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XXI. JURY TRIAL DEMANDED
1. Lead Plaintiff Wyoming Retirement System ("Plaintiff"), individually and on behalf of a proposed class (the "Class") of all purchasers of the publicly traded common stock of ITT Educational Services, Inc. ("ESI" or the "Company") between October 23, 2008 and August 13, 2010, inclusive (the "Class Period"), by and through its undersigned counsel, brings suit against ESI, Kevin M. Modany ("Modany") and Daniel M. Fitzpatrick ("Fitzpatrick") (ESI, Modany, and Fitzpatrick are collectively the "Defendants").

2. Plaintiff seeks remedies under the Securities Exchange Act of 1934 (the "Exchange Act") as a result of the fraudulent scheme undertaken by Defendants and the economic loss suffered when the true facts were partially revealed to the public through a series of disclosure events. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5.

I. INTRODUCTION AND NATURE OF THE ACTION

One of the most common words in the [for-profit education] industry’s recruiting documents is "pain." It is not the first word that comes to mind when you think about enrolling in college. However, nothing worthwhile was ever accomplished without effort, so you might be thinking that schools are talking about preparing students for the hard work and pain of excelling in school.

The reality is quite the opposite. For the most part, for-profit higher education companies want to make college seem easy. The reason they’re focusing on pain is to try to get students to enroll in school . . . When students are enrolled through deception or fear, they are less prepared to meet the challenges of college. Rather than offering students a better life, these types of strong-arm, emotionally abusive tactics are all too typical of schools that have little or no interest in providing students the academic help and support they need to succeed . . . Mr. President, the bottom-line finding of my committee’s investigation is that the schools are expensive. They’re exploitative. And, as these documents show they are focused on their own success, not the success of their students."

3. Chairman Harkin’s words ring especially true for ESI, one of the country’s largest for-profit education companies, and stand in stark contrast to Defendants’ materially false Class Period statements and omissions. Indeed, during his February 7, 2011 speech on the floor of the U.S. Senate, Chairman Harkin specifically referred to internal ESI documents demonstrating that the Company was a sales machine, disguised as an institution of higher learning, whose focus on quotas and numbers above all else depended on its recruiters’ ability to focus on “pain.”

4. Specifically, an internal ESI memorandum written by a Director of Recruitment at an ESI campus entitled, “June Analysis 2007,” makes clear that ESI’s sales tactics for its recruiters were premised upon “pain.” After falling short of the required quota of “starts” – a for-profit industry term for new students – ESI’s Director of Recruitment wrote, in pertinent part:

   The department needs to focus on the selling [of] the appointment by digging in and getting to the pain of each and every prospective student. By getting to the pain, the representatives will be able to solidify the appointments and have a better show rate for the actual conducts.¹

5. Likewise, an internal ESI document describing what recruiters should do to keep students in class stated, in pertinent part:

   • Remind them of what things will be like if they don’t continue forward and earn their degrees.
   
   • Poke the pain a bit and remind them (if applicable) who else is depending on them and their commitment to a better future.²

6. Pain was such a central theme in ESI’s hyper-aggressive sales machine that, as Chairman Harkin stated:

   In their training, ITT went beyond rhetoric and created what they call a “pain funnel.” It illustrates four levels of pain, with questions that are supposed to get progressively more hurtful to the student. Level 1 starts off with questions like

¹ A true and correct copy of the internal ESI memorandum, made public by Chairman Harkin, is attached hereto as Exhibit A. Unless indicated otherwise herein, all emphasis is added.

² A true and correct copy of the internal ESI document, made public by Chairman Harkin, is attached hereto as Exhibit B.
“tell me more about” or “give me an example.” Level 2 is “What have you tried to do about that?” By Level 4, the recruiter is asking questions like, have you given up trying to deal with the problem?” A different document from [ESI] goes through the same levels of pain; their Level 4 question is once again “What are you willing to change now or have you given up trying to deal with the problem?”

What are you willing to change now or have you given up trying to deal with the problem? That’s a question I’d like to ask the executives who believe that preying on past failures is a sound method for enrolling students, or a reasonable way to run a college. According to the Department of Education, 30 percent of student loan borrowers at [ESI] default within three years of leaving school.3

7. Indeed, the Company’s “Pain Funnel” asks, “Does the prospect have enough pain to qualify for the next step?” As demonstrated above and throughout this Complaint, Defendants operated a systemically predatory business model that relied upon deceit, manipulation, lies, and outright fraud to meet undisclosed enrollment quotas – quotas that were, according to Defendants, to be attained “at any cost.” Without Defendants’ nondisclosure of such deceptive and manipulative tactics, as has been made clear through post-Class Period events, ESI’s reported financial performance and future business prospects would have suffered greatly during the Class Period, and the price of ESI stock would not have been artificially inflated.

8. Indeed, because of extraordinarily high drop-out rates, ESI required an incredible level of new “starts” every year to increase its total enrollment. For example, ESI started 2008 with 53,027 students enrolled and ended the year with an enrollment of 61,983. ESI, however, added 65,313 new students – more than ESI’s total enrollment – over the course of 2008. In other words, ESI recruiters had to enroll more than 65,000 new students to increase enrollment

3 True and correct copies of ESI’s internal “Pain Funnel and Pain Puzzle” and an internal ESI “Questionnaire” [sic], made public by Chairman Harkin, are attached hereto as Exhibit C and Exhibit D. As will be detailed herein, ESI and the for-profit education industry have become the subject of numerous Congressional hearings and a variety of investigations. For reference to these and related materials, see http://harkin.senate.gov/forprofitcolleges.cfm (last visited March 30, 2011) and the website for the U.S. Senate Committee on Health, Education, Labor & Pensions (the “HELP Committee”), available at http://help.senate.gov/issues/issue/?id=20c1298a-5186-4859-8488-a6731cf07a9e (last visited March 30, 2011).
by approximately 9,000 students. History repeated itself in 2009, when ESI started the year with 61,983 students and ended with a total student enrollment of 80,766. In 2009, the Company added 85,928 new students — again more than ESI’s total enrollment. Thus, Recruiters had to sign up nearly 86,000 new students to increase enrollment by 18,783 students. Likewise, in 2010, ESI started the year with a total enrollment of 80,766 and ended it with 84,686 students. But, during 2010, ESI recruiters signed up a whopping 89,123 new students — once again more than ESI’s total enrollment — to increase enrollment by only 3,920 students. All told, between 2008 and 2010, the Company recruited more than 240,000 new students, but increased its total enrollment by only 22,700 students. These troubling statistics, representing massive annual turnover of ESI’s student body, make unfortunate yet perfect sense in light of the story of systemically predatory recruiting and lending practices, and utter disregard for student success and well-being detailed throughout this Complaint, as corroborated by dozens of confidential witnesses, including former ESI employees and students.

