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19 Counsel for Plaintiff

20 **IN THE UNITED STATES DISTRICT COURT**  
21 **FOR THE DISTRICT OF ARIZONA**

22 JOHN T. FITCH, individually and on behalf  
23 of all other similarly situated,

24 Plaintiff,

25 vs.

26 APOLLO GROUP, INC., an Arizona  
27 corporation; JOHN SPERLING, an individual;  
28 GREGORY W. CAPPELLI, an individual;  
CHARLES B. EDELSTEIN, an individual;  
GREGORY J. IVERSON, an individual;  
JOSEPH L. D'AMICO, an individual; and  
BRIAN L. SWARTZ, an individual,

Defendants.

Case No.

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMAND**

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1 **INTRODUCTION**

2 This is a federal class action on behalf of purchasers of the common stock of  
3 Apollo Group, Inc. (“Apollo” or the “Company”) between December 7, 2009, and  
4 August 3, 2010, inclusive (the “Class Period”), seeking to pursue remedies under the  
5 Securities Exchange Act of 1934 (the “Exchange Act”). As alleged herein, defendants  
6 published a series of materially false and misleading statements which defendants knew  
7 and/or deliberately disregarded were false and materially misleading at the time of such  
8 publication, and which omitted to reveal material information necessary to make  
9 defendants’ statements, in light of such material omissions, not materially false and  
10 misleading.

11 **OVERVIEW**

12  
13 1. Throughout the Class Period, Apollo purported to provide various “for-  
14 profit” educational programs and services at the undergraduate, graduate, and doctoral  
15 levels, offering associate’s, bachelor’s, master’s, and doctoral degree programs in arts  
16 and sciences, business and management, criminal justice and security, education, human  
17 services, health care, psychology, technology, and nursing. The Company operated  
18 campus locations and learning centers in 39 states, the District of Columbia, and Puerto  
19 Rico, as well as through an online educational delivery system. The Company’s flagship  
20 school was The University of Phoenix.

21 2. Throughout the Class Period, defendants issued a series of materially false  
22 and misleading statements regarding the operations, growth and foreseeable profitability  
23 of Apollo. During this time, defendants announced purported strong financial  
24 performance and forecasted stable and predictable revenue growth.

25 3. However, the positive statements regarding the Company’s operational  
26 performance and future growth projections made by defendants and contained in the  
27 Company’s press releases and SEC filings, made throughout the Class Period, were each  
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1 materially false and misleading when made, and were known by defendants to be false or  
2 were recklessly disregarded as such thereby, for the following reasons, among others:

- 3 • At all times during the Class Period, it was not true that the Company's  
4 purported success was the result of defendants' competent management  
5 when, in fact, throughout the Class Period, defendants had propped up the  
6 Company's results by fraudulently inducing students to enroll in Apollo's  
7 scholastic and educational programs and engaged in other manipulative  
8 recruiting tactics which defendants knew, or recklessly disregarded, could  
9 not be maintained.
- 7 • At all times during the Class Period, unbeknownst to investors, defendants  
8 had materially overstated the Company's growth prospects by failing to  
9 properly disclose that defendants had engaged in illicit and improper  
10 recruiting activities, which also had the effect of artificially inflating the  
11 Company's reported results and future growth prospects.
- 10 • During that time, it was also not true that Apollo contained adequate  
11 systems of internal operational or financial controls, such that Apollo's  
12 reported operational statements and foreseeable growth prospects were true,  
13 accurate or reliable.
- 12 • As a result of the aforementioned adverse conditions which defendants  
13 failed to disclose, throughout the Class Period, defendants lacked any  
14 reasonable basis to claim that Apollo was operating according to plan, or  
15 that Apollo could achieve guidance sponsored and/or endorsed by  
16 defendants.

15 4. Defendants were motivated to materially misrepresent to the SEC and  
16 investors the true financial condition of the Company because: (i) it deceived the  
17 investing public regarding Apollo's business, operations, management and the intrinsic  
18 value of Apollo common stock; (ii) it enabled defendants to artificially inflate the price of  
19 Apollo shares; (iii) it enabled Apollo insiders to sell over \$46 million dollars of their  
20 privately held Apollo shares while in possession of material adverse non-public  
21 information about the Company; and (iv) it caused plaintiff and other members of the  
22 Class to purchase Apollo common stock at artificially inflated prices.

23 5. It was only beginning on August 3, 2010, however, that investors began to  
24 learn the truth about Apollo's operations and that the Company could no longer  
25 foreseeably maintain its growth expectations or meet guidance sponsored and endorsed  
26 by defendants, and after the General Accounting Office of the United States of America  
27 ("GAO") issued a report that concluded that for-profit educational institutions like Apollo  
28

1 had engaged in an illegal and fraudulent course of action designed to deceptively recruit  
2 students and over-charge the federal government for the cost of such education.  
3 Following these disclosures, Apollo shares declined almost 10% between August 3 and  
4 August 5, 2010, on unusually high trading volume, thereby eradicating over \$684.53  
5 million of the Company's market capitalization in only four trading days.

6 6. The damages and losses suffered by plaintiff and other class members were  
7 a direct result of defendants' fraudulent scheme to artificially inflate the price of Apollo's  
8 stock, and the subsequent significant decline in the value of the Company's shares when  
9 defendants' prior misstatements and fraudulent conduct was revealed.

10 **JURISDICTION AND VENUE**

11 7. The claims asserted herein arise under and pursuant to Sections 10(b) and  
12 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated  
13 thereunder by the United States Securities and Exchange Commission ("SEC") [17  
14 C.F.R. § 240.10b-5].

15 8. This Court has jurisdiction over the subject matter of this action pursuant to  
16 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

17 9. Venue is proper in this District pursuant to Section 27 of the Exchange Act,  
18 and 28 U.S.C. § 1391(b). Apollo maintains its principal place of business in this District  
19 and many of the acts and practices complained of herein occurred in substantial part in  
20 this District.

21 10. In connection with the acts alleged in this complaint, defendants, directly or  
22 indirectly, used the means and instrumentalities of interstate commerce, including, but  
23 not limited to, the mails, interstate telephone communications and the facilities of the  
24 national securities markets.

25 **PARTIES**

26 11. Plaintiff John T. Fitch, as set forth in the accompanying certification,  
27 incorporated by reference herein, purchased the common stock of Apollo at artificially  
28 inflated prices during the Class Period and has been damaged thereby.

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1           12. Defendant APOLLO GROUP, INC., is an Arizona corporation with its  
2 principal place of business at located at 4025 South Riverpoint Parkway, Phoenix,  
3 Arizona 85040. According to the Company’s profile, throughout the Class Period, Apollo  
4 purported to provide various “for-profit” educational programs and services at the  
5 undergraduate, graduate, and doctoral levels, offering associate’s, bachelor’s, master’s,  
6 and doctoral degree programs in arts and sciences, business and management, criminal  
7 justice and security, education, human services, health care, psychology, technology, and  
8 nursing. The Company operated campus locations and learning centers in 39 states, the  
9 District of Columbia, and Puerto Rico, as well as through online educational delivery  
10 system.

11           13. Defendant JOHN SPERLING (“Sperling”) was, during the relevant period,  
12 the Founder and Executive Chairman of the Company. During the Class Period, Sperling  
13 assisted in the oversight or preparation of Apollo’s SEC filings, including but not limited  
14 to Apollo’s Form(s) 10-Q.

15           14. Defendant JOSEPH L. D’AMICO (“D’Amico”) was, during the Class  
16 Period, President and Chief Operating Officer of the Company. During the Class Period,  
17 defendant D’Amico assisted in the preparation and certified the Company’s SEC filings,  
18 including but not limited to Apollo’s Form(s) 10-Q.

19           15. Defendant GREGORY W. CAPPELLI (“Cappelli”) was, during the Class  
20 Period, Co-Chief Executive Officer and a Director of the Company and Chairman of  
21 Apollo Global Inc. During the Class Period, defendant Cappelli assisted in the  
22 preparation and certified the Company’s SEC filings, including but not limited to  
23 Apollo’s Form(s) 10-Q.

24           16. Defendant CHARLES B. EDELSTEIN (“Edelstein”) was, during the Class  
25 Period, Co-Chief Executive Officer of the Company. During the Class Period, defendant  
26 Edelstein assisted in the preparation and certified the Company’s SEC filings, including  
27 but not limited to Apollo’s Form(s) 10-Q.  
28

1 17. Defendant BRIAN L. SWARTZ (“Swartz”) was, during the Class Period,  
2 Chief Financial Officer and the Senior Vice President of Finance for the Company.  
3 During the Class Period, defendant Swartz assisted in the preparation and signed and  
4 certified the Company’s SEC filings, including but not limited to Apollo’s Form(s) 10-Q.

5 18. Defendant GREGORY J. IVERSON (“Iverson”) was, during the Class  
6 Period, Chief Accounting Officer, Vice President and Controller of the Company. During  
7 the Class Period, defendant Iverson assisted in the preparation and signed the Company’s  
8 SEC filings, including but not limited to Apollo’s Form(s) 10-Q.

9 19. The defendants referenced above in ¶¶ 13-18 are referred to herein as the  
10 “Individual Defendants.”

11 20. Because of the Individual Defendants’ positions with the Company, they  
12 had access to the adverse undisclosed information about its business, operations,  
13 products, operational trends, financial statements, markets, and present and future  
14 business prospects via access to internal corporate documents (including the Company’s  
15 operating plans, budgets and forecasts and reports of actual operations compared thereto),  
16 conversations and connections with other corporate officers and employees, attendance at  
17 management and Board of Directors meetings and committees thereof and via reports and  
18 other information provided to them in connection therewith. The Individual Defendants  
19 participated in the drafting, preparation, and/or approval of the various public and  
20 shareholder and investor reports and other communications complained of herein and  
21 were aware of, or deliberately disregarded, the misstatements contained therein and  
22 omissions therefrom, and were aware of their materially false and misleading nature.

23 21. As officers and controlling persons of a publicly-held company whose  
24 common stock was, and is, registered with the SEC pursuant to the Exchange Act, and  
25 was traded on the Nasdaq National Market Exchange (the “Nasdaq”), and governed by  
26 the provisions of the federal securities laws, the Individual Defendants each had a duty  
27 promptly to disseminate accurate and truthful information with respect to the Company’s  
28 financial condition and performance, growth, operations, financial statements, business,

1 products, markets, management, earnings, and present and future business prospects, and  
2 to correct any previously-issued statements that had become materially misleading or  
3 untrue, so that the market price of the Company's publicly-traded common stock would  
4 be based upon truthful and accurate information. The Individual Defendants'  
5 misrepresentations and omissions during the Class Period violated these specific  
6 requirements and obligations.

