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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

████████████████████
Individually and On Behalf of All Others
Similarly Situated

Plaintiff,

v.

APOLLO GROUP, INC.; TODD S. NELSON,
KENDA B. GONZALES; and DANIEL E.
BACHUS,

Defendants.

CIVIL ACTION NO.

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff ██████████ ("Plaintiff"), individually and on behalf of all other persons similarly situated, by its undersigned attorneys, for its complaint against defendants, alleges the following based upon personal knowledge as to itself and its own acts, and information and belief as to all other matters, based upon, *inter alia*, the

1 investigation conducted by and through its attorneys, which included, among other things, a
2 review of the defendants' public documents, conference calls and announcements made by
3 defendants, United States Securities and Exchange Commission ("SEC") filings, wire and
4 press releases published by and regarding Apollo Group, Inc. ("Apollo" or the "Company")
5 securities analysts' reports and advisories about the Company, and information readily
6 obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist
7 for the allegations set forth herein after a reasonable opportunity for discovery.
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10 NATURE OF THE ACTION

11 1. This is a federal class action on behalf of all who purchased or otherwise
12 acquired the securities of Apollo between March 12, 2004 through September 14, 2004,
13 inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange
14 Act of 1934 (the "Exchange Act").
15

16 JURISDICTION AND VENUE

17 2. The claims asserted herein arise under and pursuant to Sections 10(b) and
18 20(a) of the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated
19 thereunder (17 C.F.R. §240.10b-5).
20

21 3. This Court has jurisdiction over the subject matter of this action pursuant to
22 §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.
23

24 4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act,
25 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged
26 herein, including the preparation and dissemination of materially false and misleading
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1 information, occurred in substantial part in this Judicial District. Additionally, the Company
2 maintains a principal executive office in this Judicial District.

3
4 5. In connection with the acts, conduct and other wrongs alleged in this
5 complaint, defendants, directly or indirectly, used the means and instrumentalities of
6 interstate commerce, including but not limited to, the United States mails, interstate
7 telephone communications and the facilities of the national securities exchange.

8
9 **PARTIES**

10 6. Plaintiff [REDACTED] as set forth in the accompanying
11 certification, incorporated by reference herein, purchased Apollo securities at artificially
12 inflated prices during the Class Period and has been damaged thereby.

13
14 7. Defendant Apollo is an Arizona corporation and maintains its principal
15 executive offices at 4615 East Elwood Street, Phoenix, Arizona 85040.

16 8. Defendant Todd S. Nelson ("Nelson") was, at all relevant times, the
17 Company's Chairman of the Board, President, and Chief Executive Officer.

18
19 9. Defendant Kenda B. Gonzales ("Gonzales") was, at all relevant times, the
20 Company's Chief Financial Officer, Secretary, and Treasurer.

21 10. Defendant Daniel E. Bachus ("Bachus") was, at all relevant times, the
22 Company's Chief Accounting Officer and Controller.

23
24 11. Defendants Nelson, Gonzales, and Bachus are collectively referred to
25 hereinafter as the "Individual Defendants." During the Class Period, each of the Individual
26 Defendants, as senior executive officers and/or directors of Apollo were privy to non-public
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1 information concerning its business, finances, products, markets and present and future
2 business prospects via access to internal corporate documents, conversations and
3 connections with other corporate officers and employees, attendance at management and
4 Board of Directors meetings and committees thereof and via reports and other information
5 provided to them in connection therewith. Because of their possession of such information,
6 the Individual Defendants knew or recklessly disregarded the fact that adverse facts
7 specified herein had not been disclosed to, and were being concealed from, the investing
8 public.
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11 12. Because of the Individual Defendants' positions with the Company, they had
12 access to the adverse undisclosed information about the Company's business, operations,
13 operational trends, financial statements, markets and present and future business prospects
14 via access to internal corporate documents (including the Company's operating plans,
15 budgets and forecasts and reports of actual operations compared thereto), conversations and
16 connections with other corporate officers and employees, attendance at management and
17 Board of Directors meetings and committees thereof and via reports and other information
18 provided to them in connection therewith.
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21 13. It is appropriate to treat the Individual Defendants as a group for pleading
22 purposes and to presume that the false, misleading and incomplete information conveyed in
23 the Company's public filings, press releases and other publications as alleged herein are the
24 collective actions of the narrowly defined group of defendants identified above. Each of the
25 above officers of Apollo, by virtue of their high-level positions with the Company, directly
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1 participated in the management of the Company, was directly involved in the day-to-day
2 operations of the Company at the highest levels and was privy to confidential proprietary
3 information concerning the Company and its business, operations, growth, financial
4 statements, and financial condition, as alleged herein. Said defendants were involved in
5 drafting, producing, reviewing and/or disseminating the false and misleading statements and
6 information alleged herein, were aware, or recklessly disregarded, that the false and
7 misleading statements were being issued regarding the Company, and approved or ratified
8 these statements, in violation of the federal securities laws.

