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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Rameses Te Lomingkit, Individually And
On Behalf Of All Others Similarly
Situated,

Plaintiff,

v.

Apollo Education Group, Inc. (F/K/A
Apollo Group, Inc.); Peter V. Sperling,
Gregory W. Cappelli; Brian L. Swartz; and
William Pepicello,

Defendants.

No. 2:16-cv-00689-PHX-JAT

CLASS ACTION

**STIPULATION AND
AGREEMENT OF SETTLEMENT**

1 This Stipulation and Agreement of Settlement, dated as of February 8, 2019 (the
2 “Stipulation”) is entered into between (a) Government of Guam Retirement Fund (“Lead
3 Plaintiff”), on behalf of itself and the Settlement Class (defined below); and
4 (b) defendants Apollo Education Group, Inc. (“Apollo” or the “Company”), and Gregory
5 W. Cappelli, Brian L. Swartz, and Peter V. Sperling (collectively, the “Individual
6 Defendants” and, together with Apollo, “Defendants”), and embodies the terms and
7 conditions of the settlement of the above-captioned action (the “Action”). Subject to the
8 approval of the Court and the terms and conditions expressly provided herein, this
9 Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve,
10 waive, discharge, and dismiss with prejudice the Action and all Released Plaintiffs’
11 Claims (defined below) against Defendants and all Released Defendants’ Claims (also
12 defined below) against Plaintiffs, both of which include Unknown Claims.

13 WHEREAS:

14 A. On March 14, 2016, Plaintiff Rameses Te Lomingkit (“Lomingkit”) filed a
15 class action complaint in the United States District Court for the District of Arizona (the
16 “Court”), styled *Rameses Te Lomingkit, et al. v. Apollo Education Group, Inc., et al.*,
17 Case No. 2:16-cv-00689, asserting federal securities claims against Apollo and certain of
18 its current and former officers.

19 B. By Order dated June 16, 2016, the Court (the Honorable Douglas L. Rayes)
20 appointed Government of Guam Retirement Fund as Lead Plaintiff for the Action; and
21 approved Lead Plaintiff’s selection of Bernstein Litowitz Berger & Grossmann LLP as
22 Lead Counsel for the class and Tiffany & Bosco P.A. as local counsel for Lead Plaintiff
23 and the class.

24 C. On August 15, 2016, Lead Plaintiff and additional plaintiffs Lomingkit and
25 National Shopmen Pension Fund (collectively, “Plaintiffs”) filed and served the
26 Consolidated Class Action Complaint (“Consolidated Complaint”) asserting claims

1 against Apollo; Gregory W. Cappelli, Apollo's former CEO; Brian L. Swartz, Apollo's
2 former CFO; and William F. Pepicello, the President of the University of Phoenix and a
3 member of Apollo's executive management, under Section 10(b) of the Securities
4 Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and
5 against Defendants Cappelli, Swartz, and Peter V. Sperling, Chairman of the Apollo
6 Board of Directors, under Section 20(a) of the Exchange Act. The Consolidated
7 Complaint alleged that Defendants made materially false and misleading statements
8 about: (i) the status of the Company's new online classroom, and (ii) the Company's
9 compliance with regulations governing the recruitment of military personnel, the
10 Company's contract with the Department of Defense, and a Presidential Executive Order
11 regarding military recruiting. The Complaint further alleged that the price of Apollo
12 Class A common stock was artificially inflated as a result of Defendants' allegedly false
13 and misleading statements, and declined when the truth was revealed.

14 D. On October 14, 2016, Defendants filed and served a motion to dismiss the
15 Consolidated Complaint. On November 7, 2016, the Action was reassigned from Judge
16 Rayes to the Honorable James A. Teilborg for all further proceedings. On December 5,
17 2016, Plaintiffs served and filed their memorandum of law in opposition to Defendants'
18 motion to dismiss and, on December 12, 2016, Defendants served their reply papers. The
19 Court heard oral argument on the motion on February 15, 2017. On February 16, 2017,
20 the Court granted Defendants' motion to dismiss the Consolidated Complaint, with leave
21 to amend.

22 E. On March 9, 2017, Plaintiffs filed and served the Amended Class Action
23 Complaint ("Amended Complaint" or "Complaint") asserting claims against Defendants
24 Apollo, Cappelli, and Swartz under Section 10(b) of the Exchange Act and Rule 10b-5
25 promulgated thereunder, and against Defendants Cappelli, Swartz, and Sperling under
26 Section 20(a) of the Exchange Act. The Complaint alleges that, during the Class Period,

1 Defendants made materially false and misleading statements about the status and
2 performance of Apollo's critical online classroom project, and that the price of Apollo
3 Class A common stock was artificially inflated as a result of the alleged misleading
4 statements, and declined when the truth was revealed.

5 F. On March 29, 2017, Defendants filed and served a motion to dismiss the
6 Amended Complaint. On April 12, 2017, Plaintiffs served their memorandum of law in
7 opposition to this motion and, on April 19, 2017, Defendants served their reply papers.
8 The Court heard oral argument on this motion on July 19, 2017.

9 G. On July 26, 2017, the Court granted Defendants' motion to dismiss the
10 Amended Complaint.

11 H. On August 8, 2017, Plaintiffs filed a notice of appeal which sought review
12 by the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") of the
13 Court's July 26, 2017 Order granting the motion to dismiss. Plaintiffs electronically
14 submitted their opening brief on the appeal to the Ninth Circuit on December 22, 2017.
15 Defendants submitted their answering brief on May 4, 2018, and Plaintiffs submitted
16 their reply brief on June 25, 2018.

17 I. While the appeal was pending, the Parties discussed the possibility of
18 resolving the litigation through settlement and agreed to mediation before Jed D.
19 Melnick, Esq. of JAMS. On March 12, 2018, the Parties exchanged detailed mediation
20 statements with numerous exhibits that were also submitted to Mr. Melnick. A full-day
21 in-person mediation session with Mr. Melnick was held in New York on March 21, 2018.
22 At the mediation session, the Parties engaged in vigorous settlement negotiations with the
23 assistance of Mr. Melnick but were not able to reach an agreement.

24 J. The Parties continued their settlement negotiations after the mediation with
25 the assistance of Mr. Melnick. On October 7, 2018, the Ninth Circuit notified the Parties
26 that oral argument on the appeal was scheduled for December 21, 2018. On December

1 17, 2018, the Parties reached an agreement in principle to settle the Action for
2 \$7,400,000. The same day, the Parties notified the Ninth Circuit of their agreement in
3 principle to settle and, on December 18, 2018, the Ninth Circuit entered an order staying
4 appellate proceedings and remanding the case to the District Court for the purpose of
5 considering the Parties' settlement agreement.

