2007 through January 2013 as
26 an enrollment advisor when she was promoted to National Defense Liaison in the school’s
27 military division, where she was employed through June 2014. Nolan was employed at the
28 University of Phoenix from July 2006 through October 2008 as a corporate liaison, then
promoted in September 2009 to National Defense Liaison Manager where she served
through July 2014.

1 prohibited recruitment activity.” The two plaintiffs alleged that other “high pressure” sales
2 tactics they were forced to employ by the school included a sales ploy called ““poking the
3 pain,”” which entailed intentionally drawing out potential recruits’ deepest insecurities and
4 then using that fear to motivate enrollment in classes. Aldrich alleged the University of
5 Phoenix required that she violate an express ban against recruiting at Ft. Knox, which ban
6 was required as a term of her being allowed on the base for other purposes, and both alleged
7 that the University of Phoenix “carefully tracked the on base recruitment activity of the
8 liaisons even though fully aware that on base recruitment was unauthorized and prohibited.”
9 As an extra enrollment inducement, Aldrich and Nolan alleged they were required to
10 encourage potential recruits to apply for loans above and beyond what was needed to fund
11 their education in order to obtain extra cash to be used for consumer spending.

12 75. On June 30, 2015, the CIR published its exposé entitled “University of Phoenix
13 sidesteps Obama order on recruiting veterans.” The CIR exposé detailed how the University
14 of Phoenix, “the proprietary college that is far and away the largest recipient of taxpayer
15 money under the post-9/11 GI Bill,” was engaging in aggressive recruiting tactics that
16 exposed to being accused of violating Exec. Ord. 13607 and its DoD MOUs by, among other
17 things, paying the military to sponsor hundreds of events on military bases across the
18 country, from rock concerts to Super Bowl parties and father-daughter dances, in order to
19 sidestep the ban on recruiting directly on military bases, engaging in recruitment drives on
20 bases disguised as résumé workshops, paying what was characterized as incentive pay to
21 recruiters working on military bases, cultivating veterans’ organizations through financial
22 inducements to lobby Congress for for-profit education spending, and utilizing military
23 insignias in school marketing without obtaining the required prior permission. Specifically,
24 according to the CIR exposé, the University of Phoenix had:

- 25 • spent an estimated \$250,000 sponsoring an estimated 89 concerts and other
26 large gatherings on military bases over the prior three-year period
(commencing in June 2012) that were essentially large recruiting events;
- 27 • sponsored job fairs and résumé writing workshops on military bases along
28 with the U.S. Chamber of Commerce under the “Hiring Our Heroes” banner

1 during the prior two-year period (commencing June 2013) that were in reality
2 recruiting events;

- 3 • charted, tracked and paid incentive pay to recruiters during at least 2014;
- 4 • engaged in lobbying efforts with the American Legion and other military
5 alumni organizations beginning in October 2013 that were designed to
6 financially induce those institutions to support additional federal funding for
7 for-profit education; and
- 8 • distributed “challenge coins” that improperly used DoD insignias to make it
9 appear that the DoD endorsed the University of Phoenix’s for-profit
10 educational offerings.

11 76. On June 30, 2015, Senator Richard J. Durbin sent a letter to Secretary of
12 Defense Ashton Carter addressing the matters raised in the CIR exposé and asking that the
13 DoD take action, which stated in pertinent part as follows:

14 I am writing to bring to your attention a deeply troubling investigation
15 by the Center for Investigative Reporting published today which documents
16 University of Phoenix’s deceptive marketing practices and its infringement on
17 military trademarks. I am astonished at the Department’s willingness to accept
18 payment for access, in violation of the spirit of Executive Order 13607, and
19 disappointed in the conduct of its personnel, shielding the company from
20 public scrutiny. I urge you to investigate these allegations swiftly and take
21 immediate steps to bar the company from further access to service members
22 until these issues are resolved.