11 14. As officers and controlling persons of a publicly-held company whose
12 securities were, and are, registered with the SEC pursuant to the Exchange Act, and was
13 traded on the NASDAQ and governed by the provisions of the federal securities laws, the
14 Individual Defendants each had a duty to disseminate promptly, accurate and truthful
15 information with respect to the Company's financial condition and performance, growth,
16 operations, financial statements, business, markets, management, earnings and present and
17 future business prospects, and to correct any previously-issued statements that had become
18 materially misleading or untrue, so that the market price of the Company's publicly-traded
19 securities would be based upon truthful and accurate information. The Individual
20 Defendants' misrepresentations and omissions during the Class Period violated these
21 specific requirements and obligations.

25 15. The Individual Defendants participated in the drafting, preparation, and/or
26 approval of the various public and shareholder and investor reports and other
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1 communications complained of herein and were aware of, or recklessly disregarded, the
2 misstatements contained therein and omissions therefrom, and were aware of their
3 materially false and misleading nature. Because of their Board membership and/or
4 executive and managerial positions with Apollo, each of the Individual Defendants had
5 access to the adverse undisclosed information about Apollo financial condition and
6 performance as particularized herein and knew (or recklessly disregarded) that these adverse
7 facts rendered the positive representations made by or about Apollo and its business issued
8 or adopted by the Company materially false and misleading.

11 16. The Individual Defendants, because of their positions of control and authority
12 as officers and/or directors of the Company, were able to and did control the content of the
13 various SEC filings, press releases and other public statements pertaining to the Company
14 during the Class Period. Each Individual Defendant was provided with copies of the
15 documents alleged herein to be misleading prior to or shortly after their issuance and/or had
16 the ability and/or opportunity to prevent their issuance or cause them to be corrected.
17 Accordingly, each of the Individual Defendants is responsible for the accuracy of the public
18 reports and releases detailed herein and is therefore primarily liable for the representations
19 contained therein.

22 17. Each of the defendants is liable as a participant in a fraudulent scheme and
23 course of business that operated as a fraud or deceit on purchasers of Apollo securities by
24 disseminating materially false and misleading statements and/or concealing material adverse
25 facts. The scheme: (i) deceived the investing public regarding Apollo business, operations,
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1 management and the intrinsic value of Apollo securities; and (ii) caused Plaintiff and other
2 members of the Class to purchase Apollo securities at artificially inflated prices.

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4 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

5 18. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
6 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
7 otherwise acquired the securities of Apollo between March 12, 2004 and September 14,
8 2004, inclusive (the "Class Period") and who were damaged thereby. Excluded from the
9 Class are defendants, the officers and directors of the Company, at all relevant times,
10 members of their immediate families and their legal representatives, heirs, successors or
11 assigns and any entity in which defendants have or had a controlling interest.

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14 19. The members of the Class are so numerous that joinder of all members is
15 impracticable. Throughout the Class Period, Apollo's securities were actively traded on the
16 NYSE. While the exact number of Class members is unknown to Plaintiff at this time and
17 can only be ascertained through appropriate discovery, Plaintiff believes that there are
18 hundreds or thousands of members in the proposed Class. Record owners and other
19 members of the Class may be identified from records maintained by Apollo or its transfer
20 agent and may be notified of the pendency of this action by mail, using the form of notice
21 similar to that customarily used in securities class actions.

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24 20. Plaintiff's claims are typical of the claims of the members of the Class as all
25 members of the Class are similarly affected by defendants' wrongful conduct in violation of
26 federal law that is complained of herein.

1 Institute for Professional Development, The College for Financial Planning Institutes
2 Corporation and Western International University, Inc. The Company offers its programs
3 and services at 71 campuses and 121 learning centers in 37 states, Puerto Rico and
4 Vancouver, British Columbia.
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6 **Materially False And Misleading**
7 **Statements Issued During The Class Period**