6 K. On January 2, 2019, the Parties executed a Term Sheet setting forth their
7 agreement in principle to settle the Action in return for a cash payment by or on behalf of
8 Defendants of \$7,400,000 for the benefit of the Settlement Class, subject to certain terms
9 and conditions and the execution of a customary "long form" stipulation and agreement
10 of settlement and related papers.

11 L. This Stipulation (together with the exhibits hereto) reflects the final and
12 binding agreement between the Parties.

13 M. Based upon their investigation, prosecution, and mediation of the case,
14 Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of this
15 Stipulation are fair, reasonable and adequate to Lead Plaintiff and the other members of
16 the Settlement Class, and in their best interests. Based on Lead Plaintiff's direct
17 oversight of the prosecution of this matter and with the advice of its counsel, Lead
18 Plaintiff has agreed to settle and release the Released Plaintiffs' Claims pursuant to the
19 terms and provisions of this Stipulation, after considering, among other things: (a) the
20 substantial financial benefit that Lead Plaintiff and the other members of the Settlement
21 Class will receive under the proposed Settlement; and (b) the significant risks and costs
22 of continued litigation and trial.

23 N. This Stipulation constitutes a compromise of all matters that are in dispute
24 between the Parties. Defendants are entering into this Stipulation solely to eliminate the
25 uncertainty, burden and expense of further protracted litigation. Each of the Defendants
26 denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to

1 be evidence of or an admission or concession on the part of any of the Defendants with
 2 respect to any claim or allegation of any fault or liability or wrongdoing or damage
 3 whatsoever, or any infirmity in the defenses that Defendants have, or could have,
 4 asserted. Defendants expressly deny that Lead Plaintiff has asserted any valid claims as
 5 to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing
 6 or damages whatsoever. Similarly, this Stipulation shall in no event be construed or
 7 deemed to be evidence of or an admission or concession on the part of Lead Plaintiff of
 8 any infirmity in any of the claims asserted in the Action, or an admission or concession
 9 that any of the Defendants' defenses to liability had any merit.

10 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among
 11 Lead Plaintiff (individually and on behalf of all other members of the Settlement Class)
 12 and Defendants, by and through their respective undersigned attorneys and subject to the
 13 approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure,
 14 that, in consideration of the benefits flowing to the Parties from the Settlement, all
 15 Released Plaintiffs' Claims as against the Defendants' Releasees and all Released
 16 Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon
 17 and subject to the terms and conditions set forth below.

18 DEFINITIONS

19 1. As used in this Stipulation and any exhibits attached hereto and made a part
 20 hereof, the following capitalized terms shall have the following meanings:

21 (a) "Action" means the securities class action styled *Lomingkit, et al. v.*
 22 *Apollo Education Group, Inc., et al.*, Case No. 2:16-cv-00689-PHX-JAT.

23 (b) "Alternate Judgment" means a form of final judgment that may be
 24 entered by the Court herein but in a form other than the form of Judgment provided for in
 25 this Stipulation.

26 (c) "Apollo" or the "Company" means Apollo Education Group, Inc.

1 (d) “Authorized Claimant” means a Settlement Class Member who
2 submits a Claim to the Claims Administrator that is approved by the Court for payment
3 from the Net Settlement Fund.

4 (e) “Claim” means a paper claim submitted on a Claim Form, or an
5 electronic claim, in either instance that is submitted to the Claims Administrator.

6 (f) “Claim Form” or “Proof of Claim Form” means the form,
7 substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must
8 complete and submit should that Claimant seek to share in a distribution of the Net
9 Settlement Fund.

10 (g) “Claimant” means a person or entity who or which submits a Claim
11 to the Claims Administrator seeking to be eligible to share in the proceeds of the Net
12 Settlement Fund.

13 (h) “Claims Administrator” means the firm retained by Lead Counsel,
14 subject to approval of the Court, to provide all notices approved by the Court to potential
15 Settlement Class Members and to administer the Settlement.

16 (i) “Class Distribution Order” means an order entered by the Court
17 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part,
18 to Authorized Claimants.

19 (j) “Class Period” means the period from November 13, 2013 through
20 October 21, 2015, inclusive.

21 (k) “Complaint” means the Amended Class Action Complaint filed by
22 Lead Plaintiff in the Action on March 9, 2017.

23 (l) “Court” or “District Court” means the United States District Court for
24 the District of Arizona.

25 (m) “Defendants” means Apollo and the Individual Defendants.
26

1 (n) “Defendants’ Counsel” means Wilmer Cutler Pickering Hale and
2 Dorr LLP and Osborn Maledon, P.A.

3 (o) “Defendants’ Releasees” means Defendants, William F. Pepicello,
4 Joseph L. D’Amico, Gregory J. Iverson, and their current and former parents, affiliates,
5 subsidiaries, agents, successors, predecessors, assigns, assignees, partnerships, partners,
6 trustees, trusts, Immediate Family Members, insurers, and reinsurers, in their capacities
7 as such, and any of these persons’ or entities’ respective directors, officers, employees
8 and counsel, in their capacities as such.

9 (p) “Effective Date” with respect to the Settlement means the first date
10 by which all of the events and conditions specified in ¶ 34 of this Stipulation have been
11 met and have occurred or have been waived.

12 (q) “Escrow Account” means an account maintained at Valley National
13 Bank wherein the Settlement Amount shall be deposited and held in escrow under the
14 control of Lead Counsel.

15 (r) “Escrow Agent” means Valley National Bank.

16 (s) “Escrow Agreement” means the agreement between Lead Counsel
17 and the Escrow Agent setting forth the terms under which the Escrow Agent shall
18 maintain the Escrow Account.

19 (t) “Final,” with respect to the Judgment or, if applicable, the Alternate
20 Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of
21 the time provided for filing or noticing any appeal under the Federal Rules of Appellate
22 Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an
23 appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or
24 the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the
25 judgment or order is finally affirmed on an appeal, the expiration of the time to file a
26 petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari

1 or other form of review, and, if certiorari or other form of review is granted, the date of
2 final affirmance following review pursuant to that grant. However, any appeal or
3 proceeding seeking subsequent judicial review pertaining solely to an order issued with
4 respect to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation of Settlement
5 proceeds (as submitted or subsequently modified), shall not in any way delay or preclude
6 a judgment from becoming Final.

7 (u) "Immediate Family Members" means children, stepchildren, parents,
8 stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-
9 law, brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse" shall mean a
10 husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

11 (v) "Individual Defendants" means Gregory W. Cappelli, Brian L.
12 Swartz, and Peter V. Sperling.