23 The University of Phoenix is a for-profit company that makes much of
24 its money off of service members and veterans, including \$1.2 billion in GI
25 Bill benefits alone since 2009. In return, the company offers degrees of
26 questionable value, below-average graduation rates, and a student loan default
27 rate almost forty percent higher than the national average. As multiple
28 witnesses documented at a March 2013 hearing of the Defense Appropriations
Subcommittee, these profit motives drive many for-profits to engage in
aggressive, deceptive, or abusive marketing and recruiting practices. In
response, the President issued Executive Order 13607 and the Department
issued DoDi 1322.25 to protect service members from abuse.

It is clear from the article that the Department has not taken this threat
or its own regulations seriously. According to the Center for Investigative
Reporting (CIR), the company has evaded these regulations through paid
sponsorship of briefings and events on military installations across the
country. When a CIR reporter asked about these activities at an October
concert featuring one of the company’s recruiters on stage, a military public
affairs officer removed the reporter from the base. While the article cites \$1
million of paid event sponsorships at five military bases in the last five years,
it is not publicly known how pervasive this technique has become.

1 The company has also paid an undisclosed sum to have its staff serve as
2 the exclusive resume advisors in Hiring Our Heroes job fairs and workshops,
3 many on military bases. A CIR hidden camera documents that all of the
4 resume workshop materials, presentation slides, and sample successful
5 resumes are labeled with University of Phoenix marketing, and trainers urge
attendees to go to their website for additional information. Documents
obtained by CIR show these actions are part of a concerted strategy of stealth
recruiting by the company to evade Department scrutiny.

6 Finally, the company also appears to be distributing a mock military
7 challenge coin on bases carrying the official seals of the Department of
8 Defense and every branch of the military alongside its company logo. A
military spokesperson indicated that the Department had not given permission
for the use of its trademark.

9 In light of this deeply troubling series of allegations, I request that you
take the following steps:

- 10 1) Investigate whether the company's conduct violates its
11 memorandum of understanding (MOU) with the Department.
- 12 2) Suspend the company from participating in Department of Defense
13 voluntary military education programs until that investigation
14 concludes.
- 15 3) Investigate and prosecute the company for its infringement of
16 Department of Defense trademarks through its mock "challenge
17 coins."
- 18 4) Halt the company's access to military personnel through the Hiring
Our Heroes job fair program.
- 19 5) Issue corrective guidance to all base commanders to bar the
company from *any* further access to military bases until these
matters are resolved.

20 (Emphasis in original.)

21 77. Also on June 30, 2015, the Company issued a release responding to the CIR
22 exposé and Senator Durbin's June 30, 2015 letter, entitled "University of Phoenix has
23 unconditionally and unilaterally supported the President's Executive Order 13607 of 2012,"
24 in which Apollo adamantly refuted the CIR exposé's findings, defended its Hiring Our
25 Heroes program and claimed to be in full compliance with all DoD regulations, maintaining
26 that the University of Phoenix had "unconditionally and unilaterally supported the
27 President's Executive Order." The Company also linked the 2012 DoD MOU to the version
28 of the release posted on its online website, stating the Company was in full compliance with
the 2012 DoD MOU.

1 78. Though the price of Apollo Class A common stock fell by \$2.66 per share, or
2 17% on June 30, 2015 on unusually high volume of more than 12.8 million shares traded, or
3 more than five times the average daily volume over the preceding ten trading days, due to
4 Defendants’ adamant refutation of the issues raised in the CIR exposé, the market price of
5 Apollo Class A common stock remained artificially inflated.

