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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

**REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF
(I) LEAD PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND PLAN
OF ALLOCATION; AND (II) LEAD
COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES
AND LITIGATION EXPENSES**

Judge: Hon. James A. Teilborg
Courtroom: 503
Date: June 26, 2019
Time: 1:30 p.m.

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1 Lead Plaintiff Government of Guam Retirement Fund (“Lead Plaintiff”), on behalf of
2 itself and the Settlement Class, and Lead Counsel respectfully submit this memorandum of law
3 in further support of (i) Lead Plaintiff’s motion for final approval of the proposed Settlement
4 and approval of the proposed Plan of Allocation, and (ii) Lead Counsel’s motion for an award
5 of attorneys’ fees and Litigation Expenses.¹

6 **PRELIMINARY STATEMENT**

7 The proposed Settlement resolves this litigation in its entirety in exchange for a cash
8 payment of \$7,400,000. As detailed in Lead Plaintiff’s and Lead Counsel’s opening papers
9 (ECF Nos. 115-117), the Settlement is the product of extended arm’s-length settlement
10 negotiations between experienced counsel, including mediation with an experienced mediator.
11 Lead Plaintiff and Lead Counsel believe that the Settlement is a favorable result for the
12 Settlement Class in light of the range of possible outcomes of the litigation, including the
13 substantial risks that there might be no recovery at all if Plaintiffs did not succeed in their
14 appeal from the Court’s dismissal of the Action for failure to plead a false statement by
15 Defendants, or – assuming Plaintiffs were successful on the appeal – if they failed to prove any
16 element of their claims at summary judgment or trial after remand.

17 Pursuant to the Court’s Order Preliminary Approving Settlement and Authorizing
18 Dissemination of Notice of Settlement (ECF No. 112) (the “Preliminary Approval Order”), the
19 Claims Administrator, under the supervision of Lead Counsel, conducted an extensive notice
20 program, including mailing the Notice to over 59,500 potential Settlement Class Members and
21 nominees. In response to this notice program, no Settlement Class Member has objected to the
22 Settlement, the Plan of Allocation, or Lead Counsel’s motion for an award of attorneys’ fees
23 and reimbursement of expenses. Although institutional investors held the great majority of
24 Apollo common stock during the Class Period, no institutional investor has objected to the
25 Settlement or fee request.

26 ¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the
27 Stipulation and Agreement of Settlement dated February 8, 2019 (ECF No. 109-1) (the
28 “Stipulation”).

1 Further, just one of the many Settlement Class Members submitted a request for
2 exclusion from the Settlement Class. As explained below, this reaction of the Settlement Class
3 further demonstrates that the proposed Settlement, the Plan of Allocation, and the request for
4 attorneys' fees and reimbursement of expenses are fair and reasonable, and should be approved.

5 **ARGUMENT**

6 **THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL**
7 **OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE**
8 **REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES**

9 Lead Plaintiff and Lead Counsel respectfully submit that their opening papers
10 demonstrate that approval of the motions is warranted. Now that the time for objecting or
11 requesting exclusion from the Settlement Class has passed, the reaction of the Settlement Class,
12 including the lack of any objections by Settlement Class Members, provides additional support
13 for approval of the motions.

14 Pursuant to the Court's Preliminary Approval Order, more than 59,500 copies of the
15 Notice and Claim Form have been mailed to potential Settlement Class Members and their
16 nominees. *See* Supplemental Declaration of Eric Miller Regarding (A) Mailing of Notice and
17 Claim Form and (B) Report on Requests for Exclusion Received ("Supp. Miller Decl.") at ¶ 2.
18 The Notice informed Settlement Class Members of the terms of the proposed Settlement and
19 Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees in an
20 amount not to exceed 25% of the Settlement Fund and reimbursement of Litigation Expenses in
21 an amount not to exceed \$300,000. *See* Notice ¶¶ 5, 74. The Notice also apprised Settlement
22 Class Members of their right to object to the proposed Settlement, the Plan of Allocation and/or
23 the request for attorneys' fees, and expenses, their right to exclude themselves from the
24 Settlement Class, and the June 5, 2019 deadline for filing objections and for receipt of requests
25 for exclusion. *See* Notice at p. 2 and ¶¶ 75-85.