13 (w) "Judgment" means the final judgment, substantially in the form
14 attached hereto as Exhibit B, to be entered by the Court approving the Settlement.

15 (x) "Lead Counsel" means the law firm of Bernstein Litowitz Berger &
16 Grossmann LLP.

17 (y) "Lead Plaintiff" means Government of Guam Retirement Fund.

18 (z) "Litigation Expenses" means costs and expenses incurred in
19 connection with commencing, prosecuting and settling the Action (which may include the
20 costs and expenses of Plaintiffs directly related to their representation of the Settlement
21 Class), for which Lead Counsel intends to apply to the Court for reimbursement from the
22 Settlement Fund.

23 (aa) "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes;
24 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the
25 Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees
26 approved by the Court.

1 (bb) “Notice” means the Notice of (I) Pendency of Class Action and
2 Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of
3 Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form
4 attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class
5 Members.

6 (cc) “Notice and Administration Costs” means the costs, fees, and
7 expenses that are incurred by the Claims Administrator and/or Lead Counsel in
8 connection with: (i) providing notice to the Settlement Class; and (ii) administering the
9 Settlement, including but not limited to the Claims process, as well as the costs, fees, and
10 expenses incurred in connection with the Escrow Account.

11 (dd) “Officer” means any officer as that term is defined in Securities and
12 Exchange Act Rule 16a-1(f).

13 (ee) “Parties” means Defendants and Lead Plaintiff, on behalf of itself and
14 the Settlement Class.

15 (ff) “Plaintiffs” means Lead Plaintiff, Rameses Te Lomingkit, and
16 National Shopmen Pension Fund.

17 (gg) “Plaintiffs’ Counsel” means Lead Counsel, Tiffany & Bosco P.A., and
18 Robbins Geller Rudman & Dowd LLP.

19 (hh) “Plaintiffs’ Releasees” means Plaintiffs, all other Settlement Class
20 Members, and their respective current and former parents, affiliates, subsidiaries, agents,
21 successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts,
22 Immediate Family Members, insurers, and reinsurers, in their capacities as such, and any
23 of these persons’ or entities’ respective directors, officers, employees and counsel, in their
24 capacities as such.

25 (ii) “Plan of Allocation” means the proposed plan of allocation of the Net
26 Settlement Fund set forth in the Notice.

1 (jj) “Preliminary Approval Order” means the order, substantially in the
2 form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the
3 Settlement and directing that notice of the Settlement be provided to the Settlement Class.

4 (kk) “PSLRA” means the Private Securities Litigation Reform Act of
5 1995, 15 U.S.C. § 78u-4, as amended.

6 (ll) “Released Claims” means all Released Defendants’ Claims and all
7 Released Plaintiffs’ Claims.

8 (mm) “Released Defendants’ Claims” means all claims and causes of action
9 of every nature and description, whether known claims or Unknown Claims, whether
10 arising under federal, state, common, or foreign law, that arise out of or relate in any way
11 to the institution, prosecution, or settlement of the claims asserted in the Action against
12 Defendants. Released Defendants’ Claims do not include: (i) any claims relating to the
13 enforcement of the Settlement; or (ii) any claims against any person or entity who or
14 which submits a request for exclusion from the Settlement Class that is accepted by the
15 Court.

16 (nn) “Released Plaintiffs’ Claims” means all claims and causes of action
17 of every nature and description, whether known claims or Unknown Claims, whether
18 direct or representative, whether arising under federal, state, common, or foreign law, that
19 Lead Plaintiff or any other member of the Settlement Class: (i) asserted in the Complaint,
20 or (ii) could have asserted in any forum that arise out of or are based upon the allegations,
21 transactions, facts, matters or occurrences, representations or omissions involved, set
22 forth, or referred to in the Complaint and that relate to the purchase or acquisition of
23 Apollo Class A common stock during the Class Period. For the avoidance of doubt,
24 Released Plaintiffs’ Claims do not include: (i) any claims relating to the enforcement of
25 the Settlement; and (ii) any claims of any person or entity who or which submits a request
26 for exclusion that is accepted by the Court.

1 (oo) “Releasee(s)” means each and any of the Defendants’ Releasees and
2 each and any of the Plaintiffs’ Releasees.

3 (pp) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

4 (qq) “Settlement” means the settlement between Lead Plaintiff and
5 Defendants on the terms and conditions set forth in this Stipulation.

6 (rr) “Settlement Amount” means \$7,400,000.00 in cash.

7 (ss) “Settlement Class” means all persons and entities who purchased or
8 otherwise acquired Apollo Class A common stock during the period from November 13,
9 2013 through October 21, 2015, inclusive (the “Class Period”), and were damaged
10 thereby. Excluded from the Settlement Class by definition are: Defendants, William F.
11 Pepicello, Joseph L. D’Amico, Gregory J. Iverson, the Officers and directors of Apollo at
12 all relevant times, their Immediate Family Members, and their legal representatives,
13 heirs, agents, affiliates, successors or assigns, Defendants’ liability insurance carriers, and
14 any affiliates or subsidiaries thereof, including but not limited to Apollo’s employee
15 retirement and benefit plans, and any entity in which Defendants or their immediate
16 family members have or had a controlling interest. Also excluded from the Settlement
17 Class are any persons and entities who or which exclude themselves by submitting a
18 request for exclusion that is accepted by the Court.

19 (tt) “Settlement Class Member” means each person and entity who or
20 which is a member of the Settlement Class.

21 (uu) “Settlement Fund” means the Settlement Amount plus any and all
22 interest earned thereon.

23 (vv) “Settlement Hearing” means the hearing set by the Court under
24 Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the
25 Settlement.
26

(ww) “Summary Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(xx) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(yy) “Unknown Claims” means any Released Plaintiffs’ Claims which Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

1 Lead Plaintiff and Defendants acknowledge, and each of the other Settlement Class
2 Members shall be deemed by operation of law to have acknowledged, that the foregoing
3 waiver was separately bargained for and a key element of the Settlement.