6 79. Thereafter, on July 24, 2015, the *PBS News Hour* presented an exposé entitled
7 “Are for-profit universities taking advantage of veterans?” based on the CIR exposé and
8 investigation. The *PBS News Hour* exposé opened showing President Obama’s address at
9 Fort Stewart, Georgia on April 26, 2012, where he announced that he was signing Exec. Ord.
10 13607 and stating that it would stop for-profit schools from taking advantage of service
11 members and veterans: “They are trying to swindle and hoodwink you. And, today, here at
12 Fort Stewart, *we’re putting an end to it.*” The *PBS* commentator explained that the
13 President was responding to reports that for-profit colleges enjoyed virtually unrestricted
14 access to U.S. military bases, where they enrolled new students and profited from taxpayer
15 money, and stated that Exec. Ord. 13607 placed restrictions on for-profit schools designed to
16 prohibit deceptive recruitment practices. Flashing back to Obama’s April 26, 2012 speech,
17 the *PBS* exposé quoted the President stating: “We’re going to up our oversight of improper
18 recruitment practices. We’re going to strengthen the rules about who can come on post and
19 talk to service members.” On the *PBS News Hour*, reporter Aaron Glantz went on to detail
20 the Company’s violations of Exec. Ord. 13607, stating in pertinent part as follows:

21 Under President Obama’s 2012 order, schools are allowed to recruit on base
22 only as part of official regulated education activities.

23 Documents from five military bases obtained using the Freedom of
24 Information Act show the University of Phoenix sponsored events that had
25 little to do with education, hundreds of events over the last five years. The
26 question remains, was the University of Phoenix recruiting at these events?

27 At the five bases we looked at, it paid the military about a million
28 dollars for this access. The investment is dwarfed by the \$345 million in G.I.
Bill money it received last year, and, according to the Department of Veterans
Affairs, which oversees the program, more than \$1.2 billion since 2009, when
the new GI Bill went into effect.

1 80. The *PBS News Hour* exposé also addressed allegations that the University of
2 Phoenix had been producing a coin that its representatives were handing out on military
3 bases that improperly included the insignias of every branch of the service on one side and
4 the University of Phoenix logo on the other:



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15 Quoting Robert Muth, a former officer in the Marine Corps, the exposé went on to explain
16 that “[t]here’s a long tradition within the military of commanders providing challenge coins
17 to individual troops who’ve done something great. If I’m a 19-year-old lance corporal and I
18 see that coin, I assume the Department of Defense has viewed and vetted that organization
19 and approved them in some way to provide me with an education.” Reporter Aaron Glantz
20 explained that they had found that the University of Phoenix was using the military insignias
21 without authorization.

22
23 81. The *PBS News Hour* exposé also detailed that certain internal “documents
24 show the University of Phoenix ha[d] been tracking recruitment numbers on military bases,
25 including at job fairs and entertainment events, where recruiting is supposed to be banned by
26 military regulations.” It also emphasized that “even as the University of Phoenix lost half its
27 students amid scrutiny from Congress and the media, the number of Iraq and Afghanistan
28 veterans using the G.I. Bill there tripled.”

1 82. On this news, the market price of Apollo Class A common stock continued
2 declining, closing down at \$13.42 per share on July 24, 2015.

3 83. As the market learned of additional regulatory inquiries, including that on July
4 29, 2015 Apollo had received a Civil Investigative Demand from the FTC relating to an
5 “investigation [of potential] deceptive or unfair acts or practices in or affecting commerce in
6 the advertising, marketing, or sale of secondary or postsecondary educational products or
7 services or educational accreditation products or services” seeking documentation dating
8 back to January 1, 2011, and that on August 7, 2015 Apollo had “received an Investigative
9 Subpoena from the Office of the Attorney General of the State of California” relating to “the
10 business and practices of [the] University of Phoenix, Inc., relating to members and former
11 members of the U.S. military and California National Guard, including marketing, recruiting,
12 billing, financial aid, accommodation and other services for military personnel, compliance
13 with Executive Order 13607 . . . , and use of U.S. military logos and emblems in marketing,”
14 seeking documentation dating back to July 1, 2010, the price of Apollo Class A common
15 stock continued declining, reaching an intraday low of \$10.20 per share by August 24, 2015.

16 84. On October 5, 2015, Apollo announced that defendant D’Amico was resigning
17 as interim CFO and would be replaced by defendant Iverson.