7 22. Each of the defendants is liable as a participant in a fraudulent scheme and  
8 course of business that operated as a fraud or deceit on purchasers of Apollo common  
9 stock by disseminating materially false and misleading statements and/or concealing  
10 material adverse facts. The scheme: (i) deceived the investing public regarding Apollo's  
11 business, operations, management and the intrinsic value of Apollo common stock; (ii)  
12 enabled defendants to artificially inflate the price of Apollo shares; (iii) enabled Apollo  
13 insiders to sell over \$46 million dollars of their privately held Apollo shares while in  
14 possession of material adverse non-public information about the Company; and (iv) it  
15 caused plaintiff and other members of the Class to purchase Apollo common stock at  
16 artificially inflated prices.

### 17 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

18 23. Plaintiff brings this action as a class action pursuant to Federal Rule of  
19 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
20 purchased or otherwise acquired the common stock of Apollo between December 7,  
21 2009, and August 3, 2010, inclusive (the "Class") and who were damaged thereby.  
22 Excluded from the Class are defendants, the officers and directors of the Company at all  
23 relevant times, members of their immediate families and their legal representatives, heirs,  
24 successors, or assigns, and any entity in which defendants have or had a controlling  
25 interest.

26 24. The members of the Class are so numerous that joinder of all members is  
27 impracticable. Throughout the Class Period, Apollo common shares were actively traded  
28 on the Nasdaq. As of June 17, 2010, the Company had over 147.05 million Class A and



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1 475,000 Class B shares issued and outstanding. While the exact number of Class  
2 members is unknown to plaintiff at this time and can only be ascertained through  
3 appropriate discovery, plaintiff believes that there are hundreds or thousands of members  
4 in the proposed Class. Record owners and other members of the Class may be identified  
5 from records maintained by Apollo or its transfer agent and may be notified of the  
6 pendency of this action by mail, using the form of notice similar to that customarily used  
7 in securities class actions.

8 25. Plaintiffs' claims are typical of the claims of the members of the Class as all  
9 members of the Class are similarly affected by defendants' wrongful conduct in violation  
10 of federal law that is complained of herein.

11 26. Plaintiff will fairly and adequately protect the interests of the members of  
12 the Class and has retained counsel competent and experienced in class and securities  
13 litigation.

14 27. Common questions of law and fact exist as to all members of the Class and  
15 predominate over any questions solely affecting individual members of the Class.

16 Among the questions of law and fact common to the Class are:

17 (a) whether the federal securities laws were violated by defendants' acts as  
18 alleged herein;

19 (b) whether statements made by defendants to the investing public during the  
20 Class Period misrepresented material facts about the business, operations, and  
21 management of Apollo; and

22 (c) to what extent the members of the Class have sustained damages and the  
23 proper measure of damages.

24 28. A class action is superior to all other available methods for the fair and  
25 efficient adjudication of this controversy since joinder of all members is impracticable.  
26 Furthermore, as the damages suffered by individual Class members may be relatively  
27 small, the expense and burden of individual litigation make it impossible for members of  
28



1 the Class to individually redress the wrongs done to them. There will be no difficulty in  
2 the management of this action as a class action.

3 **SUBSTANTIVE ALLEGATIONS**

4 **Defendants' Materially False and Misleading Statements**

5 29. On December 7, 2009, the first day of the Class Period, Apollo published a  
6 release that announced the purported results of the Company's internal analysis of its  
7 student success, in an acknowledgement of the "need to produce greater accountability  
8 and transparency." This release stated, in part, the following:

9 University of Phoenix Releases Transparent Accounting of Student  
10 Outcomes and Previews Programs for Continuous Improvement

11 Programs for Orientation, a Refined Approach to Introductory Courses and  
12 a Just-in-Time Plan for Remediation Designed to Increase Academic  
13 Attainment for Nontraditional Students

14 PHOENIX, Dec 07, 2009 (BUSINESS WIRE) -- In acknowledgement of  
15 the need to produce greater accountability and transparency throughout  
16 higher education, Apollo Group, Inc. (NASDAQ:APOL) subsidiary  
17 University of Phoenix today announced key findings from its second  
18 Academic Annual Report, demonstrating the University's continued  
19 progress in addressing the challenges facing higher education today and  
20 calling for greater understanding of the country's next generation of  
21 students, who are increasingly different from generations past.  
22 Recognizing the Obama administration's ambitious goals to address the  
23 nation's educated workforce shortage and the economic crisis, the Report  
24 explores how best to serve the growing contingent of talented, hardworking  
25 people who want to better themselves, but find they are shut out of higher  
26 education because of their real-life responsibilities - a group that comprises  
27 73 percent of college students today.

28 \* \* \*

In a comparison of findings between its 2008 and 2009 reports, cautioning  
that two years cannot adequately point to significant trends, University of  
Phoenix reported slightly higher rates of student satisfaction this year over  
last. In the area of information literacy, results showed that scores for  
seniors continued to increase over those reported for freshman at  
approximately the same rate.

University of Phoenix acknowledged a slight decrease in academic progress and progression, although the overall comparison between its students and their contemporaries was comparable because the variance in scores measured by the standard deviation was much greater than the decrease reported this year. Completion rates for the University showed a slight decline - 1 percentage point for associate, 2 percentage points for baccalaureate and 5 percentage points for graduate - in students graduating within 150 percent of the traditional time for degree completion.

\* \* \*

The University is currently exploring possible reasons for the slight decline in completion rates. Specifically, it is examining the demographics of next-generation learners and how this unique student population learns. Important factors in this analysis will include age, previous academic experience, transfer credits and preference for learning modality.

#### Continuous Improvement

In response to data gathered to this point, University of Phoenix has determined specific areas to be addressed, with a focus on programs for orientation, a refined approach to introductory courses and a just-in-time plan for remediation. University Orientation, currently in trial with a small sub-set of the University’s student population, upon introduction will be a three-week, non-credit bearing, free orientation course required for all students entering with fewer than 24 credits prior to their enrollment with the University. The new program is intended to address the skills necessary to be successful at University of Phoenix, and will introduce new students to the format, expectations and requirements of the environment in which they will be learning.

\* \* \*

From there, it is anticipated that all students entering with fewer than 24 credits will be required to take a customized sequence of courses designed to increase retention and promote success for at-risk students. The First-Year Sequence has been designed in four blocks with the student at the center. Each block will build upon, reinforce and recycle the academic skills introduced in the previous blocks. Course content will be interrelated to reinforce content and skill-building mastered in each course, laddering material taught over multiple courses.

\* \* \*

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1 Lastly and also as part of the First-Year Sequence, University of Phoenix is  
2 changing its approach to remediation and instituting a program of  
3 integrative learning, which will provide just-in-time skills on a gradual  
4 basis. This innovative approach will make learning opportunities available  
to students throughout their course of study, not just at the beginning and  
not in an all-in-one, sink-or-swim course.

5 30. The “Key Findings” of the Company’s internal investigation purported to  
6 include, in part, the following:

7 Academic Proficiency and Progress: University of Phoenix uses the  
8 Measure of Academic Proficiency and Progress (MAPP) assessment  
9 developed by the Educational Testing Service (ETS) to help measure  
10 students’ academic proficiency and progress. The MAPP assessment found  
11 that, as a group, the University’s seniors score at comparable levels - with  
12 no significant difference - to students at other institutions in the areas of  
13 general education. Importantly, University of Phoenix students, who enter  
under an open-admissions policy at the undergraduate level, often start out  
with lower test scores in the general education areas, but are able to make  
gains comparable to students at other institutions upon their graduation.

14 Information Literacy: Using the Standardized Assessment of Information  
15 Literacy Skills (SAILS) methodology, University of Phoenix freshmen  
16 score as well or better in all but two of the eight areas measured as  
incoming students at other master’s institutions offering at least  
17 baccalaureate through graduate level programs. The same is true of the  
18 University’s seniors, who compare favorably to students at similar  
19 institutions in all but two areas measured. Importantly, University of  
20 Phoenix seniors score better than its freshmen in each of the literacy  
21 competencies measured. The percentage of improvement for the  
University’s freshmen and seniors is comparable to that of the improvement  
for like groups in the national survey.

22 Completion Rates: While University of Phoenix’s degree completion rate is  
23 assessed by the federal government’s Integrated Postsecondary Education  
24 Data System (IPEDS), as is every other accredited educational institution,  
25 the system does a poor job of capturing the nation’s next-generation  
26 learners, who comprise the majority of the University’s student body.  
27 IPEDS counts only those students who complete their entire degree  
28 program exclusively at one institution - without transferring any credit from  
another institution - and graduate within 150 percent of the normal  
completion time. Generally speaking, these conditions exclude most  
students who do not go directly from high school to college as well as those  
who work full-time. According to the American Federation of Teachers,  
“students still enrolled after 150 percent of expected graduation time

1 represent a growing trend in higher education.” As such, the number of  
2 students who qualify for inclusion in IPEDS decreases each year,  
3 particularly in the current economy, where more students cannot afford to  
4 continue their educations uninterrupted. University of Phoenix’s  
5 completion rates for associate degrees is 26 percent for those students  
6 graduating in three years and 31 percent for students who take more than  
7 three years to complete. For bachelor’s degrees, the University’s  
8 completion rate is 36 percent for those students who graduate in six years  
9 and 39 percent for students who take more than six years to complete. At the  
10 graduate level, University of Phoenix’s completion rate is 55 percent for  
11 students who graduate in three years and 63 percent for students who  
12 require more than 3 years to complete.

13 Average Salary Increases: Many University of Phoenix students are  
14 employed full-time while enrolled. As a result, the University’s students do  
15 not forfeit wages during the time they are earning their degrees and, in fact,  
16 many experience wage increases that are above the national average salary  
17 increase for the same time period. Students enrolled in University of  
18 Phoenix’s bachelor’s degree programs in 2008 earned an average annual  
19 salary increase of 8.5 percent compared to the 2008 national average of 3.8  
20 percent. At the master’s level during the same time period, enrolled  
21 students earned an average annual salary increase of 9.7 percent compared  
22 to a 2008 national average of 3.8 percent. In addition, an analysis of public  
23 costs for higher education conducted by University of Phoenix  
24 demonstrated that the University actually pays back approximately \$140  
25 per student to the community as opposed to public and private not-for-  
26 profit institutions, which receive sizable public financing.