26 As noted above, following this notice program, no Settlement Class Member objected to
27 the Settlement, the Plan of Allocation, or Lead Counsel's application for fees and expenses. In
28

1 addition, just one request for exclusion was received. *See* Supp. Miller Decl. ¶ 4 & Ex. 1.² “In
 2 assessing whether to grant approval of a settlement, courts consider the reactions of the
 3 members of the class . . .” *In re LifeLock, Inc. Mktg. & Sales Practices Litig.*, 2010 WL
 4 11627648, at *5 (D. Ariz. Aug. 31, 2010). The absence of any objections from Settlement
 5 Class Members strongly supports a finding that the Settlement is fair, reasonable, and adequate.
 6 *See, e.g., Giroux v. Essex Prop. Tr., Inc.*, 2019 WL 2106587, at *5 (N.D. Cal. May 14, 2019)
 7 (“The Court finds that the absence of objections and very small number of opt-outs indicate
 8 overwhelming support among the Class Members and weigh in favor of approval.”); *Destefano*
 9 *v. Zynga, Inc.*, 2016 WL 537946, at *13 (N.D. Cal. Feb. 11, 2016) (“By any standard, the lack
 10 of objection of the Class Members favors approval of the Settlement.”); *In re Apollo Grp. Inc.*
 11 *Sec. Litig.*, 2012 WL 1378677, at *3 (D. Ariz. Apr. 20, 2012) (Teilborg, J.) (“There have been
 12 no objections from Class Members or potential class members, which itself is compelling
 13 evidence that the Proposed Settlement is fair, just, reasonable, and adequate.”); *Nat’l Rural*
 14 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“[T]he absence of
 15 a large number of objections to a proposed class action settlement raises a strong presumption
 16 that the terms of a proposed class settlement action are favorable to the class members.”).

17 Moreover, it is significant that no institutional investors – which held the vast majority
 18 of Apollo’s publicly traded common stock during the Class Period – have objected to the
 19 Settlement. The absence of objections from these institutional investors, which have ample
 20 means and incentive to object to the Settlement if they deemed it unsatisfactory, is further
 21 evidence of the Settlement’s fairness. *See, e.g., In re Facebook, Inc. IPO Sec. & Derivative*
 22 *Litig.*, 2018 WL 6168013, at *9 (S.D.N.Y. Nov. 26, 2018) (“That not one sophisticated
 23 institutional investor objected to the Proposed Settlement is indicia of its fairness.”); *In re*
 24 *Cathode Ray Tube (CRT) Antitrust Litig.*, 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017)
 25 (absence of any objections from institutions means that “the inference that the class approves of

26 ² The one request for exclusion was from an individual – not an institution – and did not set
 27 forth the individual’s transactions in Apollo common stock during the Class Period as required
 28 in the Notice (¶ 75) and Preliminary Approval Order (¶ 13).

the settlement is even stronger”); *In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at *4 (D.N.J. Apr. 25, 2005) (the reaction of the class “weigh[ed] heavily in favor of approval” where “no objections were filed by any institutional investors who had great financial incentive to object”).³

The lack of objections from Settlement Class Members also supports approval of the Plan of Allocation. *See, e.g., In re Heritage Bond Litig.*, 2005 WL 1594403, at *11 (C.D. June 10, 2005) (“The fact that there has been no objection to this plan of allocation favors approval of the Settlement.”); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“not one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”).

Finally, the uniformly positive reaction of the Settlement Class should also be considered with respect to Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses. The absence of any objections supports a finding that the fee and expense reimbursement request is fair and reasonable. *See, e.g., Acosta v. Frito-Lay, Inc.*, 2018 WL 2088278, at *12 (N.D. Cal. May 4, 2018) (“The absence of objections or disapproval by class members to a 25 percent fee supports the finding that Plaintiffs’ request is reasonable.”); *Destefano*, 2016 WL 537946, at *18 (“the lack of objection by any Class Members” supported 25% fee requested); *In re Nuvelo, Inc. Secs. Litig.*, 2011 WL 2650592, at *3 (N.D. July 6, 2011) (finding only one objection to the fee request to be “a strong positive response from the class, supporting an upward adjustment of the benchmark [fee award]”); *Heritage Bond*, 2005 WL 1594403, at *21 (“The absence of objections or disapproval by class members to Class Counsel’s fee request further supports finding the fee request reasonable.”).