9. ESI, like every other for-profit company, has virtually unfettered discretion to conduct its business as it sees fit. What is securities fraud, however, is to omit critical facts and to hide the true reasons behind the Company’s financial performance and future business prospects when making statements to the market. This rings true here, where Defendants implemented and oversaw a business model that, in the guise of an institution of higher learning, had no regard for its students, their education, or their ability to get well-paying jobs remotely commensurate with the incredible debt burden they undoubtedly were saddled with as a result of attending ESI. This is also true here because ESI preyed upon its targets for the sole purpose of luring them into enrolling and prying loose as much federally funded financial aid per student as possible. In this instance, as described in great detail herein and confirmed by myriad corroborating confidential witnesses and internal Company documents, Defendants did just that,
creating an undisclosed, systemically predatory business model designed for one purpose and one purpose alone – to identify, target and exploit “leads” (or students, as they are referred to by most institutions of higher learning) in order to meet ESI’s internal and ever-expanding quotas (or student enrollments, as they are referred to by most institutions of higher learning) as possible and then use its students to effectuate a cash grab by cannibalizing federal student financial aid monies.

10. Rather than providing its legions of students with a quality education and assisting them in finding well-paying jobs commensurate with the false promises made to get them to enroll, Defendants’ paid lip service to the so-called “Return on Investment” ESI so often bragged about and used as a justification for raising tuition prices. Indeed, the only “Return on Investment” ESI’s typical students were left with was non-transferrable credits, poor quality education, and massive student loan debt.

11. As demonstrated throughout this Complaint, Defendants’ systematically predatory business model stood in stark contrast to its so-called Code of Business Conduct and Ethics (the “Ethics Code”), which stated, in pertinent part:

ITT/ESI operates its business in accordance with the highest ethical standards and all applicable laws, regulations and rules. The company places the highest value on the integrity of each of its employees, representatives and directors. In addition, all directors, employees, agents, consultants and representatives of ITT/ESI are responsible for complying with all applicable laws, regulations and rules, in both the United States and other countries. ITT/ESI’s corporate culture demands not only legal compliance, but also responsible and ethical behavior.

* * *

ITT/ESI’s chief executive officer is the only person who can waive compliance with any policy in this Code by any ITT/ESI employee (except for ITT/ESI executive officers), agent, consultant or representative. Any waiver of compliance with any policy in this Code by any ITT/ESI director or executive officer can only be made by ITT/ESI’s Board of Directors and must be properly disclosed to ITT/ESI shareholders.
Every director, employee, agent, consultant and representative must read and understand this Code before undertaking any work on behalf of ITT/ESI.4

12. In addition, the Ethics Code requires that reports of code violations will be promptly investigated, that the Company would “avoid any misstatement or misrepresentation of fact or misleading impression in any of its advertising, literature, exhibits or other public statements,” and that “[a]ll statements made in support of [ESI’s] products and services should be true and supported by documentation.” The Ethics Code includes a “When in Doubt” section that poses many questions, including: “Is it legal?”; “Is it fair and just?”; “How would it look in a newspaper article?”; and “What would I tell my child to do?” Notably, according to an internal memorandum regarding the Company’s “Ethics and Compliance Program,” the Company’s Chief Compliance Officer reported directly to the Company’s CEO, Modany, and was a member of ESI’s senior management who was required to make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or the Board of Directors (through the audit committee) of ESI. The Company even maintained an ethics and compliance policy committee that was chaired by the COO and included the CEO, president and chief operating officer, senior vice president and chief financial officer.5 Nevertheless, ESI and Modany ran roughshod over ESI’s own internal policies and guidelines, which amount to mere window dressing when the underbelly of ESI’s actual business conduct is exposed, as it was at the end of the Class Period.

13. At the outset, however, it must be made clear that it is not ESI’s systemically predatory business model that forms the basis of Plaintiff’s claims. To the contrary, it is ESI’s

4 A true and correct copy of ESI’s Ethics Code is attached hereto as Exhibit E.

5 A true and correct copy of ESI’s “Ethics and Compliance Program” memorandum is attached hereto as Exhibit F.
failure to disclose the existence of this model as the driving force behind its financials and future business prospects to the market and its shareholders that is the basis for these claims.

14. Throughout the Class Period, ESI portrayed its mammoth growth, healthy financials and future business prospects as driven by an ever-expanding student body that was flocking to ESI as a result of ESI’s stellar reputation, excellent education, and high job placement rates and post-graduation salaries, none of which were true. The truth is that ESI’s financials and future business prospects were being driven by the systemically predatory business model that was finally exposed at the end of the Class Period. When the reality of what drove ESI’s business came to light through a series of partial disclosures, the artificial inflation in the price of ESI stock (which was created as a result of Defendants’ fraud), came out and ESI’s shareholders paid the price as they suffered substantial financial damages.

15. While portraying its purpose as striving to “attract students with the motivation and ability to complete the career-oriented educational programs” offered by ESI, and while purporting to be “very focused on outcomes” for its students, ESI was, all the while, employing an army of salespeople and telemarketers – cleverly disguised as so-called Admissions Representatives, Educational Recruiters, or Student Representatives (hereinafter “Recruiters”) – that were trained in the not so fine art of “pain” and exploitation. As made clear by the Company’s Funnel of Pain, this quota-driven sales force was taught to identify, target and exploit potential students’ hopes, dreams and fears in order to browbeat, convince and cajole them into enrolling. See Exhibit C. ESI purportedly prided itself on the opportunities it offered students who otherwise would have been unable to pursue higher education. The truth, however, was a far different story.

16. Without question, Recruiters were compensated based on their ability to hit mandatory enrollment quotas set by ESI’s corporate office. Conversely, the Company’s
Recruiters faced pay reductions, demotions, and termination for failing to hit those internal enrollment quotas. Put simply, hitting quantitative enrollment quotas was the only metric by which Recruiters were judged. As detailed herein, the corroborating accounts of many former ESI employees and students universally describe how the Company was organized solely to focus on quotas, which, in turn, enabled ESI to rake in vast sums of federal financial aid.