27 Diversity: University of Phoenix’s student body is more diverse than those  
28 found at traditional universities. Thirty percent of the University’s students  
are African American, compared to a national average of 13 percent.

Additionally, females make up 67 percent of undergraduate student  
enrollment at University of Phoenix, compared to 57 percent nationally.

Student Satisfaction: Student satisfaction, while not an academic measure,  
provides insight into how best holistically to meet the needs of this new  
majority population. University of Phoenix student satisfaction surveys  
over the last year showed that students rate all categories well above  
average, ranging from 91-96 percent satisfied. The University also uses an  
external measure of student satisfaction, the National Survey of Student  
Engagement (NSSE). In each of the ten relevant categories polled, students  
rate the support and instruction at University of Phoenix higher than the  
national average response rating, with the highest rating going for

1 institutional contribution to their knowledge in the area of “thinking  
2 critically and analytically.”

3 Comparisons

4 31. The December 7, 2009 release also quoted William Pepicello, President of  
5 the University of Phoenix, in part, as follows:

6 “These nontraditional students represent the next generation of learners,”  
7 said Dr. William J. Pepicello, president of University of Phoenix. “They  
8 are not just our students, they are America’s students. Understanding their  
9 needs and motivations and what systems will be necessary to serve them is  
10 critical if we, as a nation, are to produce the highest proportion of college  
11 graduates in the world by 2020.”

12 In areas where comparisons can be made and declines were found - no  
13 matter how slight - University of Phoenix has initiated thoughtful and  
14 critical analysis as to the possible reasons for the changes and developed  
15 programs for continuous improvement,” said Pepicello.

16 \* \* \*

17 “The orientation program will encourage prospective students to take  
18 personal responsibility for their learning and help them make informed  
19 decisions about whether this is the type of institution they wish to attend  
20 and if they are ready to do so,” said Pepicello. “It will afford prospective  
21 students the opportunity to experience the rigors of the college classroom  
22 without financial burden, so that those who discover they are not ready will  
23 not incur debt.”

24 \* \* \*

25 “In this way, it is expected that students will learn and retain more  
26 information than if they were learning everything in one course, without a  
27 grounding context,” explained Pepicello.

28 \* \* \*

“We are changing remedial education to work for all students when they  
need it and without sacrificing their appropriate academic progression,”  
said Pepicello.

32. These were not the only statements that the Company made in early  
December 2009 that reflected on the purported improvement of Apollo’s systems of

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1 internal controls and its school procedures. On December 14, 2009, when the Company  
2 announced a \$67.5 million payment, plus attorney fees, to settle a False Claims Act case  
3 against Phoenix University, defendants published a release that stated, in part, the  
4 following:

5 Apollo Group, Inc. Resolves University of Phoenix False Claims Act Case  
6 Agreement Provides for \$67.5 Million Payment, Plus Attorneys Fees

7 PHOENIX--(BUSINESS WIRE)--Dec. 14, 2009-- Apollo Group, Inc.  
8 (NASDAQ: APOL) (the "Company") today announced that it has entered  
9 into an agreement with the United States of America, acting through the  
10 U.S. Attorney's Office for the Eastern District of California and the U.S.  
11 Department of Justice on behalf of the U.S. Department of Education, and  
12 with two private plaintiffs to resolve the False Claims Act lawsuit filed in  
13 2003 against subsidiary University of Phoenix, United States of America ex  
14 rel. Mary Hendow and Julie Albertson v. University of Phoenix.  
15 Although a party to the agreement, the U.S. Department of Justice at no  
16 time intervened in the lawsuit, which was pursued by the two private  
17 plaintiffs as a qui tam action on behalf of the government. Under the terms  
18 of the agreement, the Company will pay \$67.5 million to the United States.  
19 A separate agreement provides for the payment by the Company of \$11  
20 million in attorneys fees to the plaintiffs, as required by the False Claims  
21 Act.

17 \* \* \*

18 The agreement makes clear that the Company does not acknowledge, admit  
19 or concede any liability, wrongdoing, noncompliance or violation as a  
20 result of the settlement. Moreover, the Company is confident it will not  
21 face any further civil or administrative exposure relating to its compliance  
22 with the Higher Education Act provision relating to incentive compensation  
23 for the period of March 1997 through the present as a result of the various  
24 releases and related agreements it has obtained from the U.S. Department  
25 of Education, U.S. Department of Justice and the plaintiffs.

24 \* \* \*

25 About the Litigation

26 Under the False Claims Act, plaintiffs - or relators - sue as "partial  
27 assignees" of the government's claims for alleged injuries to the  
28 government. The False Claims Act lawsuit against University of Phoenix  
was filed by two private plaintiffs in March 2003 in United States District



1 Court for the Eastern District of California, Sacramento Division. The suit  
2 alleged University of Phoenix violated a federal statute and regulation  
3 stating that while recruiters may be compensated based in part on the  
4 number of students they enroll, it cannot be the sole factor for determining  
5 their compensation.

6 33. The December 14, 2009 release also quoted defendant Edelstein, Cappelli  
7 and other officers of the Company, in part, as follows:

8 “This agreement not only brings closure to a long-running dispute and  
9 enables the Company to avoid the uncertainty and further expense  
10 associated with protracted litigation, it opens the door for a more  
11 constructive partnership with our lead regulator, the U.S. Department of  
12 Education,” said Charles B. Edelstein, co-chief executive officer of Apollo  
13 Group.

14 “Apollo Group is committed to rigorous regulatory and compliance systems  
15 to serve and protect the academic innovations for which we are known,”  
16 added Gregory Cappelli, co-chief executive officer of Apollo Group and  
17 chairman of Apollo Global, Inc. “Resolution enables us to focus on our  
18 core mission of providing access to quality higher education opportunities  
19 for students who have been historically underserved by the conventional  
20 system of higher education - and at a time when such access is more critical  
21 than ever.”

22 \* \* \*

23 “While we believe that the compensation practices and programs of  
24 University of Phoenix have always complied fully with applicable federal  
25 laws and regulations, the regulations at issue in this case were unclear and  
26 inconsistent and, even after they were clarified by Safe Harbor provisions,  
27 involved complex judgments and interpretations,” said P. Robert Moya,  
28 executive vice president, general counsel and secretary of Apollo Group.  
“Settlement on these terms eliminates the risks inherent in taking any case  
to trial and, ultimately, is in the best interests of our students, employees  
and shareholders.”

34. The positive statements regarding the Company’s operational performance  
and the remedial actions taken to strengthen Apollo’s operational controls, and the  
statements regarding the sufficiency and effectiveness of those controls and procedures,  
contained in the Company’s December 7, 2009, and December 14, 2009, press releases,



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1 were each materially false and misleading when made and were known by defendants to  
2 be false or were recklessly disregarded as such thereby, for the following reasons, among  
3 others:

4 (i) At all times during the Class Period, it was not true that the  
5 Company's purported success was the result of defendants' competent management  
6 when, in fact, throughout the Class Period, defendants had propped up the Company's  
7 results by fraudulently inducing students to enroll in Apollo's scholastic and educational  
8 programs and engaged in other manipulative recruiting tactics which defendants knew, or  
9 recklessly disregarded, could not be maintained;

10 (ii) At all times during the Class Period, unbeknownst to investors,  
11 defendants had materially overstated the Company's growth prospects by failing to  
12 properly disclose that defendants had engaged in illicit and improper recruiting activities,  
13 which also had the effect of artificially inflating the Company's reported results and  
14 future growth prospects;

15 (iii) During that time, it was also not true that Apollo contained adequate  
16 systems of internal operational or financial controls, such that Apollo's reported  
17 operational statements and foreseeable growth prospects were true, accurate or reliable;  
18 and

19 (iv) As a result of the aforementioned adverse conditions which  
20 defendants failed to disclose, throughout the Class Period, defendants lacked any  
21 reasonable basis to claim that Apollo was operating according to plan, or that Apollo  
22 could achieve guidance sponsored and/or endorsed by defendants.

23 35. Fiscal 1Q:10 Results. On January 7, 2010, Apollo published a release  
24 announcing results for the fiscal first quarter ended November 30, 2009. This release  
25 also stated, in part, the following:

26 Apollo Group, Inc. Reports Fiscal 2010 First Quarter Results  
27  
28

1 PHOENIX, Jan 07, 2010 (BUSINESS WIRE) -- Apollo Group, Inc.  
2 (NASDAQ: APOL) (“Apollo Group,” “Apollo” or the “Company”) today  
3 reported financial results for the three months ended November 30, 2009.

4 \* \* \*

5 Quarter Fiscal 2010 Results Operations.

6 Consolidated net revenue for the three months ended November 30, 2009,  
7 totaled \$1,270.3 million, which represents a 30.8% increase over the first  
8 quarter of fiscal 2009. Contributing to the growth in the first quarter was  
9 an 18.4% year-over-year increase in University of Phoenix total Degreeed  
10 Enrollment to 455,600 as well as \$88.7 million in revenue from recently  
11 acquired BPP Holdings. The Company reported net income attributable to  
12 Apollo Group for the three months ended November 30, 2009, of \$240.1  
13 million, or \$1.54 per share (156.0 million weighted average diluted shares  
14 outstanding), compared to net income attributable to Apollo Group of  
15 \$180.4 million, or \$1.12 per share (160.8 million weighted average diluted  
16 shares outstanding) for the three months ended November 30, 2008.

17 36. In addition to the foregoing, the Company’s January 7, 2010, release also  
18 quoted defendants Cappelli and Edelstein, in part, as follows:

19 “We are pleased with our first quarter results and continued enrollment  
20 growth, particularly among our core bachelor’s programs,” said Apollo  
21 Group Co-Chief Executive Officer and Apollo Global Chairman Greg  
22 Cappelli. “We remain committed to providing access to high-quality  
23 education, while ensuring that only students who have a reasonable chance  
24 to succeed enroll in our institutions.”

25 Apollo Group Co-Chief Executive Officer Chas Edelstein, added, “We  
26 have recently received an important recertification of University of  
27 Phoenix’s Program Participation Agreement and have successfully resolved  
28 some significant uncertainties. In addition, University of Phoenix  
published its second Academic Annual Report, demonstrating our  
commitment to championing accountability and transparency in  
academics.”