8 25. The Class Period commences on March 12, 2004. At that time, Apollo
9 reported fiscal 2004 financial results for Apollo Education Group (Nasdaq:APOL) for the
10 second quarter ended Feb. 29, 2004. Net income attributed to Apollo Education Group for
11 the three months ended Feb. 29, 200, was \$63.0 million, or \$.35 per diluted share, compared
12 to \$42.6 million, or \$.24 per diluted share, reported for the same period last year. Net
13 income attributed to Apollo Education Group for the six months ended Feb. 29, 2004, was
14 \$141.4 million, or \$.79 per diluted share, compared to \$96.4 million, or \$.54 per diluted
15 share, reported for the same period last year. Total consolidated revenues for Apollo Group
16 Inc. for the three months ended Feb. 29, 2004, rose 34.4% to \$396.9 million, compared with
17 \$295.2 million in the second quarter of fiscal 2003. The University of Phoenix accounted
18 for 95.5% of the \$372.2 million in net tuition revenues from students enrolled in degree
19 programs for the quarter ended Feb. 29, 2004. Total revenues for University of Phoenix
20 Online for the three months ended Feb. 29, 2004, rose 57.4% to \$184.1 million, compared
21 with \$117.0 million in the second quarter of fiscal 2003. Total consolidated revenues for
22 Apollo Group Inc. for the six months ended Feb. 29, 2004, rose 33.9% to \$808.7 million,
23 compared with \$604.1 million in the same period last year. The University of Phoenix
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1 accounted for 95.2% of the \$759.8 million in net tuition revenues from students enrolled in
2 degree programs for the six months ended Feb. 29, 2004. Total revenues for University of
3 Phoenix Online for the six months ended Feb. 29, 2004, rose 59.3% to \$361.8 million,
4 compared with \$227.2 million in the same period last year.

6 Consolidated net income for Apollo Group Inc. for the three months ended Feb. 29, 2004,
7 increased 49.9% to \$68.5 million, compared to \$45.7 million for the same period last year.

8 Net income for University of Phoenix Online for the three months ended Feb. 29, 2004,
9 increased 70.0% to \$38.0 million, compared to \$22.4 million for the same period last year.

11 26. Commenting on these results, defendant Nelson stated:

12 "We are pleased with the strong financial performance this
13 quarter. We are also pleased to see continued strong growth in
14 enrollments, both local and online. We also reached a new
15 milestone in enrollment at University of Phoenix, exceeding the
200,000 mark."

16 27. On April 13, 2004, the Company filed its quarterly report with the SEC on
17 Form 10-Q. The Company's Form 10-Q was signed by the Individual Defendants and
18 reaffirmed the Company's previously announced results.

20 28. On June 24, 2004, Apollo reported fiscal 2004 financial results for Apollo
21 Education Group (Nasdaq:APOL) and University of Phoenix Online (Nasdaq:UOPX) for
22 the third quarter ended May 31, 2004. Net income attributed to Apollo Education Group
23 common stock for the three months ended May 31, 2004 was \$101.1 million, or \$.56 per
24 diluted share, compared to \$69.8 million, or \$.39 per diluted share, reported for the same
25 period last year. Net income attributed to University of Phoenix Online common stock for
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1 the three months ended May 31, 2004, was \$8.2 million, or \$.48 per diluted share, compared
2 to \$4.4 million or \$.27 per diluted share, reported for the same period last year. Net income
3 attributed to Apollo Education Group common stock for the nine months ended May 31,
4 2004 was \$242.5 million, or \$1.35 per diluted share, compared to \$166.2 million, or \$.94
5 per diluted share, reported for the same period last year. Net income attributed to University
6 of Phoenix Online common stock for the nine months ended May 31, 2004, was \$19.6
7 million, or \$1.14 per diluted share, compared to \$10.4 million or \$.64 per diluted share,
8 reported for the same period last year. Total consolidated revenues for Apollo Group, Inc.
9 for the three months ended May 31, 2004 rose 36.5% to \$497.0 million, compared with
10 \$364.2 million in the third quarter of fiscal 2003. The University of Phoenix accounted for
11 95.6% of the \$464.5 million in net tuition revenues from students enrolled in degree
12 programs for the quarter ended May 31, 2004. Total revenues for University of Phoenix
13 Online for the three months ended May 31, 2004 rose 60.0% to \$233.3 million, compared
14 with \$145.8 million in the third quarter of fiscal 2003. Total consolidated revenues for
15 Apollo for the nine months ended May 31, 2004 rose 34.8% to \$1.31 billion, compared with
16 \$968.2 million in the same period last year. The University of Phoenix accounted for 95.4%
17 of the \$1.22 billion in net tuition revenues from students enrolled in degree programs for the
18 nine months ended May 31, 2004. Total revenues for University of Phoenix Online for the
19 nine months ended May 31, 2004 rose 59.6% to \$595.1 million, compared with \$373.0
20 million in the same period last year.