4 **CLASS CERTIFICATION**

5 2. Solely for purposes of the Settlement and for no other purpose, Defendants
6 stipulate and agree to: (a) certification of the Action as a class action pursuant to
7 Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the
8 Settlement Class; (b) certification of Lead Plaintiff as the Class Representative for the
9 Settlement Class; and (c) appointment of Lead Counsel as Class Counsel for the
10 Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

11 **PRELIMINARY APPROVAL OF SETTLEMENT**

12 3. Within ten (10) business days of the execution of this Stipulation, Lead
13 Plaintiff will move for preliminary approval of the Settlement, authorization to mail
14 notice of the Settlement to members of the Settlement Class, and the scheduling of a
15 hearing for consideration of final approval of the Settlement, which relief shall be
16 unopposed by Defendants. Concurrently with the motion for preliminary approval, Lead
17 Plaintiff shall apply to the Court for, and Defendants shall agree to, entry of the
18 Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

19 **RELEASE OF CLAIMS; COVENANT NOT TO SUE; INJUNCTION**

20 4. The obligations incurred pursuant to this Stipulation are in consideration of:
21 (a) the full and final disposition of the Action as against Defendants; and (b) the Releases
22 and other relief provided for herein.

23 5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
24 further action by anyone, upon the Effective Date, Lead Plaintiff and each of the other
25 Settlement Class Members, on behalf of themselves, and their respective heirs, executors,
26 administrators, predecessors, successors, and assigns, in their capacities as such, or any

1 person purporting to assert a Released Plaintiffs' Claim on behalf of any such persons,
2 shall be deemed to have, and by operation of law and of the judgment shall have, fully,
3 finally, and forever compromised, settled, released, resolved, relinquished, waived, and
4 discharged each and every Released Plaintiffs' Claim against Defendants and the other
5 Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or
6 all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

7 6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without
8 further action by anyone, upon the Effective Date of the Settlement, Defendants, on
9 behalf of themselves, and their respective heirs, executors, administrators, predecessors,
10 successors, and assigns, in their capacities as such, or any person purporting to assert a
11 Released Defendants' Claim on behalf of any such persons, shall be deemed to have, and
12 by operation of law and of the judgment shall have, fully, finally, and forever
13 compromised, settled, released, resolved, relinquished, waived, and discharged each and
14 every Released Defendants' Claim against Lead Plaintiff and the other Plaintiffs'
15 Releasees, and shall forever be barred and enjoined from prosecuting any or all of the
16 Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall
17 not apply to any person or entity who or which submits a request for exclusion from the
18 Settlement Class that is accepted by the Court.

19 7. As of the Effective Date, each person who has given any release pursuant to
20 the foregoing ¶¶ 5-6 shall: (i) be deemed to have agreed to a covenant not to sue
21 corresponding to the release given by such person; and (ii) shall be permanently enjoined
22 from prosecuting any claim that such person has released.

23 8. The Court (and in particular the Honorable James A. Teilborg, if available,
24 and otherwise any other duly assigned Judge presiding in the Court) shall retain full,
25 complete, and exclusive authority to interpret and enforce the permanent injunction set
26 forth in the foregoing paragraph, and Lead Plaintiff and all Settlement Class Members

1 expressly waive all rights to seek any adjudication concerning the permanent injunction
2 in any forum other than the Court.

3 9. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment, or the Alternate
4 Judgment, if applicable, shall bar any action by any of the Parties to enforce or effectuate
5 the terms of this Stipulation or the Judgment, or Alternate Judgment, if applicable.

6 **THE SETTLEMENT CONSIDERATION**

7 10. In consideration of the settlement of the Released Plaintiffs' Claims against
8 Defendants and the other Defendants' Releasees, Defendants shall pay or cause to be paid
9 the Settlement Amount into the Escrow Account no later than the later of (a) thirty (30)
10 calendar days after the date of entry by the Court of an order preliminarily approving this
11 Settlement; and (b) fifteen (15) business days after Defendants' Counsel's receipt from
12 Lead Counsel of the information necessary to effectuate a transfer of funds to the Escrow
13 Account, including instructions for payment by wire transfer that include the bank name
14 and ABA routing number, account name and number or for payment by check, and a
15 signed W-9 reflecting a valid taxpayer identification number for the qualified settlement
16 fund in which the Settlement Amount is to be deposited.

17 **USE OF SETTLEMENT FUND**

18 11. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
19 Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any
20 attorneys' fees awarded by the Court; and (e) any other costs and fees approved by the
21 Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund,
22 shall be distributed to Authorized Claimants as provided in ¶¶ 20-32 below.

23 12. Except as provided herein or pursuant to orders of the Court, the Net
24 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All
25 funds held by the Escrow Agent shall be deemed to be in the custody of the Court and
26 shall remain subject to the jurisdiction of the Court until such time as the funds shall be

1 distributed or returned pursuant to the terms of this Stipulation and/or further order of the
2 Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in
3 United States Treasury Bills (or a mutual fund invested solely in such instruments) and
4 shall collect and reinvest all interest accrued thereon, except that any residual cash
5 balances up to the amount that is insured by the FDIC may be deposited in any account
6 that is fully insured by the FDIC. In the event that the yield on United States Treasury
7 Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds
8 held by the Escrow Agent may be deposited in any account that is fully insured by the
9 FDIC or backed by the full faith and credit of the United States. Additionally, if short-
10 term placement of the funds is necessary, all or any portion of the funds held by the
11 Escrow Agent may be deposited in any account that is fully insured by the FDIC or
12 backed by the full faith and credit of the United States.

13 13. The Parties agree that the Settlement Fund is intended to be a Qualified
14 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead
15 Counsel, as administrator of the Settlement Fund within the meaning of Treasury
16 Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed
17 all informational and other tax returns as may be necessary or appropriate (including,
18 without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the
19 Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made
20 from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The
21 Defendants' Releasees shall not have any liability or responsibility for any such Taxes.
22 Upon written request, Defendants will provide to Lead Counsel the statement described
23 in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement
24 Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make
25 such elections as are necessary or advisable to carry out this paragraph, including, as
26 necessary, making a "relation back election," as described in Treasury Regulation

1 § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the
2 earliest allowable date, and shall take or cause to be taken all actions as may be necessary
3 or appropriate in connection therewith.

4 14. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid,
5 or caused to be paid, by Lead Counsel and without further order of the Court. Any tax
6 returns prepared for the Settlement Fund (as well as the election set forth therein) shall be
7 consistent with the previous paragraph and in all events shall reflect that all Taxes on the
8 income earned by the Settlement Fund shall be paid out of the Settlement Fund as
9 provided herein. Defendants' Releasees shall have no responsibility or liability for the
10 acts or omissions of Lead Counsel or its agents with respect to the payment of Taxes, as
11 described herein.

12 15. The Settlement is not a claims-made settlement. Upon the occurrence of
13 the Effective Date, no Defendant, Defendants' Releasee, or any other person or entity
14 who or which paid any portion of the Settlement Amount shall have any right to the
15 return of the Settlement Fund or any portion thereof for any reason whatsoever, including
16 without limitation, the number of Claims submitted, the collective amount of Recognized
17 Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to
18 be paid to Authorized Claimants from the Net Settlement Fund.