³ *See also In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (the reaction of the class supported the settlement where “not a single objection was received from any of the institutional investors that hold the majority of Citigroup stock”); *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 702-03 (E.D. Mo. 2002) (“The Court takes particular note of the fact that no objections were filed by any of the ‘institutional investors’ who comprise a large part of the plaintiff classes and who will be greatly affected by the outcome of this case”).

The lack of objections by institutional investors further supports approval of the requested attorneys' fees and reimbursement of litigation expenses. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (the fact that "a significant number of investors in the class were 'sophisticated' institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive" and did not do so, supported approval of the fee request); *In re Bisys Sec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (lack of objections from institutional investors supported the approval of the fee request because "the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive").

CONCLUSION

For the foregoing reasons and the reasons set forth in Lead Plaintiff's and Lead Counsel's opening papers, they respectfully request that the Court approve the Settlement, the Plan of Allocation, and the request for attorneys' fees and litigation expenses. Copies of the (i) proposed Judgment, (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund, and (iii) proposed Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses are attached hereto as Exhibits 1, 2, and 3, respectively.

Dated: June 19, 2019

Respectfully submitted,

By: /s/ Jonathan D. Uslander

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#1300459

Exhibit 1

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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

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

**[PROPOSED] JUDGMENT
APPROVING CLASS ACTION
SETTLEMENT**

1 WHEREAS, a class action is pending in this Court entitled *Lomingkit, et al. v.*
2 *Apollo Education Group, Inc., et al.*, Case No. 2:16-cv-00689-PHX-JAT (the “Action”);

3 WHEREAS, (a) Lead Plaintiff Government of Guam Retirement Fund, on behalf
4 of itself and the Settlement Class, and (b) defendants Apollo Education Group, Inc.
5 (“Apollo” or the “Company”), and Gregory W. Cappelli, Brian L. Swartz, and Peter V.
6 Sperling (collectively, the “Individual Defendants” and, together with Apollo,
7 “Defendants,” together with Lead Plaintiff, the “Parties”) have entered into a Stipulation
8 and Agreement of Settlement dated February 8, 2019 (the “Stipulation”), which provides
9 for a complete dismissal with prejudice of the claims asserted against Defendants in the
10 Action on the terms and conditions set forth in the Stipulation, subject to the approval of
11 this Court (the “Settlement”);

12 WHEREAS, unless otherwise defined in this Judgment, the capitalized terms
13 herein shall have the same meaning as they have in the Stipulation;

14 WHEREAS, by Order dated February 21, 2019 (the “Preliminary Approval
15 Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B) of the Federal Rules of Civil
16 Procedure, that it (i) would likely be able to approve the Settlement as fair, reasonable,
17 and accurate under Rule 23(e)(2) and (ii) would likely be able to certify the Settlement
18 Class for purposes of the Settlement; (b) ordered that notice of the proposed Settlement
19 be provided to potential Settlement Class Members; (c) provided Settlement Class
20 Members with the opportunity either to exclude themselves from the Settlement Class or
21 to object to the proposed Settlement; and (d) scheduled a hearing regarding final approval
22 of the Settlement;

23 WHEREAS, due and adequate notice has been given to the Settlement Class;

24 WHEREAS, the Court conducted a hearing on June 26, 2019 (the “Settlement
25 Hearing”) to consider, among other things, (a) whether the terms and conditions of the
26 Settlement are fair, reasonable and adequate to the Settlement Class, and should therefore

1 be approved; and (b) whether a judgment should be entered dismissing the Action with
2 prejudice as against the Defendants; and

3 WHEREAS, the Court having reviewed and considered the Stipulation, all papers
4 filed and proceedings held herein in connection with the Settlement, all oral and written
5 comments received regarding the Settlement, and the record in the Action, and good
6 cause appearing therefor;

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

8 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the
9 Action, and all matters relating to the Settlement, as well as personal jurisdiction over all
10 of the Parties and each of the Settlement Class Members.

11 2. **Incorporation of Settlement Documents** – This Judgment incorporates
12 and makes a part hereof: (a) the Stipulation filed with the Court on February 11, 2019;
13 and (b) the Notice and the Summary Notice, both of which were filed with the Court on
14 May 22, 2019.