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26 29. Commenting on these results, defendant Nelson stated:
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1 "We are pleased to report another quarter with strong earnings
2 and enrollment growth. The third quarter proved to be a strong
3 quarter for new locations as well. University of Phoenix opened
4 a campus in Louisville, KY and opened nine learning centers
5 throughout the United States. Institute for Professional
Development signed a new contract with Warner Pacific College
in Portland, OR."

6 30. On July 15, 2004, the Company filed its quarterly report with the SEC on
7 Form 10-Q. The Company's Form 10-Q was signed by the Individual Defendants and
8 reaffirmed the Company's previously announced results.
9

10 31. On August 12, 2004, the Company announced the following:

11 Apollo Group Inc. (Nasdaq:APOL) today announced that it will
12 convert all outstanding shares of University of Phoenix Online
13 (Nasdaq:UOPX) common stock into shares of Apollo Education
Group Class A common stock effective Aug. 27, 2004.

14 Todd S. Nelson, CEO and chairman, said, "We believe that the
15 conversion of University of Phoenix Online common stock will
16 allow us to focus on online learning across all of our platforms
17 and removes any market uncertainty arising from the potential
conversion of these shares."

18 Conversion of University of Phoenix Online Shares

19 In accordance with the terms of Apollo Group Inc.'s Amended
20 and Restated Articles of Incorporation, each outstanding share
21 of University of Phoenix Online common stock will be
22 converted into 1.11527 shares of Apollo Education Group Class
23 A common stock as of Aug. 27, 2004. The conversion ratio is
24 based upon the relative market values of Apollo Education
25 Group Class A common stock and University of Phoenix Online
26 common stock averaged over the 20 trading days (July 9, 2004
27 through Aug. 5, 2004) ending five trading days prior to today's
announcement, and includes a 10% premium on the value of
University of Phoenix Online common stock, all as required by
the terms of the Amended and Restated Articles of
Incorporation. The conversion is expected to result in the

1 issuance of approximately 16.7 million new shares of Apollo
2 Education Group Class A common stock. There are no
3 regulatory approvals or other conditions that must be satisfied
4 prior to the conversion becoming effective. As provided in
5 Apollo Group Inc.'s Amended and Restated Articles of
6 Incorporation, there is no shareholder vote on the conversion.

7 No fractional share interests will be issued. Shareholders who
8 would otherwise be entitled to a fractional share will instead be
9 paid cash for such fractional interest in an amount based upon
10 the market value of a share of Apollo Education Group Class A
11 common stock as of the fifth trading day prior to the Aug. 27,
12 2004 conversion date.

13 Current holders of record of University of Phoenix Online
14 common stock will receive a notice explaining the conversion. A
15 copy of the notice is also available at www.apollogrp.edu.

16 Following the conversion date, Apollo Group Inc. will have two
17 classes of common stock, Apollo Education Group Class A
18 common stock which will continue to trade on NASDAQ under
19 the ticker symbol APOL and Apollo Education Group Class B
20 common stock.

21 Updated Business Outlook

22 The conversion of the University of Phoenix Online common
23 stock will require us to record certain non-cash charges related
24 to the premium paid to convert outstanding shares of University
25 of Phoenix Online common stock to Apollo Education Group
26 Class A common stock and related to the conversion of
27 University of Phoenix Online stock options into Apollo
28 Education Group Class A stock options.

As required by Statement of Financial Accounting Standards
No. 128 "Earnings per Share," Apollo Group Inc. expects to
reduce net income attributable to Apollo Education Group
common stock in the fourth quarter of fiscal 2004 related to the
non-cash 10% premium paid to redeem the University of
Phoenix Online common stock. The amount of the reduction to
net income attributable to Apollo Education Group common
stock will be calculated based on the number of University of

1 Phoenix Online common stock outstanding and converted on
2 Aug. 27, 2004. Based on the number of University of Phoenix
3 Online common stock outstanding on Aug. 12, 2004, we would
4 expect to reduce net income attributable to Apollo Education
5 Group common stock by \$115 million related to the non-cash
6 premium.

7 As required by Emerging Issues Task Force No. 00-23 "Issues
8 Related to the Accounting for Stock Compensation under APB
9 Opinion No. 25 and FASB Interpretation No. 44," Apollo Group
10 Inc. expects to recognize approximately \$149 million of
11 non-cash pre-tax expense related to the conversion of University
12 of Phoenix Online stock options into Apollo Education Group
13 Class A stock options. We expect between \$113 million and
14 \$126 million of the option conversion expense will be
15 recognized in the fourth quarter of fiscal 2004. The amount
16 recognized as option conversion expense in the fourth quarter of
17 fiscal 2004 will be based on the total number of options vested
18 at Aug. 31, 2004. The remaining expense is expected to be
19 recognized in fiscal years 2005 and 2006.