36. The January 7, 2010, release also stated that the Company had successfully  
completed the U.S. Department of Education Program Review, as follows:

On December 31, 2009, University of Phoenix received the Department of  
Education’s Program Review Report, which is a preliminary report of the

1 Department's findings from its February 2009 program review of  
2 University of Phoenix's policies and procedures involving Title IV  
3 programs. The report contains six findings and one concern. The  
4 Company believes its liability resulting from the findings will be  
5 approximately \$1.5 million. In addition, the Department's regulations  
6 require certain institutions to post a letter of credit where a preliminary  
7 program review report cites untimely return of unearned Title IV funds for  
8 more than 10% of the sampled students. Absent relief from this  
9 requirement, the University of Phoenix will be required to post by January  
10 30, 2010, a letter of credit in the amount of approximately \$125 million.

11 38. **1Q:10 Form 10-Q.** The same day, January 7, 2010, defendants also filed  
12 with the SEC the Company's 1 Q:10 Form 10-Q, for the quarter ended November 30,  
13 2010, signed by defendants Iverson and Swartz and certified by defendants Edelstein,  
14 Cappelli and Swartz. The Company's 1Q:10 Form 10-Q stated, in part, the following:

#### 15 **Basis of Presentation**

16 The unaudited interim condensed consolidated financial statements include  
17 the accounts of Apollo Group, Inc., its wholly-owned subsidiaries, and  
18 subsidiaries that we control. These unaudited interim condensed  
19 consolidated financial statements have been prepared pursuant to the rules  
20 and regulations of the U.S. Securities and Exchange Commission and, in  
21 the opinion of management, contain all adjustments necessary to fairly  
22 present the financial condition, results of operations and cash flows for the  
23 periods presented.

24 Certain information and note disclosures normally included in these  
25 unaudited interim condensed consolidated financial statements prepared in  
26 accordance with accounting principles generally accepted in the United  
27 States of America ("GAAP") have been condensed or omitted pursuant to  
28 Securities and Exchange Commission rules. We believe that the  
disclosures made are adequate to make the information presented not  
misleading....

39. **Controls & Procedures.** In addition to making substantially similar  
statements concerning the Company operations as had been published previously, the  
1Q:10 Form 10-Q also provided statements concerning the Company's purported  
Controls and Disclosure Procedures, in part, as follows:

Item 4. Controls and Procedures

1 Disclosure Controls and Procedures

2 We intend to maintain disclosure controls and procedures designed to  
3 provide reasonable assurance that information required to be disclosed in  
4 reports filed under the Securities Exchange Act of 1934, as amended, is  
5 recorded, processed, summarized and reported within the specified time  
6 periods and accumulated and communicated to our management, including  
7 our Co-Chief Executive Officers (“Principal Executive Officers”) and our  
8 Senior Vice President, Chief Financial Officer and Treasurer (“Principal  
9 Financial Officer”), as appropriate, to allow timely decisions regarding  
10 required disclosure. We have established a Disclosure Committee,  
11 consisting of certain members of management, to assist in this evaluation.  
12 Our Disclosure Committee meets on a quarterly basis and more often if  
13 necessary.

14 Our management, under the supervision and with the participation of our  
15 Principal Executive Officers and Principal Financial Officer, evaluated the  
16 effectiveness of our disclosure controls and procedures (as defined in Rules  
17 13a-15(e) or 15d-15(e) promulgated under the Securities Exchange Act), as  
18 of the end of the period covered by this report. Based on that evaluation,  
19 management concluded that, as of that date, our disclosure controls and  
20 procedures were effective at the reasonable assurance level.

21 \* \* \*

22 Changes in Internal Control over Financial Reporting

23 Subject to BPP’s internal control over financial reporting as discussed  
24 above, there have not been any changes in our internal control over  
25 financial reporting during the quarter ended November 30, 2009, that have  
26 materially affected, or are reasonably likely to materially affect, our internal  
27 control over financial reporting.

28 40. **Certifications.** The Company’s I Q:10 Form 10-Q also contained  
29 certifications by defendants Edelstein, Cappelli, and Swartz, that again attested to the  
30 purported accuracy and completeness of its disclosures, in part, as follows:

***CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002***

1. I have reviewed this Form 10-Q of Apollo Group, Inc. (the  
“registrant”);

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2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

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5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: January 7, 2010  
/s/ Charles B. Edelstein  
Charles B. Edelstein  
Co-Chief Executive Officer and Director  
(Principal Executive Officer)

\* \* \*

Date: January 7, 2010  
/s/ Gregory W. Cappelli  
Gregory W. Cappelli  
Co-Chief Executive Officer and Director  
(Principal Executive Officer)

\* \* \*

Date: January 7, 2010  
/s/ Brian L. Swartz  
Brian L. Swartz  
Senior Vice President, Chief Financial Officer and Treasurer  
(Principal Financial Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF  
2002**

In connection with the Quarterly Report of Apollo Group, Inc. (the “Company”) on Form 10-Q for the three months ended November 30, 2009, as filed with the Securities and Exchange Commission on the date

1 hereof (the “Report”), I, Charles B. Edelstein, Co-Chief Executive Officer  
2 of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted  
3 pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my  
4 knowledge:

5 (1) the Report fully complies with the requirements of Section 13(a) or  
6 15(d) of the Securities Exchange Act of 1934; and

7 (2) the information contained in the Report fairly presents, in all  
8 material respects, the financial condition and results of operations of the  
9 Company.

10 Date: January 7, 2010

11 /s/ Charles B. Edelstein  
12 Charles B. Edelstein  
13 Co-Chief Executive Officer and Director  
14 (Principal Executive Officer)

15 **CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**  
16 **PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED**  
17 **PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF**  
18 **2002**

19 In connection with the Quarterly Report of Apollo Group, Inc. (the  
20 “Company”) on Form 10-Q for the three months ended November 30,  
21 2009, as filed with the Securities and Exchange Commission on the date  
22 hereof (the “Report”), I, Gregory W. Cappelli, Co-Chief Executive Officer  
23 of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted  
24 pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my  
25 knowledge:

26 (1) the Report fully complies with the requirements of Section 13(a) or  
27 15(d) of the Securities Exchange Act of 1934; and

28 (2) the information contained in the Report fairly presents, in all  
material respects, the financial condition and results of operations of the  
Company.

Date: January 7, 2010

/s/ Gregory W. Cappelli  
Gregory W. Cappelli  
Co-Chief Executive Officer and Director  
(Principal Executive Officer)



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1  
2 CERTIFICATION OF CHIEF FINANCIAL OFFICER  
3 PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT  
4 TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

5 In connection with the Quarterly Report of Apollo Group, Inc. (the  
6 “Company”) on Form 10-Q for the three months ended November 30,  
7 2009, as filed with the Securities and Exchange Commission on the date  
8 hereof (the “Report”), I, Brian L. Swartz, Senior Vice President, Chief  
9 Financial Officer and Treasurer of the Company, certify, pursuant to 18  
10 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-  
11 Oxley Act of 2002, that to my knowledge:

12 (1) the Report fully complies with the requirements of Section 13(a) or  
13 15(d) of the Securities Exchange Act of 1934; and

14 (2) the information contained in the Report fairly presents, in all  
15 material respects, the financial condition and results of operations of the  
16 Company.

17 Date: January 7, 2010

18 /s/ Brian L. Swartz

19 Brian L. Swartz

20 Senior Vice President, Chief Financial Officer and Treasurer  
21 (Principal Financial Officer)

22 41. The statements contained in Apollo’s January 7, 2010, release and those  
23 statements contained in the Company’s 1Q:10 Form 10-Q, referenced above were each  
24 materially false and misleading when made, and were known by defendants to be false at  
25 that time or were deliberately disregarded as such thereby, for the reasons stated herein in  
26 ¶ 34, supra.

27 42. **2Q:10 Quarterly Pre-announcement.** On February 19, 2010, Apollo  
28 published a release pre-announcing results for the fiscal second quarter. This release also  
stated, in part, the following:

Apollo Group, Inc. Announces Timing of Fiscal 2010 Second Quarter  
Earnings Release and Provides Preliminary Commentary on Fiscal 2010  
Second Quarter Results

1 Board of Directors Increases Share Repurchase Authorization by \$500  
2 Million

3 PHOENIX, Feb 19, 2010 (BUSINESS WIRE) -- Apollo Group, Inc.  
4 (NASDAQ: APOLLO (“Apollo Group,” “Apollo” or the “Company”))  
5 today announced details for its fiscal 2010 second quarter earnings  
6 conference call. In addition, in anticipation of its participation at investor  
7 conferences on February 22 and 24, 2010, the Company provided  
8 preliminary comments on its second quarter of fiscal 2010 financial results.

9 Preliminary Fiscal 2010 Second Quarter Results

10 The Company currently expects consolidated net revenue from continuing  
11 operations for the second quarter of fiscal 2010 of approximately \$1.07  
12 billion and diluted earnings per share from continuing operations of  
13 between \$0.77-\$0.82. Excluded from these amounts are results from  
14 Insight Schools, which the Company expects will be reported as a  
15 discontinued operation beginning with the fiscal second quarter.

16 43. In addition to the foregoing, the Company’s February 19, 2010, release also  
17 quoted defendants Cappelli and Edelstein, in part, as follows:

18 “Current bad debt levels are higher than we would like; however, we are  
19 taken the necessary steps to reverse current trends,” said Apollo Group Co-  
20 Chief Executive Officer and Apollo Global Chairman Greg Cappelli.  
21 “Importantly, as we outlined on our last earnings call, we continue to  
22 transition the business in an effort to shift our student mix towards  
23 bachelors and graduate programs, and believe over time this will have  
24 many positive effects on the business, including reducing bad debt expense.  
25 While we are still in the early phases of these efforts, we are pleased with  
26 the initial results, particularly the continued strong enrollment in our  
27 bachelor programs.”

28 Apollo Group Co-Chief Executive Officer Chas Edelstein added, “Apollo  
Group remains dedicated to providing access to high-quality education and  
has recently taken additional steps to ensure that only students who are  
committed to the program and have a reasonable chance to succeed enroll  
in our institutions. Importantly, we want to help students make this  
determination prior to burdening themselves with debt. We believe we can  
accomplish these goals while achieving our long-term internal growth  
targets.”



1           46. In addition to the foregoing, the Company’s March 29, 2010, release also  
2 quoted defendants Cappelli and Edelstein, in part, as follows:

3           We are pleased with our second quarter results, particularly with respect to  
4 the continued mix shift in student enrollments towards bachelor degree  
5 level students,” said Apollo Group Co-Chief Executive Officer Chas  
6 Edelstein. “We have set forth a strategy to transition the University of  
7 Phoenix to focus on better identifying and enrolling students who have a  
reasonable chance to succeed in our rigorous programs, and we are  
delivering on that plan.”