17. In addition to targeting sales "leads" that were considered the easiest to manipulate, the Company provided only enough academic counseling and financial aid assistance to guide prospective students through the enrollment and financial aid process. In other words, students were given only enough assistance to allow ESI to obtain the federal financial aid dollars Defendants so coveted. As one of many examples detailed below, students were frequently enrolled in online classes despite the students' lack of access to or an understanding of computers. As one confidential witness attested, at ESI it was all about getting "butts in seats." Similarly, ESI's career services employees were taught, expected, and required to "stretch" and manipulate graduate employment placement statistics so that Defendants could both report inflated figures to the market and also use those same figures to lure in and take advantage of more and more "starts." 6

18. ESI's systemically predatory business model was well-hidden from investors. Defendants trumpeted ESI's ever-expanding enrollment numbers, growth rates, business model and seemingly impressive financial results and future business prospects, constantly extolling that it was ESI's value proposition to students, top-rate education, superior reputation, job placement rates and post graduation salaries that were the keys to its success. The result was that

6 As demonstrated below, towards the end of the Class Period, as the federal government began investigating the for-profit industry, and ESI particularly, Defendants temporarily changed some of their fraudulent business practices (essentially admitting they were fraudulent) in an attempt to avoid further scrutiny and the potential loss of federal financial aid dollars.
the price of ESI common stock was artificially inflated throughout the Class Period, reaching a high of $133.21 per share on February 3, 2009.

19. Almost all of ESI's revenue is generated through tuition payments. Most students rely on federal financial aid provided by Title IV ("Title IV") of the Higher Education Act of 1965, as amended (the "HEA"). During the Class Period, ESI derived between a vast majority of its revenue from Title IV funding. As a result of ESI’s dependence on Title IV funding, the Company is highly regulated by federal, state and private accreditation agencies, including the Accrediting Council for Independent Colleges and Schools ("ACICS"). In order to be and remain eligible to receive Title IV funds, each ESI institution must comply with the standards set forth in the HEA.

20. The HEA and the Department of Education impose requirements on institutions seeking to participate in Title IV student financial aid programs. For example, these regulations prohibit misleading prospective students, as well as paying incentive compensation to Admissions and Financial Aid Advisors based on meeting enrollment quotas. Institutions must also prepare their students for "gainful employment in a recognized occupation," and maintain accreditation by a recognized accrediting commission in each state in which they operate. Any institution that violates these regulations risks losing its Title IV funding eligibility. For ESI, losing its eligibility would be a death knell as the loss of Title IV funds would decimate ESI’s financial condition.

21. As detailed below, more than thirty former ESI employees (including Recruiters/salespeople) and students located throughout the United States confirmed that Defendants used a variety of deceptive and predatory tactics to lure prospective students to enroll at ESI, all for the single-minded purpose of generating as much financial aid as possible. The strong growth reported by the Company during the Class Period was therefore based on abusive
and predatory practices, and rendered ESI's reported financial results and statements regarding its future business prospects materially false and misleading.

22. Despite Defendants' best efforts, and a lengthy and successful run of subterfuge, they could not keep their scheme under wraps forever. Through a series of partial disclosure events regarding the Company's business practices and true financial condition, the artificial inflation came out of the price of ESI common stock, culminating in a 14.6% drop in the price of ESI common stock on August 16, 2010, following a U.S. Department of Education ("DOE") publication on federal student-loan repayment rates at the nation's colleges and universities showing student loan repayment rates at ESI were a mere 31%, compared to 54% at public colleges and 56% at private non-profit institutions.

23. As a result of Defendants' false statements and omissions, ESI common stock traded at artificially inflated prices throughout the Class Period. As the truth emerged and seeped into the market, however, the Company's shares were hammered by massive sales, sending them down approximately 58.8% from their Class Period high.

II. JURISDICTION AND VENUE

24. Jurisdiction is conferred by §27 of the Exchange Act. The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and U.S. Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. §240.10b-5.

25. Venue is proper in this District pursuant to §27 of the Exchange Act. Many of the false and misleading statements were made in or issued from this District.

26. ESI is a national for-profit education company with campuses in many states, including several within New York. During the Class Period, no fewer than nine market analysts located within this District provide extensive coverage of the Company, the statements made by Defendants, and ESI's financial performance including, Argus, Bank of America Securities-

27. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

III. PARTIES

28. Plaintiff Wyoming Retirement System purchased ESI common stock on the open market during the Class Period, as set forth in its certification previously filed with the Court. On January 21, 2011, the Court appointed Wyoming Retirement System as Lead Plaintiff in this action.

29. ESI is a for-profit college system focused on technology-oriented programs that conducts substantial business in the state of New York, including campuses in Albany, Syracuse, and Buffalo. The Company owns and operates over 105 ITT Technical Institutes and Daniel Webster College, which operate in 38 states serving approximately 80,000 students both at ESI campuses and online. ESI is a degree-granting institution that does not offer diplomas or certificates. About 75 percent of ESI students pursue associate’s degrees, 25 percent pursue bachelor’s degrees, and a small number of students pursue MBAs.

30. ESI offers its programs of study through six different schools. The School of Information Technology, the School of Electronics Technology, and the School of Drafting and Design are ESI’s three core technology schools which serve 80 percent of the Company’s student population. ESI also operates School of Business, School of Criminal Justice, and a School of Health Sciences.
31. Defendant Modany has served as Chief Executive Officer ("CEO") of ESI since April, 2007, and as President since April 2005.

32. Defendant Fitzpatrick has served as both the Executive Vice President and Chief Financial Officer ("CFO") of ESI since April 2009. From June 2006 through March 2009, Fitzpatrick served as Senior Vice President and CFO.

33. Throughout the Class Period, Modany and Fitzpatrick (the "Individual Defendants") were responsible for ensuring the accuracy of ESI's public filings and other public statements, and they both personally attested to and certified the accuracy of ESI’s financial statements. During the Class Period – specifically on October 23, 2008, February 18, 2009, April 23, 2009, July 23, 2009, October 22, 2009, February 19, 2010, April 22, 2010, and July 23, 2010 – Modany and Fitzpatrick each signed certifications included in the Company’s public filings stating:

1. I have reviewed this quarterly report on Form [10-Q or 10-K] of ITT Educational Services, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.

IV. CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired ESI common stock during the Class Period (the "Class"). Excluded from the Class are Defendants and their families, the officers and directors of the Company, at all relevant times, members of
their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which Defendants have or had a controlling interest.

35. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of August 13, 2010, the last day of the Class Period, ESI had more than 33 million shares of common stock outstanding, owned by hundreds if not thousands of shareholders.

36. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the Exchange Act was violated by Defendants;

(b) whether Defendants omitted and/or misrepresented material facts;

(c) whether Defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether Defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of ESI common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

37. Plaintiff’s claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants’ wrongful conduct complained of herein.

38. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.
39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Not only is joinder of all Class members impracticable, but as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the members of the Class to individually address the wrongs done to them. There will be no difficulty in the management of this action as a class action.

V. CONFIDENTIAL SOURCES

40. Plaintiff makes the allegations herein, concerning the falsity of Defendants’ statements and the scienter of the Individual Defendants, based upon the investigation undertaken by Plaintiff’s counsel, which investigation included analysis of publicly available news articles and reports, public filings, securities analysts’ reports and advisories about ESI, interviews of dozens of former employees and students of ESI, press releases and other public statements issued by the Company, and media reports about the Company. Plaintiff believes that, given the multitude of witnesses described below, substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

41. Moreover, the allegations made herein are supported by the first-hand knowledge of 42 confidential witnesses (“CWs”). These CWs include many former employees of ESI who were employed during the Class Period and provided facts from various departments of the Company, as well as students who fell victim to ESI’s systemically predatory business model. As demonstrated below, the CWs each served in positions at ESI that provided them with access to the information they are alleged to possess.

42. Confidential Witness #1 (“CW 1”) was employed with ESI at the Company’s San Bernardino, California campus as a Business Administration Instructor from June 2008 to March 2010, and then as a Director of Career Services from March 2010 to August 2010. As a
Business Administration Instructor, CW 1 taught a class called TD133, which was the first class that incoming students took to learn “how to succeed as an adult learner, what was needed, and writing skills.” As a Director of Career Services, CW 1 managed a team of four Career Services personnel, who were collectively responsible for assisting students locate employment after graduation. CW 1 reported to the Dean of the San Bernardino Campus James Caprigngro, (“Caprigngro”), who, in turn, reported to San Bernardino School Director Terry Lorenz (“Lorenz”). Lorenz reported to a District-level employee who oversaw the Company’s California campuses. Among other things, CW 1 has knowledge regarding the Company’s predatory recruitment practices, Modany’s knowledge of the San Bernardino campus’ enrollment, placement and financial aid statistics, and the Company’s intentionally inaccurate career placement statistics.

43. Confidential Witness #2 (“CW 2”) was employed with ESI at the Company’s Indianapolis, Indiana campus from October 2007 to July 2009. CW 2 began her/his employment with ESI as Manager of Admissions, reporting to Director of Admissions Jim Mills (“Mills”). When Mills left ESI, CW 2 was promoted to the Director of Admissions position and was responsible for hiring, training, and monitoring the performance of a team of 23 Admission Representatives. As part of her/his management duties, CW 2 was responsible for managing the Representatives in “obtaining quarterly budgets of student enrollments” in the programs at the Indianapolis, Indiana campus. CW 2 reported to Indianapolis Campus Director Karen Larson-Rueter (“Larson-Rueter”), who reported to a Regional Director, who, in turn, reported to a Vice President. CW 2 has information regarding the Company’s improper incentive compensation for Admissions Representatives based on the meeting of enrollment quotas, the Company’s PowerPoint presentations that new Admissions Representatives were required to master, the late enrollment of new students in classes that had already begun in order to obtain the late-enrolled
students’ tuition, the Company’s predatory recruitment practices, and Modany’s knowledge of the enrollment process.

44. Confidential Witness #3 ("CW 3") was employed with ESI from April 2007 to March 2009 as a Student Representative at the Company’s Fort Wayne, Indiana campus. CW 3 was terminated in March 2009 when it appeared that she/he was “not on track” to make the required enrollment quota for the following quarter. CW 3 was responsible for student recruitment and enrollment for eight different associate’s and bachelor’s degree programs, including computer networking, industrial automated engineering, multimedia, and digital entertainment programs. CW 3 was one of approximately 13 to 15 Admissions Representatives at the Fort Wayne campus. CW 3 reported to a number of different employees during her/his employment because there was an estimated “200 percent turnover” rate in the Marketing department at the Fort Wayne campus. CW 3 initially reported to an Enrollment Manager, who reported to a Director of Enrollment, both of whom were later replaced by Enrollment Director Wesley Gilbert ("Gilbert"). Gilbert was “let go” because he did not “make his numbers.” Gilbert reported to the Dean of the school, Alois Johnson ("Johnson"), who reported to Modany. As such, CW 3 has knowledge regarding the Company’s imposition of unattainable enrollment quotas, the enrollment of students after the start of the semester (often to the detriment of the students), and the Company’s predatory recruiting practices.

45. Confidential Witness #4 ("CW 4") worked for ESI at the Earth City, Missouri campus from November 2008 through February 2010. CW 4 initially worked as a Career Services Coordinator helping students to develop resumes, conduct mock interviews and develop job searching skills. In 2009, CW 4 was promoted to Career Services Specialist and was responsible for recruiting potential employers who might be interested in hiring ESI graduates. For approximately the first six weeks of her/his employment, CW 4 reported to the Director of
Career Services, who was replaced by Kit Cushman ("Cushman") in early 2008. In 2009, Cushman was replaced by April Elston ("Elston"). Each of the Directors of Career Services reported to Campus Director John Eichkorn ("Eichkorn"), who reported to the District Manager. CW 4 left the Company due to dissatisfaction with certain ESI graduate placement practices. When CW 4 expressed this dissatisfaction, she/he "was written up." Thereafter, CW 4 gave a 30 day notice terminating employment with ESI. Upon giving notice, the Company asked CW 4 to leave immediately. CW 4 has knowledge of ESI's career placement practices, in particular, the Company's focus on making numbers and meeting a minimum number of student placements, regardless of the students' qualifications or length of employment.

46. Confidential Witness #5 ("CW 5") was employed with ESI from February 2009 to June 2010 as an Educational Recruiter at the Louisville, Kentucky campus. CW 5 was responsible for enrolling students in associate's and bachelor's degree programs in computer networking, multi media, project management, electronics, and "auto CAD" programs. The Louisville, Kentucky campus had "just hit 1,000 students" around the time CW 5 departed from ESI in June 2010. CW 5 reported to Director of Recruitment Mike Alcorn ("Alcorn"), who reported to the Campus Director. CW 5 has knowledge regarding the Company's improper incentive compensation, predatory recruiting practices, and the Company's career placement efforts.