18 85. On October 7, 2015, the DoD placed the University of Phoenix on probation,
19 barring it from recruiting on military bases, preventing troops who were not already enrolled
20 from using federal funds for its classes and threatening a permanent termination from the TA
21 program. The DoD’s October 7, 2015 letter to the University of Phoenix stated in pertinent
22 part as follows:

23 On June 20, 2014, William Pepicello, President of the University of
24 Phoenix, signed the Department of Defense (DoD) Voluntary Education
25 Partnership Memorandum of Understanding (DoD MOU). In response to
26 allegations published by the Center for Investigative Reporting on June 30,
27 2015 (*see* [https://www.revealnews.org/article/university-of-phoenix-sidesteps-
28 obama-order-on-recruiting-veterans/](https://www.revealnews.org/article/university-of-phoenix-sidesteps-obama-order-on-recruiting-veterans/)), the Department has conducted a review
of the agreements between the University of Phoenix and the DoD, as
reflected in the DoD MOU. This review revealed several violations of the
DoD MOU attributed to the University of Phoenix, including, but not limited
to, transgression of Defense Department policies regarding use of its official
seals or other trademark insignia and failure to go through the responsible

1 education advisor for each business related activity requiring access to the
2 DoD installations identified in the aforementioned article (i.e., Navy
3 Operational Support Center, Fort Worth, TX; Fort Bragg, NC; Fort Carson,
4 CO; Fort Hood, TX; and Fort Campbell, KY). Although the University of
Phoenix has responded to these infractions with appropriate corrective action
at this time, the frequency and scope of these previous violations of the DoD
MOU is disconcerting.

5 Now it has come to our attention that the University of Phoenix is under
6 review by both the Federal Trade Commission (FTC) and the California State
7 Attorney General. University of Phoenix, Inc. is a wholly-owned subsidiary of
8 The Apollo Education Group, Inc., which on July 29, 2015 filed a Form 8-K
9 Report with the United States Securities and Exchange Commission noting
10 that it received a Civil Investigative Demand from the FTC, which requested
11 documentation to determine if the University of Phoenix “. . . engaged or are
12 engaging in deceptive or unfair practices in or affecting commerce in the
13 advertising, marketing, or sale of secondary or postsecondary educational
14 products or services or education accreditation products or services.” The
15 Apollo Education Group, Inc. also disclosed that the California State Attorney
General issued an investigative subpoena requiring it to turn over information
“relating to members and former members of the U.S. military and California
National Guard, including marketing, recruiting, billing, financial aid,
accommodation and other services for military personnel.” The information
requested dates back to July 1, 2010 regarding the University of Phoenix’s use
of U.S. military logos and emblems in marketing and its compliance with
Executive Order 13607, “Establishing Principles of Excellence for Educational
Institutions Servicing Service Members, Veterans, Spouses, and Other Family
Members.”

16 The allegations associated with these inquiries, if substantiated, would
17 violate several additional provisions of the University of Phoenix MOU with
18 DoD, specifically, but not limited to: section 3a(2), for failing to comply with
19 governing Federal law and the requirements set forth in the DoD MOU; and
20 section 3j and its subsections, which seek to eliminate unfair, deceptive and
abusive marketing. Further, while we note that you are a participating member
in Servicemembers Opportunity Colleges (SOC), the allegations also raise a
concern regarding the University of Phoenix’s adherence to SOC Principles
and Criteria and the Military Student Bill of Rights, as required by section
3m(l) of the DoD MOU.

21 Please be advised that, as of the date of this letter, we have placed the
22 University of Phoenix in probationary status and we are considering whether
23 to terminate our MOU with you pursuant to paragraphs 1.r(1) and 6(f) of the
24 MOU. Such termination would preclude your participation in the DoD Tuition
25 Assistance (TA) program. While in a probationary status, and with a view to
26 minimizing harm to students, the University of Phoenix will be permitted to
27 “teach-out.” This means that a current University of Phoenix student receiving
28 DoD TA will be permitted to complete courses already in progress and enroll
in new courses deemed to be part of that student’s established academic
program. However, other than as required to complete the “teach-out” process
for current students, the University of Phoenix will not be authorized access to
DoD installations for the purposes of participating in any recruitment-type
activities, including but not limited to job training, and career events and fairs.
Further, no new or transfer students at your institution will be permitted to
receive DoD TA.