19 16. Prior to the Effective Date of the Settlement, Lead Counsel may pay from
20 the Settlement Fund, without further approval from Defendants or further order of the
21 Court, all Notice and Administration Costs actually incurred and paid or payable up to a
22 total of \$250,000. Such costs and expenses shall include, without limitation, the actual
23 costs of printing and mailing the Notice, publishing the Summary Notice,
24 reimbursements to nominee owners for forwarding the Notice to their beneficial owners,
25 the administrative expenses incurred and fees charged by the Claims Administrator in
26 connection with providing notice, administering the Settlement (including processing the

submitted Claims), and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants, any of the other Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount. After the Effective Date, Lead Counsel may pay all Notice and Administration Costs from the Settlement Fund without further approval from Defendants or further order of the Court.

ATTORNEYS' FEES AND LITIGATION EXPENSES

17. Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid solely from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses, which may include a request for reimbursement of Plaintiffs' costs and expenses directly related to their representation of the Settlement Class, to be paid solely from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

18. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon final approval by the Court, notwithstanding any appeals, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than thirty (30) calendar days after: (a) receiving from Defendants' Counsel

1 notice of the termination of the Settlement; (b) providing Defendants' Counsel with
 2 notice of Lead Plaintiff's termination of the Settlement; or (c) any order reducing or
 3 reversing the award of attorneys' fees and/or Litigation Expenses has become Final. An
 4 award of attorneys' fees and/or Litigation Expenses is not a necessary term of this
 5 Stipulation and is not a condition of the Settlement embodied herein. Neither Lead
 6 Plaintiff nor Lead Counsel may cancel or terminate the Settlement based on this Court's
 7 or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

8 19. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs'
 9 Counsel in a manner which it, in good faith, believes reflects the contributions of such
 10 counsel to the institution, prosecution, and settlement of the Action. Defendants'
 11 Releasees shall have no responsibility for or liability whatsoever with respect to the
 12 allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and
 13 Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from
 14 the Escrow Account.

15 **NOTICE AND SETTLEMENT ADMINISTRATION**

16 20. As part of the Preliminary Approval Order, Lead Counsel shall seek
 17 appointment of a Claims Administrator. The Claims Administrator shall administer the
 18 Settlement, including but not limited to the process of receiving, reviewing, and
 19 approving or denying Claims, under Lead Counsel's supervision and subject to the
 20 jurisdiction of the Court. Other than Apollo's obligation to provide its stockholder
 21 records as provided in ¶ 21 below, none of the Defendants, nor any other Defendants'
 22 Releasees, shall have any involvement in or any responsibility, authority, or liability
 23 whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the
 24 administration of the Settlement, the Claims process, or disbursement of the Net
 25 Settlement Fund, and shall have no liability whatsoever to any person or entity, including,
 26 but not limited to, Lead Plaintiff, any other Settlement Class Members, or Lead Counsel

1 in connection with the foregoing. Defendants' Counsel shall cooperate in the
2 administration of the Settlement to the extent reasonably necessary to effectuate its terms.

3 21. In accordance with the terms of the Preliminary Approval Order to be
4 entered by the Court, Lead Counsel shall cause the Claims Administrator to mail the
5 Notice and Claim Form to those members of the Settlement Class as may be identified
6 through reasonable effort. Lead Counsel shall also cause the Claims Administrator to
7 have the Summary Notice published in accordance with the terms of the Preliminary
8 Approval Order to be entered by the Court. For the purposes of identifying and providing
9 notice to the Settlement Class, within ten (10) business days of the date of entry of the
10 Preliminary Approval Order, Apollo shall provide or cause to be provided to the Claims
11 Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel or
12 the Claims Administrator) a list (consisting of names, mailing addresses and email
13 addresses) of the record holders or purchasers of Apollo Class A common stock during
14 the Class Period to the extent reasonably available to Apollo.

15 22. No later than ten (10) calendar days following the filing of this Stipulation
16 with the Court, Defendants shall serve, or cause the Claims Administrator to serve, the
17 notice required under the Class Action Fairness Act, 28 U.S.C. § 1715, *et seq.* ("CAFA").
18 Defendants are solely responsible for the costs of the CAFA notice and administering the
19 CAFA notice. At least seven (7) calendar days before the Settlement Hearing, Defendants
20 shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit or
21 declaration, regarding compliance with CAFA § 1715(b).

22 23. The Claims Administrator shall receive Claims and determine first, whether
23 the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro*
24 *rata* share of the Net Settlement Fund based upon each Authorized Claimant's
25 Recognized Claim compared to the total Recognized Claims of all Authorized Claimants
26

1 (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1
2 to Exhibit A, or in such other plan of allocation as the Court approves).

3 24. The Plan of Allocation proposed in the Notice is not a necessary term of the
4 Settlement or of this Stipulation and it is not a condition of the Settlement or of this
5 Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff
6 and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based
7 on this Court's or any appellate court's ruling with respect to the Plan of Allocation or
8 any other plan of allocation in this Action. Defendants and the other Defendants'
9 Releasees shall not object in any way to the Plan of Allocation or any other plan of
10 allocation in this Action. No Defendant, nor any other Defendants' Releasees, shall have
11 any involvement with or liability, obligation or responsibility whatsoever for the
12 application of the Court-approved plan of allocation.

13 25. Any Settlement Class Member who does not submit a valid Claim will not
14 be entitled to receive any distribution from the Net Settlement Fund, but will otherwise
15 be bound by all of the terms of this Stipulation and the Settlement, including the terms of
16 the Judgment or, the Alternate Judgment, if applicable, to be entered in the Action and the
17 Releases provided for herein and therein, and will be permanently barred and enjoined
18 from bringing any action, claim, or other proceeding of any kind against the Defendants'
19 Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective
20 Date occurs with respect to the Settlement.

21 26. Lead Counsel shall be responsible for supervising the administration of the
22 Settlement and the disbursement of the Net Settlement Fund subject to Court approval.
23 No Defendant, or any other Defendants' Releasees, shall be permitted to review, contest,
24 or object to any Claim, or any decision of the Claims Administrator or Lead Counsel with
25 respect to accepting or rejecting any Claim for payment. Lead Counsel shall have the
26

1 right, but not the obligation, to waive what it deems to be formal or technical defects in
2 any Claims submitted in the interests of achieving substantial justice.

