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10 Proposed Lead Counsel for Proposed Lead Plaintiff
11 Louisiana Municipal Police Employees' Retirement System

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF ARIZONA

14 Alaska Electrical Pension Fund,
Derivatively on Behalf of Apollo Group,
15 Inc., et al.,

16 Plaintiffs,

17 v.

18 John G. Sperling, et al.,

19 Defendants,

20 and

21 Apollo Group, Inc., an Arizona
22 corporation,

23 Nominal Defendant.

CV-06-2124-PHX-ROS (LEAD)
CV-06-2239-PHX-ROS
CV-06-2701-PHX-ROS

AMENDED VERIFIED
SHAREHOLDER DERIVATIVE
COMPLAINT FOR VIOLATIONS OF
FEDERAL AND STATE SECURITIES
LAWS AND CLAIMS FOR BREACH
OF FIDUCIARY DUTY, UNJUST
ENRICHMENT, RESCISSION,
ULTRA VIRES ACTS,
ACCOUNTING, CONSTRUCTIVE
FRAUD, WASTE, AND INSIDER
SELLING

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1
2 1. This is a shareholders' derivative action brought for the benefit of nominal
3 defendant Apollo Group, Inc. ("Apollo" or the "Company") against certain current and
4 former executive officers and directors of Apollo, including John G. Sperling, Brian E.
5 Mueller, Peter V. Sperling, Kenda B. Gonzales, Todd S. Nelson, Daniel E. Bachus,
6 Laura Palmer Noone, Anthony F. Digiovanni, J. Jorge Klor de Alva, Jerry F. Noble,
7 John Blair, Dino J. DeConcini, Hedy F. Govenar, and John R. Norton, III (collectively
8 "Individual Defendants"). This action arises from Individual Defendants' obtaining,
9 approving, or acquiescing to the unlawful backdating of stock option grants to and for
10 the benefit of Apollo's executive officers, in violation of their fiduciary duties and other
11 laws, and causing damage to Apollo.

12 2. A stock option is a right to purchase a stock for a specified period of time
13 at a fixed price, called the "exercise price" or "strike price." The shares that are subject
14 to the option grant are assets of the company and are generally issued from the
15 company's treasury. Stock options are typically granted as part of employee
16 compensation packages as a means to create incentives to boost profitability and stock
17 value. The exercise price is usually fixed to the market price of the stock on the closing
18 date of the grant. When a stock's market price exceeds its exercise price, a holder of
19 vested options may purchase the stock from the company at the exercise price and resell
20 it at the higher market price, pocketing the difference.

21 3. When the grant date of an option is manipulated to an earlier date on which
22 the stock closed at a lower price, or when the grant date is manipulated in connection
23 with the release of company news, the grantee pays less for the stock and the company,
24 the counterparty to the option grant, receives less when the option is exercised. Thus,
25 the unlawful practice of backdating option grants represents a direct and continuing
26 waste of valuable corporate assets.

27 4. Manipulating the timing of option grants undermines the incentive that is
28 supposed to justify stock option compensation in the first place. Stock option

1 compensation is intended to align the interests of managers with those of shareholders by
2 encouraging managers to maximize shareholder value. In contrast, backdating option
3 grants to correspond to lower points in the stock price allows managers to benefit from
4 declines in the price of the stock, and therefore creates an incentive for managers to
5 engineer dips or volatile swings in stock price.

6 5. The unlawful practice of backdating stock option grants raises the specter
7 of false or misleading financial reporting under Generally Accepted Accounting
8 Principles (“GAAP”). The difference between the exercise price and the market price on
9 the day of exercise is compensation that negatively impacts a company’s earnings.
10 Backdating option grants therefore creates a substantial risk that earnings have been, and
11 will continue to be, misreported. Option backdating also masks the true level of
12 executive compensation, thereby further misleading investors.

13 6. From at least 1998 through 2001, Apollo’s Board of Directors (the
14 “Board”) and its Compensation Committee authorized and approved the manipulation of
15 option grant dates to coincide with periodic lows in the price of Apollo stock, or to
16 coincide with the announcement of Company news, after which Apollo’s stock price
17 rose.

18 7. During this same time period, Apollo’s Board of Directors and its
19 Compensation Committee were controlled and dominated by the Company’s founder,
20 Defendant John G. Sperling and his son, Defendant Peter V. Sperling. Currently, the
21 Company’s directors and its “Special Committee” (“SLC”) charged with investigating
22 the Company’s unlawful option backdating practices are controlled by the co-trustees of
23 the John Sperling Voting Stock Trust – Defendant Peter V. Sperling, Defendant Todd S.
24 Nelson, and attorney, Jon S. Cohen, a partner with the law firm representing Apollo in
25 this action, Snell & Wilmer L.L.P.

26 8. Tellingly, executive stock option compensation at Apollo dwarfs cash
27 salary and bonus compensation, creating a strong incentive to backdate options. For
28 example, according to Apollo’s Form 10-K, during fiscal year 2001, Company founder

1 Defendant John G. Sperling received \$450,000 in total cash compensation and
2 \$6,652,002 in potential realizable value in stock option compensation.

3 9. On June 19, 2006, the Company received a subpoena from the United
4 States Attorney for the Southern District of New York requesting that the Company
5 provide the Court with documents relating to its stock option grants. On June 30, 2006,
6 the Company was notified by letter from the U.S. Securities and Exchange Commission
7 (“SEC”) of an informal investigation and the commission’s request for the production of
8 documents relating to the Company’s stock option grants.

9 10. The Company received a letter dated June 20, 2006 on behalf of a
10 shareholder of the Company demanding that the Board take action to remedy alleged
11 breaches of fiduciary duty and other alleged misconduct by the Company’s directors and
12 certain officers in connection with the stock option backdating issues.

13 11. On September 5, 2006, Plaintiff Alaska Electrical Pension Fund filed its
14 complaint in this action. On September 19, 2006, Plaintiff Louisiana Municipal Police
15 Employees’ Retirement System filed its complaint in this action. The cases were
16 consolidated, along with the case filed by Plaintiff Milton Pfeiffer, on January 9, 2007
17 (the “consolidated action”).

18 12. On October 18, 2006, Apollo announced that a SLC of the Board,
19 purportedly formed on June 23, 2006 to review the Company’s practices related to stock
20 option grants and comprised of director Defendant Hedy F. Govenar and Director Daniel
21 Diethelm, had identified “various deficiencies in the process of granting and
22 documenting stock options.”

23 13. On November 3, 2006, Apollo announced the interim factual findings of
24 the SLC, stating:

25 In the accounting of certain stock option grants, the Company did not
26 correctly apply the requirements of Accounting Principles Board (APB)
27 Opinion 25 [T]he Company used a measurement date for option
28 awards that corresponded with the reported grant date even though the
approvals for those grants as set forth in the operative plans were not
obtained until after the reported grant date and the final list of grantees and

1 award amounts was incomplete at the time of the reported grant date.

2 The Company misapplied Internal Revenue Code Section 162(m) with
3 respect to the contemporaneous tax treatment of certain stock option grants
4 and may face significant tax liability for prior years.

5 * * *

6 The Company prepared and maintained inaccurate documentation
7 concerning the date that grant awards lists were completed and approved.

8 14. On November 3, 2006, Defendant Brian E. Mueller, Apollo's President,
9 stated during a public conference call that,

10 [T]he investigation to date has identified various deficiencies associated
11 with the process of granting and documenting stock options. We will need
12 to revise certain measurement dates . . . and the Company will need to
13 record additional compensation expenses relating to past stock option
14 grants.

15 15. On November 6, 2006, Apollo announced the following:

16 In two instances . . . the price on the grant date is at a relative low point
17 for the Company's stock, and there is little contemporaneous evidence to
18 establish that the grant was made on the grant date.

19 16. On November 14, 2006, Apollo announced that the Company was unable
20 to file its consolidated financial statements to be included in the Form 10-K until the
21 SLC completed its review of the stock option practices.

22 17. On December 14, 2006, Apollo announced that the SLC presented its
23 "final factual findings" to the Board on December 8, 2006. The Company's Form 8-K
24 dated December 14, 2006, reported the SLCs' findings as follows:

25 The Special Committee's factual findings were largely consistent with
26 earlier, interim factual findings reported to the Board, a summary of which
27 was disclosed by the Company as part of its Current Reports on Form 8-K
28 dated November 3, 2006 and November 6, 2006. These interim factual
findings were:

- In the accounting of certain stock option grants, the Company did not correctly apply the requirements of Accounting Principles Board (APB) Opinion No. 25, Accounting for Stock Issued to Employees. In certain instances, the Company used a measurement date for option awards that corresponded with the reported grant date even though the approvals for

1 those grants as set forth in the operative plans were not obtained until after
2 the reported grant date and the final list of grantees and award amounts
3 was incomplete at the time of the reported grant date.

4 • The Company misapplied Internal Revenue Code Section 162(m) with
5 respect to the contemporaneous tax treatment of certain stock option grants
6 and may face significant tax liability for prior years.

7 • The Company prepared and maintained inaccurate documentation
8 concerning the date that grant award lists were completed and approved.

9 * * *

10 In addition to the information previously disclosed, the Special Committee,
11 in connection with its final factual findings, reported to the Board that
12 certain former officers took steps that may have been intended to mask
13 failures in the grant approval process with respect to the Company's
14 financial reporting and payment of taxes. The Special Committee also
15 recently discovered additional evidence that raises questions whether
16 another grant date (in addition to the two grants referenced in the Form 8-
17 K dated November 6, 2006) may have been retroactively selected by a day,
18 although there is insufficient evidence to reach such a conclusion.

19 The Special Committee also made recommendations to the Board
20 regarding improvements in option grant practices and internal controls as
21 well as broader governance reforms. The Company and the Board's
22 Compensation Committee have revised certain of its option grant practices
23 and procedures, and are reviewing the recommendations of the Special
24 Committee with the expectation of making further changes.

25 As a result of the Special Committee's findings, management believes that
26 the Company had a material weakness in its internal controls over the
27 process of granting stock option awards during years covered by the
28 special investigation. The Company's 2006 Form 10-K will further
describe the material weakness along with planned remedial actions that
are being taken, which include, among other things, hiring of a new Chief
Financial Officer and improving controls and processes.

The Company is working expeditiously to complete and file with the SEC
amendments to certain of the Company's previous filings reflecting the
restatement of its consolidated financial statements as well as file its Form
10-Q for the period ended May 31, 2006, and its annual report on Form 10-
K for the fiscal year ended August 31, 2006. At this time, the Company is
unable to determine when such filings will be made.

1 18. On January 10, 2007, Apollo announced that the Company was unable to
2 timely file its Quarterly Report on Form 10-Q for the quarter ended November 30, 2006,
3 stating:

4 The Company, following receipt by the Board of the Special Committee's
5 final factual findings, is diligently working on the restatement of its
6 financial statements. At this time the Company is unable to predict when
7 such restatements will be completed. Since certain information to be
8 included in the Form 10-Q is dependent upon finalizing the restated
9 financial statements, the Company is unable to provide assurances as to
10 when the Form 10-Q will be filed.

11 19. On January 19, 2007, Apollo announced that the NASDAQ Listing and
12 Hearings Council issued a stay of delisting on December 22, 2006, pending further
13 review of the NASDAQ Listing and Qualifications Panel's decision to delist and
14 suspend trading of the Company's securities on The NASDAQ Stock Market.

15 20. Since the filing of the initial complaints in this consolidated action, two
16 executives have resigned from Apollo. On November 1, 2006, Defendant Kenda B.
17 Gonzales resigned as Chief Financial Officer and Treasurer. On November 8, 2006, the
18 Company accepted Defendant Daniel E. Bachus' resignation as Chief Accounting
19 Officer and Controller.

20 21. Apollo's Board has also undergone several changes since the
21 commencement of this consolidated action. On December 8, 2006 – the same day that
22 the SLC presented its “final factual findings” regarding its options investigation to the
23 Board – Defendant John R. Norton III resigned from the Board and K. Sue Redman was
24 appointed as a director. In addition, that same day, Director Redman replaced Defendant
25 Hedy F. Govenar as a member of the SLC in response to the December 4, 2006 Order
26 issued by this Court.

27 22. On January 18, 2007, Apollo announced that Director Redman replaced
28 Defendant John Blair as Chairperson of the Board's Audit Committee and that George
Zimmer replaced Defendant Blair as a member of the Board's Compensation
Committee. The Company stated that Defendant Blair resigned as Chairperson of the

1 Audit Committee and as a member of the Compensation Committee effective January
2 12, 2007, but would continue as a member of the Board. Apollo also announced that on
3 January 12, 2007, James R. Reis was appointed to serve as a director of the Company
4 and as a member of its Compensation Committee.

5 23. At the time the first of the consolidated actions was commenced, Apollo's
6 Board consisted of Defendants John G. Sperling, Peter V. Sperling, John Blair, Dino J.
7 DeConcini, Hedy F. Govenar, John R. Norton III, and Brian E. Mueller, along with non-
8 defendants George Zimmer and Daniel Diethelm. Even with the recent changes to the
9 Board, a majority of the current Board members are not independent and thus the Board
10 still cannot objectively consider whether to bring suit against the defendants named
11 herein (including themselves) for breach of fiduciary duties, insider trading and fraud.
12 Furthermore, as a "Controlled Company," the *entire* Board, including the SLC, is
13 controlled and dominated by the co-trustees of the John Sperling Voting Stock Trust –
14 Defendant Peter Sperling, Defendant Todd S. Nelson, and attorney, Jon S. Cohen.

15 24. This action, on behalf of the Company, seeks to remedy the harms caused
16 to Apollo. Specifically, Plaintiff seeks to cancel unexercised backdated options, have all
17 of the financial gains from the recipients who exercised backdated options returned to
18 Apollo, and hold accountable Apollo's directors, who administered and granted
19 backdated options, for damages caused to Apollo from their unlawful conduct.

20 **JURISDICTION AND VENUE**

21 25. This Court has jurisdiction over this action under 28 U.S.C. § 1331,
22 because this is a civil action arising under the laws of the United States. This Court also
23 has exclusive jurisdiction over this action pursuant to Section 27 of the Securities
24 Exchange Act, 15 U.S.C. § 78aa, because this action asserts claims under that Act and
25 rules promulgated thereunder. This Court has supplemental jurisdiction over the non-
26 federal claims asserted herein under 28 U.S.C. § 1367. In addition, this Court has
27 jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C. § 1332(a)(2),
28 because complete diversity exists between plaintiff and each defendant, and the amount

1 in controversy exceeds \$75,000.

2 26. This Court has jurisdiction over each Individual Defendant named herein
3 because each defendant is either a corporation that conducts business in and maintains
4 operations in this District, or is an individual who has sufficient minimum contacts with
5 this District so as to render the exercise of jurisdiction by this Court permissible under
6 traditional notions of fair play and substantial justice.

7 27. Venue is proper in this Court because one or more of the Individual
8 Defendants either resides in or maintains executive offices in this District, a substantial
9 portion of the transactions and wrongs complained of herein, including the Individual
10 Defendants' primary participation in the wrongful acts detailed herein, occurred in this
11 District, and Individual Defendants have received substantial compensation in this
12 District by doing business here and engaging in numerous activities that had an effect in
13 this District.

14 **PARTIES**

15 28. Plaintiff Louisiana Municipal Police Employees' Retirement System is a
16 defined-benefit pension fund established for the benefit of municipal police officers in
17 the State of Louisiana. The fund has over \$1.5 billion in net assets as of February 22,
18 2007. Plaintiff currently owns shares of Apollo common stock, and owned shares of
19 Apollo common stock throughout the period of wrongful conduct alleged herein.
20 Plaintiff is a citizen of Louisiana.

21 29. Nominal Defendant Apollo Group, Inc. is an Arizona corporation with its
22 principal executive offices and place of business located at 4615 East Elwood Street,
23 Phoenix, Arizona 85040.

24 30. Apollo, through its subsidiaries, the University of Phoenix (including
25 University of Phoenix Online), the Institute for Professional Development, the College
26 for Financial Planning, and Western International University, is a provider of higher
27 education programs for working adults.

28 ///

Inside Director Defendants

1
2 31. (a) Defendant **John G. Sperling, Ph.D.** (“John Sperling”), the founder
3 of the Company, has served as Acting Executive Chairman of the Board of Directors
4 since January 2006. John Sperling previously held the following positions with Apollo:
5 (i) Chief Executive Officer (“CEO”) (inception – August 2001); (ii) President (inception
6 – February 1998); (iii) Chairman of the Board of Directors (inception – June 2004); and
7 (iv) director (inception – present). John Sperling is a citizen of Arizona.

8 (b) From at least fiscal year 1999 through fiscal year 2002, the bulk of
9 Defendant John Sperling’s compensation came from stock option grants. During this
10 time period, Defendant John Sperling’s *average* annual potential realizable value in
11 stock option compensation was \$7,484,939, or 1,761% greater than his *average* annual
12 total cash compensation of \$425,000. Indeed, Defendant John Sperling was granted a
13 total of at least 675,000 stock options between fiscal year 1999 and fiscal year 2002.
14 During this same time period, Defendant John Sperling earned in cash salary a maximum
15 of \$450,000 annually.