15 3. **Class Certification for Settlement Purposes** – The Court hereby certifies
16 for the purposes of the Settlement only, the Action as a class action pursuant to Rules
17 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class
18 consisting of all persons or entities who purchased or otherwise acquired Class A
19 common stock of Apollo Education Group, Inc. during the period from November 13,
20 2013 through October 21, 2015, inclusive (the “Class Period”), and were damaged
21 thereby. Excluded from the Settlement Class by definition are: Defendants, William F.
22 Pepicello, Joseph L. D’Amico, Gregory J. Iverson, the Officers and directors of Apollo at
23 all relevant times, their Immediate Family Members, and their legal representatives,
24 heirs, agents, affiliates, successors or assigns, Defendants’ liability insurance carriers, and
25 any affiliates or subsidiaries thereof, including but not limited to Apollo’s employee
26 retirement and benefit plans, and any entity in which Defendants or their immediate

1 family members have or had a controlling interest. Also excluded from the Settlement
2 Class is the individual listed on Exhibit 1 hereto who is excluded from the Settlement
3 Class pursuant to request.

4 4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of
5 Civil Procedure, and for the purposes of the Settlement only, the Court hereby certifies
6 Lead Plaintiff as Class Representative for the Settlement Class and appoints Lead
7 Counsel as Class Counsel for the Settlement Class. Lead Plaintiff and Lead Counsel
8 have fairly and adequately represented the Settlement Class both in terms of litigating the
9 Action and for purposes of entering into and implementing the Settlement and have
10 satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g),
11 respectively.

12 5. **Notice** – The Court finds that the dissemination of the Notice and the
13 publication of the Summary Notice: (a) were implemented in accordance with the
14 Preliminary Approval Order; (b) constituted the best notice practicable under the
15 circumstances; (c) constituted notice that was reasonably calculated, under the
16 circumstances, to apprise Settlement Class Members of (i) the pendency of the Action;
17 (ii) the effect of the proposed Settlement (including the Releases to be provided
18 thereunder); (iii) Lead Counsel's motion for an award of attorneys' fees and
19 reimbursement of Litigation Expenses; (iv) their right to object to any aspect of the
20 Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and
21 reimbursement of Litigation Expenses; (v) their right to exclude themselves from the
22 Settlement Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted
23 due, adequate, and sufficient notice to all persons and entities entitled to receive notice of
24 the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal
25 Rules of Civil Procedure, the United States Constitution (including the Due Process
26

1 Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as
2 amended, and all other applicable law and rules.

3 6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in
4 accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby
5 fully and finally approves the Settlement set forth in the Stipulation in all respects
6 (including, without limitation: the amount of the Settlement; the Releases provided for
7 therein; and the dismissal with prejudice of the claims asserted against Defendants in the
8 Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to
9 the Settlement Class. Specifically, the Court finds that (a) Lead Plaintiff and Lead
10 Counsel have adequately represented the Settlement Class; (b) the Settlement was
11 negotiated by the Parties at arm's length; (c) the relief provided for the Settlement Class
12 under the Settlement is adequate taking into account the costs, risks and delay of trial and
13 appeal, the proposed means of distributing the Settlement Fund to the Settlement Class;
14 and the proposed attorneys' fee award; and (d) the Settlement treats members of the
15 Settlement Class equitably relative to each other. The Parties are directed to implement,
16 perform and consummate the Settlement in accordance with the terms and provisions
17 contained in the Stipulation.

18 7. The Action and all of the claims asserted against Defendants in the Action
19 by Lead Plaintiff and the other Settlement Class Members are hereby dismissed with
20 prejudice. The Parties shall bear their own costs and expenses, except as otherwise
21 expressly provided in the Stipulation.

22 8. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be
23 forever binding on Defendants, Lead Plaintiff, and all other Settlement Class Members
24 (regardless of whether or not any individual Settlement Class Member submits a Claim
25 Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their
26 respective successors and assigns. The individual listed on Exhibit 1 hereto is excluded

1 from the Settlement Class pursuant to request and is not bound by the terms of the
2 Stipulation or this Judgment.

3 9. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation,
4 together with the definitions contained in paragraph 1 of the Stipulation relating thereto,
5 are expressly incorporated herein in all respects. The Releases are effective as of the
6 Effective Date. Accordingly, this Court orders that:

7 (a) Without further action by anyone, and subject to paragraph 12
8 below, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other
9 Settlement Class Members, on behalf of themselves, and their respective heirs,
10 executors, administrators, predecessors, successors, and assigns, in their capacities as
11 such, and any other person(s) claiming on their behalf, shall be deemed to have, and
12 by operation of law and of this Judgment shall have, fully, finally and forever
13 compromised, settled, released, resolved, relinquished, waived, and discharged each
14 and every Released Plaintiffs' Claim against the Defendants and the other Defendants'
15 Releasees, and shall forever be enjoined from prosecuting any or all of the Released
16 Plaintiffs' Claims against any of the Defendants' Releasees.