47. Confidential Witness #6 ("CW 6") was employed with ESI from September 2007 through June 2009. CW 6 began employment with ESI as a part-time instructor until March of 2008 when she/he became Chair of the Criminal Justice Program at the Troy, Michigan campus. CW 6 was then promoted to Director of Career Services in October 2008, where she/he remained until leaving the Company on her/his own accord in June 2009. As Director of Career Services, CW 6 oversaw two Career Services Specialists, a Career Services Coordinator, and a "student
worker.” CW 6 was responsible for developing employment opportunities for upcoming and former ESI graduates, including working within the community and with prospective employers to build relationships in order to create employment opportunities for ESI students and graduates. CW 6 reported to Troy, Michigan Campus Director Laura Majewski (“Majewski”), and, after her departure, Jim Pfaff (“Pfaff”), who reported to the Regional Director, who, in turn, reported to an Assistant Director. The Assistant Director reported to Modany. CW 6 has knowledge regarding ESI’s graduation placement efforts and placement rates, as well as student entrance requirements and ESI’s enrollment of unqualified, unemployable students.

48. Confidential Witness #7 (“CW 7”) worked for ESI as Director of Career Services at the Company’s Lexington, Kentucky campus from January 2008 until February 2010, when she/he was terminated. CW 7 reported to District Manager Jonathon Patterson (“Patterson”). Among other things, CW 7 has knowledge regarding the manner in which the Company calculated job placement statistics, as well as the Company’s changing of its job placement procedures in late 2009, in response to increased scrutiny by the ACICS and DOE, which amounted to an inherent admission of ESI’s fraudulent practices. CW 7 also has knowledge of the Company’s job placement efforts and job placement rates, improper incentive compensation based on meeting quotas, and the private lending provided to ESI students by ESI.

49. Confidential Witness #8 (“CW 8”) was retained by ESI as a “private consultant” in August 2006 to develop the Company’s Nursing Program. As a private consultant, CW 8’s responsibilities included traveling around the country to establish nursing campuses and preparing the nursing campuses for accreditation. CW 8 worked at the Company’s Carmel, Indiana headquarters a couple of days each week. CW 8 reported to Senior Vice President for Business Development David Catalano (“Catalano”), who reported to Modany. CW 8 left ESI in May 2010 because she/he “couldn’t stand it.” CW 8 stated emphatically that she/he wished
she/he "had never created the program." CW 8 has knowledge regarding the Company's lack of concern for its students, the failure of ESI's nursing program to obtain accreditation, and the Company's predatory recruiting practices.

50. Confidential Witness #9 ("CW 9") worked for ESI as a Financial Aid Analyst for the Online Campus in Carmel, Indiana for approximately nine months, ending in September 2009. The Carmel headquarters for the Online Campus was "mostly just a call center," where CW 9 was tasked with "packaging" financial aid. CW 9 reported to Tiffany Whitte ("Whitte"), Director of Finance, who reported to Betsy Moore, Director of Student Operations, Online Division, who reported to June McCormack, President of the Online Division. As such, CW 9 has information regarding the Company's financial aid system and the availability of private loans and temporary loans provided by the Company to its students, and the effect of private and internal loans on ESI's ability to meet the requirements of the 90/10 Rule.

51. Confidential Witness #10 ("CW 10") worked for ESI from approximately July 2007 until June 2009. During the first year, CW 10 worked as an Enrollment Specialist at ESI's Online Campus in Carmel, Indiana. Later, CW 10 also began working in ESI's "hybrid program" in which Admission Representatives were also responsible for processing a student's financial aid. After the "hybrid program" was disbanded approximately eight or nine months later, CW 10 transferred to the Company's Indianapolis, Indiana campus, working as an Admissions Representative. While at the Indianapolis, Indiana campus, CW 10 reported to Director of Enrollment Jim Ray ("Ray") and Assistant Director of Enrollment Melinda Rumschlag ("Rumschlag"). Among other things, CW 10 has information regarding the Company's "pipeline meetings," the predatory recruitment of prospective students, improper incentive compensation based on the number of enrollments, and Admission Representatives' unethical behavior, such as forging student signatures.
52. Confidential Witness #11 ("CW 11") was employed with ESI from February 2010 to August 2010. CW 11 was a Financial Aid Coordinator for ESI’s online program and was responsible for reviewing potential students’ taxes, assisting them with the financial aid application process, and determining financial aid eligibility. CW 11 reported to Director of Finance Whitte. As such, CW 11 has knowledge regarding the Company’s reliance on federal financial aid, student default rates, the packaging of student financial aid, ESI’s emphasis on the “number,” and the Company’s PEAKS lending program.

53. Confidential Witness #12 ("CW 12") was employed by ESI as an Educational Recruiter at the Company’s Indianapolis, Indiana campus from mid-August 2008 to the end of June 2009. CW 12 was responsible for calling and emailing “leads,” or prospective students, who had expressed interest in attending ESI either through emails, phone calls or the Internet. CW 12 also encouraged prospective students to visit the campus for a tour in order to interview them and “basically sell them on enrolling in the school.” CW 12 reported to Manager of Recruitment Rumschlag, who oversaw the team of Educational Recruiters at the Indianapolis campus. Rumschlag reported to Director of Admissions Ray, who reported to the Campus Director. CW 12 has information regarding improper incentive compensation based on meeting quotas, the Company’s high pressure sales environment, and predatory recruiting practices.

54. Confidential Witness #13 ("CW 13") was employed with ESI from April 2007 to July 2008 as the Director of Finance at the Indianapolis, Indiana campus. Prior to working at ESI, CW 13 was an underwriter working with subprime mortgage loans, a role in which she/he “dealt with the scum of the Earth.” However, CW 13 “never felt dirtier” than she/he did working for ESI. As such, she/he opted to leave ESI to pursue another employment opportunity. As the Director of Finance, CW 13 oversaw the financial aid function at the Indianapolis, Indiana “main campus,” which was separate and apart from the online school. CW 13 reported to Indianapolis,
Indiana “main campus” Director Larson-Reuter, who reported to District Manager Antonio Darosa (“Darosa”). In turn, Darosa reported to the Regional Manager. CW 13 has knowledge regarding problems associated with Sallie Mae exiting the private student lending industry, ESI student default rates, the Company’s direct lending programs, and ESI’s failure to obtain regional accreditation.