16 (c) As an executive and member of the Board of Directors, Defendant
17 John Sperling authorized, approved, and received backdated stock option grants at issue
18 in this case.

19 (d) Defendant John Sperling sold at least 5,390,213 shares of Apollo
20 stock for proceeds of at least \$246,092,638.70 between December 1998 and the present
21 based upon his knowledge of material non-public information regarding the undisclosed
22 practice of backdating stock option grants.

23 (e) Defendant John Sperling participated in the issuance of false and/or
24 misleading statements in the form of false and/or misleading press releases and SEC
25 filings during the relevant period.

26 32. (a) Defendant **Peter V. Sperling** (“Peter Sperling”), son of founder
27 Defendant John Sperling, has been with the Company since 1983 and held the following
28 positions: (i) Secretary (June 2006 – present); (ii) Senior Vice President (June 1998 –

1 present); (iii) Director (at least 1995 – present); (iv) Vice President (1992 – June 1998);
2 (v) Secretary and Treasurer (1988 – February 2003); (vi) Director of Operations (1987 –
3 1992); and (vii) Director of Management Information Services (1983 – 1987). Peter
4 Sperling is a citizen of Arizona.

5 (b) From fiscal year 1999 through fiscal year 2002, Defendant Peter
6 Sperling annually earned a maximum of \$210,000 in salary. However, Defendant Peter
7 Sperling was granted at least 125,000 stock options during this same time period,
8 making the grants the bulk of his compensation.

9 (c) As an executive and member of the Board of Directors, Defendant
10 Peter Sperling authorized, approved, and received backdated stock option grants at issue
11 in this case.

12 (d) Defendant Peter Sperling sold at least 13,136,208 shares of Apollo
13 stock for proceeds of at least \$610,368,004.26 between December 1998 and the present
14 based upon his knowledge of material non-public information regarding the undisclosed
15 practice of backdating stock option grants.

16 (e) Defendant Peter Sperling participated in the issuance of false and/or
17 misleading statements in the form of false and/or misleading press releases and SEC
18 filings during the relevant period.

19 33. (a) Defendant **Todd S. Nelson** (“Nelson”) held the following positions
20 with Apollo: (i) President (February 1998 – January 2006); (ii) CEO (August 2001 –
21 January 2006); (iii) Chairman of the Board (June 2004 – January 2006); (iv) Director
22 (1998 – January 2006); (v) Vice President (1994 – February 1998); (vi) Executive Vice
23 President of University of Phoenix (1989 – February 1998); and (vii) Director of
24 University of Phoenix’s Utah campus (1987 – 1989). Nelson is a citizen of Arizona.

25 (b) From at least fiscal year 1999 through fiscal year 2002, the bulk of
26 Defendant Nelson’s compensation came from stock option grants. During this time
27 period, Defendant Nelson’s *average* annual potential realizable value in stock option
28 compensation was \$6,709,079, or 541% greater than his *average* annual total cash

1 compensation of \$1,240,628. Indeed, Defendant Nelson was granted a total of at least
2 600,000 stock options between fiscal year 1999 and fiscal year 2002. During this same
3 time period, Defendant Nelson earned in cash salary a maximum of \$500,000 annually
4 and received annual cash bonuses up to as much as \$2,575,000.

5 (c) As an executive and member of the Board of Directors, Defendant
6 Nelson authorized, approved, and received backdated stock option grants at issue in this
7 case.

8 (d) Defendant Nelson sold at least 2,296,101 shares of Apollo stock for
9 proceeds of at least \$101,637,346.50 between December 1998 and the present based
10 upon his knowledge of material non-public information regarding the undisclosed
11 practice of backdating stock option grants.

12 (e) Defendant Nelson participated in the issuance of false and/or
13 misleading statements in the form of false and/or misleading press releases and SEC
14 filings during the relevant period.

15 34. (a) Defendant **J. Jorge Klor de Alva, J.D., Ph.D.** (“Klor de Alva”)
16 formerly held the following positions with the Company: (i) Director (1991 – at least
17 2002); (ii) President and CEO of Apollo International, Inc. (September 2000 – at least
18 2002); (iii) President of University of Phoenix and Senior Vice President of Apollo
19 (February 1998 – August 2000); and (iv) Vice President of Apollo (1996 - 1998). Klor
20 de Alva is a citizen of California.

21 (b) From at least fiscal year 1999 through fiscal year 2000, the bulk of
22 Defendant Klor de Alva’s compensation came from stock option grants. During this
23 time period, Defendant Klor de Alva’s *average* annual potential realizable value in stock
24 option compensation was \$1,907,511, or 392% greater than his *average* annual total cash
25 compensation of \$486,539. Indeed, Defendant Klor de Alva was granted a total of at
26 least 100,000 stock options between fiscal year 1999 and fiscal year 2000. During this
27 same time period, Defendant Klor de Alva earned in cash salary a maximum of \$285,577
28 annually and received annual cash bonuses up to as much as \$206,250.

1 (c) As an executive and member of the Board of Directors, Defendant
2 Klor de Alva authorized, approved, and received backdated stock option grants at issue
3 in this case.

4 (d) Defendant Klor de Alva sold at least 254,233 shares of Apollo stock
5 for proceeds of at least \$9,488,803.69 between December 1998 and the present based
6 upon his knowledge of material non-public information regarding the undisclosed
7 practice of backdating stock option grants.

8 (e) Defendant Klor de Alva participated in the issuance of false and/or
9 misleading statements in the form of false and/or misleading press releases and SEC
10 filings during the relevant period.

11 35. (a) Defendant **Jerry F. Noble** (“Noble”) formerly served as Senior
12 Vice President and director of Apollo from 1987 to October 2001. Noble is a citizen of
13 Arizona.

14 (b) From at least fiscal year 1999 through fiscal year 2001, the bulk of
15 Defendant Noble’s compensation came from stock option grants. During this time
16 period, Defendant Noble’s *average* annual potential realizable value in stock option
17 compensation was \$780,934, or 182% greater than his *average* annual total cash
18 compensation of \$428,917. Indeed, Defendant Noble was granted a total of at least
19 60,000 stock options between fiscal year 1999 and October 2001. During this same time
20 period, Defendant Noble earned in cash salary a maximum of \$250,000 annually and
21 received annual cash bonuses up to as much as \$187,500.

22 (c) As an executive and member of the Board of Directors, Defendant
23 Noble authorized, approved, and received backdated stock option grants at issue in this
24 case.

25 (d) Defendant Noble sold at least 739,932 shares of Apollo stock for
26 proceeds of at least \$29,625,422.37 between December 1998 and the present based upon
27 his knowledge of material non-public information regarding the undisclosed practice of
28 backdating stock option grants.

1 (e) Defendant Noble participated in the issuance of false and/or
2 misleading statements in the form of false and/or misleading press releases and SEC
3 filings during the relevant period.

4 **Management Defendants**

5 36. (a) Defendant **Brian E. Mueller** (“Mueller”) became President of
6 Apollo in January 2006 and a member of the Board of Directors from March 2006 to
7 January 2007. Mueller has been with the Company since 1987 and has held the
8 following positions: (i) Chief Operating Officer (“COO”) (December 2005–January
9 2006); (ii) CEO of University of Phoenix Online (March 2002–November 2005); (iii)
10 COO and Senior Vice President of University of Phoenix Online (May 1997–March
11 2002); (iv) Vice President and Campus Director at University of Phoenix, San Diego
12 (1995–1997); (v) Vice President and Campus Director at University of Phoenix, New
13 Mexico (1993–1995); (vi) Director of Enrollment at University of Phoenix, Phoenix
14 (1990–1993); and (vii) Enrollment Advisor at the Phoenix Campus (1987–1990).
15 Mueller is a citizen of Arizona.

16 (b) From fiscal year 1998 through fiscal year 2002, Defendant Mueller
17 annually earned a maximum of \$210,000 in salary. During this same time period,
18 however, Defendant Mueller received at least 2,500 backdated stock option grants.

19 (c) During the relevant period, Defendant Mueller participated in the
20 issuance of false and/or misleading statements in the form of false and/or misleading
21 press releases and SEC filings.

22 37. (a) Following the commencement of this action, Defendant
23 **Kenda B. Gonzales** (“Gonzales”) resigned as Apollo’s Chief Financial Officer (“CFO”)
24 and Treasurer on November 1, 2006. Gonzales served as CFO from the time she joined
25 the Company in October 1998. Gonzales also served as Treasurer of the Company from
26 January 2003 until her resignation. Gonzales is a citizen of Arizona.

27 (b) From at least fiscal year 1999 through fiscal year 2002, the bulk of
28 Defendant Gonzales’ compensation came from stock option grants. During this time

1 period, Defendant Gonzales' *average* annual potential realizable value in stock option
2 compensation was \$1,329,888, or 380% greater than her *average* annual total cash
3 compensation of \$349,965. Indeed, Defendant Gonzales was granted a total of at least
4 102,000 stock options between fiscal year 1999 and fiscal year 2002. During this same
5 time period, Defendant Gonzales earned in cash salary a maximum of \$244,000 annually
6 and received annual cash bonuses up to as much as \$175,000.

7 (c) As alleged herein, Defendant Gonzales received backdated stock
8 option grants at issue in this case.

9 (d) Defendant Gonzales sold at least 196,667 shares of Apollo stock for
10 proceeds of at least \$7,671,739.48 between December 1998 and the present based upon
11 her knowledge of material non-public information regarding the undisclosed practice of
12 backdating stock option grants.

13 (e) Defendant Gonzales participated in the issuance of false and/or
14 misleading statements in the form of false and/or misleading press releases and SEC
15 filings during the relevant period.

16 38. (a) Following the commencement of this action, Defendant
17 **Daniel E. Bachus** ("Bachus") resigned as Apollo's Chief Accounting Officer and
18 Controller on November 8, 2006. Bachus held these positions from the time he joined
19 the Company in August 2000 until his resignation. Bachus is a citizen of Arizona.

20 (b) From August 2000 through fiscal year 2002, Defendant Bachus
21 annually earned a maximum of \$210,000 in salary. During this same time period,
22 however, Defendant Bachus was granted a total of at least 15,000 stock options.

23 (c) As alleged herein, Defendant Bachus received backdated stock
24 option grants at issue in this case.

25 (d) Defendant Bachus sold at least 33,333 shares of Apollo stock for
26 proceeds of at least \$1,900,875.52 between December 1998 and the present based upon
27 his knowledge of material non-public information regarding the undisclosed practice of
28 backdating stock option grants.

1 (e) Defendant Bachus participated in the issuance of false and/or
2 misleading statements in the form of false and/or misleading press releases and SEC
3 filings during the relevant period.

4 39. (a) Defendant **Laura Palmer Noone, J.D., Ph.D.** (“Noone”) served as
5 President of University of Phoenix from September 2000 to July 2006. From 1994 to
6 2000, she was the Provost and Senior Vice President for Academic Affairs, and from
7 1991 to 1994, she was Director of Academic Affairs at University of Phoenix, Phoenix
8 campus. Noone is a citizen of Arizona.

9 (b) From at least fiscal year 2001 through fiscal year 2002, the bulk of
10 Defendant Noone’s compensation came from stock option grants. During this time
11 period, Defendant Noone’s *average* annual potential realizable value in stock option
12 compensation was \$1,064,255, or 389% greater than her *average* annual total cash
13 compensation of \$273,710. Indeed, Defendant Noone was granted a total of at least
14 70,000 stock options between fiscal year 2001 and fiscal year 2002. During this same
15 time period, Defendant Noone earned in cash salary a maximum of \$210,000 annually
16 and received annual cash bonuses up to as much as \$80,000.

17 (c) As alleged herein, Defendant Noone received backdated stock
18 option grants at issue in this case.

19 (d) Defendant Noone sold at least 285,854 shares of Apollo stock for
20 proceeds of at least \$17,250,622.11 between December 1998 and the present based upon
21 her knowledge of material non-public information regarding the undisclosed practice of
22 backdating stock option grants.

23 (e) Defendant Noone participated in the issuance of false and/or
24 misleading statements in the form of false and/or misleading press releases and SEC
25 filings during the relevant period.

26 40. (a) Defendant **Anthony F. Digiovanni** (“Digiovanni”) formerly held
27 the following positions with the Company: (i) CEO of University of Phoenix Online
28 (June 2001 – October 2002); (ii) President of University of Phoenix Online (April 2000

1 – June 2001); (iii) Executive Vice President of University of Phoenix (February 1998 –
2 April 2000); and (iv) Regional Vice President of University of Phoenix’s Western
3 Region (1992 – 1998). Digiovanni is a citizen of California.

4 (b) From at least fiscal year 2001 through fiscal year 2002, the bulk of
5 Defendant Digiovanni’s compensation came from stock option grants. During this time
6 period, Defendant Digiovanni’s *average* annual potential realizable value in stock option
7 compensation was \$1,585,415, or 359% greater than his *average* annual total cash
8 compensation of \$441,688. Indeed, Defendant Digiovanni was granted a total of at least
9 147,500 stock options between fiscal year 2001 and fiscal year 2002. During this same
10 time period, Defendant Digiovanni earned in cash salary a maximum of \$295,000
11 annually and received annual cash bonuses up to as much as \$164,000.

12 (c) As alleged herein, Defendant Digiovanni received backdated stock
13 option grants at issue in this case.

14 (d) Defendant Digiovanni sold at least 764,467 shares of Apollo stock
15 for proceeds of at least \$26,517,769.32 between December 1998 and the present based
16 upon his knowledge of material non-public information regarding the undisclosed
17 practice of backdating stock option grants.

18 (e) Defendant Digiovanni participated in the issuance of false and/or
19 misleading statements in the form of false and/or misleading press releases and SEC
20 filings during the relevant period.

21 41. Defendants John Sperling, Peter Sperling, Nelson, Klor de Alva, Noble,
22 Mueller, Gonzales, Bachus, Noone, and Digiovanni each received backdated options and
23 are collectively referred to hereinafter as the “Officer Defendants.”

24 **Outside Director Defendants**

25 42. Defendant **John Blair** (“Blair”) has served as a director of the Company
26 since September 2000. Blair was a member of the Audit Committee and Compensation
27 Committee from September 2000 until January 12, 2007. He was the Chairman of the
28 Audit Committee when the backdating of stock options occurred as alleged herein. As a

1 member of the Board of Directors and the Compensation Committee, Defendant Blair
2 authorized and approved the backdated stock option grants at issue in this case.
3 Defendant Blair sold at least 61,790 shares of Apollo stock for proceeds of at least
4 \$3,698,625.70 between December 1998 and the present based upon his knowledge of
5 material non-public information regarding the undisclosed practice of backdating stock
6 option grants. Blair is a citizen of Arizona.

7 43. Defendant **Dino J. DeConcini** (“DeConcini”) has served as a director of
8 the Company since 1981. DeConcini has been a member of the Audit Committee since
9 1996. As a member of the Board of Directors, Defendant DeConcini authorized and
10 approved the backdated stock option grants at issue in this case. Defendant DeConcini
11 sold at least 126,611 shares of Apollo stock for proceeds of at least \$6,081,683.72
12 between December 1998 and the present based upon his knowledge of material non-
13 public information regarding the undisclosed practice of backdating stock option grants.
14 DeConcini is a citizen of Arizona.

15 44. Defendant **Hedy F. Govenar** (“Govenar”) has served as a director of the
16 Company since March 1997. As a member of the Board of Directors, Defendant
17 Govenar authorized and approved the backdated stock option grants at issue in this case.
18 Defendant Govenar sold at least 141,624 shares of Apollo stock for proceeds of at least
19 \$6,023,125.92 between December 1998 and the present based upon her knowledge of
20 material non-public information regarding the undisclosed practice of backdating stock
21 option grants. Govenar is a citizen of California.

22 45. Defendant **John R. Norton III** (“Norton”) served as a director of the
23 Company from March 1997 until his resignation on December 8, 2006 - following the
24 commencement of this action. Norton was a member of the Audit Committee and
25 served as Chairman of the Compensation Committee. As a member of the Board of
26 Directors and the Compensation Committee, Defendant Norton authorized and approved
27 the backdated stock option grants at issue in this case. Defendant Norton sold at least
28 184,498 shares of Apollo stock for proceeds of at least \$7,926,721.50 between

1 December 1998 and the present based upon his knowledge of material non-public
2 information regarding the undisclosed practice of backdating stock option grants.
3 Norton is a citizen of Arizona.

4 46. Defendants John Sperling, Peter Sperling, Nelson, Klor de Alva, Noble,
5 Blair, DeConcini, Govenar, and Norton each approved and/or acquiesced to the granting
6 of backdated options and are collectively referred to hereinafter as the “Director
7 Defendants.”