8           Apollo Group Co-Chief Executive Officer and Apollo Global Chairman  
9 Greg Cappelli added, “Through our refined marketing efforts focused on  
10 identifying students who are better prepared for our programs, as well as  
11 the positive early results we are seeing from our University Orientation  
12 pilot, we are beginning to see the shift in student mix that we have been  
13 targeting, which we believe over time will result in more consistent, higher  
14 quality growth and profitability and will positively impact a number of our  
key metrics.”

15           47. The Company’s March 29, 2010, release also provided purported forward  
16 guidance, in part, as follows:

17           Business Outlook

18           Given the transition it is undertaking in its business, the Company offers  
19 the following commentary regarding the outlook for the third quarter of  
20 fiscal 2010 based on current business trends, which could change:

21           Consolidated net revenue, including BPP, of approximately \$1.3 billion;

22           Diluted earnings per share from continuing operations of approximately  
23 \$1.55 excluding the impact of special items or additional share repurchases  
but including a contribution from BPP;

24           Effective tax rate of approximately 41.0%; and

25           Diluted shares outstanding of approximately 153 million.

26           Based on current business trends, for the fiscal year 2010, the Company  
27 should achieve its long-term target of mid-teens operating income growth,  
28 excluding the impact of special items and discontinued operations.

1  
2 48. 2Q:10 Form 10-Q. On March 29, 2010, defendants also filed with the SEC  
3 the Company's 2Q:10 Form 10-Q, for the quarter ended February 28, 2010, signed by  
4 defendants Iverson and Swartz and certified by defendants Edelstein, Cappelli and  
5 Swartz. The Company's 2Q:10 Form 10-Q stated, in part, the following:

6 **Basis of Presentation**

7 The unaudited interim condensed consolidated financial statements include  
8 the accounts of Apollo Group, Inc., its wholly-owned subsidiaries, and  
9 subsidiaries that we control. These unaudited interim condensed  
10 consolidated financial statements have been prepared pursuant to the rules  
11 and regulations of the U.S. Securities and Exchange Commission and, in  
12 the opinion of management, contain all adjustments necessary to fairly  
13 present the financial condition, results of operations and cash flows for the  
14 periods presented.

15 Certain information and note disclosures normally included in these  
16 unaudited interim condensed consolidated financial statements prepared in  
17 accordance with accounting principles generally accepted in the United  
18 States of America ("GAAP") have been condensed or omitted pursuant to  
19 Securities and Exchange Commission rules. We believe that the  
20 disclosures made are adequate to make the information presented not  
21 misleading....

22 49. Controls & Procedures. In addition to making substantially similar  
23 statements concerning the Company operations as had been published previously, the  
24 2Q:10 Form 10-Q also provided statements concerning the Company's purported  
25 Controls and Disclosure Procedures, in part, as follows:

26 **Item 4. Controls and Procedures**

27 **Disclosure Controls and Procedures**

28 We intend to maintain disclosure controls and procedures designed to  
provide reasonable assurance that information required to be disclosed in  
reports filed under the Securities Exchange Act of 1934, as amended, is  
recorded, processed, summarized and reported within the specified time  
periods and accumulated and communicated to our management, including  
our Co-Chief Executive Officers ("Principal Executive Officers") and our

1 Senior Vice President and Chief Financial Officer (“Principal Financial  
2 Officer”), as appropriate, to allow timely decisions regarding required  
3 disclosure. We have established a Disclosure Committee, consisting of  
4 certain members of management, to assist in this evaluation. Our  
5 Disclosure Committee meets on a quarterly basis and more often if  
6 necessary.

7 Our management, under the supervision and with the participation of our  
8 Principal Executive Officers and Principal Financial Officer, evaluated the  
9 effectiveness of our disclosure controls and procedures (as defined in Rules  
10 13a-15(e) or 15d-15(e) promulgated under the Securities Exchange Act), as  
11 of the end of the period covered by this report. Based on that evaluation,  
12 management concluded that, as of that date, our disclosure controls and  
13 procedures were effective at the reasonable assurance level.

14 Attached as exhibits to this Quarterly Report on Form 10-Q are  
15 certifications of our Principal Executive Officers and Principal Financial  
16 Officer, which are required in accordance with Rule 13a-14 of the  
17 Securities Exchange Act. This Disclosure Controls and Procedures section  
18 includes information concerning management’s evaluation of disclosure  
19 controls and procedures referred to in those certifications and, as such,  
20 should be read in conjunction with the certifications of our Principal  
21 Executive Officers and Principal Financial Officer.

#### 22 Changes in Internal Control over Financial Reporting

23 \* \* \*

24 Subject to BPP’s internal control over financial reporting as discussed  
25 above, there have not been any changes in our internal control over  
26 financial reporting during the quarter ended February 28, 2010, that have  
27 materially affected, or are reasonably likely to materially affect, our internal  
28 control over financial reporting.

50. **Certifications.** The Company’s 2Q:10 Form 10-Q also contained  
22 certifications by defendants Edelstein, Cappelli and Swartz, that, similar to those  
23 described above in paragraph 40, again attested to the purported accuracy and  
24 completeness of its disclosures.

51. The statements contained in Apollo’s February 19, 2010, and March 29,  
25 2010, releases, as well as those statements made by defendants at the February 22, 2010,  
26 and February 24, 2010, analyst and investor conferences, and those statements contained  
27 in the Company’s 2Q:10 Form 10-Q, referenced above were each materially false and  
28



1 misleading when made, and were known by defendants to be false at that time or were  
2 deliberately disregarded as such thereby, for the reasons stated herein in ¶ 34, supra.

3       **52. Investor Presentations.** As shares of the Company continued to trade at  
4 levels artificially inflated by defendants' materially false and misleading statements,  
5 during May and June 2010 defendants appeared at two investor conferences, where they  
6 reiterated many of the same or similar materially false and misleading statements as had  
7 been published in the Company's prior press releases and SEC filings. Accordingly, on  
8 May 24 - 26, 2010, defendants Edelstein and Cappelli appeared and presented at the Bank  
9 of America Merrill Lynch Services Conference at the Millennium Broadway Hotel in  
10 New York, N.Y., and on June 15-17, 2010, they appeared and presented at the 30th  
11 Annual William Blair Growth Stock Conference at the Four Seasons Hotel in Chicago,  
12 Ill.

13       **53.** On June 21, 2010, Apollo published a release that announced that the  
14 Company had received a final program review determination letter from the U.S.  
15 Department of Education. This release stated, in part, the following:

16       PHOENIX, Jun 21, 2010 (BUSINESS WIRE) --Apollo Group, Inc.  
17 (NASDAQ:APOL) today announced that subsidiary University of Phoenix  
18 has received the Final Program Review Determination Letter associated  
19 with its February 2009 program review by the U.S. Department of  
20 Education (Department) and that the University has successfully  
21 completed the corrective actions and satisfied the obligations arising from  
22 the review.

23       "We are pleased to have successfully resolved the findings reported by the  
24 Department through a collaborative and productive process," said Joseph L.  
25 D'Amico, president and chief operating officer of Apollo Group, Inc. "In so  
26 doing, we have adopted a series of processes and procedures to further  
27 strengthen our already rigorous internal controls and administrative  
28 capability."

As required, Apollo has posted a Letter of Credit in the amount of  
approximately \$125 million to comply with the Department's standards of  
financial responsibility. The Department's regulations require institutions  
to post a Letter of Credit where a program review report cites untimely



1 return of unearned Title IV funds for more than 10 percent of the sampled  
2 students in a period covered by the review.

3 Of the six findings contained in the Final Program Review Determination  
4 Letter, three related to University of Phoenix's procedures for determining  
5 student withdrawal dates and associated timing of the return of unearned  
6 Title IV funds, which averaged no more than six days outside the required  
7 timeframe in the affected sample files. Importantly, there were no findings  
8 that indicated incorrect amounts of Title IV funds had been returned. In the  
9 second quarter of fiscal year 2010, Apollo made payments totaling  
10 \$660,000 to reimburse the Department for the cost of Title IV funds  
11 associated with these findings.

12 The remaining findings involved isolated clerical errors verifying student-  
13 supplied information and, as self-reported by University of Phoenix in  
14 2008, the calculation of student financial need where students were eligible  
15 for tuition and fee waivers and discounts, and the use of Title IV funds for  
16 non-program purposes such as transcripts, applications and late fees.

17 54. **3Q:10 Results Announced.** On June 30, 2010, Apollo published a release  
18 announcing results for the fiscal third quarter, the period ended May 31, 2010. This  
19 release also stated, in part, the following:

20 Apollo Group, Inc. Reports Fiscal 2010 Third Quarter Results

21 PHOENIX, Jun 30, 2010 (BUSINESS WIRE) --

22 Apollo Group, Inc. (NASDAQ: APOL) ("Apollo Group," "Apollo" or the  
23 "Company") today reported financial results for the three and nine months  
24 ended May 31, 2010.

25 \* \* \*

26 Unaudited Third Quarter of Fiscal 2010 Results of Operations

27 Consolidated net revenue for the three months ended May 31, 2010, totaled  
28 \$1,337.4 million, which represents a 27.7% increase over the third quarter  
of fiscal 2009. Contributing to the growth in the third quarter was a 13.3%  
year- over-year increase in University of Phoenix total Degreed Enrollment  
to 476,500, as well as \$75.8 million in net revenue from BPP Holdings,  
which was acquired in the fourth quarter of fiscal 2009. The Company  
reported income from continuing operations attributable to Apollo Group  
for the three months ended May 31, 2010, of \$177.2 million, or \$1.16 per  
share (152.3 million weighted average diluted shares outstanding),

1 compared to income from continuing operations attributable to Apollo  
2 Group of \$206.4 million, or \$1.30 per share (159.3 million weighted  
3 average diluted shares outstanding) for the three months ended May 31,  
2009.