17 (b) Without further action by anyone, and subject to paragraph 12
18 below, upon the Effective Date of the Settlement, Defendants, on behalf of
19 themselves, and their respective heirs, executors, administrators, predecessors,
20 successors, and assigns, in their capacities as such, and any other person(s) claiming
21 on their behalf, shall be deemed to have, and by operation of law and of this Judgment
22 shall have, fully, finally and forever compromised, settled, released, resolved,
23 relinquished, waived, and discharged each and every Released Defendants' Claim
24 against Lead Plaintiff and the other Plaintiffs' Releasees, and shall forever be enjoined
25 from prosecuting any or all of the Released Defendants' Claims against any of the
26

1 Plaintiffs' Releasees. This Release shall not apply to the individual listed on Exhibit 1
2 hereto.

3 10. As of the Effective Date of the Settlement, each person who has given any
4 release pursuant to the foregoing ¶ 9 shall: (i) be deemed to have agreed to a covenant not
5 to sue corresponding to the release given by such person; and (ii) shall be permanently
6 enjoined from prosecuting any claim that such person has released.

7 11. The Court (and in particular the Honorable James A. Teilborg, if available,
8 and otherwise any other duly assigned Judge presiding in the Court) shall retain full,
9 complete, and exclusive authority to interpret and enforce the permanent injunction set
10 forth in the foregoing paragraph, and Lead Plaintiff and all Settlement Class Members
11 expressly waive all rights to seek any adjudication concerning the permanent injunction
12 in any forum other than the Court.

13 12. Notwithstanding paragraphs 9(a) – (b) above, nothing in this Judgment
14 shall bar any action by any of the Parties to enforce or effectuate the terms of the
15 Stipulation or this Judgment.

16 13. **Rule 11 Findings** – The Court finds and concludes that the Parties and
17 their respective counsel have complied in all respects with the requirements of Rule 11 of
18 the Federal Rules of Civil Procedure in connection with the institution, prosecution,
19 defense, and settlement of the Action.

20 14. **No Admissions** – Neither this Judgment, the Term Sheet, the Stipulation
21 (whether or not consummated), including the exhibits thereto and the Plan of Allocation
22 contained therein (or any other plan of allocation that may be approved by the Court), the
23 negotiations leading to the execution of the Term Sheet and the Stipulation, nor any
24 proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation
25 and/or approval of the Settlement (including any arguments proffered in connection
26 therewith):

1 (a) shall be offered against any of the Defendants' Releasees as
2 evidence of, or construed as, or deemed to be evidence of any presumption,
3 concession, or admission by any of the Defendants' Releasees with respect to the truth
4 of any fact alleged by Lead Plaintiff or the validity of any claim that was or could
5 have been asserted or the deficiency of any defense that has been or could have been
6 asserted in this Action or in any other litigation, or of any liability, negligence, fault,
7 or other wrongdoing of any kind of any of the Defendants' Releasees or in any way
8 referred to for any other reason as against any of the Defendants' Releasees, in any
9 civil, criminal or administrative action or proceeding, other than such proceedings as
10 may be necessary to effectuate the provisions of the Stipulation;

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

21 (c) shall be construed against any of the Releasees as an admission,
22 concession, or presumption that the consideration to be given under the Settlement
23 represents the amount which could be or would have been recovered after trial;
24 *provided, however,* that the Parties and the Releasees and their respective counsel may
25 refer to this Judgment and the Stipulation to effectuate the protections from liability
26 granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

1 15. **Retention of Jurisdiction** – Without affecting the finality of this Judgment
2 in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties
3 for purposes of the administration, interpretation, implementation, and enforcement of the
4 Settlement, including the interpretation and enforcement of all injunctions set forth
5 herein; (b) the disposition of the Settlement Fund; (c) any motion for an award of
6 attorneys’ fees and/or Litigation Expenses by Lead Counsel in the Action that will be
7 paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any
8 motion to approve the Class Distribution Order; and (f) the Settlement Class Members for
9 all matters relating to the Action.