8 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

9 47. By reason of their positions as officers and/or directors of the Company
10 and because of their ability to control the business and corporate affairs of the Company,
11 the Individual Defendants owed the Company and its shareholders the fiduciary
12 obligations of good faith, trust, loyalty, and due care, and were and are required to use
13 their utmost ability to control and manage the Company in a fair, just, honest, and
14 equitable manner. The Individual Defendants were and are required to act in furtherance
15 of the best interests of the Company and its shareholders so as to benefit all shareholders
16 equally and not in furtherance of their personal interest or benefit. Each Individual
17 Defendant owes the Company and its shareholders the fiduciary duty to exercise good
18 faith and diligence in the administration of the affairs of the Company and in the use and
19 preservation of its property and assets, and the highest obligations of fair dealing. In
20 addition, the Individual Defendants had a duty to promptly disseminate accurate and
21 truthful information with respect to the Company’s operations, earnings and
22 compensation practices.

23 48. The Individual Defendants, because of their positions of control and
24 authority as directors and/or officers of the Company, were able to and did, directly
25 and/or indirectly, exercise control over the wrongful acts complained of herein.

26 49. To discharge their duties, the Individual Defendants were required to
27 exercise reasonable and prudent supervision over the management, policies, practices
28 and controls of the Company. By virtue of such duties, the Individual Defendants were

1 required to, among other things: (i) exercise good faith in ensuring that the Company
2 was operated in a diligent, honest and prudent manner and complied with all applicable
3 federal and state laws, rules, regulations and requirements, including acting only within
4 the scope of its legal authority; and (ii) refrain from unduly benefiting themselves and
5 other Company insiders at the expense of the Company.

6 **FACTUAL ALLEGATIONS**

7 50. The Officer Defendants received stock option grants from the Company on
8 unusually favorable dates from at least 1998 through 2001. The grants coincided with
9 Company news, were made at or near periodic lows, or were made before a large run-up
10 in the stock price. Analysis of the grants reveals that the grants were in fact backdated to
11 allow the options' recipients to enjoy the largest possible returns at the expense of the
12 Company.

13 51. But for the extreme gross negligence, recklessness, or knowing complicity
14 of the Director Defendants, and in particular the members of the Compensation
15 Committee, the backdating of stock option grants to the Officer Defendants could not,
16 and would not, have occurred. Only the abdication of their duties can explain the
17 Director Defendants' year after year approval of backdated stock options to executives
18 on terms that were highly disadvantageous to the Company.

19 **The Stock Option Plans**

20 ***Plans Applicable to Officers***

21 52. During the relevant time period, Company officers were granted stock
22 options pursuant to the 1994 Long Term Incentive Plan (the "LTIP Plan"). The LTIP
23 Plan provides for the issuance of two different kinds of stock options, "Non-Qualified
24 Stock Options" and "Incentive Stock Options."

25 53. The exercise price of a Non-Qualified Stock Option is set by a Board
26 committee, while the exercise price of an Incentive Stock Option is tied to the market
27 price of Company stock at the time of the grant. More specifically, Section 7.1 of the
28 LTIP Plan states that the exercise price of an Incentive Stock Option "may not be less

1 than the Fair Market Value of a share of [s]tock on the date of [the] grant.” “Fair Market
2 Value” is defined in Section 3.1 as “the fair market value of such stock . . . as determined
3 by such methods or procedures established from time to time by the Committee.”

4 *Plans Applicable to Officers and Directors*

5 54. Beginning in fiscal year 2000, the Company granted options to officers and
6 directors under the 2000 Stock Incentive Plan (the “2000 Plan”). The 2000 Plan
7 provides for the issuance of two different kinds of stock options, “Non-Qualified Stock
8 Options” and “Incentive Stock Options,” with the latter being available only to
9 employees.

10 55. Both types of options carry an exercise price tied to the market price of
11 Company stock at the time of the grant. Section 7 of the 2000 Plan states that “the
12 exercise price for any Incentive Stock Option may not be less than the Fair Market Value
13 [of Company stock] as of the date of the grant.” Section 3 states that “[u]nless otherwise
14 determined by the Committee, the Fair Market Value of [Company] [s]tock as of any
15 date shall be the closing price for the [s]tock . . . for that date or, if no closing price is
16 reported for that date, the closing price on the next preceding date for which a closing
17 price was reported.”

18 56. Although for Non-Qualified Stock Options, the Board is permitted to use
19 “its discretion” to set the exercise price at less than the closing price of the stock on the
20 grant date, Non-Qualified Stock Options must still be granted at Fair Market Value.

21 57. The 2000 Plan permits the Company President and CEO (acting jointly if
22 such offices are held by two persons) to grant Company stock options to certain
23 individuals including Company directors, officers and principal stockholders, but to the
24 latter only if the option was to be held for six months following the date of the grant.

25 58. Both the LTIP Plan and the 2000 Plan require that the Plans be
26 administered by a “Committee” that has exclusive and binding authority to designate
27 plan participants, determine types and number of option awards, and make all other
28 necessary administrative decisions. The “Compensation Committee Report” in the Form

1 10-K for each relevant year (the “Report”) identifies the “Committee” as the Board’s
2 Compensation Committee. Per each Report, the Compensation Committee “administers
3 the key provisions of the executive compensation program and reviews with the Board
4 of Directors in detail all aspects of [executive] compensation.” Each Report states that
5 the executive compensation program primarily comprises of “base salary, annual
6 bonus[,] and long-term incentives in the form of stock option grants.” Each Report was
7 signed by the members of the Compensation Committee, and as such, the members of
8 the Compensation Committee as well as the Board as a whole, reviewed, approved, and
9 had direct personal knowledge of the stock option grants under the 1994 LTIP Plan and
10 the 2000 Plan.

11 Stock Option Grants

12 59. The multi-year pattern of stock option grants on dates with highly
13 favorable exercise prices—at or near a periodic low, or preceding a run-up in the share
14 price—indicates that the purported grant dates of the stock options were not the actual
15 dates on which the option grants were made. Rather, the pattern indicates that the grants
16 were repeatedly backdated to dates with exceedingly low stock prices. Indeed, the
17 exercise price of every grant to the Officer Defendants in the relevant period was below
18 the weighted average price of the stock in the corresponding fiscal year.

19 60. As demonstrated below, year after year, stock options were granted at
20 different times of the year with the only consistency being that the grants were dated at
21 or near a periodic low:

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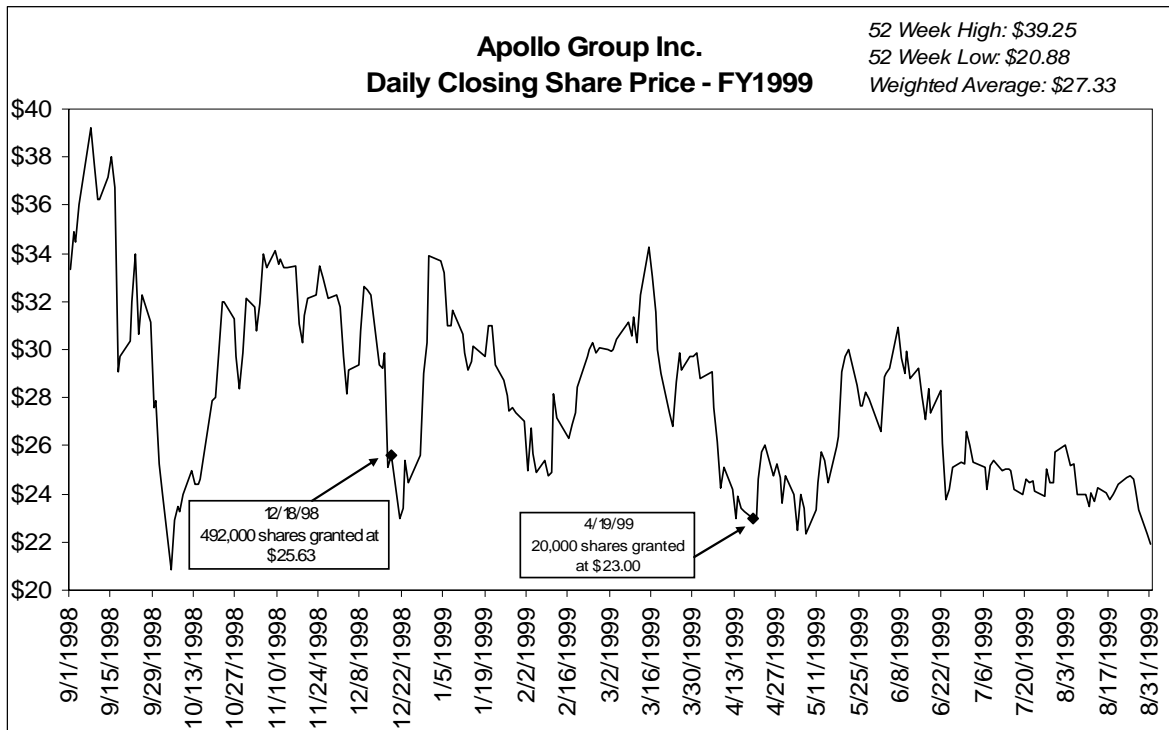
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Summary Of Option Grants And Surrounding Stock Price Performance

Purported Date Of Grant	Exercise Price	Stock Price 20 Trading Days Before Purported Grant Date	Stock Price 20 Trading Days After Purported Grant Date	% Rise In Stock Price 20 Trading Days After Purported Grant Date
12/18/98	\$25.63	\$31.44	\$31.00	20.98%
4/19/99	\$23.00	\$29.00	\$25.94	12.77%
1/12/00	\$18.88	\$25.56	\$23.84	26.32%
12/15/00	\$33.39	\$37.56	\$51.44	54.05%
9/21/00	\$35.00	\$38.67	\$40.22	14.91%

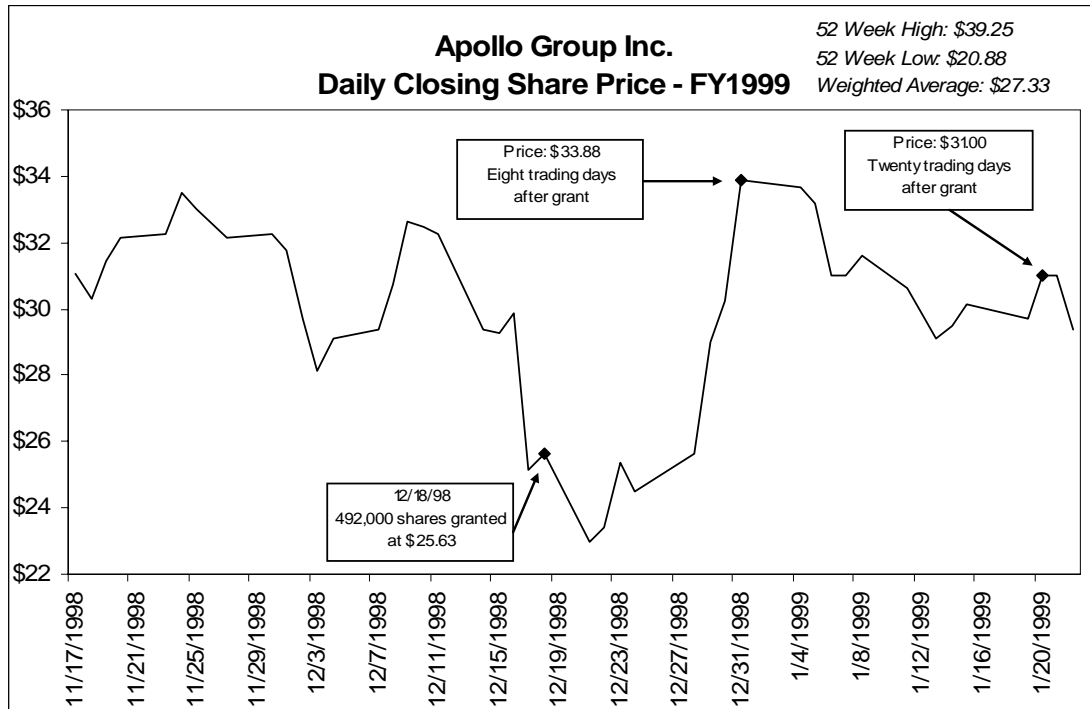
Fiscal Year 1999 (September 1, 1998 – August 31, 1999) Stock Option Grants

61. (a) During fiscal year 1999, the public trading price of Apollo’s common stock ranged from a price of \$20.88 to \$39.25 per share, with a weighted average closing price of \$27.33. Certain officers were purportedly granted stock options twice during this fiscal year, as described in more detail below. A graph demonstrating the timing of these grants is also set forth below.



(b) A total of 492,000 options were purportedly granted on December 18, 1998 to eight officers, including the Company’s CEO. These options carried an exercise price of \$25.63, which is \$1.70 less than the weighted average closing price for

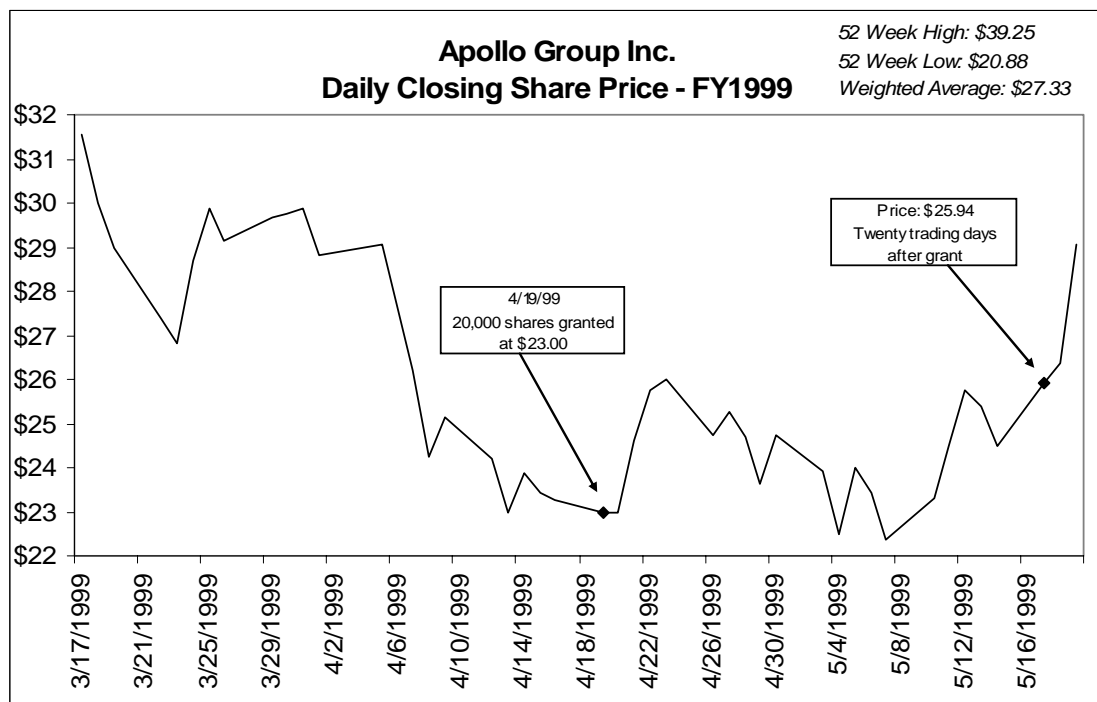
1 the fiscal year. Twenty trading days after the grant, the stock closed at \$31.00 per share
 2 for a twenty day cumulative return based on the exercise price of 20.98%. Just eight
 3 days after the grant, the stock price climbed to \$33.88 per share for a 32% change. The
 4 exercise price was the fifth lowest closing price for the stock for the subsequent twenty
 5 days. A graph illustrating the twenty days following the grant is set forth below.