20 Excluding the non-cash charges detailed above, we reiterate our
21 guidance dated June 24, 2004.

22 32. On August 25, 2004, the Company provided its business outlook for the first
23 quarter of fiscal 2005 ending Nov. 30, 2004 and the fiscal year ending Aug. 31, 2005.

24 Specifically, Apollo stated:

25 We are pleased to report that we expect degree enrollments at
26 local campuses to grow between 12% and 13% over the prior
27 year at the end of the first quarter of fiscal 2005. In addition, we
28 expect online degree enrollments to grow in excess of 40% over
the prior year at the end of the first quarter of fiscal 2005.

1 Apollo Group Inc.

2 We expect revenue for the quarter ending Nov. 30, 2004 to be
3 between \$529 million and \$532 million and to be between
4 \$2.285 billion and \$2.288 billion for fiscal 2005.

5 Operating margin is expected to be between 32.5% and 33.0%
6 for the quarter ending Nov. 30, 2004 and to be between 32.5%
7 and 33.0% for fiscal 2005.

8 Excluding non-cash charges related to the conversion of
9 University of Phoenix Online stock options into Apollo
10 Education Group Class A stock options anticipated to be
11 recognized in the fourth quarter of fiscal 2005, diluted earnings
12 per share are expected to be \$.56 for the quarter ending Nov. 30,
13 2004 and to be \$2.40 for fiscal 2005.

14 33. The statements contained in ¶¶ 25-32 were materially false and misleading
15 when made because failed to disclose or indicate the following: (1) that the Company
16 improperly based recruiter's compensation on enrollment figures, in violation of U.S.
17 regulations that forbid schools whose students receive federal financial aid from tying pay
18 directly to enrollments; (2) that as a consequence of the foregoing, defendants were able to
19 demonstrate dazzling growth at schools such as the University of Phoenix, even though
20 recruiters bolstered their number by signing up unqualified students; and (3) that as result of
21 the illegal practices, the Company's earning and net income were materially inflated at all
22 relevant times.

23 **The Truth Begins to Emerge**

24 34. On September 15, 2004, the *Wall Street Journal* published an article entitled
25 "Will Apollo's Bad Report Card Get Its Shares Grounded?. In relevant part, the article read:
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1 Apollo Group, star of the for-profit education business, just got a
2 rare failing grade from regulators. Will Wall Street mark down
3 its high-achieving shares, too?

4 A newly disclosed Education Department report blasts Apollo
5 Group Inc.'s flagship University of Phoenix for a "culture of
6 duplicity" in which supervisors improperly lavished money on
7 sales employees for signing up scores of new students, including
8 those unable to cut it.

9 Federal investigators said recruiters -- called "enrollment
10 counselors" at the University of Phoenix -- faced pressures more
11 akin to car dealerships than colleges. Forty-four of 61 counselors
12 interviewed by the government told investigators that salaries
13 were always about enrollment numbers. The Education
14 Department said counselors were told they could as much as
15 double or triple their starting salaries in three to six months if
16 they signed up enough students.

17 Apollo strongly disputes the investigators' findings, saying it
18 doesn't base salaries on enrollment figures. Still, the report
19 provides fresh details about sales practices in the for-profit
20 education business. It also raises the question of whether a
21 too-aggressive approach contributed to Apollo's dazzling growth
22 -- and if it now will be forced to tone down its approach and
23 grow more slowly. Amid news of the report yesterday, Apollo
24 shares slipped as much as 3% before rebounding to trade at
25 \$80.09, down 54 cents, or 0.67%, as of 4 p.m. on the Nasdaq
26 Stock Market.

27 The shares have dropped sharply in recent weeks as Apollo's
28 peers faced various legal and regulatory assaults over their
recruiting and placement practices, but Apollo's stock remains
up about 18% year to date. Since the company's initial public
offering in 1994, its shares have soared from 72 cents apiece to
as high as \$98 in June, adjusted for stock splits.

U.S. regulations forbid schools whose students receive federal
financial aid from tying pay directly to enrollments. In 2003,
about 60% of the University of Phoenix's revenue came from
federal student aid, which comes in the form of grants and

1 guaranteed loans. Violating the rules runs the risk of losing the
2 aid.

3 Responding to a series of scandals in the 1980s and 1990s, the
4 government has sought to prevent entrepreneurial schools from
5 signing up students for programs that don't benefit them, then
6 leaving them saddled with loans that they can't repay. Aid
7 recipients are generally low-income students. Many rely heavily
8 on federal aid and pay little or nothing out of pocket to cover
9 tuition.