3 27. For purposes of determining the extent, if any, to which a Settlement Class
4 Member shall be entitled to be treated as an Authorized Claimant, the following
5 conditions shall apply:

6 (a) Each Claimant shall be required to submit a Claim in paper form,
7 substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form,
8 in accordance with the instructions for the submission of such Claims, and supported by
9 such documents as are designated therein, including proof of the Claimant's loss, or such
10 other documents or proof as the Claims Administrator or Lead Counsel, in their
11 discretion, may deem acceptable;

12 (b) All Claims must be submitted by the date set by the Court in the
13 Preliminary Approval Order and specified in the Notice. Any Settlement Class Member
14 who fails to submit a Claim by such date shall be forever barred from receiving any
15 distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless
16 by Order of the Court such Settlement Class Member's Claim is accepted), but shall in all
17 other respects be bound by all of the terms of this Stipulation and the Settlement,
18 including the terms of the Judgment or Alternate Judgment, if applicable, and the
19 Releases provided for herein and therein, and will be permanently barred and enjoined
20 from bringing any action, claim or other proceeding of any kind against any Defendants'
21 Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by
22 the claim-submission deadline, a Claim Form shall be deemed to be submitted when
23 postmarked, if received with a postmark indicated on the envelope and if mailed by first-
24 class mail and addressed in accordance with the instructions thereon. In all other cases,
25 the Claim Form shall be deemed to have been submitted on the date when actually
26 received by the Claims Administrator;

1 (c) Each Claim shall be submitted to and reviewed by the Claims
2 Administrator who shall determine in accordance with this Stipulation and the plan of
3 allocation the extent, if any, to which each Claim shall be allowed, subject to review by
4 the Court pursuant to subparagraph (e) below as necessary;

5 (d) Claims that do not meet the submission requirements may be
6 rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall
7 communicate with the Claimant in writing, to give the Claimant the chance to remedy
8 any curable deficiencies in the Claim submitted. The Claims Administrator shall notify,
9 in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator
10 proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate
11 in such notice that the Claimant whose Claim is to be rejected has the right to a review by
12 the Court if the Claimant so desires and complies with the requirements of subparagraph
13 (e) below; and

14 (e) If any Claimant whose Claim has been rejected in whole or in part
15 desires to contest such rejection, the Claimant must, within twenty (20) days after the
16 date of mailing of the notice required in subparagraph (d) above or a lesser time period if
17 the Claim was untimely, serve upon the Claims Administrator a notice and statement of
18 reasons indicating the Claimant's grounds for contesting the rejection along with any
19 supporting documentation, and requesting a review thereof by the Court. If a dispute
20 concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present
21 the request for review to the Court.

22 28. Each Claimant shall be deemed to have submitted to the jurisdiction of the
23 Court with respect to the Claimant's Claim, and the Claim will be subject to investigation
24 and discovery under the Federal Rules of Civil Procedure, provided, however, that such
25 investigation and discovery shall be limited to that Claimant's status as a Settlement
26 Class Member and the validity and amount of the Claimant's Claim. No discovery shall

1 be allowed on the merits of this Action or of the Settlement in connection with the
2 processing of Claims.

3 29. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for
4 a Class Distribution Order: (a) approving the Claims Administrator's administrative
5 determinations concerning the acceptance and rejection of the Claims submitted;
6 (b) approving payment of any administration fees and expenses associated with the
7 administration of the Settlement from the Escrow Account; and (c) if the Effective Date
8 has occurred, directing payment of the Net Settlement Fund to Authorized Claimants
9 from the Escrow Account.

10 30. Payment pursuant to the Class Distribution Order shall be final and
11 conclusive against all Claimants. All Settlement Class Members whose Claims are not
12 approved by the Court for payment shall be barred from participating in distributions
13 from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this
14 Stipulation and the Settlement, including the terms of the Judgment or Alternate
15 Judgment, if applicable, to be entered in this Action and the Releases provided for herein
16 and therein, and will be permanently barred and enjoined from bringing any action
17 against any and all Defendants' Releasees with respect to any and all of the Released
18 Plaintiffs' Claims.

19 31. No person or entity shall have any claim against Lead Plaintiff, Lead
20 Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, or
21 Defendants' Releasees and/or their respective counsel, arising from distributions made
22 substantially in accordance with the Stipulation, the plan of allocation approved by the
23 Court, or any order of the Court. Lead Plaintiff and Defendants, and their respective
24 counsel, and Lead Plaintiff's damages expert and all other Releasees shall have no
25 liability whatsoever for the investment or distribution of the Settlement Fund or the Net
26 Settlement Fund, the plan of allocation, or the determination, administration, calculation,

1 or payment of any claim or nonperformance of the Claims Administrator, the payment or
2 withholding of taxes (including interest and penalties) owed by the Settlement Fund, or
3 any losses incurred in connection therewith.

4 32. All proceedings with respect to the administration, processing and
5 determination of Claims and the determination of all controversies relating thereto,
6 including disputed questions of law and fact with respect to the validity of Claims, shall
7 be subject to the jurisdiction of the Court. All Settlement Class Members, other
8 Claimants, and parties to this Settlement expressly waive trial by jury (to the extent any
9 such right may exist) and any right of appeal or review with respect to such
10 determinations.

11 **TERMS OF THE JUDGMENT**

12 33. If the Settlement contemplated by this Stipulation is approved by the Court,
13 Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment,
14 substantially in the form attached hereto as Exhibit B.

15 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
16 **DISAPPROVAL, CANCELLATION, OR TERMINATION**

17 34. The Effective Date of the Settlement shall be deemed to occur on the
18 occurrence or express written waiver of all of the following events:

19 (a) the Court has entered the Preliminary Approval Order, substantially
20 in the form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

21 (b) the Settlement Amount has been deposited into the Escrow Account
22 in accordance with the provisions of ¶ 10 above;

23 (c) Defendants have not exercised their option to terminate the
24 Settlement pursuant to the provisions of this Stipulation;

25 (d) Lead Plaintiff has not exercised its option to terminate the Settlement
26 pursuant to the provisions of this Stipulation; and

1 (e) the Court has approved the Settlement as described herein, following
2 notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal
3 Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final,
4 or the Court has entered an Alternate Judgment and none of the Parties seek to terminate
5 the Settlement and the Alternate Judgment has become Final.

6 35. Upon the occurrence of all of the events referenced in ¶ 34 above, any and
7 all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be
8 absolutely and forever extinguished and the Releases herein shall be effective.

9 36. If (i) Defendants exercise their right to terminate the Settlement as provided
10 in this Stipulation; (ii) Lead Plaintiff exercises its right to terminate the Settlement as
11 provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the
12 Effective Date as to the Settlement otherwise fails to occur, then:

13 (a) The Settlement and the relevant portions of this Stipulation shall be
14 canceled and terminated.

