

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

Local 617 Teamsters Pension and Welfare Funds, et al.,  <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> Apollo Group Incorporated, et al.,  <p style="text-align: center;">Defendants.</p>	No. CV-06-02674-PHX-DLR  <p style="text-align: center;"><b>ORDER PRELIMINARY          APPROVED SETTLEMENT AND          PROVIDING FOR NOTICE</b></p>
---	---

WHEREAS, a consolidated class action is pending before the Court captioned *Teamsters Local 617 Pension and Welfare Funds v. Apollo Group Inc. et al.*, No. 2:06-cv-02674-RCB (the ‘‘Litigation’’);

WHEREAS, the Court has received the Stipulation of Settlement dated as of January 12, 2015 (the ‘‘Stipulation’’) that has been entered into by the Lead Plaintiff (on behalf of itself and each of the Settlement Class Members) and Defendants, and the Court has reviewed the Stipulation and its attached Exhibits;

WHEREAS, the Lead Plaintiff, having made an application pursuant to Federal Rule of Civil Procedure 23(e) for an order preliminarily approving the Settlement of this Litigation, in accordance with the Stipulation, which, together with the Exhibits annexed thereto, sets forth the terms and conditions for the Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein,

1 and the Court having read and considered the Stipulation and the Exhibits annexed  
2 thereto; and

3 WHEREAS, all terms with initial capitalization contained herein shall have the  
4 same meanings as set forth in the Stipulation;

5 NOW, THEREFORE, IT IS HEREBY ORDERED:

6 1. After a preliminary review, the Settlement appears to be fair, reasonable,  
7 adequate and in the best interests of the Settlement Class. The Settlement: (a) resulted  
8 from extensive arm's-length negotiations; and (b) is sufficient to warrant (i) notice  
9 thereof as set forth below; and (ii) a full hearing on the Settlement. Accordingly, the  
10 Court does hereby preliminarily approve the Stipulation and the Settlement set forth  
11 therein, subject to further consideration at the Final Approval Hearing described below.

12 2. A hearing (the "Final Approval Hearing") shall be held before this Court  
13 on July 28, 2015, at 1:30 p.m., at the Sandra Day O'Connor U.S. Courthouse, 401 West  
14 Washington Street, SPC 79, Phoenix, Arizona 85003, to determine whether the proposed  
15 Settlement of the Litigation on the terms and conditions provided for in the Stipulation is  
16 fair, just, reasonable and adequate to the Settlement Class Members and should be  
17 approved by the Court; whether a Judgment as provided in ¶1.13 and ¶8.1(d) of the  
18 Stipulation and substantially in the form attached as Exhibit B thereto should be entered  
19 herein; whether the proposed Plan of Allocation should be approved; and to determine  
20 the amount of attorneys' fees and expenses that should be awarded to Lead Plaintiff's  
21 counsel and the amount that Lead Plaintiff should be awarded for its expenses, including  
22 lost wages. The Court may continue or adjourn the Final Approval Hearing without  
23 further notice to Settlement Class Members.

24 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court  
25 certifies, solely for purposes of effectuating the Settlement, a Settlement Class consisting  
26 of all Persons who purchased or otherwise acquired Apollo Securities from November  
27 28, 2001 through and including October 18, 2006. Excluded from the Settlement Class  
28

1 are Defendants, members of their immediate families, their legal representatives, heirs,  
2 successors, or assigns, officers and directors of Apollo during the Settlement Class  
3 Period, and any entity in which Defendants have or had a controlling interest. Persons  
4 who make a timely and valid request for exclusion from the Settlement Class are also  
5 excluded.

6 4. With respect to the Settlement Class, this Court finds, solely for purposes of  
7 effectuating the Settlement, that: (a) the Members of the Settlement Class are so  
8 numerous that joinder of all Settlement Class Members in the Litigation is impracticable;  
9 (b) there are questions of law and fact common to the Settlement Class that predominate  
10 over any individual question; (c) the claims of the Lead Plaintiff are typical of the claims  
11 of the Settlement Class; (d) Lead Plaintiff and its counsel has fairly and adequately  
12 represented and protected the interests of the Settlement Class Members; and (e) a class  
13 action is superior to other available methods for the fair and efficient adjudication of the  
14 controversy, considering: (i) the interests of the Members of the Settlement Class in  
15 individually controlling the prosecution of the separate actions; (ii) the extent and nature  
16 of any litigation concerning the controversy already commenced by Members of the  
17 Settlement Class; (iii) the desirability or undesirability of concentrating the litigation of  
18 these claims in this particular forum; and (iv) the difficulties likely to be encountered in  
19 the management of the Litigation.  
20

21 5. The Court approves, as to form and content, the Notice of Pendency and  
22 Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form  
23 (the "Proof of Claim and Release") and the Summary Notice of Pendency of Class Action  
24 and Proposed Settlement ("Summary Notice") for publication annexed as Exhibits A-1,  
25 A-2 and A-3 hereto and finds that the mailing and distribution of the Notice and  
26 publishing of the Summary Notice substantially in the manner and form set forth in ¶¶6-7  
27 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due  
28

1 process, is the best notice practicable under the circumstances and shall constitute due  
2 and sufficient notice to all Persons entitled thereto.