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Date	Executive	No. Of Securities Options Granted	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
12/18/1998	John G. Sperling	125,000	\$3,203,750	\$3,875,000
12/18/1998	Todd S. Nelson	100,000	\$2,563,000	\$3,100,000
12/18/1998	J. Jorge Klor de Alva	75,000	\$1,922,250	\$2,325,000
12/18/1998	Jerry F. Noble	50,000	\$1,281,500	\$1,550,000
12/18/1998	Peter V. Sperling	50,000	\$1,281,500	\$1,550,000
12/18/1998	Kenda B. Gonzales	22,000	\$563,860	\$682,000
12/18/1998	Laura Palmer Noone	20,000	\$512,600	\$620,000
12/18/1998	Anthony Digiovanni	50,000	\$1,281,500	\$1,550,000

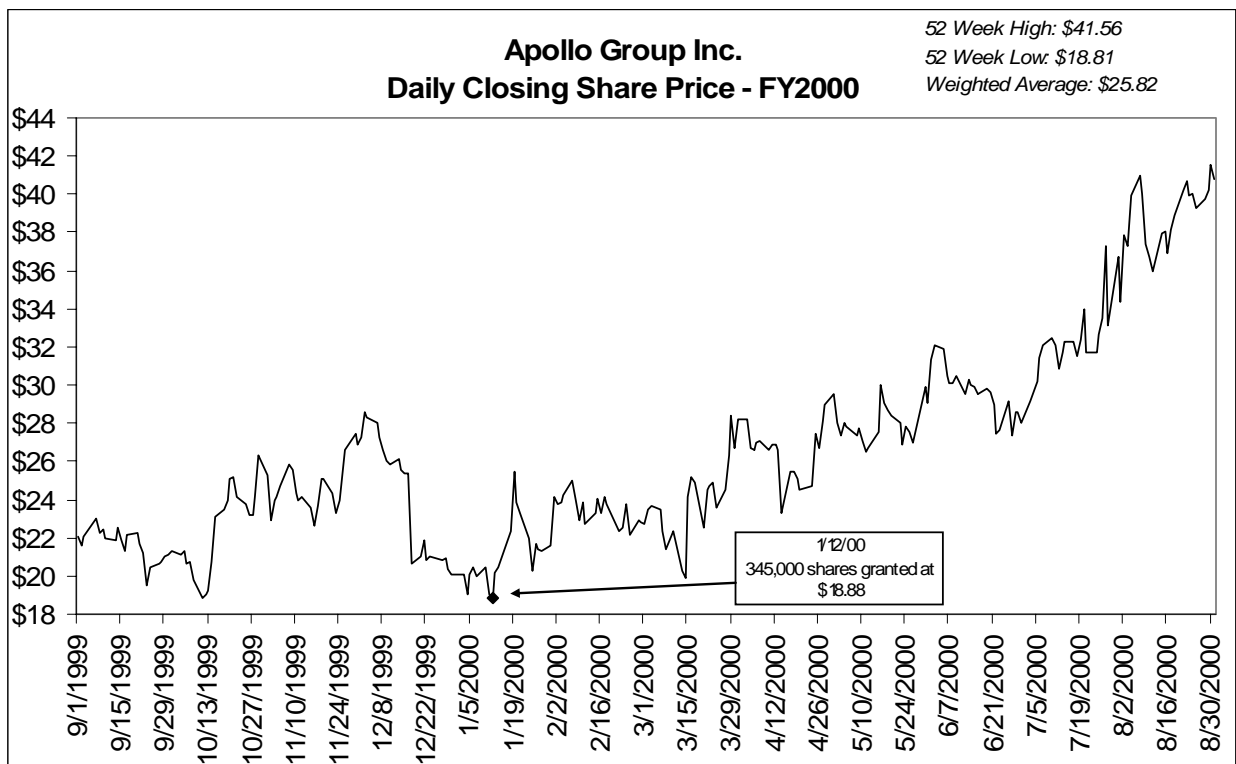
(c) A total of 20,000 stock options were granted to the Company's Chief Financial Officer, Defendant Gonzales, on April 19, 1999. These grants had an exercise price of \$23.00, which is \$4.33 less than the average weighted closing price of the stock for fiscal year 1999. The price of the stock twenty trading days after the grant was \$25.94, for a twenty day cumulative return based on the exercise price of 12.77%. In addition, the exercise price was the third lowest closing price for the stock for the subsequent twenty days. A graph illustrating the twenty days following the grant is set forth below.

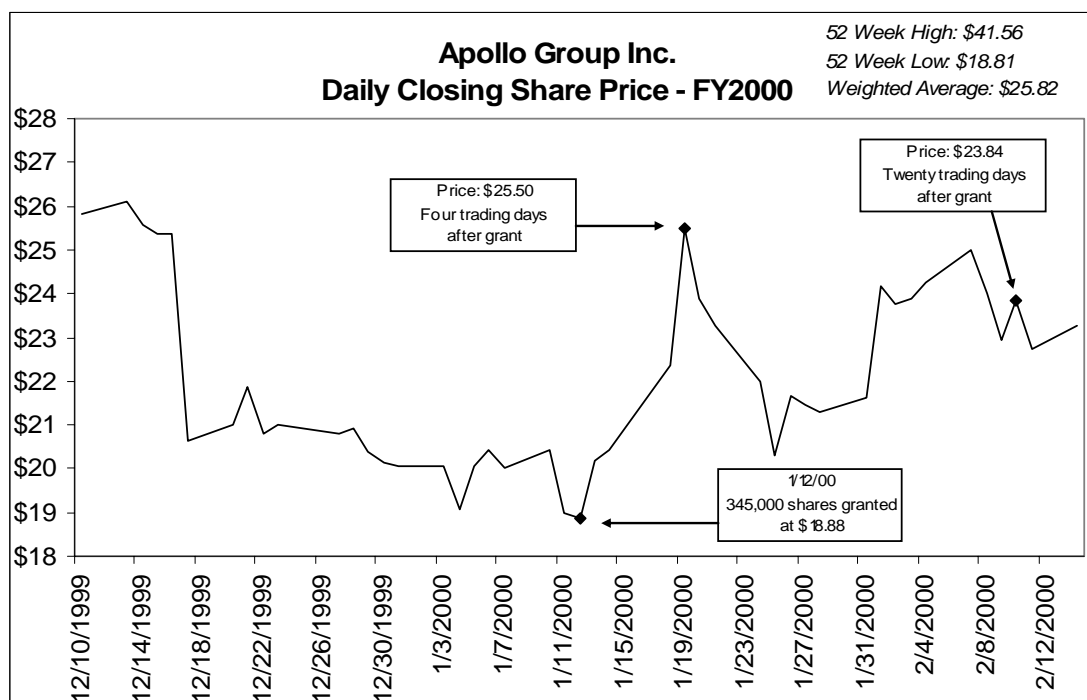


Date	Executive	No. Of Securities Options Granted	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
4/19/1999	Kenda B. Gonzales	20,000	\$460,000	\$518,800

Fiscal Year 2000 (September 1, 1999 – August 31, 2000) Stock Option Grant

62. During fiscal year 2000, the public trading price of Apollo’s common stock ranged from a price of \$18.81 to \$41.56 per share, with a weighted average closing price of \$25.82. A total of 345,000 options were purportedly granted on January 12, 2000 to eight executives, including the Company’s CEO. The exercise price was \$18.88, which is \$6.94 less than the weighted average closing price for the fiscal year. The price of the stock twenty trading days after the grant was \$23.84, for a twenty day cumulative return based on the exercise price of 26.32%. Just four days after the grant, the stock price soared to \$25.50 per share for a 35% change. The exercise price was *the lowest closing price* for the stock for the subsequent twenty days. A graph demonstrating the timing of this grant during the fiscal year is set forth below, along with a second graph illustrating the stock price twenty days following the grant.



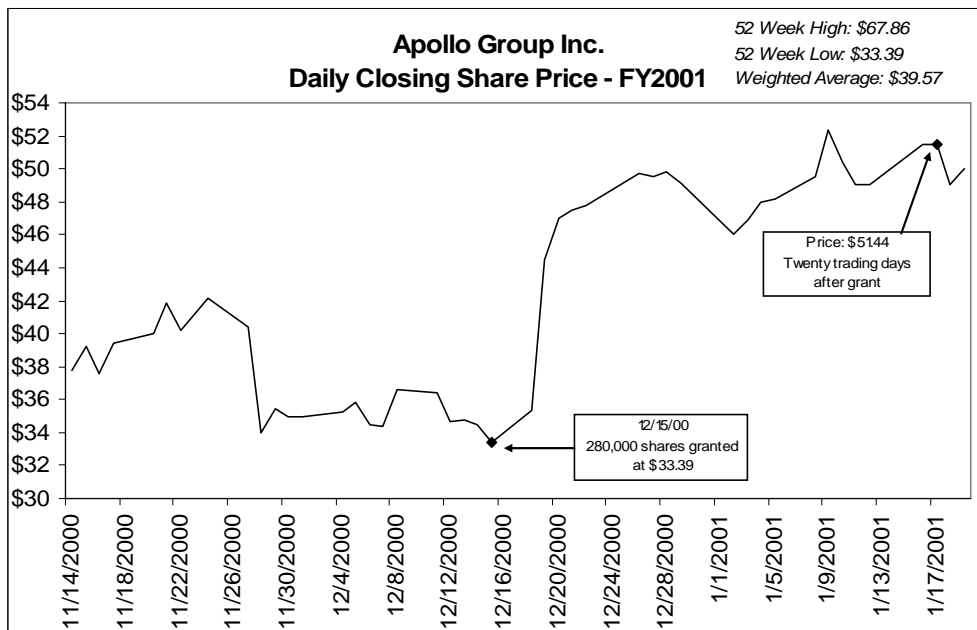
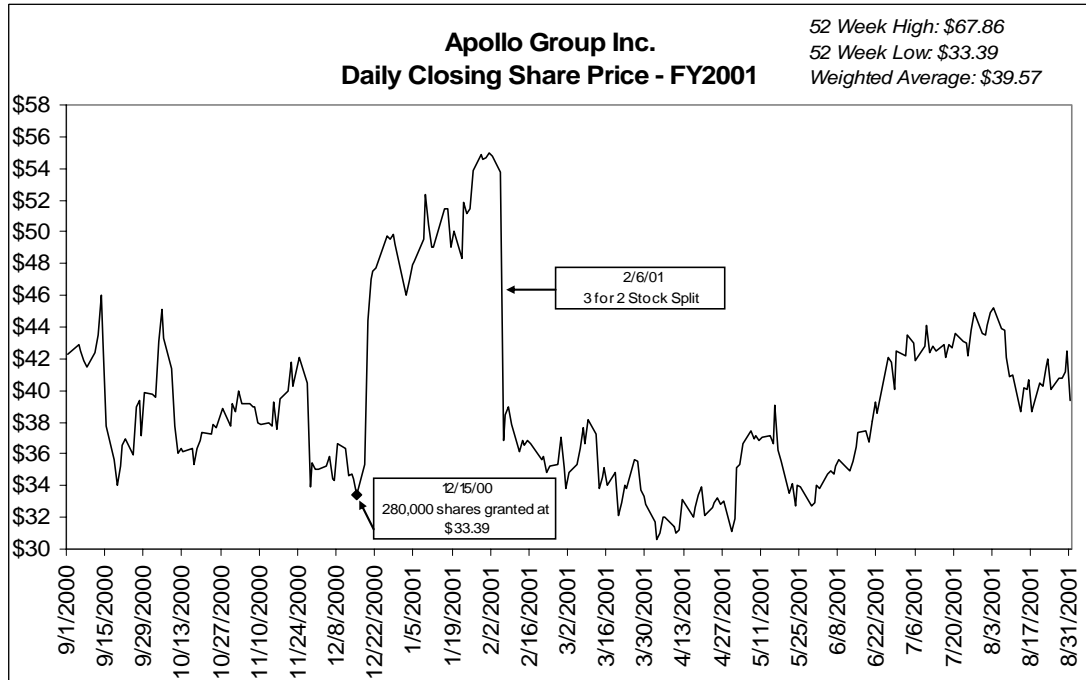


Date	Executive	No. Of Securities Options Granted	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
1/12/2000	John G. Sperling	125,000	\$2,359,375	\$2,980,000
1/12/2000	Todd S. Nelson	100,000	\$1,887,500	\$2,384,000
1/12/2000	Peter V. Sperling	25,000	\$471,875	\$596,000
1/12/2000	J. Jorge Klor de Alva	25,000	\$471,875	\$596,000
1/12/2000	Kenda B. Gonzales	25,000	\$471,875	\$596,000
1/12/2000	Jerry F. Noble	10,000	\$188,750	\$238,400
1/12/2000	Laura Palmer Noone	10,000	\$188,750	\$238,400
1/12/2000	Anthony Digiovanni	25,000	\$471,875	\$596,000

Fiscal Year 2001 (September 1, 2000 – August 31, 2001) Stock Option Grant

63. During fiscal year 2001, the public trading price of Apollo's common stock ranged from a split-adjusted price of \$33.39 to \$67.86 per share, with a weighted average closing price of \$39.57. A total of 280,000 options were purportedly granted on December 15, 2000 to six executives, including the Company's CEO. These options carried an exercise price of \$33.39, which is \$5.88 less than the weighted average

1 closing price for the fiscal year. The price of the stock twenty trading days after the
 2 grant was \$51.44, for a twenty day cumulative return from the grant date of 54.05%.
 3 Once again, the exercise price was *the lowest closing price* for the stock for the
 4 subsequent twenty days and was also *equal to the 52 week low*. A graph demonstrating
 5 the timing of this grant during the fiscal year is set forth below, along with a second
 6 graph illustrating the stock price twenty days following the grant.



Date	Executive	No. Of Securities Options Granted	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
12/15/2000	John G. Sperling	125,000	\$4,173,750	\$6,430,000
12/15/2000	Todd S. Nelson	100,000	\$3,339,000	\$5,144,000
12/15/2000	Peter V. Sperling	25,000	\$834,750	\$1,286,000
12/15/2000	Anthony Digiovanni	10,000	\$333,900	\$514,400
12/15/2000	Kenda B. Gonzales	10,000	\$333,900	\$514,400
12/15/2000	Laura Palmer Noone	10,000	\$333,900	\$514,400

Fiscal Year 2002 (September 1, 2001 – August 31, 2002) Stock Option Grant

64. During fiscal year 2002, the public trading price of Apollo's common stock ranged from a split-adjusted price of \$35.00 to \$63.27 per share, with a weighted average closing price of \$41.28. A total of 392,500 options were purportedly granted on September 21, 2001 to seven executives, including the Company's CEO. These options carried an exercise price of \$35.00, which is \$6.28 less than the weighted average closing price for the fiscal year. The price of the stock twenty trading days after the grant was \$40.22, for a twenty day cumulative return from the grant date of 14.91%. Just nine days after the grant, the stock price soared to \$45.62 per share for a 30% change based upon the split-adjusted exercise price. Yet again, the exercise price was *the lowest closing price* for the stock for the subsequent twenty days. A graph demonstrating the timing of this grant during the fiscal year is set forth below, along with a second graph illustrating the stock price twenty days following the grant.

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Date	Executive	No. Of Securities Options Granted	Total Grant Value At Date Of Grant	Total Grant Value 20 Trading Days After Grant
9/21/2001	John G. Sperling	150,000	\$5,250,000	\$6,033,000
9/21/2001	Todd S. Nelson	150,000	\$5,250,000	\$6,033,000
9/21/2001	Peter V. Sperling	25,000	\$875,000	\$1,005,500
9/21/2001	Kenda B. Gonzales	25,000	\$875,000	\$1,005,500
9/21/2001	Laura Palmer Noone	25,000	\$875,000	\$1,005,500
9/21/2001	Anthony Digiovanni	7,500	\$262,500	\$301,650
9/21/2001	Daniel E. Bachus	10,000	\$350,000	\$402,200

**University of Phoenix Tracking Stock – Fiscal Year 2002
(September 1, 2001 – August 31, 2002) Stock Option Grant**

65. During fiscal year 2002, the public trading price of Apollo’s tracking stock, University of Phoenix (UOPx), ranged from a split-adjusted price of \$21.68 to \$45.33 per share, with a weighted average closing price of \$31.00. A total of 390,000 options were purportedly granted on September 21, 2001 to six executives, including the Company’s CEO. These options carried an exercised price of \$25.33, which is \$5.67 less than the weighted average closing price for the fiscal year. Although the price of the stock twenty trading days after the grant was \$24.89, just nine days after the grant the stock price soared to \$34.04 per share for a 34% change. A graph demonstrating the timing of this grant during the fiscal year is set forth below, along with a second graph illustrating the stock price nine and twenty days following the grant.