10 Last week, Apollo Group, based in Phoenix, disclosed it had
11 agreed to pay \$9.8 million to settle the sales-incentive
12 allegations spelled out in the Education Department report. But
13 the company, which said the inquiry covered 1998 through June
14 2004, disclosed few details. The Wall Street Journal reviewed a
15 copy of the Education Department document, contents of which
16 were detailed yesterday in the Arizona Republic.

17 Apollo Group Chief Executive Todd S. Nelson yesterday
18 dismissed the conclusions of the report as "totally false." He said
19 the company settled its dispute to avoid the expense and
20 distraction of the probe. He said its own internal examination,
21 headed by outside accounting firm KPMG LLP, found no
22 correlation between compensation and enrollment.

23 "If the things said in the report were 100% accurate, the
24 government certainly wouldn't have resolved this for \$9
25 million," he said. Education Department spokeswoman Susan
26 Aspey said the agency stands by the report and noted the fine is
27 the largest the agency had ever levied.

28 Mr. Nelson said the company changed its compensation system
in June -- to make it clear that pay wasn't tied to enrollment but
to other measures, such as customer satisfaction. "The growth in
our company is not based on the compensation of our enrollment
counselors," he said. "It's based on the demand for the quality
education we deliver."

Founded in 1973, Apollo has prospered amid a demographic
shift in higher education from young students to "lifelong
learning" by working adults who need to enhance job skills in a

1 fast-changing economy. In the four fiscal years through Aug. 31,
2 2003, enrollment and revenue at Apollo has more than doubled.
3 Annual profit quadrupled to \$247 million.

4 Jennifer Childe, an analyst with Bear Stearns with an
5 "outperform" rating on the shares, said details of the Education
6 Department report are catching some investors by surprise
7 because Apollo was perceived as being "pure as the driven
8 snow." But she said she has considered aggressive sales
9 practices to be "the norm in the business." Apollo is "growing
10 enrollment north of 40% a year," she said. "It's hard to believe
11 they've been able to do that without being aggressive." (Bear
12 Stearns says it has no banking relationship with Apollo.)

13 Larry Puglia, manager of T. Rowe Price Blue Chip Growth
14 Fund, which owns one million Apollo shares, says he is still
15 confident that the company can report better than 30% annual
16 earnings growth, based on the strong demand for postsecondary
17 education. "There are a lot of people who have tried to put this
18 company in the basket of companies that have had pretty
19 widespread regulatory deficiencies," he says. "I don't think this
20 is the case going forward."

21 Mr. Nelson characterized the allegations of the current and
22 former workers interviewed by the government as those of
23 "disgruntled employees," including some with litigation against
24 the company. He said they represent the views of a small
25 number of the company's 5,000 counselors.

26 Investigators said the school hired counselors at \$26,000 a year
27 from far higher-paying jobs, then promised to bump their
28 salaries up to as much as \$120,000 if they logged enough
enrollments. Internal literature boasted of "\$\$\$-No limit on
income" and "Never have to worry about \$\$\$ again."

Recruiters with over 200 student enrollments a year earned
\$80,000 to \$100,000, regardless of their length of service, the
report said. The university rewarded top performers with
all-expense paid trips, including one to the Watergate Hotel in
Washington, the report said. Counselors also received \$100 gift
certificates and spa packages.

1 Mr. Nelson said top performers did receive trips, though not to
2 Washington. He said a few employees got gifts from bosses,
3 though not for enrollment. He said the literature cited by the
4 government wasn't sanctioned by the company and that only
longtime counselors could make more than \$100,000.

5 Investigators said the company kept performance reviews that
6 suggested the company used other criteria, such as rapport with
7 students, to make it appear the company wasn't directly tying
8 enrollments to compensation. But they described the efforts as
"smoke and mirrors" to avoid government detection.

9 The company pressured recruiters to sign up unqualified
10 students, such as those who don't have the money to complete
11 the program, the report said. The recruiters would overcome
12 objections by citing the availability of student aid, stressing no
up-front costs and playing down loan-repayment obligations,
investigators said.

13 The report cited "a culture of duplicity," with some counselors
14 even forging student signatures on loan documents. Mr. Nelson
15 said only a few counselors have ever forged documents and they
16 were quickly fired. He said statistics show that University of
17 Phoenix has graduation rates above -- and loan-default rates
below -- the rest of the industry, proving the company doesn't
sell to unqualified students.

18 35. This news shocked the market. Shares of Apollo fell \$1.41 per share, or 1.76
19 percent on September 15, 2004, to close at \$78.68 per share.