55. Confidential Witness #14 (“CW 14”) worked as a “Recruiter” for ESI at the Company’s Online Campus from December 2008 until August 2009. CW 14 decided to leave ESI because “they treat students wrong” and ESI “is pretty much a rip-off school” consisting of “scam artists.” As a Recruiter, CW 14 was tasked with calling prospective students and CW 14 reported directly to her/his Manager, who ultimately reported to National Director of Recruitment Steve Brown (“Brown”). As such, CW 14 has information regarding the Company’s predatory recruitment practices, the online campus’ low graduation and retention rates, the misrepresentations made to prospective students with respect to the transferability of ESI credits, and the Company’s improper incentive compensation based on the number of students enrolled.

56. Confidential Witness #15 (“CW 15”) was employed as an Admissions Representative at ESI’s Dearborn, Michigan campus from approximately July 2009 to July 2010, when she/he left ESI on her/his own accord. As an Admissions Representative, CW 15’s responsibilities included calling and emailing prospective students to encourage them to come to the Dearborn campus for a tour and interview with the ultimate goal of convincing those prospects to enroll at ESI. CW 15 reported to Director of Recruitment Aaron Markovich (“Markovich”), who reported to Campus Director Paula Strickert (“Strickert”). Among other things, CW 15 has information regarding the Company’s improper incentive compensation based on the meeting of quotas and the Company’s predatory recruiting practices.
57. Confidential Witness #16 ("CW 16") was employed with ESI from September 2008 to February 2011 as the Campus Director for the Madison, Mississippi campus. CW 16 joined the Madison, Mississippi campus when it was just being completed, as "the carpet [was] being laid and the walls being painted." CW 16 was expected to hire a staff and start the first class of students by December 2008 and was tasked with opening and growing "starts" at the Madison, Mississippi campus, which offered associate's degree programs in criminal justice, information technology, electronics, and drafting and design. CW 16 reported to District Manager Allen Rice ("Rice"), who reported to the Vice President of Operations Barry Simich ("Simich"). CW 16 left ESI on her/his own accord because the practices at ESI were "not quite ethical." As such, CW 16 has information regarding the pressure from corporate to "meet unreasonable start and profit expectations," the "budget review" process and expectations at the Madison, Mississippi campus, ESI's temporary credit program, and Modany's close involvement with all aspects of ESI's business as a "hands on CEO."

58. Confidential Witness #17 (CW 17) worked as Receptionist for ESI from February 2009 through March 2010 in the Company's Lathrop, California campus. During this time, CW 17 reported to Director of Recruiting Kathy Paradif ("Paradif"). Thereafter, she/he worked as an Academic Secretary, and in September 2009, CW 17 was promoted to Career Services Coordinator, reporting to Director of Career Services Tamara Leonard ("Leonard"). CW 17 has knowledge regarding the Company's inflated job placement numbers, the ESI teachers' inflating of student grades, and the Company's predatory recruitment of unqualified prospective students.

59. Confidential Witness #18 (CW 18) worked for ESI as an Admissions Representative at the Company's Bessemer, Alabama campus from September 2007 to December 2009. CW 18 reported to Manager of Recruitment Walter Stewart ("Stewart"), who reported to Director of Recruitment Clarissa Kenty ("Kenty"). When Kenty left ESI in or around
September 2009, Stewart was promoted to Director of Recruitment. Kenty, and then Stewart, reported to Campus Director Rice, who was also a District Manager. CW 18 was responsible for confirming that representatives called and emailed prospective students to convince them to visit the campus for interviews and tours, with the ultimate goal of enrolling them in ESI classes. As such, CW 18 has information regarding the Company’s improper incentive compensation based on meeting quotas, as well as the poor quality sales leads provided to representatives.

60. Confidential Witness #19 (CW 19) worked for ESI as an Educational Recruiter in South Bend, Indiana from March 2008 until January 2010. CW 19 was terminated for her/his failure to meet quotas. CW 19 was one of approximately seven Educational Recruiters on the campus and each reported to South Bend campus Admissions Director Paul Haigh (“Haigh”). Haigh reported to the campus President, Butch Baker (“Baker”), who became President in approximately mid-2008. CW 19 has knowledge regarding the Company’s predatory recruiting practices and the Company’s emphasis on meeting the “numbers.”

61. Confidential Witness #20 (CW 20) was employed with ESI as a Director of Career Services for the Lake Mary, Florida campus from May 2004 to May 2010. CW 20 left ESI on her/his own accord when the pressure to report placement numbers in line with corporate quotas became “unbearable.” CW 16 was asked by ESI’s corporate office to engage in “unethical” behavior that jeopardized ESI’s “legitimacy and ethics.” CW 20 was responsible for managing the career placement process at the Lake Mary campus and in doing so, she/he oversaw a team of two Career Specialists and one Career Coordinator, as well as a work study student. CW 20 reported to Lake Mary Campus Director Melinda Mathus (“Mathus”), who reported to Southeast District Manager Sam Lynn (“Lynn”). In turn, Lynn reported to Modany. CW 20 has knowledge regarding the Company’s emphasis on and manipulation of job placement rates, weekly district conference calls discussing “stretching” the criteria to make it look like
there were legitimate job placements, and Modany's close involvement with ESI's Southern District. Indeed, "stretching" was an internal ESI buzzword for figuring out a way to define graduates' jobs in a manner designed to make it appear that their jobs utilized skills within their fields of study when they really did not in order to artificially boost ESI's job placement rates.

62. Confidential Witness #21 (CW 21) was employed by ESI as a Recruiter at the Company's Bessemer, Alabama, campus from May 2007 to May 2009. There were approximately 20 Recruiters at the Bessemer campus. CW 21 was fired for not meeting her/his enrollment quotas. At the time, CW 21's supervisors told her/him, that CW 21 had "not performed as [she/he] was expected to." CW 21 said it was made clear that she/he "had not produced the numbers of people coming into the school that they wanted." CW 21 reported to the Manager of Recruitment, who reported to Director of Recruitment Kenty, who in turn reported to Campus Director Rice. Among other things, CW 21 has information regarding the Company's poor quality leads, predatory recruiting practices, and the Company's improper incentive compensation based on meeting quotas.