1 86. Beyond losing the TA revenues derived from new military admissions at the
2 University of Phoenix, as a result of the ban on participation in the DoD's TA program,
3 Apollo also faced having to address the implications of the ban on its ability to comply with
4 the federal 90/10 rule mandate. The 9/10 rule expressly prohibits for-profit colleges from
5 deriving more than 90% of their revenue from federal student aid. Military funds are not
6 counted as federal student aid. So the University of Phoenix would now be faced with
7 confronting two issues simultaneously: how to attract students who are not paying with
8 federal funding now that it cannot actively recruit military personnel, and how to ensure it
9 does not breach its 90/10 threshold with regards to the rest of its tuition funding.

10 87. On October 9, 2015, *The Wall Street Journal* disclosed that the DoJ and DoE
11 were coordinating ongoing investigations of the University of Phoenix's aggressive
12 recruitment practices.

13 88. As the market learned of and incorporated the disclosures made between
14 Wednesday, October 7, 2015 and Friday October 9, 2015 into the stock price, the price of
15 Apollo Class A common stock declined further, falling from a close of \$11.78 per share on
16 October 7, 2015 to a close of \$10.52 per share on Monday, October 12, 2015.

17 89. Then on October 22, 2015, before the open of trading, Apollo announced its
18 4Q 2015 and FY 2015 financial results for the year ended August 31, 2015. New enrollment
19 at the University of Phoenix had fallen by nearly one-third in the quarter and total enrollment
20 was almost 20% lower than in the same period in 2014. Rather than the \$621 million in
21 revenues the Company had led the investment community to expect, revenues **declined 14%**
22 to \$600.29 million compared to 4Q 2014. Rather than the **net profit** of \$0.18 per share the
23 Company had led investors to expect, Apollo reported a **net loss** of \$10.2 million, or \$0.09
24 per share. For its recently started fiscal year, the Company projected revenues of just \$2.18
25 billion to \$2.23 billion, well below estimates of analysts polled by *Thomson Reuters* for
26 \$2.24 billion.

27 90. During the conference held with investors and analysts later that day,
28 commenting on what had negatively impacted the Company's 4Q 2015 revenues, and

1 specifically referencing the “current regulatory environment,” defendant Cappelli
2 emphasized that Apollo was “dealing with a number of recent issues.” He further stated in
3 pertinent part that the Company had “redoubled [its] commitment to ethics, compliance, and
4 student protections,” specifically having “increased transparency around the cost of college”
5 and “promoting affordability with University of Phoenix tuition fees,” which he claimed
6 were then “reported below the national average for private schools.” Defendant Cappelli
7 also conceded that while “[n]o institution [was] completely insulated from mistakes,” “when
8 [Apollo] identif[ied] or [was] alerted to them, [the Company had] fix[ed] them.” Defendant
9 Cappelli further stated that “[t]he actions that [he had] updated . . . on [that]day as well as
10 external factors *[would] put pressure on new student enrollment, revenue and operating*
11 *margin in fiscal year 2016.*” Speaking directly to how the ban on participating in the
12 military TA programs would impact revenues and profits going forward, defendant Cappelli
13 stated in pertinent part as follows:

14 Our 2016 outlook, based on our current view, includes net revenue of \$2.18 to
15 \$2.23 billion and operating profit of \$115 million to \$140 million. We
16 continue to anticipate ending fiscal year 2016 with about 150,000 students at
University of Phoenix and beginning to stabilize in 2017.

17 As we committed last quarter, to offset this decline in enrollment, we
18 are in the process of taking appropriate cost actions to better align our costs
19 with expected revenue until retention begins to improve and enrollment
20 stabilizes. Over the next three to five years, we are targeting a consolidated
operating margin of 15% to 20%. *While we are working to ensure we have*
the ability to continue to serve active duty military students, our new outlook
range does include some impact from the recent Department of Defense
action, as we can’t be certain as to the timing of reinstatement.