15 (b) Lead Plaintiff and Defendants shall revert to their respective positions
16 in the Action as of December 17, 2018.

17 (c) The terms and provisions of this Stipulation, with the exception of
18 this ¶ 36 and ¶¶ 16, 18, 40, and 60, shall have no further force and effect with respect to
19 the Parties and shall not be used in the Action or in any other proceeding for any purpose,
20 and any Judgment, or Alternate Judgment, if applicable, or order entered by the Court in
21 accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

22 (d) Within five (5) business days after joint written notification of
23 termination is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the
24 Settlement Fund (including accrued interest thereon, and change in value as a result of
25 the investment of the Settlement Fund, and any funds received by Lead Counsel
26 consistent with ¶ 18 above), less any Notice and Administration Costs actually incurred,

1 paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow
2 Agent to Defendants (or such other persons or entities as Defendants may direct). In the
3 event that the funds received by Lead Counsel consistent with ¶ 18 above have not been
4 refunded to the Settlement Fund within the five (5) business days specified in this
5 paragraph, those funds shall be refunded by the Escrow Agent to Defendants (or such
6 other persons or entities as Defendants may direct) immediately upon their deposit into
7 the Escrow Account consistent with ¶ 18 above.

8 37. It is further stipulated and agreed that Defendants, provided they agree, and
9 Lead Plaintiff shall each have the right to terminate the Settlement and this Stipulation,
10 by providing written notice of their election to do so (“Termination Notice”) to the other
11 Parties to this Stipulation within thirty (30) days of: (a) the Court’s final refusal to enter
12 the Preliminary Approval Order in any material respect; (b) the Court’s final refusal to
13 approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter
14 the Judgment in any material respect as to the Settlement; (d) the date upon which the
15 Judgment is modified or reversed in any material respect by the Ninth Circuit or the
16 United States Supreme Court; or (e) the date upon which an Alternate Judgment is
17 modified or reversed in any material respect by the Ninth Circuit or the United States
18 Supreme Court, and the provisions of ¶ 36 above shall apply. However, any decision or
19 proceeding, whether in this Court or any appellate court, with respect to an application
20 for attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of
21 allocation shall not be considered material to the Settlement, shall not affect the finality
22 of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for
23 termination of the Settlement.

24 38. In addition to the grounds set forth in ¶ 37 above, Apollo shall have the
25 unilateral right to terminate the Settlement in the event that Settlement Class Members
26 timely and validly requesting exclusion from the Settlement Class meet the conditions set

1 forth in Defendants' confidential supplemental agreement with Lead Plaintiff (the
2 "Supplemental Agreement"), in accordance with the terms of that agreement. The
3 Supplemental Agreement, which is being executed concurrently herewith, shall not be
4 filed with the Court and its terms shall not be disclosed in any other manner (other than
5 the statements herein and in the Notice, to the extent necessary, as necessary in order for
6 Defendants to comply with the provisions of CAFA, or as otherwise provided in the
7 Supplemental Agreement) unless the Court otherwise directs or a dispute arises between
8 Lead Plaintiff and Apollo concerning its interpretation or application, in which event the
9 Parties shall submit the Supplemental Agreement to the Court in camera and request that
10 the Court afford it confidential treatment.

11 39. In addition to the grounds set forth in ¶ 37 above, Lead Plaintiff shall also
12 have the right to terminate the Settlement in the event that the Settlement Amount has not
13 been paid as provided for in ¶ 10 above, by providing written notice of the election to
14 terminate to Defendants' Counsel.

15 **NO ADMISSION OF WRONGDOING**

16 40. Neither the Term Sheet, this Stipulation (whether or not consummated),
17 including the exhibits hereto and the Plan of Allocation contained therein (or any other
18 plan of allocation that may be approved by the Court), the negotiations leading to the
19 execution of the Term Sheet or this Stipulation, nor any proceedings taken pursuant to or
20 in connection with the Term Sheet, this Stipulation, and/or approval of the Settlement
21 (including any arguments proffered in connection therewith):

22 (a) shall be offered against any of the Defendants' Releasees as evidence
23 of, or construed as, or deemed to be evidence of any presumption, concession, or
24 admission by any of the Defendants' Releasees with respect to the truth of any fact
25 alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted
26 or the deficiency of any defense that has been or could have been asserted in this Action

1 or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any
2 kind of any of the Defendants' Releasees or in any way referred to for any other reason as
3 against any of the Defendants' Releasees, in any arbitration proceeding or other civil,
4 criminal, or administrative action or proceeding, other than such proceedings as may be
5 necessary to effectuate the provisions of this Stipulation;

6 (b) shall be offered against any of the Plaintiffs' Releasees, as evidence
7 of, or construed as, or deemed to be evidence of any presumption, concession, or
8 admission by any of the Plaintiffs' Releasees that any of their claims are without merit,
9 that any of the Defendants' Releasees had meritorious defenses, or that damages
10 recoverable under the Complaint would not have exceeded the Settlement Amount or
11 with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way
12 referred to for any other reason as against any of the Plaintiffs' Releasees, in any
13 arbitration proceeding or other civil, criminal, or administrative action or proceeding,
14 other than such proceedings as may be necessary to effectuate the provisions of this
15 Stipulation; or

16 (c) shall be construed against any of the Releasees as an admission,
17 concession, or presumption that the consideration to be given hereunder represents the
18 amount which could be or would have been recovered after trial;
19 *provided, however,* that if this Stipulation is approved by the Court, the Parties and the
20 Releasees and their respective counsel may refer to it to effectuate the protections from
21 liability granted hereunder or otherwise to enforce the terms of the Settlement.

22 **MISCELLANEOUS PROVISIONS**

23 41. All of the exhibits attached hereto are hereby incorporated by reference as
24 though fully set forth herein. Notwithstanding the foregoing, in the event that there exists
25 a conflict or inconsistency between the terms of this Stipulation and the terms of any
26 exhibit attached hereto, the terms of the Stipulation shall prevail.

1 42. Defendants warrant that, as to the payments made or to be made on behalf
2 of them, at the time of entering into this Stipulation and at the time of such payment they,
3 or to the best of their knowledge any persons or entities contributing to the payment of
4 the Settlement Amount, were not insolvent, nor will the payment required to be made by
5 or on behalf of them render them insolvent, within the meaning of and/or for the purposes
6 of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This
7 representation is made by each of the Defendants and not by their counsel.