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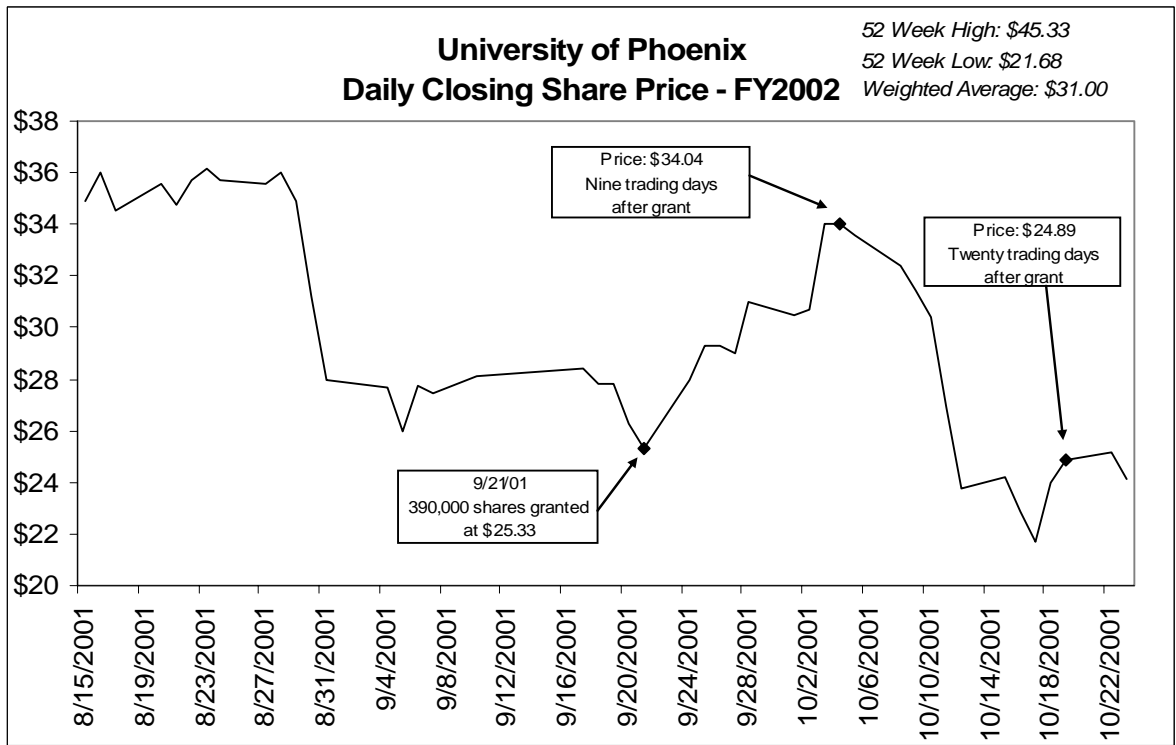
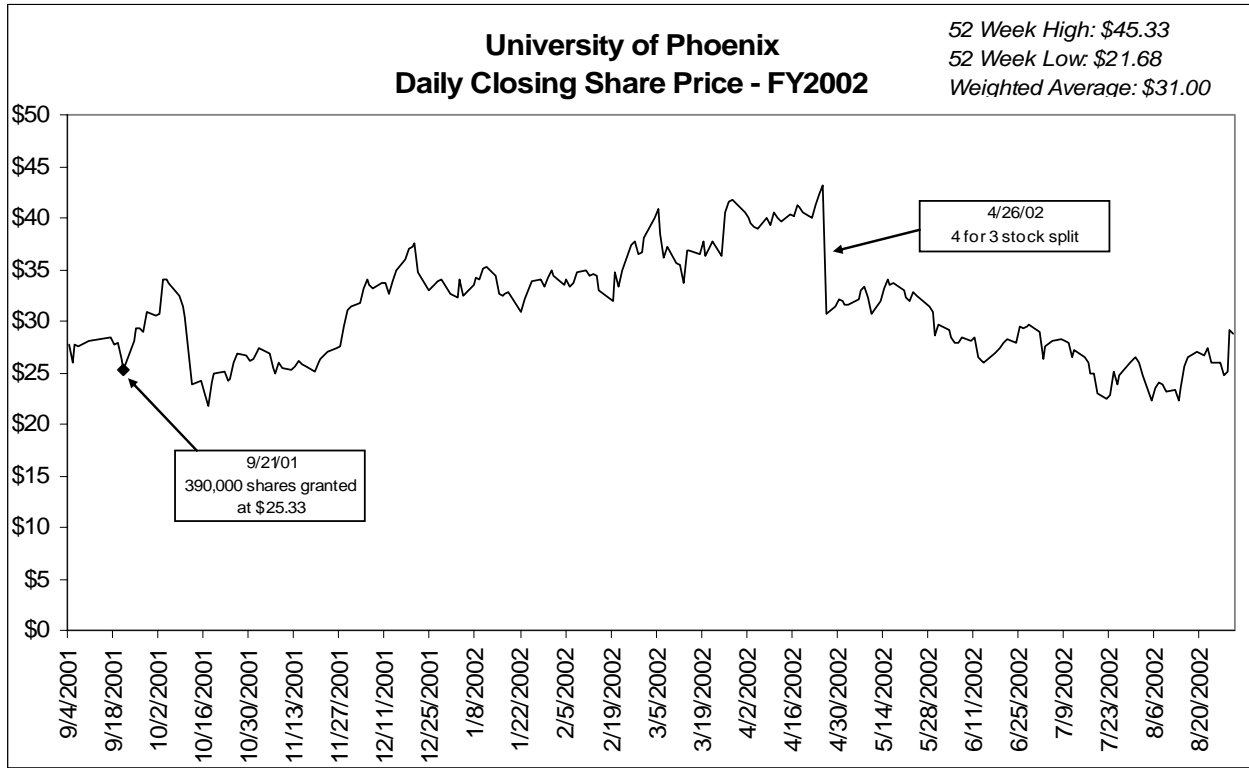
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Date	Executive	No. Of Securities Options Granted	Total Grant Value At Date Of Grant	Total Grant Value Nine Trading Days After Grant
9/21/2001	John G. Sperling	150,000	\$3,799,500	\$5,106,000
9/21/2001	Todd S. Nelson	150,000	\$3,799,500	\$5,106,000
9/21/2001	Anthony Digiovanni	55,000	\$1,393,150	\$1,872,200
9/21/2001	Kenda B. Gonzales	25,000	\$633,250	\$851,000
9/21/2001	Laura Palmer Noone	5,000	\$126,650	\$170,200
9/21/2001	Daniel E. Bachus	5,000	\$126,650	\$170,200

66. The unlawful backdating of stock option grants and the issuance of these options in the amounts awarded to the Officer Defendants caused, and continues to cause, substantial harm to Apollo. Backdating stock option grants represents a direct and continuing waste of valuable corporate assets. Because Apollo is the counterparty to the option contracts, when the Officer Defendants exercise their backdated stock options, money is siphoned on a dollar-for-dollar basis directly from Apollo. The result is that the backdated grants give the Officer Defendants an option to purchase Apollo shares directly from the Company at an unfair and improper low price, with the Company making up the difference.

67. Backdating stock options also severely undermines the already grossly excessive incentives that purportedly justify the use of stock options. Stock option compensation is intended to encourage management to maximize the return to shareholders by aligning the interests of management with those of shareholders. In the words of Apollo's Compensation Committee, "[t]he Company believes that it is important for executives to have an equity stake in the Company and, toward this end, makes option grants to key executives from time to time under the Apollo Group, Inc. Long-Term Incentive Plan." The Compensation Committee Report further states, "[s]tock option grants are intended to provide substantial rewards to executives based on stock price appreciation and improved overall financial performance." However, the Director Defendants permitted the Officer Defendants to receive stock option grants

1 backdated to correspond to low points in the stock price. The unlawful backdating
2 created a perverse incentive for management to engineer dips and volatile swings in the
3 stock price. The option backdating also may cause Apollo to violate the Internal
4 Revenue Code, since compensation from exercised stock options issued under the
5 unlawful backdating scheme was likely nondeductible under Section 162(m) of the
6 Internal Revenue Code.

7 68. On June 19, 2006, the Company received a subpoena from the United
8 States Attorney for the Southern District of New York requesting that the Company
9 provide the Court with documents relating to its stock option grants. On June 30, 2006,
10 the Company was notified by letter from the SEC of an informal investigation and the
11 commission's request for the production of documents relating to the Company's stock
12 option grants. The Company must now expend valuable resources contending with these
13 and possibly other investigations, all resulting from the manipulation of the timing of
14 option grants to gratuitously enrich Apollo executives.

15 69. Issuing backdated stock options is unlawful, *ultra vires*, and outside the
16 scope of legitimate and permissible business conduct. The practice is inherently
17 manipulative and involves a substantial likelihood that business records were
18 intentionally falsified. Issuing backdated stock options is, therefore, not a form of
19 legitimate business conduct and is therefore not protected by the business judgment rule.

20 **DISSEMINATION OF FALSE FINANCIAL STATEMENTS**

21 70. The Individual Defendants knew, or were deliberately reckless in not
22 knowing, that they made materially false and misleading statements in the periodic
23 filings they prepared, approved, reviewed and/or signed.

24 71. As a result of the improper backdating of stock options, the Company, with
25 the knowledge, approval, and participation of each of the Individual Defendants:

- 26 (a) violated the terms of the Stock Option Plans;
27 (b) violated GAAP by failing to recognize compensation expenses
28 incurred when the improperly backdated options were granted;

1 (c) violated Internal Revenue Code Section 162(m) with respect to the
2 contemporaneous tax treatment of stock option grants;

3 (d) produced and disseminated to Apollo shareholders and the market
4 false financial statements that improperly recorded and accounted for backdated option
5 grants.

6 72. The Company, with the knowledge, approval and participation of each of
7 the Individual Defendants, disseminated its false financial statements in, *inter alia*, the
8 following Form 10-K filings:

9 (a) Form 10-K for fiscal year ended August 31, 1999, filed with the
10 SEC on November 26, 1999 and signed by Defendants John Sperling, Nelson, Klor de
11 Alva, Noble, Peter Sperling, Gonzales, DeConcini, Norton, and Govenar;

12 (b) Form 10-K/A for fiscal year ended August 31, 1999, filed with the
13 SEC on July 20, 2000 and signed by Defendants John Sperling, Nelson, Klor de Alva,
14 Noble, Peter Sperling, Gonzales, DeConcini, Norton, and Govenar;

15 (c) Form 10-K for fiscal year ended August 31, 2000, filed with the
16 SEC on November 24, 2000 and signed by Defendants John Sperling, Nelson, Noble,
17 Peter Sperling, Gonzales, Bachus, DeConcini, Klor de Alva, Norton, Govenar, and Blair;

18 (d) Form 10-K for fiscal year ended August 31, 2001, filed with the
19 SEC on November 28, 2001 and signed by Defendants John Sperling, Nelson, Peter
20 Sperling, Gonzales, Bachus, DeConcini, Klor de Alva, Norton, Govenar, and Blair;

21 (e) Form 10-K for fiscal year ended August 31, 2002, filed with the
22 SEC on November 27, 2002 and signed by Defendants John Sperling, Nelson, Peter
23 Sperling, Gonzales, Bachus, DeConcini, Klor de Alva, Norton, Govenar, and Blair;

24 (f) Form 10-K for fiscal year ended August 31, 2003, filed with the
25 SEC on November 26, and signed by Defendants John Sperling, Nelson, Gonzales, Peter
26 Sperling, Bachus, DeConcini, Norton, Govenar, and Blair;

27 (g) Form 10-K for fiscal year ended August 31, 2004, filed with the
28 SEC on November 15, 2004 and signed by Defendants John Sperling, Nelson, Gonzales,

1 Peter Sperling, Bachus, DeConcini, Norton, Govenar, and Blair;

2 (h) Form 10-K for fiscal year ended August 31, 2005, filed with the
3 SEC on November 14, 2005 and signed by Defendants John Sperling, Nelson, Gonzales,
4 Peter Sperling, Bachus, DeConcini, Norton, Govenar, and Blair.

5 73. The financial statements in the foregoing Form 10-K filings were false
6 because the Company, in violation of GAAP, understated compensation expenses it was
7 required to incur when the improperly backdated options were granted, and therefore
8 overstated net income by indeterminate amounts.

9 74. During the relevant period, Apollo, with the knowledge, approval and
10 participation of each of the Individual Defendants, falsely reported in the Form 10-K
11 filings that the dates of the stock option grants to the Officer Defendants and falsely
12 reported that these stock option grants were granted at fair market value pursuant to the
13 Company's stock option plans:

14 (a) Form 10-K for fiscal year ended August 31, 1999, filed with the
15 SEC on November 26, 1999, falsely reported that options granted to Defendants John
16 Sperling, Nelson, Klor de Alva, Noble, and Gonzales were granted on December 18,
17 1998; and options granted to Defendant Gonzales were granted on April 19, 1999;

18 (b) Form 10-K/A for fiscal year ended August 31, 1999, filed with the
19 SEC on July 20, 2000, falsely reported that options granted to Defendants John
20 Sperling, Nelson, Klor de Alva, Noble, and Gonzales were granted on December 18,
21 1998; and options granted to Defendant Gonzales were granted on April 19, 1999;

22 (c) Form 10-K for fiscal year ended August 31, 2000, filed with the
23 SEC on November 24, 2000, falsely reported that options granted to Defendants John
24 Sperling, Nelson, Klor de Alva, Noble, and Gonzales were granted on January 12,
25 2000;

26 (d) Form 10-K for fiscal year ended August 31, 2001, filed with the
27 SEC on November 28, 2001, falsely reported that options granted to Defendants John
28 Sperling, Nelson, Digiovanni, Gonzales, and Noone were granted on December 15,

1 2000;

2 (e) Form 10-K for fiscal year ended August 31, 2002, filed with the
3 SEC on November 27, 2002, falsely reported that options granted to Defendants John
4 Sperling, Nelson, Digiovanni, Gonzales, and Noone were granted on September 21,
5 2000.

6 **THE INDIVIDUAL DEFENDANTS CONCEALMENT OF THEIR MISCONDUCT**

7 75. From 1998 to 2002, the Company with the knowledge, approval and
8 participation of each of the Individual Defendants, for the purpose and with the effect of
9 concealing the improper option backdating, filed Form 4s, Form 3s, and Form 5s with
10 the SEC that falsely reported the dates of stock option grants to the Officer Defendants,
11 as follows:

12 (a) John Sperling's Form 4 filed with the SEC on December 11, 2000
13 falsely reported that options granted to Sperling had been granted on December 18,
14 1998;

15 (b) John Sperling's Form 4 filed with the SEC on December 11, 2000
16 falsely reported that options granted to Sperling had been granted on January 12, 2000;

17 (c) John Sperling's Form 4 filed with the SEC on February 12, 2001
18 falsely reported that options granted to Sperling had been granted on December 15,
19 2000;

20 (d) John Sperling's Form 4s filed with the SEC on January 10, 2002
21 falsely reported that options granted to Sperling had been granted on September 21,
22 2001;

23 (e) Mueller's Form 3 filed with the SEC on December 1, 2005 falsely
24 reported that options granted to Mueller had been granted on January 12, 2000;

25 (f) Peter Sperling's Form 4 filed with the SEC on December 11, 2000
26 falsely reported that options granted to Sperling had been granted on December 18,
27 1998;

28 (g) Peter Sperling's Form 4 filed with the SEC on December 11, 2000

1 falsely reported that options granted to Sperling had been granted on January 12, 2000;

2 (h) Peter Sperling's Form 4 filed with the SEC on February 12, 2001
3 falsely reported that options granted to Sperling had been granted on December 15,
4 2000;

5 (i) Peter Sperling's Form 4 filed with the SEC on February 11, 2002
6 falsely reported that options granted to Sperling had been granted on September 21,
7 2001;

8 (j) Gonzales' Form 4 filed with the SEC on December 11, 2000 falsely
9 reported that options granted to Gonzales had been granted on December 18, 1998;

10 (k) Gonzales' Form 4 filed with the SEC on December 11, 2000 falsely
11 reported that options granted to Gonzales had been granted on April 19, 1999;

12 (l) Gonzales' Form 4 filed with the SEC on December 11, 2000 falsely
13 reported that options granted to Gonzales had been granted on January 12, 2000;

14 (m) Gonzales' Form 4s filed with the SEC on May 10, 2002 falsely
15 reported that options granted to Gonzales had been granted on September 21, 2001;

16 (n) Nelson's Form 4 filed with the SEC on December 11, 2000 falsely
17 reported that options granted to Nelson had been granted on December 18, 1998;

18 (o) Nelson's Form 4 filed with the SEC on December 11, 2000 falsely
19 reported that options granted to Nelson had been granted on January 12, 2000;

20 (p) Nelson's Form 4 filed with the SEC on February 12, 2001 falsely
21 reported that options granted to Nelson had been granted on December 15, 2000;

22 (q) Nelson's Form 4s filed with the SEC on January 10, 2002 falsely
23 reported that options granted to Nelson had been granted on September 21, 2001;

24 (r) Daniel E. Bachus' Form 4s filed with the SEC on May 10, 2002
25 falsely reported that options granted to Bachus had been granted on September 21, 2001;

26 (s) Noone's Form 4 filed with the SEC on February 12, 2001 falsely
27 reported that options granted to Noone had been granted on December 18, 1998;

28 (t) Noone's Form 4 filed with the SEC on February 12, 2001 falsely

1 reported that options granted to Noone had been granted on January 12, 2000;

2 (u) Noone's Form 4 filed with the SEC on February 12, 2001 falsely
3 reported that options granted to Noone had been granted on December 15, 2000;

4 (v) Noone's Form 5s filed with the SEC on August 30, 2002 falsely
5 reported that options granted to Noone had been granted on September 21, 2001;

6 (w) Digiovanni's Form 3 filed with the SEC on November 8, 2000
7 falsely reported that options granted to Diogiovanni had been granted on December 18,
8 1998;

9 (x) Digiovanni's Form 3 filed with the SEC on November 8, 2000
10 falsely reported that options granted to Diogiovanni had been granted on January 12,
11 2000;

12 (y) Digiovanni's Form 5 filed with the SEC on August 30, 2002 falsely
13 reported that options granted to Diogiovanni had been granted on December 15, 2000;

14 (z) Digiovanni's Form 4s filed with the SEC on May 10, 2002 falsely
15 reported that options granted to Diogiovanni had been granted on September 21, 2001;

16 (aa) Klor de Alva's Form 4 filed with the SEC on December 11, 2000
17 falsely reported that options granted to Klor de Alva had been granted on January 12,
18 2000;

19 (bb) Noble's Form 4 filed with the SEC on December 11, 2000 falsely
20 reported that options granted to Noble had been granted on December 18, 1998;

21 (cc) Noble's Form 4 filed with the SEC on December 11, 2000 falsely
22 reported that options granted to Noble had been granted on January 12, 2000.