3 6. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby  
4 appointed to supervise and administer the notice procedure, as well as the processing of  
5 claims as more fully set forth below:

6 (a) The Claims Administrator shall make reasonable efforts to identify  
7 all Persons who are Members of the Settlement Class, and not later than May 4, 2015 (the  
8 “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Proof  
9 of Claim and Release, substantially in the forms annexed as Exhibits A-1 and A-2 hereto,  
10 to be mailed by first-class mail to all Settlement Class Members who can be identified  
11 with reasonable effort;

12 (b) Not later than May 14, 2015, the Claims Administrator shall cause  
13 the Summary Notice, substantially in the form annexed hereto as Exhibit A-3, to be  
14 published once in *Investor’s Business Daily* and transmitted once over a national  
15 newswire service;

16 (c) Not later than the Notice Date, the Claims Administrator shall post  
17 the Stipulation and all of its Exhibits on a case-dedicated website,  
18 [www.apollosecuritiessettlement.com](http://www.apollosecuritiessettlement.com), which will be set forth in the Notice and Summary  
19 Notice; and  
20

21 (d) At least seven calendar days prior to the Final Approval Hearing,  
22 Lead Counsel shall cause to be served on Defendants’ counsel and filed with the Court  
23 proof, by affidavit or declaration, of such mailing and publishing.

24 7. Nominees who purchased Apollo Securities for the beneficial ownership of  
25 Settlement Class Members during the Settlement Class Period shall send the Notice and  
26 the Proof of Claim and Release to all beneficial owners of such securities within ten days  
27 after receipt thereof, or send a list of the names and addresses of such beneficial owners  
28 to the Claims Administrator within ten days of receipt thereof, in which event the Claims

1 Administrator shall promptly mail the Notice and Proof of Claim and Release to such  
2 beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses  
3 or other nominees solely for their reasonable costs incurred in providing notice to  
4 beneficial owners who are Settlement Class Members out of the Settlement Fund, which  
5 expenses would not have been incurred except for the sending of such notice, subject to  
6 further order of this Court with respect to any dispute concerning such compensation.

7 8. All Settlement Class Members shall be bound by all determinations and  
8 judgments in the Litigation concerning the Settlement, whether favorable or unfavorable  
9 to the Settlement Class.

10 9. Any Member of the Settlement Class may enter an appearance in the  
11 Litigation, at their own expense, individually or through counsel of their own choice. If  
12 they do not enter an appearance, they will be represented by Lead Counsel.

13 10. Settlement Class Members who wish to participate in the Settlement shall  
14 complete and submit Proof of Claim and Release forms in accordance with the  
15 instructions contained therein. Unless the Court orders otherwise, all Proof of Claim and  
16 Release forms must be submitted no later than 90 days from the Notice Date. Any  
17 Settlement Class Member who does not timely submit a Proof of Claim and Release  
18 within the time provided for shall be barred from sharing in the distribution of the  
19 proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall in  
20 all respects be bound by the release contained in the Stipulation and Judgment.  
21 Notwithstanding the foregoing, Lead Counsel shall have the discretion to accept late-  
22 submitted claims for processing by the Claims Administrator so long as distribution of  
23 the Net Settlement Fund is not materially delayed thereby.

24 11. Any Settlement Class Member may, upon request, be excluded from the  
25 Settlement Class. Any such Person must submit to the Claims Administrator a request  
26 for exclusion (“Request for Exclusion”), postmarked no later than July 6, 2015. A  
27 Request for Exclusion must provide the following information to the Claims  
28

1 Administrator: (a) name; (b) address; (c) telephone number; (d) quantities of Apollo  
2 Securities purchased and sold during the Settlement Class; (e) prices paid or received for  
3 such securities with respect to each purchase and sale; (f) the date of each purchase or  
4 sale transaction; and (g) a statement that the Person wishes to be excluded from the  
5 Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the  
6 manner set forth in this paragraph shall have no rights under the Stipulation, shall not  
7 share in the distribution of the Net Settlement Fund and shall not be bound by the  
8 Stipulation or the Judgment entered in the Litigation. Unless otherwise ordered by the  
9 Court, any Settlement Class Member who does not submit a valid and timely written  
10 Request for Exclusion as provided by this paragraph shall be bound by the Stipulation.