4 55. In addition to the foregoing, the Company's June 30, 2010, release also  
5 quoted defendants Cappelli and Edelstein, in part, as follows:

6 "We are pleased to have made significant progress on our strategic  
7 initiatives designed to enhance the student experience, expand student  
8 protections and ensure we enroll students who we believe can succeed in  
9 our programs," said Apollo Group Co-Chief Executive Officer and Apollo  
10 Global Chairman Greg Cappelli. "This quarter's results reflect continued  
11 success with our efforts to shift the mix of our enrollments toward bachelor  
12 level students. Additionally, based on the favorable results we've seen  
13 from our University Orientation pilot, we have decided to roll out the  
14 program more broadly this fall. We are confident that this is the right thing  
15 to do for our students, and believe it will allow us to deliver sustainable,  
16 high quality results over the long term."

17 Apollo Group Co-Chief Executive Officer Chas Edelstein added, "We are  
18 committed to strengthening and capitalizing on Apollo Group's position as  
19 a leading provider of high quality, accessible education for individuals  
20 around the world, and for us that means putting the student first. We are  
21 focused on delivering quality academic programs that are relevant to  
22 today's working learners, and providing them with high levels of service  
23 and support from their first day in class through graduation--all of which  
24 should maximize the value of our students' return on their educational  
25 investment."

26 56. The Company's June 30, 2010, release also provided purported forward  
27 guidance, in part, as follows:

28 **Business Outlook**

The Company offers the following commentary regarding the outlook for the fourth quarter of fiscal 2010 based on current business trends, which could change:

Consolidated net revenue, including BPP, of approximately \$1.25 billion;

Diluted earnings per share from continuing operations of approximately \$1.30, excluding the impact of special items or additional share repurchases

1 beyond the repurchases note above subsequent to quarter end, but including  
2 an adverse seasonal impact from BPP;

3 Effective tax rate of approximately 40.0%; and

4 Diluted shares outstanding of approximately 148 million.

5 In addition, the Company has been piloting its University Orientation  
6 program, which is a free three-week, non-credit bearing program for new  
7 students enrolling at University of Phoenix with fewer than 24 credit hours.  
8 The Company currently intends to require all incoming students with fewer  
9 than 24 credit hours to participate in the orientation program beginning  
10 during the latter half of the first quarter of fiscal 2011, which will adversely  
11 impact the Company's operating metrics and financial results. Based on  
12 current business trends, which could change, and the results of the initial  
13 pilot orientation program, the Company offers the following commentary  
14 regarding its preliminary outlook for the fiscal year 2011:

15 High-single digit consolidated net revenue growth; and

16 Operating income, excluding the impact of special items, approximately  
17 flat with fiscal year 2010.

18 57. **3Q:10 Form 10-Q.** On June 30, 2010, defendants also filed with the SEC  
19 the Company's 3Q:10 Form 10-Q, for the quarter ended May 31, 2010, signed by  
20 defendants Iverson and Swartz and certified by defendants Edelstein, Cappelli and  
21 Swartz. The Company's 3Q:10 Form 10-Q stated, in part, the following:

### 22 **Basis of Presentation**

23 The unaudited interim condensed consolidated financial statements include  
24 the accounts of Apollo Group, Inc., its wholly-owned subsidiaries, and  
25 subsidiaries that we control. These unaudited interim condensed  
26 consolidated financial statements have been prepared pursuant to the rules  
27 and regulations of the U.S. Securities and Exchange Commission and, in  
28 the opinion of management, contain all adjustments, consisting of normal,  
recurring adjustments, necessary to fairly present the financial condition,  
results of operations and cash flows for the periods presented.

1 Certain information and note disclosures normally included in these  
 2 unaudited interim condensed consolidated financial statements prepared in  
 3 accordance with accounting principles generally accepted in the United  
 4 States of America (“GAAP”) have been condensed or omitted pursuant to  
 5 Securities and Exchange Commission rules. We believe that the  
 6 disclosures made are adequate to make the information presented not  
 7 misleading....

8 58. **Controls & Procedures.** In addition to making substantially similar  
 9 statements concerning the Company operations as had been published previously, the  
 10 3Q:10 Form 10-Q also provided statements concerning the Company’s purported  
 11 Controls and Disclosure Procedures, in part, as follows:

12 Item 4. Controls and Procedures Disclosure Controls and Procedures

13 We intend to maintain disclosure controls and procedures designed to  
 14 provide reasonable assurance that information required to be disclosed in  
 15 reports filed under the Securities Exchange Act of 1934, as amended, is  
 16 recorded, processed, summarized and reported within the specified time  
 17 periods and accumulated and communicated to our management, including  
 18 our Co-Chief Executive Officers (“Principal Executive Officers”) and our  
 19 Senior Vice President and Chief Financial Officer (“Principal Financial  
 20 Officer”), as appropriate, to allow timely decisions regarding required  
 21 disclosure. We have established a Disclosure Committee, consisting of  
 22 certain members of management, to assist in this evaluation. Our  
 23 Disclosure Committee meets on a quarterly basis and more often if  
 24 necessary.

25 Our management, under the supervision and with the participation of our  
 26 Principal Executive Officers and Principal Financial Officer, evaluated the  
 27 effectiveness of our disclosure controls and procedures (as defined in Rules  
 28 13a-15(e) or 15d-15(e) promulgated under the Securities Exchange Act), as  
 of the end of the period covered by this report. Based on that evaluation,  
 management concluded that, as of that date, our disclosure controls and  
 procedures were effective at the reasonable assurance level.

\* \* \*

Changes in Internal Control over Financial Reporting

\* \* \*

1 Subject to BPP's internal control over financial reporting as discussed  
2 above, there have not been any changes in our internal control over  
3 financial reporting during the quarter ended May 31, 2010, that have  
4 materially affected, or are reasonably likely to materially affect, our internal  
5 control over financial reporting.

6 59. Certifications. The Company's 3Q:10 Form 10-Q also contained  
7 certifications by defendants Edelstein, Cappelli and Swartz, that, similar to those  
8 described above in paragraph 40, again attested to the purported accuracy and  
9 completeness of its disclosures.

10 60. The statements contained in Apollo's June 21, 2010, release, as well as  
11 those statements made by defendants at the May 24 - 26, 2010, and June 15-17, 2010,  
12 analyst and investor conferences, and those statements contained in the Company's  
13 3Q:10 Form 10-Q, referenced above were each materially false and misleading when  
14 made, and were known by defendants to be false at that time or were deliberately  
15 disregarded as such thereby, for the reasons stated herein in ¶ 34, supra.

16 **THE TRUE OPERATIONAL CONDITION**  
17 **OF APOLLO IS BELATEDLY REVEALED**

18 61. Beginning on August 3, 2010, reports began to circulate that questioned the  
19 legitimacy of the means by which for-profit education providers, such as the Company,  
20 recruited students. While no names were initially provided, that day, the United States  
21 Government Accounting Office (the "GAO") published a report finding that: (i) certain  
22 for-profit schools used deceptive recruiting practices; (ii) certain for-profit schools  
23 substantially inflated their tuition costs; and (iii) certain for-profit schools engaged in  
24 other "troubling" practices. Accordingly, that day, Reuters reported, in part, the  
25 following:

26 WASHINGTON, Aug 3 (Reuters) - U.S. government investigators found  
27 that for-profit colleges encouraged fraudulent practices and made deceptive  
28 statements to prospective students, according to a study released on  
Tuesday. Investigators from the Government Accountability Office posed  
as students and applied for admission at 15 for-profit colleges across the  
United States. School personnel encouraged GAO staff to falsify financial

1 aid forms, misled them about costs and gave false information about  
2 accreditation.

3 \* \* \*

4 GAO’s investigators also found the tuition at the for-profit college was  
5 “substantially more” than for comparable programs at nearby public  
6 colleges, but often misled prospective students about total costs.

7 The study found that a massage therapy program certificate cost \$14,000 at  
8 a for-profit college but was just \$520 at a local community college.

9 The Career College Association, an organization of mostly for-profit  
10 occupational colleges, said in a statement that the GAO report “is deeply  
11 troubling” and vowed to strengthen its members’ compliance with  
12 regulations.

13 \* \* \*

14 Investigators found that on average, tuition for an associate’s degree was  
15 between 6 and 13 times as much at a for-profit school than at a nearby  
16 public college. The average of the for-profit schools investigated was  
17 \$33,467, compared to just over \$4,000 for public schools.

18 A bachelor’s degree at a for-profit college averaged \$55,000, almost twice  
19 as expensive as local public institutions.

20 The GAO findings add to pressure the industry, which has already faced a  
21 crackdown by the Obama administration.

22 The U.S. Department of Education proposed rules on July 22 that would  
23 force for-profit schools to show their former students are either paying off  
24 their loans or are capable of doing so.

25 62. Later, on August 3, 2010, Barron’s reported that the GAO report had been  
26 leaked to the press. That day, Barrons reported, in part, the following:

27 For-Profit Stocks Marked Down on Leaked GAO Report

28 For-profit college shares are being moved to the back of the class after a  
Government Accountability Office report accused some of deceptive  
marketing and encouraging fraud.

Education Management (EDMC) is off 6% at a 52-week low; Apollo  
Group (APOL) is off 4% and Corinthian Colleges (COCO) was off 2%.

1 The GAO report, which was leaked ahead of a hearing Wednesday before  
2 the Senate Committee on Health, Education, Labor and Pensions, said four  
3 undercover applicants were encouraged by college personnel to falsify their  
4 financial aid forms to qualify for federal aid, while other college  
5 representatives exaggerated potential salaries after graduation and failed to  
6 provide clear information about program duration, costs, or graduation rate  
7 despite federal regulations requiring them to do so, according to Dow Jones  
8 Newswires.

9 The for-profit stocks have been under pressure as a result of criticism, such  
10 as from hedge fund manager Steve Eisman, who said in May they are  
11 morally akin to the subprime mortgage market, DJ added.

12 63. That same day, August 3, 2010, CNBC reported, in part, the following:  
13 For Profit Education Gets `F`

14 Shares of for-profit education companies tumbled Tuesday after a  
15 government report prepared ahead of a Senate hearing scheduled for  
16 Wednesday detailed deceptive -- and in some cases -- possibly illegal  
17 actions, by recruiters at 15 for-profit schools.

18 The Government Accountability Office's report, which was obtained by  
19 The Associated Press, said enrollment counselors allegedly encouraged  
20 investigators posing as potential students to falsify financial aid  
21 applications, and misled them about the cost of programs and potential  
22 salaries after graduation.

23 Tomorrow's Trades - Capital Ideas Into Year's End

24 No publicly traded companies were involved in the alleged fraudulent  
25 activity, but some may have used deceptive marketing and recruiting  
26 practices. The GAO said it plans to refer cases of deceptive marketing to  
27 federal investigators.