23 76. The Individual Defendants have continued to conceal their foregoing
24 misconduct until this action was commenced.

25 **IMPROPER INSIDER SELLING**

26 77. All the Individual Defendants, except for Defendant Mueller, sold the
27 following shares of Apollo stock, including University of Phoenix tracking stock, that
28 they had obtained (often by cashing in backdated stock options) while in possession of

undisclosed material information, from December 1998 to the present:

DEFENDANT	DATE RANGE OF SALES	SHARES SOLD	PROCEEDS RECEIVED
John Sperling	10/19/00-1/08/04	5,390,213	\$246,092,638.70
Peter Sperling	10/10/00-7/28/05	13,136,208	\$610,368,004.26
Gonzales	7/19/01-7/23/03	196,667	\$7,671,739.48
Nelson	10/10/00-11/14/03	2,296,101	\$101,637,346.50
Bachus	7/10/01-1/12/05	33,333	\$1,900,875.52
Noone	1/08/01-12/22/05	285,854	\$17,250,622.11
Digiovanni	11/01/00-12/20/02	764,467	\$26,517,769.32
Klor de Alva	7/05/00-9/22/03	254,233	\$9,488,803.69
Noble	7/02/99-3/05/02	739,932	\$29,625,422.37
Blair	7/18/01-7/1/05	61,790	\$3,698,625.70
DeConcini	11/01/00-12/30/05	126,611	\$6,081,683.72
Govenar	7/27/00-1/11/05	141,624	\$6,023,125.92
Norton	7/10/02-1/06/04	184,498	\$7,926,721.50
TOTAL:	7/02/99-12/30/05	23,611,531	\$1,074,283,378.79

DERIVATIVE ACTION ALLEGATIONS

78. Plaintiff brings this action derivatively on behalf of and for the benefit of Apollo to redress injuries suffered, and yet to be suffered, by the Company as a direct and proximate result of the breaches of fiduciary duty and other legal violations alleged herein. Apollo is named as a nominal defendant solely in a derivative capacity.

79. Plaintiff is a current shareholder of Apollo common stock and will adequately and fairly represent the interests of the Company and its shareholders in this litigation.

80. Plaintiff owned common shares of Apollo at the time of the injurious acts complained of herein and intends to retain shares in Apollo throughout the duration of this litigation.

81. The wrongful acts complained of herein subject, and will persist in subjecting, the Company to continuing harm because the adverse consequences of the injurious actions are still in effect.

82. The wrongful actions complained of herein were unlawfully concealed from Apollo shareholders.

1 **DEMANDS MADE ON THE COMPANY**

2 83. Section 10-742 of the Arizona Revised Statutes states that no shareholder
3 may commence a derivative proceeding until a written demand has been made on the
4 Company to take suitable action and ninety days have expired from the date of the
5 demand. The Company received a letter dated June 20, 2006 on behalf of a shareholder
6 of the Company demanding that the Board of Directors take suitable action to remedy
7 alleged breaches of fiduciary duty and other alleged misconduct by the Company's
8 directors and certain officers in connection with stock option backdating issues.

9 84. Plaintiff initiated this action on September 19, 2006 – ninety-one days after
10 the initial shareholder demand – in compliance with Section 10-742 of the Arizona
11 Revised Statutes.

12 **ACTIONS TAKEN BY APOLLO NOT SUITABLE**

13 85. Apollo announced that on June 23, 2006, it appointed a SLC of
14 independent directors to oversee work allegedly being performed by attorneys and
15 forensic accountants of the Company's historical stock option practices, including its
16 underlying option grant documentation and procedures, and that this review was
17 ongoing.

18 86. On August 8, 2006 and August 23, 2006, Plaintiff sent Apollo's Board of
19 Directors letters requesting it take remedial action relating to Apollo's stock option
20 grants. The SLC, which was allegedly formed two months earlier, did not respond to
21 Plaintiff. Rather, Defendant John Sperling, founder and acting Executive Chairman,
22 demonstrated his control over the SLC's "investigation" by responding and requesting
23 further information.

24 87. On August 30, 2006, Plaintiff provided Defendant John Sperling with a
25 draft copy of a complaint in response to his request for information which set forth in
26 specific factual detail the backdated stock option grants and legal claims. Further,
27 Plaintiff requested the opportunity to meet with the SLC and members of the Board.
28 After receiving no response or action from Defendant John Sperling, the Board, the SLC

1 or any other representative of Apollo, Plaintiff filed its initial complaint on September
2 19, 2006 in accordance with Arizona law.

3 **Apollo's Six-Month Investigation**

4 88. On June 9, 2006, the Company released its initial public announcement
5 regarding option backdating allegations, in response to a report issued by Lehman
6 Brothers. Apollo claimed that it had reviewed its stock option practices (“including
7 reviewing documents and interviewing employees”), and concluded that it “complied
8 with all applicable laws . . . and it has not backdated options.” Apollo also claimed it
9 planned to hire an outside firm “to confirm” these conclusions.

10 89. On June 23, 2006, Apollo's Board of Directors allegedly formed the SLC
11 to “determine whether the Company properly accounted for its stock option grants.” The
12 SLC was comprised of only two Board members - Daniel Diethelm and Hedy Govenar.
13 Although Director Diethelm was newly appointed to the Board on June 26, 2006, he has
14 served as a director at Apollo subsidiary, Western International University (“Western”)
15 since 2001. Director Govenar has served on Apollo's Board since March 1997 and is a
16 defendant in this action.

17 90. On June 30, 2006, the United States Securities and Exchange Commission
18 (“SEC”) notified the Company of its informal investigation and requested the production
19 of documents relating to the Company's stock option grants. Apollo announced that it
20 was “cooperating fully with this informal investigation.”

21 91. On October 18, 2006, over three months after reporting that the SEC had
22 commenced an informal investigation, Apollo began to announce its conclusions from
23 the investigation stating that “*various deficiencies in the process of granting and*
24 *documenting stock options have been identified.*” The Company elaborated with
25 subsequent announcements, including admitting that Apollo's previous financial
26 statements were false and could not be relied upon.

27 92. During its investigation, key executives charged with overseeing the
28 Company's financial reporting and internal control processes resigned from Apollo. On

1 November 1, 2006, Defendant Gonzales resigned as Apollo's Chief Financial Officer
2 and Treasurer. Additionally, Defendant Bachus, the Company's Chief Accounting
3 Officer, resigned four days later.

4 93. On November 3, 2006 Apollo announced:

5 [T]he Company used a measurement date for option awards that
6 corresponded with the reported grant date even though the approvals for
7 those grants as set forth in the operative plans were not obtained until after
8 the reported grant date and the final list of grantees and award amounts was
9 incomplete at the time of the reported grant date.

10 The Company prepared and maintained inaccurate documentation
11 concerning the date that grant awards lists were completed and approved.

12 94. During a subsequent conference call regarding Apollo's stock option
13 grants at issue in this action, the Company stated:

14 The investigation to date has identified various deficiencies associated with
15 the process of granting and documenting stock options. We will need to
16 revise certain measurements dates . . . and the Company will need to record
17 additional compensation expenses relating to past stock option grants.

18 95. On December 14, 2006, Apollo announced that the SLC of the Board and
19 its independent counsel and accounting advisors investigating the Company's historic
20 stock option grant practices presented their "**final factual findings**" to Apollo's Board
21 on December 8, 2006. Apollo issued a carefully-worded announcement confirming the
22 following:

23 (a) Apollo failed to comply with Generally Accepting Accounting
24 Principles. "[T]he Company used a measurement date for option awards that
25 corresponded with the reported grant date even though the approval for those grants as
26 set forth in the operative plans was not obtained until after the reported grant date and
27 the final list of grantees and award amounts was incomplete at the time of the reported
28 grant date."

(b) Apollo violated the Internal Revenue Code § 162(m) and "may face
significant tax liability for prior years."

(c) Option grant dates "may have been retroactively selected."

1 (d) Apollo “prepared and maintained inaccurate documentation
2 concerning the date that grant award lists were completed and approved.”

3 (e) “[C]ertain former officers took steps that may have been intended to
4 mask failures in the grant approval process with respect to the Company’s financial
5 reporting and payment of taxes.”

6 96. The December 14, 2006 announcement further stated that “[a]s a result of
7 the Special Committee’s findings, management believes that the Company had a
8 material weakness in its internal controls over the process of granting stock option
9 awards during years covered by the special investigation.”

10 **Apollo Is A Controlled Company**

11 97. Any ongoing investigation conducted by the SLC is a continuous waste of
12 valuable Company assets because its members were appointed to the Board of Directors
13 by Defendant John Sperling, Defendant Peter Sperling and/or Defendant Nelson and
14 therefore cannot remain independent and unbiased. Further, any recommendations made
15 by the SLC regarding its investigation must be approved by the Company’s Board of
16 Directors who were also appointed by these same defendants.

17 98. Apollo is considered a “Controlled Company” because more than 50% of
18 the voting power (Class B Common Stock) is held by the John Sperling Voting Stock
19 Trust dated January 31, 1995. Defendant Peter Sperling, Defendant Nelson, and attorney
20 Jon S. Cohen (a partner with the law firm of Snell & Wilmer L.L.P.) serve as co-trustees
21 of the John Sperling Voting Stock Trust. The balance of the voting power is held by the
22 Peter Sperling Voting Stock Trust dated January 31, 1995 with Defendant Peter Sperling
23 serving as trustee.

24 99. Apollo, as a Controlled Company, does not maintain a standing
25 nominating committee or other committee performing similar Board of Director
26 functions. As such, Apollo’s Directors are completely dependent upon Defendant John
27 Sperling, Defendant Peter Sperling, Defendant Nelson and Apollo’s attorney, Mr.
28 Cohen, for re-appointment to the Board of Directors. In fact, each member of the

1 Company's current Board of Directors was appointed by either Defendant John Sperling
2 and/or by the current co-trustees of the John Sperling Voting Stock Trust.

3 100. Since Apollo is a Controlled Company, the remaining shareholders of
4 Apollo have no influence over who sits on the Company's Board of Directors and
5 therefore must resort to derivative actions, such as this, to protect their respective
6 interests. As a Controlled Company, Apollo's Board of Directors, as well as Apollo
7 itself, are dominated and controlled by John Sperling and the co-trustees of the John
8 Sperling Voting Stock Trust. Accordingly, Apollo's Board of Directors and its SLC
9 cannot effectively investigate and remedy the stock option abuses alleged herein.

10 **The SLC Is Not Independent**

11 101. The SLC provides no assurance that the wrongs complained of herein will
12 be properly and satisfactorily addressed and remedied. Most notably, their membership
13 on both the Board of Directors and the SLC rests entirely in the hands of Defendant John
14 Sperling and the co-trustees of the John Sperling Voting Stock Trust – defendants Peter
15 Sperling and Nelson.

16 102. On June 23, 2006, Apollo's Board of Directors allegedly formed the SLC
17 to "determine whether the Company properly accounted for its stock option grants."

18 103. On June 26, 2006, Apollo announced the election of Daniel D. Diethelm
19 and George Zimmer to its Board of Directors, increasing the total number of directors to
20 nine. Two days later, Apollo reported that Director Zimmer would not be serving on the
21 SLC. Instead, Director Diethelm and Defendant Govenar were appointed as the sole
22 members of the SLC.

23 104. Defendant Govenar has been a director of Apollo since 1997. As a
24 member of the Board, Govenar authorized and approved of the backdated stock option
25 grants at issue in this case. Govenar is incapable of independently serving on the SLC
26 due to personal and professional entanglements with Company officers. For example,
27 Govenar served as a director of the University of Phoenix from 1992 to 1997 while
28 Defendant Nelson served as its Executive Vice President and Defendant Palmer Noone

1 served as the school's Provost. Thus, in order to bring this suit, Defendant Govenar
2 would be forced to determine whether the Company should initiate litigation against her
3 current business associates and long time colleagues.

4 105. Defendant Govenar also has personal and professional entanglements with
5 transactions connected to Apollo. Effective June 1999, Apollo entered into an
6 agreement with Governmental Advocates, Inc. to provide consulting services to Apollo.
7 Defendant Govenar is the founder and Chairwomen of Governmental Advocates, Inc.
8 Since June 1999, Apollo has paid Governmental Advocates, Inc. \$10,000 per month. In
9 order to bring the suit, Defendant Govenar would be forced to jeopardize this significant
10 business relationship.

11 106. Although Director Diethelm has only been a director of the Company since
12 June 2006, he has served as a director at Apollo's subsidiary Western International
13 University ("Western") since 2001, and thus has long-term ties to Apollo. Diethelm is
14 also incapable of serving independently on the SLC because of his personal and
15 professional entanglements with other Company directors and officers.

16 107. Director Diethelm has served as a director of Western since 2001.
17 Effective September 2002, Western entered into an agreement with Apollo International,
18 Inc. ("AII") to provide Western's educational offerings in India. Western has received
19 revenue from AII in the following amounts: \$89,000 (2005), \$37,000 (2004), and \$8,000
20 (2003). AII is beneficially owned by Apollo and an outside investment entity. The
21 outside investment entity is owned by Defendant John Sperling and, at least until 2003,
22 Defendant Peter Sperling. Defendants John Sperling, Nelson and Klor de Alva served as
23 directors of AII during the relevant period. Klor de Alva also served as President and
24 Chief Executive Officer of AII from September 2000 to at least 2002. Apollo paid
25 \$999,989 to AII for a 2.6% beneficial ownership interest. An entity owned by
26 Defendant John Sperling owns another 30% interest in AII. Thus, in order to bring this
27 suit, Director Diethelm would be forced to determine whether the Company should
28 engage in litigation against current business associates and long-time colleagues and

1 potentially jeopardize significant transactions.

2 108. On December 4, 2006, the Court issued an order stating that the Court “can
3 not conclude that the Special Committee is independent so long as a named Defendant is
4 one of its members.” The Court indicated that it would enter Apollo’s requested stay if
5 Apollo notified the Court “that Hedy F. Govenar has been replaced as a member of the
6 Special Committee with another Board member who is not a named Defendant in this
7 action.” In response, Defendants John Sperling, Peter Sperling and Nelson added K. Sue
8 Redman to its Board and appointed her to replace Defendant Govenar on the SLC on
9 December 8, 2006.

10 109. The removal of Defendant Govenar did not cure the bias of the SLC’s
11 investigation. Defendant Govenar remained on the two-member SLC until after it
12 allegedly completed its investigation. On December 14, 2006, Apollo announced that
13 nearly a week before, “[o]n December 8, 2006, the Special Committee of the Board and
14 its independent counsel and accounting advisors investigating the Company’s historic
15 stock option grant practices presented their **final factual findings** to the Board”
16 [emphasis added]. Thus, the belated appointment of new board member, K. Sue
17 Redman, hardly remedies Defendant Govenar’s taint on the investigation.

18 110. Ms. Redman’s appointment to the Board raises additional questions about
19 the SLC. Apollo’s public shareholders did not vote to elect Ms. Redman to the Board.
20 Rather, Apollo is controlled and dominated by Defendants John Sperling, Peter Sperling
21 and Todd Nelson, who privately decided to appoint Ms. Redman to the Board and then
22 to the SLC. Defendants failed even to consult with Plaintiff regarding her appointment,
23 despite Plaintiff’s previous request to meet with Apollo’s Board regarding the
24 allegations alleged herein.

25 **The Investigation Has Not Been Conducted Properly**

26 111. The SLC is not conducting a proper investigation. According to the
27 Company’s own admission, the SLC is only investigating conduct during the years
28 2000-2004 and therefore is not investigating the entire relevant time period. The

1 evidence available to Plaintiff shows that defendants began backdating stock options as
2 early as December 18, 1998, with the grant of 492,000 options.

3 112. Further, the Company has identified at least one outside firm, FTI
4 Consulting, Inc., (“FTI”) that is purportedly aiding in the investigation, which appears
5 biased. On November 20, 2006, the Company announced that FTI, through its Forensic
6 and Litigation Consulting practice, was currently assisting the SLC of the Board in
7 connection with its review of the Company’s historic stock option practices. That same
8 day, the Company announced the appointment of Joseph L. D’Amico as the Company’s
9 interim Chief Financial Officer. Notably, Mr. D’Amico is a senior managing director
10 with FTI Palladium Partners, a division of FTI, which calls into question FTI’s
11 independence.