8 43. In the event of the entry of a final order of a court of competent jurisdiction
9 determining the transfer of money to the Settlement Fund or any portion thereof by or on
10 behalf of Defendants to be a preference, voidable transfer, fraudulent transfer, or similar
11 transaction and any portion thereof is required to be returned, and such amount is not
12 promptly deposited into the Settlement Fund by others, then, at the election of Lead
13 Plaintiff, Lead Plaintiff and Defendants shall jointly move the Court to vacate and set
14 aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered
15 in favor of Defendants and the other Releasees pursuant to this Stipulation, in which
16 event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and
17 void, and the Parties shall be restored to their respective positions in the litigation as
18 provided in ¶ 36 above and any cash amounts in the Settlement Fund (less any Taxes
19 paid, due or owing with respect to the Settlement Fund and less any Notice and
20 Administration Costs actually incurred, paid or payable) shall be returned as provided in
21 ¶ 36.

22 44. The Parties intend this Stipulation and the Settlement to be a final and
23 complete resolution of all disputes asserted or which could be asserted by Lead Plaintiff
24 and any other Settlement Class Members against the Defendants' Releasees with respect
25 to the Released Plaintiffs' Claims. No Party shall assert any claims of any violation of
26 Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution,

1 defense, or settlement of this Action. The Parties agree that the amounts paid and the
2 other terms of the Settlement were negotiated at arm's length and in good faith by the
3 Parties, including through a mediation process supervised and conducted by Jed D.
4 Melnick of JAMS, and reflect the Settlement that was reached voluntarily after extensive
5 negotiations and consultation with experienced legal counsel, who were fully competent
6 to assess the strengths and weaknesses of their respective clients' claims or defenses.

7 45. While retaining their right to deny that the claims asserted in the Action
8 were meritorious, Defendants and their counsel, in any statement made to any media
9 representative (whether or not for attribution) will not assert that the Action was
10 commenced or prosecuted in bad faith, nor will they deny that the Action was
11 commenced and prosecuted in good faith and is being settled voluntarily after
12 consultation with competent legal counsel. In all events, Lead Plaintiff and its counsel
13 and Defendants and their counsel shall not make any accusations of wrongful or
14 actionable conduct by any Party concerning the prosecution, defense, and resolution of
15 the Action, and shall not otherwise suggest that the Settlement constitutes an admission of
16 any claim or defense alleged.

17 46. The terms of the Settlement, as reflected in this Stipulation, may not be
18 modified or amended, nor may any of its provisions be waived except by a writing signed
19 on behalf of both Lead Plaintiff and Defendants (or their successors-in-interest).

20 47. The headings herein are used for the purpose of convenience only and are
21 not meant to have legal effect.

22 48. The administration and consummation of the Settlement as embodied in
23 this Stipulation shall be under the authority of the Court, and the Court shall retain
24 jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and
25 Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation,
26 including the Plan of Allocation (or such other plan of allocation as may be approved by

1 the Court) and the distribution of the Net Settlement Fund to Settlement Class Members.
2 The Court shall also retain exclusive jurisdiction to interpret and enforce all injunctions
3 set forth herein.

4 49. The waiver by one Party of any breach of this Stipulation by any other
5 Party shall not be deemed a waiver of any other prior or subsequent breach of this
6 Stipulation.

7 50. This Stipulation and its exhibits and the Supplemental Agreement constitute
8 the entire agreement among Lead Plaintiff and Defendants concerning the Settlement and
9 this Stipulation and its exhibits. All Parties acknowledge that no other agreements,
10 representations, warranties, or inducements have been made by any Party hereto
11 concerning this Stipulation, its exhibits or the Supplemental Agreement other than those
12 contained and memorialized in such documents.

13 51. This Stipulation may be executed in one or more counterparts, including by
14 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via
15 email. All executed counterparts and each of them shall be deemed to be one and the
16 same instrument.

17 52. This Stipulation shall be binding upon and inure to the benefit of the
18 successors and assigns of the Parties, including any and all Releasees and any
19 corporation, partnership, or other entity into or with which any Party hereto may merge,
20 consolidate or reorganize.

21 53. The construction, interpretation, operation, effect, and validity of this
22 Stipulation, the Supplemental Agreement and all documents necessary to effectuate it
23 shall be governed by the internal laws of the State of Arizona without regard to conflicts
24 of laws, except to the extent that federal law requires that federal law govern.

25 54. Any action arising under or to enforce this Stipulation, or any portion
26 thereof, shall be commenced and maintained only in the Court.

1 55. This Stipulation shall not be construed more strictly against one Party than
2 another merely by virtue of the fact that it, or any part of it, may have been prepared by
3 counsel for one of the Parties, it being recognized that it is the result of arm's-length
4 negotiations between the Parties and all Parties have contributed substantially and
5 materially to the preparation of this Stipulation.

6 56. All counsel and any other person executing this Stipulation and any of the
7 exhibits hereto, or any related Settlement documents, warrant and represent that they
8 have the full authority to do so and that they have the authority to take appropriate action
9 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

10 57. Lead Counsel and Defendants' Counsel agree to cooperate fully with one
11 another in seeking Court approval of the Preliminary Approval Order and the Settlement,
12 as embodied in this Stipulation, and to use best efforts to promptly agree upon and
13 execute all such other documentation as may be reasonably required to obtain final
14 approval by the Court of the Settlement.

15 58. If any Party is required to give notice to another Party under this
16 Stipulation, such notice shall be in writing and shall be deemed to have been duly given
17 upon receipt of hand delivery or facsimile or email transmission, with confirmation of
18 receipt. Notice shall be provided as follows:

19 If to Lead Plaintiff or Lead 20 Counsel:	Bernstein Litowitz Berger & Grossmann LLP Attn: David R. Stickney, Esq. 12481 High Bluff Drive, Suite 300 San Diego, CA 92130-3582 Telephone: (858) 793-0070 Email: davids@blbglaw.com
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23 If to Defendants:	Wilmer Cutler Pickering Hale and Dorr LLP Attn: Michael G. Bongiorno 24 7 World Trade Center 25 250 Greenwich Street 26 New York, NY 10007 Telephone: (212) 230-8800
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Email: michael.bongiorno@wilmerhale.com

59. Except as otherwise provided herein, each Party shall bear its own costs.

60. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

61. The Releasees may file the Stipulation and/or the Judgment in any action that may be brought against them to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to otherwise enforce this Stipulation. If any Settlement Class Member asserts any Released Claims against any Releasee in any court prior to final Court approval of the settlement in the Action, the Parties shall cooperate to effect a stay, withdrawal, or dismissal of such claims pending Final Court Approval.

62. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

63. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of February 8, 2019.

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