20 UNDISCLOSED ADVERSE FACTS

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22 36. The market for Apollo's securities was open, well-developed and efficient at
23 all relevant times. As a result of these materially false and misleading statements and
24 failures to disclose, Apollo's securities traded at artificially inflated prices during the Class
25 Period. Plaintiff and other members of the Class purchased or otherwise acquired Apollo
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1 securities relying upon the integrity of the market price of Apollo's securities and market
2 information relating to Apollo, and have been damaged thereby.

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4 37. During the Class Period, defendants materially misled the investing public,
5 thereby inflating the price of Apollo's securities, by publicly issuing false and misleading
6 statements and omitting to disclose material facts necessary to make defendants' statements,
7 as set forth herein, not false and misleading. Said statements and omissions were materially
8 false and misleading in that they failed to disclose material adverse information and
9 misrepresented the truth about the Company, its business and operations, as alleged herein.
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11 38. At all relevant times, the material misrepresentations and omissions partic-
12 ularized in this Complaint directly or proximately caused or were a substantial contributing
13 cause of the damages sustained by plaintiff and other members of the Class. As described
14 herein, during the Class Period, defendants made or caused to be made a series of materially
15 false or misleading statements about Apollo's business, prospects and operations. These
16 material misstatements and omissions had the cause and effect of creating in the market an
17 unrealistically positive assessment of Apollo and its business, prospects and operations, thus
18 causing the Company's securities to be overvalued and artificially inflated at all relevant
19 times. Defendants' materially false and misleading statements during the Class Period
20 resulted in plaintiff and other members of the Class purchasing the Company's securities at
21 artificially inflated prices, thus causing the damages complained of herein.
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1 (a) Apollo stock met the requirements for listing, and was listed and actively
2 traded on the NASDAQ, a highly efficient and automated market;

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

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

10 (d) Apollo was followed by several securities analysts employed by major
11 brokerage firms who wrote reports which were distributed to the sales force and certain
12 customers of their respective brokerage firms. Each of these reports was publicly available
13 and entered the public marketplace.

14 42. As a result of the foregoing, the market for Apollo securities promptly
15 digested current information regarding Apollo from all publicly-available sources and
16 reflected such information in Apollo stock price. Under these circumstances, all purchasers
17 of Apollo securities during the Class Period suffered similar injury through their purchase of
18 Apollo securities at artificially inflated prices and a presumption of reliance applies.

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24 **NO SAFE HARBOR**

25 43. The statutory safe harbor provided for forward-looking statements under
26 certain circumstances does not apply to any of the allegedly false statements pleaded in this
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1 complaint. Many of the specific statements pleaded herein were not identified as "forward-
2 looking statements" when made. To the extent there were any forward-looking statements,
3 there were no meaningful cautionary statements identifying important factors that could
4 cause actual results to differ materially from those in the purportedly forward-looking
5 statements. Alternatively, to the extent that the statutory safe harbor does apply to any
6 forward-looking statements pleaded herein, defendants are liable for those false forward-
7 looking statements because at the time each of those forward-looking statements was made,
8 the particular speaker knew that the particular forward-looking statement was false, and/or
9 the forward-looking statement was authorized and/or approved by an executive officer of
10 Apollo who knew that those statements were false when made.
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14 **FIRST CLAIM**
15 **Violation Of Section 10(b) Of**
16 **The Exchange Act Against And Rule 10b-5**
17 **Promulgated Thereunder Against All Defendants**

18 44. Plaintiff repeats and realleges each and every allegation contained above as if
19 fully set forth herein.

20 45. During the Class Period, defendants carried out a plan, scheme and course of
21 conduct which was intended to and, throughout the Class Period, did: (i) deceive the
22 investing public, including Plaintiff and other Class members, as alleged herein; and (ii)
23 cause Plaintiff and other members of the Class to purchase Apollo securities at artificially
24 inflated prices. In furtherance of this unlawful scheme, plan and course of conduct,
25 defendants, and each of them, took the actions set forth herein.
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1 46. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made
2 untrue statements of material fact and/or omitted to state material facts necessary to make
3 the statements not misleading; and (c) engaged in acts, practices, and a course of business
4 which operated as a fraud and deceit upon the purchasers of the Company's securities in an
5 effort to maintain artificially high market prices for Apollo securities in violation of Section
6 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary
7 participants in the wrongful and illegal conduct charged herein or as controlling persons as
8 alleged below.
9

11 47. Defendants, individually and in concert, directly and indirectly, by the use,
12 means or instrumentalities of interstate commerce and/or of the mails, engaged and
13 participated in a continuous course of conduct to conceal adverse material information about
14 the business, operations and future prospects of Apollo as specified herein.
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17 48. These defendants employed devices, schemes and artifices to defraud, while in
18 possession of material adverse non-public information and engaged in acts, practices, and a
19 course of conduct as alleged herein in an effort to assure investors of Apollo value and
20 performance and continued substantial growth, which included the making of, or the
21 participation in the making of, untrue statements of material facts and omitting to state
22 material facts necessary in order to make the statements made about Apollo and its business
23 operations and future prospects in the light of the circumstances under which they were
24 made, not misleading, as set forth more particularly herein, and engaged in transactions,
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1 practices and a course of business which operated as a fraud and deceit upon the purchasers
2 of Apollo securities during the Class Period.