10 16. Separate orders shall be entered regarding approval of a plan of allocation
11 and the motion of Lead Counsel for an award of attorneys’ fees and reimbursement of
12 Litigation Expenses. Such orders shall in no way affect or delay the finality of this
13 Judgment and shall not affect or delay the Effective Date of the Settlement.

14 17. **Modification of the Agreement of Settlement** – Without further approval
15 from the Court, Lead Plaintiff and Defendants are hereby authorized to agree to and
16 adopt such amendments or modifications of the Stipulation or any exhibits attached
17 thereto to effectuate the Settlement that: (a) are not materially inconsistent with this
18 Judgment; and (b) do not materially limit the rights of Settlement Class Members in
19 connection with the Settlement. Without further order of the Court, Lead Plaintiff and
20 Defendants may agree to reasonable extensions of time to carry out any provisions of the
21 Settlement.

22 18. **Termination of Settlement** – If the Settlement is terminated as provided in
23 the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this
24 Judgment shall be vacated, rendered null and void and be of no further force and effect,
25 except as otherwise provided by the Stipulation, and this Judgment shall be without
26 prejudice to the rights of Lead Plaintiff, the other Settlement Class Members, and

1 Defendants, and the Parties shall revert to their respective positions in the Action as of
2 December 17, 2018, as provided in the Stipulation.

3 19. **Entry of Final Judgment** – There is no just reason to delay the entry of
4 this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is
5 expressly directed to immediately enter this final judgment in this Action.

Exhibit 1

Florence A. Gooden
Hoopeston, IL

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Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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

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

**[PROPOSED]
ORDER APPROVING PLAN OF
ALLOCATION OF NET
SETTLEMENT FUND**

1 This matter came on for hearing on June 26, 2019 (the “Settlement Hearing”) on
2 Lead Plaintiff’s motion to determine whether the proposed plan of allocation of the Net
3 Settlement Fund (“Plan of Allocation”) created by the Settlement achieved in the above-
4 captioned class action (the “Action”) should be approved. The Court having considered
5 all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that
6 notice of the Settlement Hearing substantially in the form approved by the Court was
7 mailed to all Settlement Class Members who or which could be identified with
8 reasonable effort, and that a summary notice of the hearing substantially in the form
9 approved by the Court was published in *Investor’s Business Daily* and was transmitted
10 over the *PR Newswire* pursuant to the specifications of the Court; and the Court having
11 considered and determined the fairness and reasonableness of the proposed Plan of
12 Allocation,

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. This Order approving the proposed Plan of Allocation incorporates by
15 reference the definitions in the Stipulation and Agreement of Settlement dated February
16 8, 2019 (ECF No. 109-1) (the “Stipulation”) and all terms not otherwise defined herein
17 shall have the same meanings as set forth in the Stipulation.

18 2. The Court has jurisdiction to enter this Order approving the proposed Plan
19 of Allocation, and over the subject matter of the Action and all parties to the Action,
20 including all Class Members.

21 3. Notice of Lead Plaintiff’s motion for approval of the proposed Plan of
22 Allocation was given to all Settlement Class Members who could be identified with
23 reasonable effort. The form and method of notifying the Settlement Class of the motion
24 for approval of the proposed Plan of Allocation satisfied the requirements of Rule 23 of
25 the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of
26 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules,

1 constituted the best notice practicable under the circumstances, and constituted due and
2 sufficient notice to all persons and entities entitled thereto.

3 4. Copies of the Notice, which included the Plan of Allocation, were mailed to
4 over 59,500 potential Settlement Class Members and nominees and no objections to the
5 Plan of Allocation have been received.

6 5. The Court hereby finds and concludes that the formula for the calculation
7 of the claims of Claimants as set forth in the Plan of Allocation mailed to Settlement
8 Class Members provides a fair and reasonable basis upon which to allocate the proceeds
9 of the Net Settlement Fund among Settlement Class Members with due consideration
10 having been given to administrative convenience and necessity.

11 6. The Court hereby finds and concludes that the Plan of Allocation is, in all
12 respects, fair and reasonable to the Settlement Class. Accordingly, the Court hereby
13 approves the Plan of Allocation proposed by Lead Plaintiff.