63. Confidential Witness #22 (CW 22) worked for ESI as an Admissions Representative at the Company's Corona, California campus from October 2009 to April 2010. CW 22 reported to Director of Recruitment Patty Burns ("Burns"), who reported to Campus Director Gary Lopez ("Lopez"). CW 22 was responsible for calling prospective students up to three times a day to attempt to convince them to attend ESI. CW 22 has knowledge regarding the Company's poor lead quality, improper incentive compensation based on meeting quotas, as well as the Company's predatory recruitment practices.

64. Confidential Witness #23 ("CW 23") worked for ESI in the Company's Online Division from June 2006 through January 2010 as a Records Coordinator and later as an Office Coordinator. In 2007, CW 23 was promoted to Financial Aid Coordinator. As Financial Aid
Coordinator, CW 23 reported to Financial Aid Manager Don Purdue ("Purdue"), who reported to the Director. CW 23's responsibilities included "packaging" students' financial aid. As such, CW 23 has information regarding the Company's use of temporary credit for its students and the Company's "outrageous [enrollment] goals."

65. Confidential Witness #24 ("CW 24") was employed with ESI for approximately six years until she/he was fired on February 20, 2011 for not meeting quotas. CW 24 began as a Recruiter at the Company's Ft. Lauderdale, Florida campus and was promoted to Manager of Recruitment in 2008. In 2009, CW 24 became the Director of Recruitment at the Company's Miami, Florida campus. As Director of Recruitment, CW 24 reported to Miami Campus Director Robert Hayward ("Hayward"), who reported to District Manager Sam Lynn ("Lynn"). Lynn reported to Vice President Gene Feichtner ("Feichtner"). Among other things, CW 24 has information regarding the Company's improper incentive compensation based on meeting enrollment numbers, the Company's predatory recruiting practices, and the poor quality of ESI's education.

66. Confidential Witness #25 ("CW 25") graduated from ESI in March 2009 with an associate's degree in Multi-Media. CW 25 has relevant information regarding the Company's misleading and inaccurate job placement rates, the misrepresentation of job placement services available for ESI graduates, the misrepresentation of interest rates on students loans, and the Company's fraudulent student loan practices, as well as the Company's poor quality education.

67. Confidential Witness #26 ("CW 26") received an associate's degree in Criminal Justice from ESI's Seattle, Washington campus in December 2010. CW 26 learned after completion of her/his degree that ESI's credits would not transfer to state schools. CW 26 has information regarding the Company's misleading statements about ESI's accreditation and the
transferability of its credits, the misrepresentations about student “success stories,” and the Company’s post-graduate job placement assistance.

68. Confidential Witness #27 ("CW 27") was enrolled at ESI from June 2008 until just prior to the start of the Class Period. CW 27, who dropped out of ESI due to financial reasons, has information regarding ESI’s accreditation, the non-transferability of ESI credits and the Company’s predatory recruiting practices.

69. Confidential Witness #28 ("CW 28") worked for ESI as a Student Representative at the Company’s Fort Lauderdale campus located in Davie, Florida, from August 2007 to March 2010. CW 28 was terminated for not meeting enrollment quotas, although she/he was told by her/his supervisor it was because her/his “heart wasn’t in the school.” CW 28 reported to Director of Recruitment Joe Dizon ("Dizon") until Dizon transferred to the Fort Meyers, Florida campus in or around November 2009. Dizon reported to Campus Director Nan Lough ("Lough"), who reported to the District Manager. As such, CW 28 has information regarding the Company’s predatory recruitment practices, misrepresentations made by Recruiters concerning ESI’s accreditation and the transferability of ESI credits, the Company’s low graduation rates, and improper incentive compensation based on meeting quotas.

70. Confidential Witness #29 ("CW 29") was employed with ESI on two occasions. CW 29’s first term of employment with ESI was from August 1995 until November 2007, the last two years of which CW 29 served as the District Director of Recruitment. In November 2007, ESI eliminated the position, reassigning the responsibilities of the District Director of Recruitment to the Regional Director of Recruitment. Then, in February 2008, CW 29 returned to work for ESI as the Manager of Recruitment for the Rancho Cordova, California campus. CW 29 voluntarily left ESI on February 23, 2011, after she/he became “fed up” with the way that the Company was operating. As Manager of Recruitment, CW 29 oversaw a team of 15 to 20
Recruiters, with the number of Recruiters at the campus increasing during her/his employment. CW 29 initially reported to Director of Recruitment Vance Klinke ("Klinke"), who departed from ESI in approximately mid-2009 and was replaced by Director of Recruitment Tracy Martin ("Martin"). Klinke reported to Campus Director Richard Flann ("Flann"), who was replaced by Jeffery Wilkinson ("Wilkinson"). Flann and later Wilkinson reported to the District Manager in Colorado, who reported to Senior Vice President of Operations Simich. Simich reported to Executive Vice President Gene Feichtner ("Feichtner"). Among other things, CW 29 has information regarding ESI’s lack of concern for its students, the Company’s rushed financial aid process, “unrealistic and unattainable” enrollment quotas, the Company’s predatory recruiting practices, and low job placement rates.

71. Confidential Witness #30 ("CW 30") was employed at ESI as an Educational Recruiter from approximately October 2009 until June 2010, at which point she/he was fired for "performance" related reasons including not meeting enrollment quotas. CW 30 worked for the Company’s Online Division based in Carmel, Indiana and reported to Manager of Recruitment Vincent van Empeh ("Empeh"), who reported to the Director of Recruitment Tony Sprehe ("Sprehe"). Sprehe reported to the Executive Vice President of ESI and President of the Online Division June McCormick ("McCormick"). CW 30 has information regarding the pressure to meet enrollment quotas and the Company’s predatory recruiting practices.

72. Confidential Witness #31 ("CW 31") worked for ESI from June 2008 through September 5, 2010 as the Chair of Nursing at the Company’s Tulsa, Oklahoma campus. CW 31 reported to Tulsa Campus Director Karen Selby ("Selby") and worked extensively with ESI’s National Nursing Chair Peggy Keane ("Keane") and Nursing Program Consultant Dr. Louis Hart to develop ESI’s Nursing program. CW 31 was tasked with developing the curriculum for the Nursing program, hiring faculty, setting up clinical relationships and providing prospective
students with admissions seminars. As such, CW 31 has information regarding Modany’s involvement with the creation of ESI’s nursing program, the Company’s top down management structure, ESI’s failure to attain National League of Nurses (“NLN”) accreditation for its nursing program, and the lowering of admission standards.