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4 49. Each of the Individual Defendants' primary liability, and controlling person
5 liability, arises from the following facts: (i) the Individual Defendants were high-level
6 executives and/or directors at the Company during the Class Period and members of the
7 Company's management team or had control thereof; (ii) each of these defendants, by virtue
8 of his responsibilities and activities as a senior officer and/or director of the Company was
9 privy to and participated in the creation, development and reporting of the Company's
10 internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed
11 significant personal contact and familiarity with the other defendants and was advised of
12 and had access to other members of the Company's management team, internal reports and
13 other data and information about the Company's finances, operations, and sales at all
14 relevant times; and (iv) each of these defendants was aware of the Company's dissemination
15 of information to the investing public which they knew or recklessly disregarded was
16 materially false and misleading.
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20 50. The defendants had actual knowledge of the misrepresentations and omissions
21 of material facts set forth herein, or acted with reckless disregard for the truth in that they
22 failed to ascertain and to disclose such facts, even though such facts were available to them.
23 Such defendants' material misrepresentations and/or omissions were done knowingly or
24 recklessly and for the purpose and effect of concealing Apollo operating condition and
25 future business prospects from the investing public and supporting the artificially inflated
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1 price of its securities. As demonstrated by defendants' overstatements and misstatements of
2 the Company's business, operations and earnings throughout the Class Period, defendants, if
3 they did not have actual knowledge of the misrepresentations and omissions alleged, were
4 reckless in failing to obtain such knowledge by deliberately refraining from taking those
5 steps necessary to discover whether those statements were false or misleading.
6

7 51. As a result of the dissemination of the materially false and misleading
8 information and failure to disclose material facts, as set forth above, the market price of
9 Apollo securities was artificially inflated during the Class Period. In ignorance of the fact
10 that market prices of Apollo publicly-traded securities were artificially inflated, and relying
11 directly or indirectly on the false and misleading statements made by defendants, or upon
12 the integrity of the market in which the securities trades, and/or on the absence of material
13 adverse information that was known to or recklessly disregarded by defendants but not dis-
14 closed in public statements by defendants during the Class Period, Plaintiff and the other
15 members of the Class acquired Apollo securities during the Class Period at artificially high
16 prices and were damaged thereby.
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20 52. At the time of said misrepresentations and omissions, Plaintiff and other
21 members of the Class were ignorant of their falsity, and believed them to be true. Had
22 Plaintiff and the other members of the Class and the marketplace known the truth regarding
23 the problems that Apollo was experiencing, which were not disclosed by defendants,
24 Plaintiff and other members of the Class would not have purchased or otherwise acquired
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1 their Apollo securities, or, if they had acquired such securities during the Class Period, they
2 would not have done so at the artificially inflated prices which they paid.

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

6 54. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and
7 the other members of the Class suffered damages in connection with their respective
8 purchases and sales of the Company's securities during the Class Period.
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10 **SECOND CLAIM**
11 **Violation Of Section 20(a) Of**
12 **The Exchange Act Against the Individual Defendants**

13 55. Plaintiff repeats and realleges each and every allegation contained above as if
14 fully set forth herein.

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

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4 57. In particular, each of these defendants had direct and supervisory involvement
5 in the day-to-day operations of the Company and, therefore, is presumed to have had the
6 power to control or influence the particular transactions giving rise to the securities
7 violations as alleged herein, and exercised the same.

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

15
16 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

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18 (a) Determining that this action is a proper class action, designating Plaintiff
19 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the
20 Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

21
22 (b) Awarding compensatory damages in favor of Plaintiff and the other Class
23 members against all defendants, jointly and severally, for all damages sustained as a result
24 of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

25
26 (c) Awarding Plaintiff and the Class their reasonable costs and expenses
27 incurred in this action, including counsel fees and expert fees; and
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1 (d) Such other and further relief as the Court may deem just and proper.

2 **JURY TRIAL DEMANDED**

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4 Plaintiff hereby demands a trial by jury.

5 Dated this 12th day of October, 2004

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