21 91. On this news, the price of Apollo Class A common stock plummeted even
22 further, closing down **\$3.67** per share – or *more than 33%* – from a close of \$10.86 per share
23 on October 21, 2015 to a close of \$7.19 per share on October 22, 2015, on unusually high
24 volume of more than 14.2 million shares traded, or approximately eight times the average
25 daily volume over the prior seven trading days.

26 92. As a result of Apollo’s false statements during the Class Period, Apollo Class
27 A common stock traded at artificially inflated prices. However, after the above revelations,
28 the Company’s shares were hammered by massive sales, sending them down approximately

1 **80%** from their Class Period high – nearly **\$29** per share – and erasing **more than \$3 billion**
2 in market capitalization.

3 93. In early January 2016, Apollo was rumored to be putting itself up for sale.

4 94. On January 11, 2016, the Company issued a release announcing its results for
5 the quarter ended November 30, 2015. Revenue for 1Q 2016 was \$586 million, down
6 substantially from 1Q 2015 revenues of \$714 million. Apollo reported an operating *loss* for
7 1Q 2016 of \$45.2 million, compared to operating *income* of \$64.2 million for 1Q 2015.
8 Excluding special items, income from continuing operations in 1Q 2016 was \$31.3 million,
9 down 37% from the \$49.9 million reported in 1Q 2015. The Company blamed a shrinking
10 number of campuses, layoffs and tumbling enrollment. The release quoted defendant
11 Cappelli as stating, in pertinent part, that “Apollo [was] taking the necessary steps to
12 enhance long-term shareholder value through a series of strategic actions which include
13 transforming University of Phoenix into a higher retaining, more trusted provider of career
14 relevant higher education,” and that “implementing major components of its transformational
15 plan as quickly as possible . . . [was] having a near-term negative impact on revenue.”

16 95. On January 15, 2016, the Company filed a Current Report on Form 8-K with
17 the SEC disclosing that the “University of Phoenix, Inc., was notified by the U.S.
18 Department of Defense (‘DoD’) that the University’s probationary status in respect of its
19 participation in the DoD Tuition Assistance Program for active duty military personnel ha[d]
20 been lifted, effective immediately,” stating that the “Department determined that the removal
21 of probationary status was warranted based on the Department’s internal review, the
22 University’s response to the Department’s concerns, and the active engagement and
23 cooperation by representatives of the University.” However, the Company also disclosed
24 that the University of Phoenix would remain “subject to a heightened compliance review for
25 a period of one-year following the removal of probationary status” and that “[d]uring this
26 period, the University [would] continue to engage with the Department and complete the
27 production of information and documents previously requested by the Department” and
28 would “be subject to an enhanced compliance review in fiscal year 2017.”

1 Apollo who knew that the FLS was false. In addition, the FLS were contradicted by
 2 existing, undisclosed material facts that were required to be disclosed so that the FLS would
 3 not be misleading. Finally most of the purported “Safe Harbor” warnings were themselves
 4 misleading because they warned of “risks” that had already materialized or failed to provide
 5 meaningful disclosures of the relevant risks.

6 **ADDITIONAL SCIENTER ALLEGATIONS**

7 100. As alleged herein, Defendants acted with scienter in that they knew that the
 8 public documents and statements issued or disseminated in the name of the Company were
 9 materially false and misleading; knew that such statements or documents would be issued or
 10 disseminated to the investing public; and knowingly and substantially participated or
 11 acquiesced in the issuance or dissemination of such statements or documents as primary
 12 violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants,
 13 by virtue of their receipt of information reflecting the true facts regarding Apollo, their
 14 control over, and/or receipt or modification of Apollo’s allegedly materially misleading
 15 misstatements and/or their associations with the Company which made them privy to
 16 confidential proprietary information concerning Apollo, participated in the fraudulent
 17 scheme alleged herein.