12 113. Communications between Plaintiff and the Board confirm that the SLC has
13 not conducted a proper investigation, instead deferring to the Company’s founder and
14 Executive Chairman, Defendant John Sperling. Plaintiff sent Apollo’s Board of
15 Directors letters on August 8, 2006 and August 23, 2006, seeking remedial action to
16 remedy breaches of fiduciary as alleged herein. Plaintiff received a letter directly from
17 Defendant John Sperling dated August 23, 2006 requesting evidence in support of
18 Plaintiff’s allegations. Plaintiff responded to Defendant John Sperling’s request by
19 providing him with a draft copy of a complaint which set forth the questionable stock
20 option grants as alleged herein. Plaintiff received no further communication from any
21 representative of Apollo, including Defendant John Sperling, prior to the expiration of
22 the 90-day wait period.

23 114. Defendant John Sperling responded directly to Plaintiff’s letters even
24 though a SLC of Apollo’s Board of Directors had allegedly been appointed to oversee
25 the Company’s investigation of backdating issues. The fact that Defendant John
26 Sperling, as opposed to a member of the SLC, responded to Plaintiff’s letters exemplifies
27 how Defendant John Sperling dominates and controls not only Apollo, but its Board of
28 Directors as well. The direct response by Defendant John Sperling to Plaintiff’s letters is

1 also evidence that the backdating investigation allegedly conducted by the SLC was
2 inadequate. If the SLC's investigation is and was legitimate, a member of the SLC, and
3 not the defendant who received the most backdated stock options, would have responded
4 to Plaintiff's inquiries.

5 **Members Of The Board Of Directors Are Not Independent**

6 115. The wrongful acts complained of herein involve self-dealing, were outside
7 the scope of the Board of Directors' authority, and serve no legitimate business purpose.
8 Such acts were not, nor could they have been, the product of a valid or good faith
9 exercise of business judgment. Such acts were, moreover, unlawful and incapable of
10 ratification. Accordingly, the actions complained of herein are not protected by the
11 business judgment rule. Five out of Apollo's nine current directors were members of
12 Apollo's Board of Directors when the backdated option grants were made. Thus, these
13 directors, in assessing the recommendations of the SLC, would be considering whether
14 to bring a suit against themselves for approving the backdated options.

15 116. The current members of Apollo's Board of Directors are Defendants John
16 Sperling, Peter Sperling, John Blair, Dino DeConcini, and Hedy Govenar, along with
17 non-defendants Daniel Diethelm, George Zimmer, K. Sue Redman, and James R. Reis.

18 117. Any recommendation for remedial action by the SLC would be futile and
19 useless because the wrongful acts complained of herein were approved by the majority
20 of the Board of Directors as it is presently constituted. According to the Company's
21 stock option plans, Apollo's Board and the Compensation Committee had the sole
22 authority over when the stock options were granted, who received the options, and in
23 what amount. Significantly, the Board of Directors is controlled by Defendant John
24 Sperling and the co-trustees of the John Sperling Voting Stock Trust - Defendant Peter
25 Sperling, Defendant Nelson, and Apollo's attorney, Mr. Cohen.

26 118. In short, as detailed below, a majority of current Apollo directors suffer
27 from irreconcilable conflicts of interest arising from the backdating scheme, including
28 acquiescing to or personally benefiting from the scheme, and as such, cannot adequately

1 assess or review a recommendation by the SLC from the standpoint of the Company's
2 best interests.

3 119. (a) Inside Director Defendant John Sperling is the founder of the
4 Company and has been a Company director since its inception. He was President of the
5 Company from inception until February 1998, CEO from inception until August 2001,
6 and the Chairman of the Board from inception until June 2004. John Sperling was
7 recently appointed Acting Executive Chairman of the Board as of January 2006. During
8 the relevant period, Defendant John Sperling received millions of dollars in salary,
9 bonuses, and other forms of compensation. The value of Defendant John Sperling's
10 exercisable in-the-money options as stated in the most recent Form 10-K was
11 approximately \$93,234,484. Defendant John Sperling is incapable of assessing a
12 recommendation by the SLC in good faith because, as a member of the Board,
13 Defendant John Sperling authorized and approved of the backdated stock option grants
14 at issue in this case.

15 (b) During the relevant period, John Sperling or a trust in his name,
16 owned between 17.7% and 47.5% of Apollo's outstanding shares. Defendant John
17 Sperling, his son Defendant Peter Sperling, and several trusts in their names control
18 Apollo. Defendant John Sperling is the largest shareholder of Apollo's stock and
19 exercises control over Apollo.

20 (c) Defendant John Sperling is incapable of assessing a
21 recommendation by the SLC in good faith because he received five backdated stock
22 option grants during the relevant period, as listed below:

23 (i) Defendant John Sperling received an option grant on
24 December 18, 1998, on the same date and at the same exercise price as
25 certain Officer Defendants. As discussed above, the twenty day
26 cumulative return based on the exercise price was 20.98%.

27 (ii) Defendant John Sperling received an option grant on January
28 12, 2000, on the same date and at the same exercise price as certain Officer

1 Defendants. As discussed above, the twenty day cumulative return based
2 on the exercise price was 26.32%.

3 (iii) Defendant John Sperling received an option grant on
4 December 15, 2000, on the same date and at the same exercise price as
5 certain Officer Defendants. As discussed above, the twenty day
6 cumulative return based on the grant date was 54.05%.

7 (iv) Defendant John Sperling received an option grant on
8 September 21, 2001, on the same date and at the same exercise price as
9 certain Officer Defendants. As discussed above, the twenty day
10 cumulative return based on the grant date was 14.91%.

11 (v) Defendant John Sperling received a second option grant on
12 September 21, 2001, on the same date and at the same exercise price as
13 certain Officer Defendants. As discussed above, the nine day change was
14 34%.

15 (d) Defendant John Sperling is incapable of assessing a SLC
16 recommendation in good faith because of personal and professional entanglements with
17 other Company directors and officers. Until at least 2003, John Sperling and his son
18 Peter Sperling controlled an investment entity which beneficially owned AII.
19 Defendants John Sperling, Nelson, and Klor de Alva served as directors of AII during
20 the relevant period. Klor de Alva also served as President and CEO of AII from
21 September 2000 to at least 2002. In addition, Defendant John Sperling was a professor
22 at San Jose State University at the same time that Defendant Klor de Alva taught and
23 lectured there. Thus, in order to bring this suit, Defendant John Sperling would be
24 forced to determine whether his own grants, as well as grants to his own son and long-
25 time colleagues, should be rescinded.

26 (e) Defendant John Sperling is also incapable of assessing a SLC
27 recommendation in good faith because of his various personal and professional
28 entanglements with transactions connected to Apollo. Defendant John Sperling, through

1 an investment entity, and Apollo, both beneficially own AII. Effective July 1999,
2 Apollo entered into contracts with AII to provide educational products and services in
3 certain locations outside of the United States. As discussed above, Defendant John
4 Sperling and two other defendants served as directors of AII together. Effective
5 September 2002, Western entered into an agreement with AII to provide Western's
6 educational offerings in India. As discussed above, Director Diethelm currently serves
7 as a director at Western.

8 120. (a) Inside Director Defendant Peter Sperling has been a director of the
9 Company since at least 1995, and currently serves as Senior Vice President and
10 Secretary. He has held several other positions with the Company since 1983, including
11 Vice President, Treasurer and Director of Operations. During the relevant period,
12 Defendant Peter Sperling received millions of dollars in salary, bonuses, and other forms
13 of compensation. Defendant Peter Sperling is incapable of assessing a recommendation
14 by the SLC in good faith because as a member of the Board, he authorized and approved
15 of the backdated stock option grants at issue in this case.

16 (a) During the relevant period, Peter Sperling or a trust in his name,
17 owned between 17.9% and 45.4% of Apollo's outstanding shares. Defendant Peter
18 Sperling, his father Defendant John Sperling, and several trusts in their names control
19 Apollo. Next to his father, Defendant John Sperling is the second largest shareholder of
20 Apollo stock.

21 (b) Defendant Peter Sperling is incapable of assessing a
22 recommendation by the SLC in good faith because he received four backdated or
23 questionable stock option grants during the relevant period, as listed below:

24 (i) Defendant Peter Sperling received an option grant on
25 December 18, 1998, on the same date and at the same exercise price as
26 certain Officer Defendants. As discussed above, the twenty day
27 cumulative return based on the exercise price was 20.98%.

28 (ii) Defendant Peter Sperling received an option grant on

1 January 12, 2000, on the same date and at the same exercise price as
2 certain Officer Defendants. As discussed above, the twenty day
3 cumulative return based on the exercise price was 26.32%.

4 (iii) Defendant Peter Sperling received an option grant on
5 December 15, 2000, on the same date and at the same exercise price as
6 certain Officer Defendants. As discussed above, the twenty day
7 cumulative return based on the grant date was 54.05%.

8 (iv) Defendant Peter Sperling received an option grant on
9 September 21, 2001, on the same date and at the same exercise price as
10 certain Officer Defendants. As discussed above, the twenty day
11 cumulative return based on the grant date was 14.91%.

12 (d) Defendant Peter Sperling is incapable of assessing a SLC
13 recommendation in good faith because of personal and professional entanglements with
14 other Company directors and officers. Until at least 2003, Peter Sperling and his father
15 controlled an investment entity which beneficially owned AII. Defendants John
16 Sperling, Nelson, and Klor de Alva served as directors at AII during the relevant period.
17 Klor de Alva also served as President and CEO of AII from September 2000 to at least
18 2002. In addition, beginning in 2002, Western entered into agreements with AII and
19 Director Diethelm has served as a director at Western since 2001. Thus, in order to
20 bring this suit, Peter Sperling would be forced to determine whether his own grants, as
21 well as grants to his own father and long-time colleagues, should be rescinded.

22 121. (a) Outside Director Defendant Govenar has been a director of the
23 Company since 1997. Defendant Govenar is incapable of assessing a recommendation
24 of the SLC in good faith because, as a member of the Board, Defendant Govenar
25 authorized and approved of the backdated stock option grants at issue in this case. She
26 served on the SLC charged with investigating the options backdating. Following the
27 SLC's presentation of its final factual findings to the Board on December 8, 2006,
28 Defendant Govenar was replaced as a member of the SLC by K. Sue Redman.

1 (a) Defendant Govenar is incapable of assessing a recommendation of
2 the SLC in good faith because of her personal and professional entanglements with
3 Company officers. For example, Defendant Govenar served as a director of the
4 University of Phoenix from 1992 to 1997 while Officer Defendant Nelson served as the
5 Executive Vice President of the University of Phoenix from 1989 until 1998 and Officer
6 Defendant Noone served as the Provost and Senior Vice President of Academic Affairs
7 for the University of Phoenix from 1991 to 1994. Thus, in order to bring this suit,
8 Defendant Govenar would be forced to determine whether grants to her long-time
9 colleagues should be rescinded.

10 (b) Defendant Govenar is also incapable of assessing a
11 recommendation of the SLC in good faith because of her personal and professional
12 entanglements with transactions connected to Apollo. Effective June 1999, Apollo
13 entered into an agreement with Governmental Advocates, Inc. to provide consulting
14 services to Apollo. Defendant Govenar is the founder and Chairwomen of
15 Governmental Advocates, Inc. Since June 1999, Apollo has paid Governmental
16 Advocates, Inc. \$10,000 per month. In order to bring the suit, Defendant Govenar would
17 be forced to jeopardize this significant business relationship.

18 122. Outside Director Defendant John Blair has been a director of Apollo and
19 has served on the Compensation Committee since 2000. Defendant Blair is incapable of
20 assessing a recommendation of the SLC in good faith because as a member of the Board
21 and the Compensation Committee, Defendant Blair authorized and approved of the
22 backdated stock option grants at issue in this case.

23 123. Outside Director Defendant Dino J. DeConcini has been a director of the
24 Company since 1981. Defendant DeConcini is incapable of assessing a recommendation
25 of the SLC in good faith because as a member of the Board, Defendant DeConcini
26 authorized and approved of the backdated stock option grants at issue in this case.

27 124. Outside Director Daniel D. Diethelm has been a director of the Company
28 since June 2006. As discussed above, Director Diethelm is incapable of independently

1 serving on the SLC because of personal and professional entanglements with other
2 Company officers and directors.

3 125. Accordingly, a majority of Apollo's current directors are either directly
4 responsible for administering the unlawfully backdated option grants challenged in this
5 litigation, or personally benefited from the backdated grants. Thus, there is substantial
6 reason to doubt that the current members of the Board of Directors will pursue litigation
7 to remedy harms resulting from fellow directors' performance of the unlawful acts, acts
8 that have no ascertainable connection to the exercise of business judgment, and acts for
9 which they face a substantial likelihood of liability.

10 126. The current directors are not independent and cannot sufficiently prosecute
11 this action because certain controlling members have, through self-dealing, individually
12 gained tremendous wealth through their receipt and exercise of Apollo's stock options—
13 often at suspiciously low prices—since at least the outset of the relevant period. Since
14 1998, Apollo's current directors have collectively sold over \$1 billion of Apollo stock.
15 As a result, the directors lack independence.

16 **COUNT I**

17 **AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 10(b) OF THE**
18 **SECURITIES EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER**

19 127. Throughout the relevant period, the Individual Defendants, individually
20 and in concert, directly and indirectly, by the use and means of instrumentalities of
21 interstate commerce and/or of the mails, engaged and participate in a continuous course
22 of conduct designed to divert hundreds of millions of dollars to the Officer Defendants
23 via improper option grants.

24 128. Individual Defendants employed devices, schemes, and artifices to defraud
25 while in possession of material, adverse non-public information, and engaged in acts,
26 practices, and a course of conduct that included the making of, or participation in the
27 making of, untrue and/or misleading statements of material facts and/or omitting to state
28 material facts necessary in order to make the statements made about Apollo not

1 misleading.

2 129. Individual Defendants, as top executive officers and directors of the
3 Company, are liable as direct participants in the wrongs complained of herein. Through
4 their positions of control and authority as officers and directors of the Company, each of
5 the Individual Defendants was able to and did control the conduct complained of herein.

6 130. Individual Defendants acted with scienter throughout the relevant period in
7 that they either had actual knowledge of the misrepresentations and/or omissions of
8 material facts set forth herein, or acted with reckless disregard for the truth by failing to
9 ascertain and disclose the true facts, even though such facts were available to them.
10 Individual Defendants were among the senior management of the Company, and were
11 therefore directly responsible for the false and misleading statements and/or omissions
12 disseminated to the public through press releases, news reports, and SEC filings.

13 131. Each of the Individual Defendants participated in a scheme to defraud with
14 the purpose and effect of defrauding Apollo, which relied on Individual Defendants'
15 fraud in granting backdated stock option to the Officer Defendants.

16 132. By virtue of the foregoing, Individual Defendants have violated §10(b) of
17 the Exchange Act, and Rule 10b-5 promulgated thereunder, and caused Apollo to sustain
18 damages, as alleged herein.

19 133. As alleged in detail herein, the Individual Defendants breached their
20 fiduciary duties by:

21 (a) colluding with each other to backdate stock option grants;

22 (b) colluding with each other to violate GAAP and Internal Revenue
23 Code §162(m);

24 (c) colluding with each other to produce and disseminate to Apollo
25 shareholders and the market false financial statements that improperly recorded and
26 accounted for the backdated option grants and concealed the improper backdating of
27 stock options; and

28 (d) colluding with each other to file false statements and false Form 3,

1 Form 4 and Form 5 filings in order to conceal the improper backdating of stock options.

2 134. The Individual Defendants' foregoing misconduct was not, and could not
3 have been, an exercise of good faith business judgment. Rather, it was intended to, and
4 did, unduly benefit the Individual Defendants at the expense of the Company.

5 **COUNT II**

6 **AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF**
7 **SECTION 20(a) OF THE SECURITIES EXCHANGE ACT**

8 135. Plaintiff incorporates by reference and realleges each and every allegation
9 contained above as though fully set forth herein.

10 136. Through their positions of control and authority as officers and directors of
11 the Company, the Individual Defendants were able to and did control, directly and
12 indirectly, the content of public statements by the Company. With knowledge of the
13 falsity of the statements contained therein or with deliberate disregard for the truth about
14 the Company's financial condition, defendants caused the false and misleading
15 statements and omissions of material facts alleged herein.

16 137. The Individual Defendants, by virtue of their positions, stock ownership
17 and/or specific acts described above, were controlling persons of Apollo within the
18 meaning of Section 20(a) of the Securities Exchange Act. The Individual Defendants,
19 had the power to, and did, directly and indirectly, exercise control over Apollo, including
20 the content and dissemination of statements which the Plaintiff alleges are false and
21 misleading. The Individual Defendants were each provided with and had access to
22 reports, financial statements, press releases and other statements alleged to be misleading
23 prior to and/or shortly after they were issued and had the ability to prevent the issuance
24 or correct the statements. The Individual Defendants had direct and supervisory
25 involvement in the day-to-day operations of the Company and induced Apollo to engage
26 in the acts constituting violations of the federal securities laws, as set forth in Count One
27 above.