28 "As information emerges about which public companies were cited, we  
expect heads to roll," said Signal Hill education analyst Trace Urdan.

BMO Capital Markets analyst Jeffrey Silber and Baird analyst Amy Junker  
said it was likely that the unnamed schools whose counselors misled  
prospective students included two campuses owned by Apollo Group, two  
owned by Corinthian Colleges and one owned by Washington Post Co., a  
newspaper publisher that also owns the Kaplan school chain.



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“We reviewed the testimony and it doesn’t have enough information for us to determine whether any of the campuses are ours. We are investigating and if we find any reason to take action we will,” said Corinthian spokesman Kent Jenkins.

Following the broadcast Apollo Group sent us this statement.

“The recent GAO study sampled recruiting practices at a number of for-profit colleges. While we have not been informed whether or not Apollo Group schools were involved in this study, we take very seriously the issues raised in the recent GAO study. We have clear policies in place to protect students. If we are made aware of violations of our code of conduct we will promptly and thoroughly investigate the matter and, if found true, will take disciplinary action up to, and including, termination of the employee involved.”

64. Similarly, on August 4, 2010, cable news network, CNBC, also published a report on its website that stated, in part, the following:

#### GAO Finds For-Profit Schools Encouraged Fraud

An investigation by the Government Accountability Office (GAO) contends that for-profit colleges encouraged fraud and engaged in deceptive and questionable marketing practices.

The investigation is part of a detailed report released this morning in conjunction with testimony before the Senate Committee on Health, Education, Labor and Pensions by Gregory Kutz, the GAO’s managing director of forensic audits and special investigations.

\* \* \*

Kutz made it clear he believed the company’s findings suggested the practices were widespread throughout the industry, suggesting to some industry observers that legislators are likely to more tightly regulate the industry.

Meanwhile Harris Miller, president of the Career College Association, told me the findings are “disturbing.” And while the report was expected, “It’s hard to put lipstick on a pig. To have four schools have financial aid officers that are advising students to misrepresent their financial situation is totally unacceptable. The necessity to focus on compliance has to be elevated.”

1 65. Also on August 4, 2010, Senator Durbin, Assistant Majority Leader, posted  
2 in part the following on his official website at <http://durbin.senate.gov/showRelease.cfni>):

3 DURBIN, WEBB TAKE CONCERNS ABOUT FOR-PROFIT  
4 COLLEGES TO V.A. AND D.O.D.

5 Wednesday, August 4, 2010

6 [WASHINGTON, D.C.] - Concerned about reports of some for-profit  
7 colleges aggressively targeting military personnel and veterans, U.S.  
8 Senators Dick Durbin (D-IL) and Jim Webb (D-VA) today asked the  
9 Secretaries of the Department of Veterans Affairs, Eric Shinseki, and the  
10 Department of Defense, Robert Gates, for detailed information on how  
11 veteran and military tuition assistance program funding is being spent.

12 Specifically, Durbin and Webb asked for data on the tuition assistance used  
13 for education at for-profit colleges and the standards in place to ensure that  
14 veterans, service members and their families are given the best possible  
15 options for higher education and that taxpayer funding is being well-spent.

16 “Some for-profit colleges serve VA beneficiaries [and active duty students  
17 and their families] well by offering flexible course schedules, distance  
18 learning, and course credit for military training,” the Senators wrote. “But  
19 we have heard reports that some for-profit institutions may be aggressively  
20 targeting service members and veterans, signing them up for educational  
21 programs that may bring little benefit to future employment opportunities,  
22 low graduation rates and high default rates. Finally, with the recent passage  
23 of the Post 9/11 GI Bill, which provides for tuition reimbursement, we have  
24 heard concerns about excessive tuition being charged at some of these  
25 institutions.”

26 In 2008, Congress passed the Post-9/11 GI Bill, hallmark legislation  
27 introduced by Senator Webb on his first day in office, to provide veterans  
28 with comprehensive educational benefits on par with the World War II-era  
GI Bill. More than 34,000 beneficiaries took advantage of the program in  
fall 2009 - the first year funding was available. Seven of the top ten  
recipients of Post-9/11 GI Bill funding were for-profit schools.  
The United States began providing education benefits to veterans and  
members of the military in 1944, as part of the Servicemen’s Readjustment  
Act, which was the origin of the GI Bill. Many of these educational  
opportunities are free or at reduced cost, and offer the flexibility necessary  
for service members subject to short-notice, worldwide deployments. In  
2009, the Department of Defense spent \$424 million on tuition assistance  
and the Department of Veterans Affairs spent \$3.58 billion.

1 On June 21, Durbin joined with other lawmakers in asking the GAO to  
2 assess the quality of for-profit institutions, as well as how much of their  
3 revenue is comprised of Federal student aid and other Federal funding  
4 sources. Other Senators signing on to today's letter include: Senators Tom  
5 Carper (D-DE), Kay Hagan (D-NC), Claire McCaskill (D-MO), Russ  
6 Feingold (D-WI) and Tom Harkin (D-IA).

6 66. As a result of the truth about the Company reaching the market, between  
7 August 3, 2010, and August 6, 2010, shares of the Company declined precipitously.  
8 During that time, shares of Apollo fell from a close of \$47.14 per share on August 2,  
9 2010, to a close of \$44.81 per share the following day. As further news about the  
10 Company reached the market, shares of Apollo continued to trade lower, falling from a  
11 close of \$44.76 per share on August 4, 2010, to a close of \$42.83 per share the following  
12 day. On August 5, 2010, over 6.1 million shares traded and between August 2, 2010, and  
13 August 5, 2010, over 16 million Apollo shares traded - many times the Company's  
14 average share volume.

### 15 CAUSATION AND ECONOMIC LOSS

16  
17 67. During the Class Period, as detailed herein, defendants engaged in a  
18 scheme to deceive the market, and a course of conduct that artificially inflated Apollo's  
19 stock price and operated as a fraud or deceit on Class Period purchasers of Apollo's stock  
20 by misrepresenting the Company's operations and foreseeable growth prospects. Over a  
21 period of approximately eight months, defendants improperly inflated the Company's  
22 results and issued false and misleading guidance. Ultimately, however, when defendants'  
23 prior misrepresentations and fraudulent conduct came to be revealed and were apparent to  
24 investors, shares of Apollo declined precipitously - evidence that the prior artificial  
25 inflation in the price of Apollo's shares was eradicated. As a result of their purchases of  
26 Apollo stock during the Class Period, plaintiff and other members of the Class suffered  
27 economic losses, i.e. damages under the securities laws.  
28

1           68. By improperly characterizing the Company’s operational results and  
2 misrepresenting its prospects, the defendants presented a misleading image of Apollo’s  
3 business and future growth prospects. During the Class Period, defendants repeatedly  
4 emphasized the ability of the Company to maintain and sustain its objectives, and  
5 consistently reported growth within the range of investors' expectations and its historical  
6 range. These claims caused and maintained the artificial inflation in Apollo’s stock price  
7 throughout the Class Period and until the truth about the Company was ultimately  
8 revealed to investors.

9           69. Defendants’ false and materially misleading statements had the intended  
10 effect of causing Apollo’s shares to trade at artificially inflated levels throughout the  
11 Class Period - reaching a Class Period high of almost \$66.00 per share on April 21, 2010.

12           70. On August 3, 2010, however, as investors learned the truth about the  
13 Company, and realized or concluded that defendants had engaged in deceptive and  
14 manipulative recruiting that could not be sustained in the face of the federal government  
15 investigations, shares of the Company fell. Defendants’ belated disclosures had an  
16 immediate, adverse impact on the price of Apollo shares.

17           71. These belated revelations also evidenced defendants’ prior falsification of  
18 Apollo’s business prospects due to defendants’ false statements. As investors and the  
19 market ultimately learned, the Company’s prior business prospects had been overstated as  
20 were the Company’s results of operations. As this adverse information became known to  
21 investors, the prior artificial inflation began to be eliminated from Apollo’s share price  
22 and plaintiff and the Class were damaged as a result of the related share price decline.

23           72. As a direct result of investors learning the truth about the Company on  
24 August 3, 2010, Apollo’s stock price fell almost 10% over several trading days, on  
25 abnormally high trading volume. This dramatic share price decline eradicated much of  
26 the artificial inflation from Apollo’s share price, causing real economic loss to investors  
27 who purchased this stock during the Class Period. This decline also eradicated over  
28 \$684.53 million of Apollo’s market capitalization over only four trading days.



1 sell over \$46 million dollars of their privately held Apollo shares while in possession of  
 2 material adverse non-public information about the Company; and (iv) caused plaintiff  
 3 and other members of the Class to purchase Apollo common stock at artificially inflated  
 4 prices.

5 77. The insider stock sales which occurred within the Class Period are set forth  
 6 below:

7  
 8 **INSIDER TRANSACTIONS REPORTED DURING THE CLASS PERIOD**

9 Date	10 Insider	11 Shares	12 Transaction	13 Value
14 July 29, 15 2010	16 SPERLING, 17 PETER V. 18 Officer	19 55,000	20 Sale at \$47.01 per share	21 \$2,585,550
22 July 23, 23 2010	24 SPERLING, 25 PETER V. 26 Officer	27 75,000	28 Sale at \$50.55 per share	\$3,791,250
July 22, 2010	SPERLING, PETER V. Officer	20,000	Sale at \$46.56 per share	\$931,200
July 20, 2010	SPERLING, PETER V. Officer	100,000	Sale at \$47.67 per share	\$4,767,000
July 13, 2010	SPERLING, PETER V. Officer	100,000	Sale at \$43.84 per share	\$4,384,000
July 8, 2010	SPERLING, PETER V. Officer	150,000	Sale at \$43.77 per share	\$6,565,500
June 15, 2010	D'AMICO JOSEPH L. Officer	8,398	Disposition (Non Open Market) at \$48.30 per share	\$405,623

	Date	Insider	Shares	Transaction	Value
1					
2	April 30, 2009	SPERLING, PETER V. Officer	113,821	Sale at \$57.44 -\$58.2 per share	\$6,581,000
3					
4	April 29, 2010	SPERLING, PETER V. Officer	106,279	Sale at \$57.80 per share	\$6,142,926
5					
6					
7	April 28, 2010	SPERLING, PETER V. Officer	78,332	Sale at \$61.62 per share	\$4,826,817
8					
9	April 28, 2010	SPERLING JOHN G Officer	79,001	Sale at \$61.65 per share	\$4,870,411
10					
11					
12	April 2, 2010	CAPPELLI GREGORY Officer	9,607	Disposition (Non Open Market) at \$61.50 per share	\$590,830
13					

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

78. 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 national market exchange, a highly efficient and automated market;

(b) As a regulated issuer, Apollo filed periodic public reports with the SEC and the Nasdaq;

(c) Apollo regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and



1 (d) Apollo was followed by several securities analysts employed by  
2 major brokerage firm(s) who wrote reports which were distributed to the sales force and  
3 certain customers of their respective brokerage firm(s). Each of these reports was  
4 publicly available and entered the public marketplace.