18 101. Additionally, with the price of Apollo stock artificially inflated due to their
 19 false and misleading statements, certain of the Individual Defendants and John Sperling
 20 cashed in, selling more than 1.4 million shares to the investing public at fraud-inflated prices
 21 and receiving almost \$42 million in proceeds as follows:

22 SELLER	DATE	SHARES SOLD	PRICE	PROCEEDS
23 Iverson	29-Jan-2014	1.195	\$31.74	\$37.929
	24 23-Apr-2014	1.196	\$28.46	\$34.038
	23-Jul-2014	1.392	\$29.15	\$40.577
	25 22-Oct-2014	1.373	\$26.77	\$36.755
	26 02-Jan-2015	6,667	\$33.50	\$223,345
		<u>11.823</u>		<u>\$372,644</u>

1	Swartz	10-Jan-2015	50,500	\$30.49	<i>\$1,539,745</i>
2					
3	Peter Sperling	28-Oct-2013	100,000	\$27.83	<i>\$2,783,000</i>
4	John Sperling	25-Oct-2013	1,555	\$28.44	\$44,224
5		25-Oct-2013	248,445	\$27.69	\$6,879,442
6		28-Oct-2013	250,000	\$27.83	\$6,957,500
7		10-Jan-2014	100,000	\$30.39	\$3,039,000
8		04-Apr-2014	35,000	\$31.90	\$1,116,500
9		04-Apr-2014	500,000	\$31.87	\$15,935,000
10		11-Aug-2014	120,000	\$26.65	\$3,198,000
11			<u>1,255,000</u>		<u><i>\$37,169,666</i></u>
12	<i>Totals</i>		<i>1,417,323</i>		<i>\$41,865,055</i>

102. These sales were unusual both as to scope and timing when compared to Defendants' previous stock sales. Indeed, on April 9, 2012, just as President Obama prepared to sign Exec. Ord. 13607, the Company disclosed that it had increased its Class A common share repurchase program to \$300 million. The Company stated that in addition to open-market purchases, the Company could purchase shares through "privately negotiated transactions pursuant to applicable Securities and Exchange Commission rules," which it said "may include repurchases pursuant to Securities and Exchange Commission Rule 10b5-1 nondiscretionary trading programs," permitting Apollo to purchase shares from its senior executives and directors.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:
FRAUD-ON-THE-MARKET DOCTRINE**

103. At all relevant times, the market for Apollo's common stock was an efficient market for the following reasons, among others:

(a) Apollo's stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As of October 15, 2015, the Company had more than 107.9 million shares of its Class A common stock issued and outstanding. During the Class Period, on average, more than 2 million shares of Apollo Class A common stock were traded on a daily

1 basis, demonstrating a very active and broad market for Apollo stock and permitting a very
2 strong presumption of an efficient market;

3 (c) Apollo claims to be qualified to file the less comprehensive Form S-3
4 registration statement with the SEC that is reserved, by definition, to well-established and
5 largely capitalized issuers for whom less scrutiny is required;

6 (d) as a regulated issuer, Apollo filed periodic public reports with the SEC;

7 (e) Apollo regularly communicated with public investors via established
8 market communication mechanisms, including regular the dissemination of press releases on
9 the national circuits of major newswire services, the Internet and other wide-ranging public
10 disclosures, such as communications with the financial press and other similar reporting
11 services;

12 (f) Apollo was followed by many securities analysts who wrote reports that
13 were distributed to the sales force and certain customers of their respective firms during the
14 Class Period. Each of these reports was publicly available and entered the public
15 marketplace;

16 (g) numerous National Association of Securities Dealers member firms
17 were active market-makers in Apollo stock at all times during the Class Period; and

18 (h) unexpected material news about Apollo was rapidly reflected in and
19 incorporated into the Company's stock price during the Class Period.

20 104. As a result of the foregoing, the market for Apollo common stock promptly
21 digested current information regarding Apollo from publicly available sources and reflected
22 such information in Apollo's stock price. Under these circumstances, all purchasers of
23 Apollo common stock during the Class Period suffered similar injury through their purchase
24 of Apollo common stock at artificially inflated prices, and a presumption of reliance applies.