14 7. There is no just reason for delay in the entry of this Order, and immediate
15 entry by the Clerk of the Court is expressly directed.

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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

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

**[PROPOSED]
ORDER AWARDING ATTORNEYS'
FEES AND LITIGATION EXPENSES**

1 This matter came on for hearing on June 26, 2019 (the “Settlement Hearing”) on
2 Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses. The
3 Court having considered all matters submitted to it at the Settlement Hearing and
4 otherwise; and it appearing that notice of the Settlement Hearing substantially in the form
5 approved by the Court was mailed to all Settlement Class Members who or which could
6 be identified with reasonable effort, and that a summary notice of the hearing
7 substantially in the form approved by the Court was published in *Investor’s Business*
8 *Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the
9 Court; and the Court having considered and determined the fairness and reasonableness
10 of the award of attorneys’ fees and Litigation Expenses requested,

11 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

12 1. This Order incorporates by reference the definitions in the Stipulation and
13 Agreement of Settlement dated February 8, 2019 (ECF No. 109-1) (the “Stipulation”) and
14 all capitalized terms not otherwise defined herein shall have the same meanings as set
15 forth in the Stipulation.

16 2. The Court has jurisdiction to enter this Order and over the subject matter of
17 the Action and all parties to the Action, including all Settlement Class Members.

18 3. Notice of Lead Counsel’s motion for an award of attorneys’ fees and
19 reimbursement of Litigation Expenses was given to all Settlement Class Members who
20 could be identified with reasonable effort. The form and method of notifying the
21 Settlement Class of the motion for an award of attorneys’ fees and expenses satisfied the
22 requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities
23 Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other
24 applicable law and rules, constituted the best notice practicable under the circumstances,
25 and constituted due and sufficient notice to all persons and entities entitled thereto.
26

1 4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of
2 _____% of the Settlement Fund and \$_____ in payment of Plaintiffs'
3 Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement
4 Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate
5 the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good
6 faith, believes reflects the contributions of such counsel to the institution, prosecution and
7 settlement of the Action.

8 5. In making this award of attorneys' fees and reimbursement of expenses to
9 be paid from the Settlement Fund, the Court has considered and found that:

10 (a) The Settlement has created a fund of \$7,400,000 in cash that has
11 been funded into escrow pursuant to the terms of the Stipulation, and that
12 numerous Settlement Class Members who submit acceptable Claim Forms will
13 benefit from the Settlement that occurred because of the efforts of Plaintiffs'
14 Counsel;

15 (b) The requested fee has been reviewed and approved as reasonable by
16 Lead Plaintiff, who closely supervised the prosecution and settlement of the
17 Action;

18 (c) Copies of the Notice were mailed to over 59,500 potential
19 Settlement Class Members and nominees stating that Lead Counsel would apply
20 for attorneys' fees in an amount not exceed 25% of the Settlement Fund and for
21 Litigation Expenses in an amount not to exceed \$300,000, and no objections to the
22 requested attorneys' fees and expenses were received;

23 (d) Plaintiffs' Counsel conducted the litigation and achieved the
24 Settlement with skill, perseverance and diligent advocacy;

25 (e) The Action raised a number of complex issues;
26

1 (f) Had Plaintiffs' Counsel not achieved the Settlement there would
2 remain a significant risk that Lead Plaintiff and the other members of the Class
3 may have recovered less or nothing from Defendants;

4 (g) Plaintiffs' Counsel devoted over 5,900 hours, with a lodestar value
5 of approximately \$3.6 million, to achieve the Settlement; and

6 (h) The amount of attorneys' fees awarded and expenses to be
7 reimbursed from the Settlement Fund are fair and reasonable and consistent with
8 awards in similar cases.

9 6. Any appeal or any challenge affecting this Court's approval regarding any
10 attorneys' fees and expense application shall in no way disturb or affect the finality of the
11 Judgment.

12 8. Exclusive jurisdiction is hereby retained over the parties and the Settlement
13 Class Members for all matters relating to this Action, including the administration,
14 interpretation, effectuation or enforcement of the Stipulation and this Order.

15 9. In the event that the Settlement is terminated or the Effective Date of the
16 Settlement otherwise fails to occur, this Order shall be rendered null and void to the
17 extent provided by the Stipulation.

18 10. There is no just reason for delay in the entry of this Order, and immediate
19 entry by the Clerk of the Court is expressly directed.
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