28 138. By virtue of the foregoing, the Individual Defendants are liable pursuant to

1 Section 20(a) of the Securities Exchange Act to the Company, which has been damaged
2 as a result of the underlying violations as alleged herein.

3 **COUNT III**

4 **AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATIONS OF A.R.S. § 44-1991(A)**
5 **(FRAUD IN PURCHASE OR SALE OF SECURITIES)**

6 139. Plaintiff incorporates by reference and realleges each and every allegation
7 contained above as though fully set forth herein.

8 140. This Count is brought pursuant to A.R.S. § 44-1991(A) against all
9 Individual Defendants on behalf of Apollo.

10 141. During the relevant period, the Individual Defendants, individually and in
11 concert, directly and indirectly:

12 (a) Employed devices, schemes, and/or artifices involving the issuance
13 of fraudulently priced options to defraud Apollo;

14 (b) Made untrue statements of material fact and/or omitted to state
15 material facts necessary in order to make the statements made, in light of the
16 circumstances in which they were made, not misleading, in order to defraud Apollo;
17 and/or

18 (c) Engaged in acts, practices, and a course of conduct that operated as
19 a fraud or deceit upon Apollo causing the issuance of fraudulently priced options
20 contracts.

21 142. The Individual Defendants made material misrepresentations concerning
22 the validity of and the true grant dates for the stock option contracts at issue in this
23 action knowingly and/or in reckless disregard for the truth, with the purpose and effect
24 of misleading and defrauding Apollo concerning fraudulently priced options contracts.

25 143. The Individual Defendants used or engaged in devices, schemes, artifices,
26 practices and/or courses of conduct knowingly and/or in reckless disregard of the truth,
27 with the purpose and effect of misleading and defrauding Apollo. The Individual
28 Defendants were directly responsible for the false and misleading statements and/or

1 omissions to the public due to their controlling positions as senior executives and/or
2 directors of the Company. Accordingly, the Individual Defendants are liable as direct
3 participants in the wrongful conduct alleged herein.

4 144. By virtue of the foregoing, the Individual Defendants have violated A.R.S.
5 § 44-1991(A).

6 145. As detailed herein, Apollo suffered significant damages as a direct result of
7 its issuance of fraudulently priced stock options, which options were issued as a direct
8 and proximate result of Individual Defendants' misconduct alleged herein.

9 **COUNT IV**

10 **AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATIONS OF A.R.S. § 44-1999**
11 **(CONTROLLING PERSONS LIABILITY)**

12 146. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above as though fully set forth herein.

14 147. The Individual Defendants, by reason of their positions as officers and/or
15 directors of the Company and their specific acts, were, at the time of the wrongs alleged
16 herein, controlling persons of Apollo within the meaning of A.R.S. § 44-1999. The
17 Individual Defendants had the power and influence and exercised the same to cause
18 Apollo to engage in the misconduct alleged herein.

19 **COUNT V**

20 **AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY**

21 148. Plaintiff incorporates by reference and realleges each and every allegation
22 contained above as though fully set forth herein.

23 149. The Individual Defendants, by reason of their positions as fiduciaries of
24 the Company, owed duties of due care, undivided loyalty, honesty, fair play, fair dealing,
25 good faith, and truthful disclosure. Each of the Individual Defendants had a fiduciary
26 duty to refrain from unduly benefiting themselves and other Company insiders at the
27 expense of Apollo. The Individual Defendants violated and breached these duties, as
28 alleged in detail herein.

1 150. As alleged herein, the Officer Defendants breached their fiduciary duties
2 by:

3 (a) Colluding with the Director Defendants to backdate stock option
4 grants;

5 (b) Colluding with the Director Defendants to produce and disseminate
6 to Apollo shareholders and the market false financial statements that improperly
7 recorded and accounted for the backdated option grants and concealed the improper
8 backdating of stock options; and

9 (c) Colluding with the Director Defendants to file false Form 3, Form 4
10 and Form 5 filings in order to conceal the improper backdating of stock options.

11 151. The Officer Defendants' foregoing misconduct was not, and could not
12 have been, an exercise of good faith business judgment. Rather, it was intended to, and
13 did, unduly benefit themselves at the expense of the Company.

14 152. Each Director Defendant received, approved, ratified or was otherwise
15 responsible for permitting the backdated options to be granted. The Directors,
16 particularly those directors who were members of the Compensation Committee during
17 the period that the backdated options were granted, each abandoned and abdicated their
18 fiduciary responsibilities to the Company. As such, each Director Defendant failed to
19 act (1) in good faith; (2) with the care an ordinarily prudent person in a like position
20 would exercise under similar circumstances; and (3) in accordance with a reasonable
21 belief that their conduct was in the best interest of the corporation as required by A.R.S.
22 § 10-830.

23 153. As alleged herein, the Director Defendants breached their fiduciary duties
24 by:

25 (a) Colluding with the Officer Defendants to backdate stock option
26 grants;

27 (b) Colluding with the Officer Defendants to produce and disseminate
28 to Apollo shareholders and the market false financial statements that improperly

1 recorded and accounted for the backdated option grants and concealed the improper
2 backdating of stock options; and

3 (c) Colluding with the Officer Defendants to file false Form 3, Form 4
4 and Form 5 filings in order to conceal the improper backdating of stock options.

5 154. The Director Defendants' foregoing misconduct was not, and could not
6 have been, an exercise of good faith business judgment. Rather, it was intended to, and
7 did, unduly benefit the Officer Defendants at the expense of the Company.

8 155. As a direct and proximate result of the Individual Defendants' breach of
9 fiduciary duty and waste of corporate assets, the Company has sustained, and will
10 continue to sustain, substantial harm.

11 156. The Individual Defendants are liable to the Company as a result of the acts
12 alleged herein.

13 **COUNT VI**

14 **AGAINST THE INDIVIDUAL DEFENDANTS**
15 **FOR AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY**

16 157. Plaintiff incorporates by reference and realleges each and every allegation
17 contained above as though fully set forth herein.

18 158. The Individual Defendants, by reason of their positions as fiduciaries of
19 the Company, owed duties of due care, undivided loyalty, honesty, fair play, fair dealing,
20 good faith, and truthful disclosure. Each of the Individual Defendants had a fiduciary
21 duty to refrain from unduly benefiting themselves and other Company insiders at the
22 expense of Apollo. The Individual Defendants violated and breached these duties, as
23 alleged in detail herein.

24 159. By virtue of their role with regard to the backdated stock options alleged
25 herein, each Individual Defendant aided and abetted one another in their breach of
26 fiduciary duty.

27 160. As a direct and proximate result of the Individual Defendants' aiding and
28 abetting one another's breach of fiduciary duty, the Company has sustained, and will

1 continue to sustain, substantial harm.

2 161. The Individual Defendants are liable to the Company as a result of the acts
3 alleged herein.

4 **COUNT VII**

5 **AGAINST THE OFFICER DEFENDANTS FOR UNJUST ENRICHMENT**

6 162. Plaintiff incorporates by reference and realleges each and every allegation
7 contained above as though fully set forth herein.

8 163. As a direct and proximate result of the acts alleged herein, the Officer
9 Defendants wrongfully deprived the Company of substantial wealth and were unjustly
10 enriched thereby. The Officer Defendants were unjustly enriched by their receipt and
11 retention of backdated stock option grants and it would be unconscionable to allow them
12 to retain the benefits thereof.

13 164. The Officer Defendants are liable to the Company as a result and should be
14 required to disgorge their unjust gains and return them to the Company.

15 **COUNT VIII**

16 **AGAINST THE OFFICER DEFENDANTS FOR RESCISSION**

17 165. Plaintiff incorporates by reference and realleges each and every allegation
18 contained above as though fully set forth herein.

19 166. As a result of the acts alleged herein, all stock option contracts between the
20 Officer Defendants and Apollo entered into during the relevant period were obtained
21 through the Officer Defendants' fraud, deceit, and abuse of control. Further, the
22 backdated stock options and the shares underlying these options were not duly
23 authorized by the Board, as was legally required, because they were not authorized in
24 accordance with the terms of the publicly filed contracts—including the relevant stock
25 option plans—filed with the SEC.

26 167. All stock option contracts between the Officer Defendants and Apollo
27 entered into during the relevant period should, therefore, be rescinded, with all sums paid
28 under such contracts returned to the Company, and all such executory contracts

1 cancelled and declared void.

2 **COUNT IX**

3 **AGAINST THE OFFICER DEFENDANTS FOR ENJOINING OF**
4 **ULTRA VIRES ACTS PURSUANT TO A.R.S. § 10-304**

5 168. Plaintiff incorporates by reference and realleges each and every allegation
6 contained above as though fully set forth herein.

7 169. Pursuant to A.R.S. § 10-304, the agreements and transactions described
8 above and any other unauthorized agreements and transactions should be declared
9 invalid, void, and rescinded in full as *ultra vires* acts, as they were beyond the scope of
10 the authorized and legitimate powers of the Company.

11 170. The Officer Defendants should be enjoined from conducting any further
12 activities which are injurious to the Company and should pay all damages and/or losses
13 suffered by the Company during the term of the rescinded agreements and transactions
14 as authorized by A.R.S. § 10-304.

15 **COUNT X**

16 **AGAINST THE INDIVIDUAL DEFENDANTS FOR AN ACCOUNTING**

17 171. Plaintiff incorporates by reference and realleges each and every allegation
18 contained above as though fully set forth herein.

19 172. The Individual Defendants, by reason of their positions as fiduciaries of
20 the Company, owed duties of due care, undivided loyalty, honesty, fair play, fair dealing,
21 good faith, and truthful disclosure. Each of the Individual Defendants had a fiduciary
22 duty to refrain from unduly benefiting themselves and other Company insiders at the
23 expense of Apollo. The Individual Defendants violated and breached these duties, as
24 alleged in detail herein.

25 173. The Individual Defendants possess complete and unfettered control over
26 their improperly issued stock option grants and the books and records of the Company
27 concerning the details of such improperly backdated stock option grants to the Officer
28 Defendants. As a direct and proximate result of the Individual Defendants' misconduct,

1 the Company has been substantially injured and is entitled to a recovery as a result
2 thereof, including the proceeds of those improperly granted options which have been
3 exercised and sold.

4 174. Plaintiff demands an accounting be made of all stock option grants made to
5 the Individual Defendants, including, but not limited to, the recipients of the grants, the
6 dates of the grants, the amounts of the grants, the value of the grants, the exercise date of
7 stock options, as well as the disposition of any proceeds received by the defendants via
8 sale or other exercise of backdated stock option grants received by the Individual
9 Defendants.

10 **COUNT XI**

11 **AGAINST THE INDIVIDUAL DEFENDANTS FOR CONSTRUCTIVE FRAUD**

12 175. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above as though fully set forth herein.

14 176. As corporate fiduciaries, the Individual Defendants owed to Apollo and its
15 shareholders a duty of candor and duty to disclose accurate and truthful information with
16 respect to the Company's business, operations, assets, earnings and compensation
17 practices as well as their conduct with regard thereto.

18 177. As a result of the conduct alleged herein, the Individual Defendants made,
19 or aided and abetted the making of, numerous misrepresentations to and/or concealed
20 material facts from Apollo's shareholders in breach of their duties to, *inter alia*, disclose
21 the true facts regarding their stewardship of Apollo. Thus they have committed
22 constructive fraud and violated their duty of candor.

23 178. As a direct and proximate result of the fraud and breaches of duty alleged
24 herein, Apollo has sustained significant damages.

25 **COUNT XII**

26 **AGAINST THE INDIVIDUAL DEFENDANTS FOR WASTE OF CORPORATE ASSETS**

27 179. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above as though fully set forth herein.

1 180. As a result of the improprieties alleged herein, and by failing to properly
2 consider the interests of the Company and its public shareholders by failing to conduct
3 proper supervision, by giving away millions of dollars to the Officer Defendants via the
4 option backdating scheme, and incurring costs to conduct investigations, the Individual
5 Defendants have caused the Company to waste valuable corporate assets.

6 181. The Individual Defendants are liable to the Company as a result of the acts
7 alleged herein.

8 **COUNT XIII**

9 **AGAINST THE OFFICER DEFENDANTS FOR VIOLATION OF SECTION 20A**
10 **OF THE SECURITIES EXCHANGE ACT**

11 182. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above as though fully set forth herein.

13 183. The Officer Defendants, by reason of their relationship with the Company
14 as officers of the Company, had access, directly or indirectly, to material information
15 about the Company not generally available to the public.

16 184. The Officer Defendants knowingly used material information about the
17 Company, not generally available to the public, to facilitate the backdating of stock
18 options granted by the Company.

19 185. The Officer Defendants knowingly used their positions at the Company to
20 avail themselves of non-public information to facilitate backdating of Apollo securities
21 for their own personal gain in a manner not available to the public.

22 186. The Officer Defendants purchased (through their acquisition and/or
23 exercise of backdated stock options) Apollo securities with actual knowledge that the
24 value of these securities was inflated as a result of backdating.

25 187. Apollo was as a contemporary trader, pursuant to Section 20A of the
26 Exchange Act, when the Officer Defendants purchased securities by acquisition and/or
27 exercise of backdated stock options in Apollo. As such, Apollo was damaged by the
28 actions of the Officer Defendants, as alleged herein.

1 188. The Officer Defendants are liable to the Company for damages pursuant to
2 Section 20A of the Exchange Act.

3 **COUNT XIV**

4 **AGAINST THE INDIVIDUAL DEFENDANTS (EXCEPT FOR DEFENDANT MUELLER) FOR**
5 **BREACH OF FIDUCIARY DUTIES FOR INSIDER SELLING**

6 189. Plaintiff incorporates by reference and realleges each and every allegation
7 contained above as though fully set forth herein.

8 190. At the time of the stock sales set forth herein, the Individual Defendants,
9 except for Defendant Mueller, were aware that the value of the securities and Apollo's
10 revenues were inflated as a result of the backdating scheme, and sold Apollo common
11 stock on the basis of such information.

12 191. The fact that Apollo's securities and reported revenue were inflated as a
13 result of the backdating scheme was non-public information concerning the Company's
14 financial condition and future business prospects. The Individual Defendants used this
15 non-public adverse information for their own benefit when they sold Apollo common
16 stock.

17 192. At the time of their stock sales, the Individual Defendants knew that the
18 Company's revenues were materially overstated and that the securities were inflated as a
19 result of the backdating scheme. The Individual Defendants' sales of Apollo common
20 stock while in possession and control of this material adverse non-public information
21 was a breach of their fiduciary duties of loyalty and good faith.

22 193. Since the use of the Company's proprietary information for their own gain
23 constitutes a breach of the Individual Defendants' fiduciary duties, the Company is
24 entitled to damages and appropriate equitable remedies.

25 WHEREFORE, Plaintiff demands judgment as follows:

- 26 (i) Awarding to the Company money damages against all
27 Individual Defendants, jointly and severally, for all losses and damages
28 suffered as a result of the acts and transactions complained of herein;

1 Dated: February 26, 2007

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

2
3 /s David R. Stickney
4 DAVID R. STICKNEY

5 DAVID R. STICKNEY
6 BRETT M. MIDDLETON
7 12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
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8 *Proposed Lead Counsel for Proposed*
9 *Lead Plaintiff Louisiana Municipal Police*
10 *Employees' Retirement System*

1 I hereby certify that on February 26, 2007, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification of
3 such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List,
4 and hereby certify that I have mailed the foregoing document or paper via the United
5 States Postal Service to the non-CM/ECF participants indicated on the attached Manual
6 Notice List.

7
8 BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

9 s/DAVID R. STICKNEY
10 DAVID R. STICKNEY

11 DAVID R. STICKNEY
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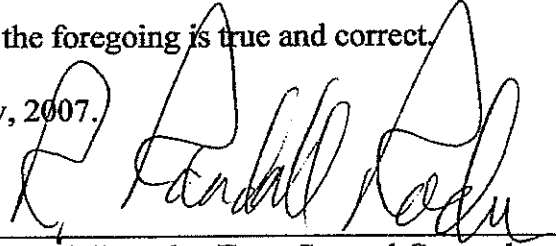
14 *Proposed Lead Counsel for Proposed Lead*
15 *Plaintiff Louisiana Municipal Police Employees'*
16 *Retirement System*

VERIFICATION

I, R. Randall Roche, Esq., General Counsel, Louisiana Municipal Police Employees' Retirement System, hereby verify that I have reviewed the foregoing Amended Verified Shareholder Derivative Complaint and authorized its filing and that the foregoing is true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on this 26 day of February, 2007.

A handwritten signature in black ink, appearing to read "R. Randall Roche". The signature is written in a cursive style and is positioned above a horizontal line.

R. Randall Roche, Esq., General Counsel

Louisiana Municipal Police Employees'
Retirement System
7722 Office Park Boulevard, Suite 200
Baton Rouge, LA 70809