25 **LOSS CAUSATION**

26 105. During the Class Period, as detailed herein, Defendants made false and
27 misleading statements and omitted material information concerning Apollo's business
28 fundamentals and engaged in a scheme to deceive the market. Defendants knowingly

1 **COUNT I**

2 **For Violation of §10(b) of the 1934 Act**
3 **and Rule 10b-5 Against All Defendants**

4 110. Plaintiff repeats and realleges the above paragraphs as though fully set forth
5 herein.

6 111. Throughout the Class Period, Defendants, in pursuit of their scheme and
7 continuous course of conduct to inflate the market price of Apollo common stock, had the
8 ultimate authority for making, and knowingly or recklessly made, materially false or
9 misleading statements or failed to disclose material facts necessary to make the statements
10 made, in light of the circumstances under which they were made, not misleading.

11 112. During the Class Period, Defendants, and each of them, carried out a plan,
12 scheme, and course of conduct using the instrumentalities of interstate commerce and the
13 mails, which was intended to and, throughout the Class Period did: (a) artificially inflate and
14 maintain the market price of Apollo Class A common stock; (b) deceive the investing public,
15 including plaintiff and other Class members, as alleged herein; (c) cause plaintiff and other
16 members of the Class to purchase Apollo Class A common stock at inflated prices; and (d)
17 cause them losses when the truth was revealed. In furtherance of this unlawful scheme, plan
18 and course of conduct, Defendants, and each of them, took the actions set forth herein, in
19 violation of §10(b) of the 1934 Act and Rule 10b-5, 17 C.F.R. §240.10b-5. All Defendants
20 are sued either as primary participants in the wrongful and illegal conduct charged herein or
21 as controlling persons as alleged below.

22 113. In addition to the duties of full disclosure imposed on Defendants as a result of
23 their affirmative false and misleading statements to the investing public, Defendants had a
24 duty to promptly disseminate truthful information with respect to Apollo's operations and
25 performance that would be material to investors in compliance with the integrated disclosure
26 provisions of the SEC, including with respect to the Company's revenue and earnings trends,
27 so that the market price of the Company's securities would be based on truthful, complete
28

1 and accurate information. SEC Regulations S-X (17 C.F.R. §210.01, *et seq.*) and S-K (17
2 C.F.R. §229.10, *et seq.*).

3 114. Defendants had actual knowledge of the misrepresentations and omissions of
4 material facts set forth herein or acted with reckless disregard for the truth in that they failed
5 to ascertain and disclose such facts, even though such facts were either known or readily
6 available to them.

7 115. As a result of the dissemination of the materially false and misleading
8 information and failure to disclose material facts as set forth above, the market price of
9 Apollo Class A common stock was artificially inflated during the Class Period. In ignorance
10 of the fact that the market price of Apollo Class A common stock was artificially inflated,
11 and relying directly or indirectly on the false and misleading statements made knowingly or
12 with deliberate recklessness by Defendants, or upon the integrity of the market in which the
13 shares traded, plaintiff and other members of the Class purchased Apollo Class A common
14 stock during the Class Period at artificially high prices and, when the truth was revealed,
15 were damaged thereby.

16 116. Had plaintiff and the other members of the Class and the marketplace known of
17 the true facts, which were knowingly or recklessly concealed by Defendants, plaintiff and the
18 other members of the Class would not have purchased their Apollo Class A common stock
19 during the Class Period, or if they had acquired such shares during the Class Period, they
20 would not have done so at the artificially inflated prices that they paid.

21 117. By virtue of the foregoing, Defendants have violated §10(b) of the 1934 Act
22 and Rule 10b-5 promulgated thereunder. 17 C.F.R. §240.10-5.

23 **COUNT II**

24 **For Violation of §20(a) of the 1934 Act**
25 **Against the Individual Defendants**

26 118. Plaintiff repeats and realleges the above paragraphs as though fully set forth
27 herein.

28