5 79. As a result of the foregoing, the market for Apollo securities promptly  
6 digested current information regarding Apollo from all publicly available sources and  
7 reflected such information in Apollo stock price. Under these circumstances, all  
8 purchasers of Apollo common stock during the Class Period suffered similar injury  
9 through their purchase of Apollo common stock at artificially inflated prices and a  
10 presumption of reliance applies.

#### 11 **NO SAFE HARBOR**

12 80. The statutory safe harbor provided for forward-looking statements under  
13 certain circumstances does not apply to any of the allegedly false statements pleaded in  
14 this complaint. Many of the specific statements pleaded herein were not identified as  
15 “forward-looking statements” when made. To the extent there were any forward-looking  
16 statements, there were no meaningful cautionary statements identifying important factors  
17 that could cause actual results to differ materially from those in the purportedly forward-  
18 looking statements. Alternatively, to the extent that the statutory safe harbor does apply  
19 to any forward-looking statements pleaded herein, defendants are liable for those false  
20 forward-looking statements because at the time each of those forward-looking statements  
21 was made, the particular speaker knew that the particular forward-looking statement was  
22 false, and/or the forward-looking statement was authorized and/or approved by an  
23 executive officer of Apollo who knew that those statements were false when made.

#### 24 **BASIS OF ALLEGATIONS**

25 81. Plaintiff has alleged the following based upon the investigation of  
26 plaintiff’s counsel, which included a review of SEC filings by Apollo, as well as  
27 regulatory filings and reports, securities analysts’ reports and advisories about the  
28 Company, press releases and other public statements issued by the Company, and media

1 reports about the Company, and plaintiff believes that substantial additional evidentiary  
2 support will exist for the allegations set forth herein after a reasonable opportunity for  
3 discovery.

4 **FIRST CLAIM**

5 **Violation Of Section 10(b) Of**  
6 **The Exchange Act And Rule 10b-5**  
7 **Promulgated Thereunder Against All Defendants**

8 82. Plaintiff repeats and realleges each and every allegation contained above as  
9 if fully set forth herein.

10 83. During the Class Period, defendants carried out a plan, scheme and course  
11 of conduct which was intended to and, throughout the Class Period, did: (i) deceive the  
12 investing public regarding Apollo's business, operations, management and the intrinsic  
13 value of Apollo common stock; (ii) enable defendants to artificially inflate the price of  
14 Apollo shares; (iii) enable Apollo insiders to sell over \$46 million dollars of their  
15 privately held Apollo shares while in possession of material adverse non-public  
16 information about the Company; and (iv) cause plaintiff and other members of the Class  
17 to purchase Apollo common stock at artificially inflated prices.

18 84. In furtherance of this unlawful scheme, plan and course of conduct,  
19 defendants, jointly and individually (and each of them) took the actions set forth herein.

20 85. Defendants: (a) employed devices, schemes, and artifices to defraud; (b)  
21 made untrue statements of material fact and/or omitted to state material facts necessary to  
22 make the statements not misleading; and (c) engaged in acts, practices, and a course of  
23 business which operated as a fraud and deceit upon the purchasers of the Company's  
24 common stock in an effort to maintain artificially high market prices for Apollo's  
25 common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All  
26 defendants are sued either as primary participants in the wrongful and illegal conduct  
27 charged herein or as controlling persons as alleged below.

28

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1           86. Defendants, individually and in concert, directly and indirectly, by the use,  
2 means, or instrumentalities of interstate commerce and/or of the mails, engaged and  
3 participated in a continuous course of conduct to conceal adverse material information  
4 about the business, operations, and future prospects of Apollo as specified herein.

5           87. These defendants employed devices, schemes, and artifices to defraud,  
6 while in possession of material adverse non-public information and engaged in acts,  
7 practices, and a course of conduct as alleged herein in an effort to assure investors of  
8 Apollo's value and performance and continued substantial growth, which included the  
9 making of, or the participation in the making of, untrue statements of material facts and  
10 omitting to state material facts necessary in order to make the statements made about  
11 Apollo and its business operations and future prospects in the light of the circumstances  
12 under which they were made, not misleading, as set forth more particularly herein, and  
13 engaged in transactions, practices and a course of business which operated as a fraud and  
14 deceit upon the purchasers of Apollo common stock during the Class Period.

15           88. Each of the Individual Defendants' primary liability, and controlling person  
16 liability, arises from the following facts: (i) the Individual Defendants were high-level  
17 executives and/or directors at the Company during the Class Period and members of the  
18 Company's management team or had control thereof; (ii) each of these defendants, by  
19 virtue of his responsibilities and activities as a senior officer and/or director of the  
20 Company was privy to and participated in the creation, development and reporting of the  
21 Company's internal budgets, plans, projections and/or reports; (iii) each of these  
22 defendants enjoyed significant personal contact and familiarity with the other defendants  
23 and was advised of and had access to other members of the Company's management  
24 team, internal reports and other data and information about the Company's finances,  
25 operations, and sales at all relevant times; and (iv) each of these defendants was aware of  
26 the Company's dissemination of information to the investing public which they knew or  
27 deliberately disregarded was materially false and misleading.

28

1           89. The defendants had actual knowledge of the misrepresentations and  
2 omissions of material facts set forth herein, or acted with deliberate disregard for the truth  
3 in that they failed to ascertain and to disclose such facts. Such defendants' material  
4 misrepresentations and/or omissions were done knowingly or with deliberately for the  
5 purpose and effect of concealing Apollo's operating condition and future business  
6 prospects from the investing public and supporting the artificially inflated price of its  
7 common stock. As demonstrated by defendants' overstatements and misstatements of the  
8 Company's business, operations and earnings throughout the Class Period, defendants, if  
9 they did not have actual knowledge of the misrepresentations and omissions alleged,  
10 were deliberate in failing to obtain such knowledge by deliberately refraining from taking  
11 those steps necessary to discover whether those statements were false or misleading.

12           90. As a result of the dissemination of the materially false and misleading  
13 information and failure to disclose material facts, as set forth above, the market price of  
14 Apollo common stock was artificially inflated during the Class Period. In ignorance of  
15 the fact that market prices of Apollo's publicly-traded common stock were artificially  
16 inflated, and relying directly or indirectly on the false and misleading statements made by  
17 defendants, or upon the integrity of the market in which the securities trade, and/or on the  
18 absence of material adverse information that was known to or deliberately disregarded by  
19 defendants but not disclosed in public statements by defendants during the Class Period,  
20 plaintiff and the other members of the Class acquired Apollo common stock during the  
21 Class Period at artificially high prices and were damaged thereby.

22           91. At the time of said misrepresentations and omissions, plaintiff and other  
23 members of the Class were ignorant of their falsity, and believed them to be true. Had  
24 plaintiff and the other members of the Class and the marketplace known the truth  
25 regarding the problems that Apollo was experiencing, which were not disclosed by  
26 defendants, plaintiff and other members of the Class would not have purchased or  
27 otherwise acquired their Apollo common stock, or, if they had acquired such common  
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1 stock during the Class Period, they would not have done so at the artificially inflated  
2 prices which they paid.

3 92. By virtue of the foregoing, defendants have violated Section 10(b) of the  
4 Exchange Act, and Rule 10b-5 promulgated thereunder.

5 93. As a direct and proximate result of defendants' wrongful conduct, plaintiff  
6 and the other members of the Class suffered damages in connection with their respective  
7 purchases and sales of the Company's common stock during the Class Period.

8 **SECOND CLAIM**

9  
10 **Violation Of Section 20(a) Of  
The Exchange Act Against Individual Defendants**

11 94. Plaintiff repeats and realleges each and every allegation contained above as  
12 if fully set forth herein.

13 95. The Individual Defendants acted as controlling persons of Apollo within  
14 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their  
15 high-level positions, and their ownership and contractual rights, participation in and/or  
16 awareness of the Company's operations and/or intimate knowledge of the false financial  
17 statements filed by the Company with the SEC and disseminated to the investing public,  
18 the Individual Defendants had the power to influence and control and did influence and  
19 control, directly or indirectly, the decision-making of the Company, including the content  
20 and dissemination of the various statements which plaintiff contends are false and  
21 misleading. The Individual Defendants were provided with or had unlimited access to  
22 copies of the Company's reports, press releases, public filings and other statements  
23 alleged by plaintiff to be misleading prior to and/or shortly after these statements were  
24 issued and had the ability to prevent the issuance of the statements or cause the  
25 statements to be corrected.

26 96. In particular, each of these defendants had direct and supervisory  
27 involvement in the day-to-day operations of the Company and, therefore, is presumed to  
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1 have had the power to control or influence the particular transactions giving rise to the  
2 securities violations as alleged herein, and exercised the same.

3 97. As set forth above, Apollo and the Individual Defendants each violated  
4 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
5 By virtue of their positions as controlling persons, the Individual Defendants are liable  
6 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of  
7 defendants' wrongful conduct, plaintiff and other members of the Class suffered damages  
8 in connection with their purchases of the Company's common stock during the Class  
9 Period.

10 **WHEREFORE**, plaintiff prays for relief and judgment, as follows:

11 1. Determining that this action is a proper class action under Rule 23 of the  
12 Federal Rules of Civil Procedure;

13 2. Awarding compensatory damages in favor of plaintiff and the other Class  
14 members against all defendants for all damages sustained as a result of defendants'  
15 wrongdoing, in an amount to be proven at trial, including interest thereon;

16 3. Awarding plaintiff and the Class their reasonable costs and expenses  
17 incurred in this action, including counsel fees and expert fees;

18 4. Awarding extraordinary, equitable and/or injunctive relief as permitted by  
19 law, equity and the federal statutory provisions sued hereunder, pursuant to Rules 64 and  
20 65 and any appropriate state law remedies to assure that the Class has an effective  
21 remedy; and

22 5. Such other and further relief as the Court may deem just and proper.  
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**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: September 23, 2010.

/s/ Michael Salcido

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- and-

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