11 12. Any Member of the Settlement Class may appear and show cause if he, she  
12 or it has any reason why the proposed Settlement of the Litigation should or should not  
13 be approved as fair, reasonable and adequate, why the Judgment should or should not be  
14 entered thereon, why the Plan of Allocation should or should not be approved, or why  
15 Lead Counsel's request for an award of attorneys' fees and expenses, including Lead  
16 Plaintiff's expenses as provided for by 15 U.S.C. §78u-4(a)(4) should or should not be  
17 awarded; provided, however, that no Settlement Class Member or any other Person shall  
18 be heard or entitled to contest the approval of the terms and conditions of the proposed  
19 Settlement or the Judgment to be entered thereon unless that Person has delivered by  
20 hand or sent by first-class mail written objections and copies of any papers and briefs  
21 such that they are received on or before July 6, 2015 by Robbins Geller Rudman & Dowd  
22 LLP, Jeffrey D. Light, 655 West Broadway, Suite 1900, San Diego, CA 92101; Morgan  
23 Lewis & Bockius LLP, Joseph E. Floren, Brian A. Herman, One Market Street, Spear  
24 Street Tower, San Francisco, CA 94105; Jennings Strouss & Salmon PLC, Michael J.  
25 Farrell, One E. Washington, Suite 1900, Phoenix, AZ 85004-2554; and Skadden, Arps,  
26 Slate, Meagher & Flom LLP, Eric Waxman, Peter B. Morrison, 300 South Grand  
27 Avenue, Suite 3400, Los Angeles, CA 90071, and filed said objections, papers and briefs  
28

1 with the Clerk of the United States District Court for the District of Arizona, Phoenix  
2 Division, on or before July 6, 2015. Any Settlement Class Member who does not make  
3 his, her or its objection in the manner provided shall be deemed to have waived such  
4 objection and shall forever be foreclosed from making any objection to the fairness or  
5 adequacy of the proposed Settlement as set forth in the Stipulation, to the Plan of  
6 Allocation or to the award of attorneys' fees and expenses to Lead Counsel, including  
7 Lead Plaintiff's expenses, unless otherwise ordered by the Court.

8 13. All funds held by the Escrow Agent shall be deemed and considered to be  
9 in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court,  
10 until such time as such funds shall be distributed pursuant to the Stipulation and/or  
11 further order(s) of the Court.

12 14. All papers in support of the Settlement, the Plan of Allocation and any  
13 application by Lead Counsel for an award of attorneys' fees or expenses, including Lead  
14 Plaintiff's request for payment of its expenses as provided for by 15 U.S.C. §78u-4(a)(4),  
15 shall be filed and served on or before fourteen calendar days prior to the objection  
16 deadline in ¶12. Any reply briefs and supporting documents shall be filed and served on  
17 or before seven calendar days prior to the Final Approval Hearing.

18 15. Neither the Released Persons nor Defendants' counsel shall have any  
19 responsibility for the Plan of Allocation or any application for attorneys' fees or expenses  
20 submitted by Lead Plaintiff's counsel or Lead Plaintiff, and such matters will be  
21 considered separately from the fairness, reasonableness and adequacy of the Settlement.

22 16. At or after the Final Approval Hearing, the Court shall determine whether  
23 the Plan of Allocation proposed by Lead Counsel, any application for attorneys' fees or  
24 expenses and any application for an award of Lead Plaintiff's expenses, including lost  
25 wages pursuant to 15 U.S.C. §78u-4(a)(3)(4), shall be approved.

26 17. All reasonable expenses incurred in identifying and notifying Settlement  
27 Class Members, as well as administering the Settlement Fund, shall be paid as set forth in  
28

1 the Stipulation. In the event the Settlement is not approved by the Court, or otherwise  
2 fails to become effective, neither Plaintiffs nor any of their counsel shall have any  
3 obligation to repay any amounts incurred or properly disbursed pursuant to ¶¶2.6 or 2.7  
4 of the Stipulation.

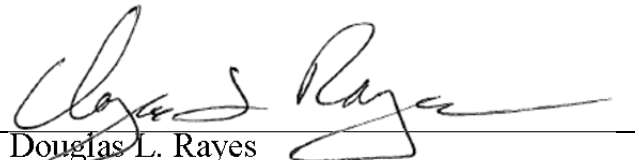
5 18. Neither the Stipulation, nor any of its terms or provisions, nor any of the  
6 negotiations or proceedings connected with it, including the Plan of Allocation, shall be  
7 construed as an admission or concession by Defendants of the truth of any of the  
8 allegations in connection with the Litigation or of any liability, fault or wrongdoing of  
9 any kind.

10 19. Pursuant to ¶8.4 of the Stipulation, in the event that the Court declines to  
11 approve the Settlement or the Settlement set forth in the Stipulation is terminated or fails  
12 to become effective in accordance with its terms, the Settling Parties shall be restored to  
13 their respective positions in the Litigation as of April 17, 2014

14 20. The Court reserves the right to adjourn the date of the Final Approval  
15 Hearing without further notice to the Members of the Settlement Class and retains  
16 jurisdiction to consider all further applications arising out of or connected with the  
17 proposed Settlement. The Court may approve the Settlement, with such modifications as  
18 may be agreed to by the Settling Parties, if appropriate, without further notice to the  
19 Settlement Class.  
20

21 IT IS SO ORDERED.

22 Dated this 23rd day of April, 2015.  
23  
24

25  
26   
27 Douglas L. Rayes  
28 United States District Judge