73. Confidential Witness #32 (“CW 32”) was employed as the Director of Career Services at ESI’s Knoxville, Tennessee campus from September 2007 to October 2010, when she/he left ITT on her/his own accord because of mounting pressure to improve job placement numbers and because of increased government scrutiny of the for-profit industry. As Director of Career Services, CW 32 reported to Knoxville’s Campus Director, Pete Pratti (“Pratti”), who was replaced in or around July 2009 by Jamie Carpenter (“Carpenter”). Pratti, and then Carpenter, reported to District Manager Sam Russell (“Russell”), who was based in Charlotte, North Carolina and oversaw the Knoxville campus as well as seven or eight other schools in the region. Russell, reported to Simich, who reported to Feichtner. As Director of Career Services, CW 32 oversaw a staff of three Career Services Specialists, who worked with graduates, helping them with their resumes and in applying for jobs and preparing for interviews. Among other things, CW 32 has information regarding the Company’s job placement efforts and job placement rates, predatory recruiting practices, the Company’s low admissions standards, rampant grade inflation, and misrepresentations made to ESI students about the transferability of ESI credits.

74. Confidential Witness #33 (“CW 33”) was enrolled at ESI from March 2005 until November 2008. As such, CW 27 has information regarding ESI’s accreditation, the transferability of ESI credits, and the Company’s predatory recruiting practices.

75. Confidential Witness #34 (“CW 34”) was employed by ESI from approximately January 2007 until April 2009 when she/he was “forced out” as a result of ongoing issues with financial aid student file documentation at the campus. CW 34 was originally employed as a
Receptionist at the Troy, Michigan campus, but in December 2007 became a Financial Aid Coordinator. As a Financial Aid Coordinator, CW 34 was responsible for meeting with students to “get them packaged” for financial aid, which included assisting students with the financial aid application process, and completing and submitting the Free Application for Federal Student Aid (“FAFSA”). CW 34 reported to Finance Director Leona Brown (“Brown”) who departed from ESI in early 2009. CW 34 reported to a Campus Director. CW 34 has information regarding the Company’s misleading of ESI students regarding financial aid, predatory recruiting practices including the misrepresentation of graduates’ salary potential, and the Company’s “temp credit” program.

76. Confidential Witness #35 (“CW 35”) was employed by ESI as a Career Services Specialist at the Richmond, Virginia campus from November 2009 to March 2010. CW 35 reported to Director of Career Services Margie Ratliss (“Ratliss”), who reported to Campus Director Elaine Bartoli (“Bartoli”). As such, CW 35 has information regarding the Company’s job placement rates, low admission standards and ESI’s lack of concern for its students.

77. Confidential Witness #36 (“CW 36”) was employed with ESI as a Career Services Specialist at the Maumee, Ohio campus from April 2009 to November 1, 2010, when she/he left the Company because the “pressures to get placement percentages” became intolerable. CW 36 was responsible for assisting ESI graduates search for employment opportunities, including coaching the graduates on interviewing techniques and working with the graduates who found employment to define the nature of their respective positions with employers. CW 35 reported to Director of Career Services Jennifer Stopar (“Stopar”), who reported to Campus Director Jim Unger (“Unger”). When Stopar departed from ESI in April 2010, CW 36 began to report directly to Unger. Unger reported to District Manager Jonathan Patterson (“Patterson”), who oversaw the Ohio Valley District, which encompassed seven or eight campuses. CW 36 has
information regarding the “stretch[ing] of job descriptions,” the Company’s CS360 reports, which tracked job placement rates, an internal audit of the Company’s placement rates, and Modany’s close involvement with the Maumee, Ohio campus.

78. Confidential Witness #37 (“CW 37”) was an ESI student pursuing an associate’s degree in Information Technology from March through August 2010 at the Company’s Dayton, Ohio campus. CW 37 has information regarding ESI’s accreditation, the transferability of ESI credits, and the quality of ESI instructors and students.

79. Confidential Witness #38 (“CW 38”) was employed with ESI as a Financial Aid Coordinator from May 12, 2004 to July 2007, and then again from May 2008 to September 2010. CW 38 was responsible for working with ESI students on their financial aid packages. Among other things, CW 38 has information regarding the Company’s predatory recruiting practices, unethical financial aid practices, and the Company’s “temp credit” program.

80. Confidential Witness #39 (“CW 39”) worked for ESI as a Director of Career Services from January 2009 to November 2009 when she/he was “forced out” because she/he was “bucking the system” by refusing to comply with unethical career services practices and methods that did not comply with accreditation guidelines. CW 39 was tasked with developing employment opportunities for existing students and graduates of ESI. CW 39 oversaw a Career Services Specialist and a Career Services Assistant. CW 39 reported to Bessemer, Alabama Campus Director Allen Rice (“Rice”), who reported to a District Manager based in Atlanta, Georgia. CW 39 has knowledge regarding the Company’s violations of ACICS regulations and Modany’s knowledge of the violations, the Company’s job placement efforts and the “stretching of job descriptions.”

81. Confidential Witness #40 (“CW 40) worked for ESI as the Campus Director of the Troy, Michigan campus from approximately January 2007 to March 2009. CW 40 was
responsible for operations at the Troy campus, including recruitment, administration of financial 
aid, and career services, as well as reporting on the results of operations. CW 40 also 
participated in setting enrollment goals for the campus each year and traveled to ESI's corporate 
headquarters in Carmel, Indiana once per year to assist in establishing and reviewing the 
"budget" for the Troy campus. CW 40 reported to Regional Vice President Liz Frank ("Frank"), 
who reported to Senior Vice President of Operations Simich or Executive Vice President 
Feichtner. Among other things, CW 40 has knowledge regarding the Company's predatory 
recruiting practices, enrollment quotas and Modany's intricate involvement with all aspects of 
recruiting, financial aid and graduate placement rates.

82. Confidential Witness #41 ("CW 41") worked as a Senior Financial Aid 
Coordinator at ESI's Owings Mills, Maryland campus from March 17, 2007 to June 15, 2010. 
CW 41 initially reported to Director of Finance Susan Mangus ("Mangus") who was replaced by 
Darcy Sisler ("Sisler"). Mangus, and then Sisler, reported to Campus Director Shaher Shanti 
("Shanti"), who reported to District Manager Joe DeFillipp ("DeFillipp"). CW 41 has 
information regarding ESI's working environment, the Company's quotas, and the quality of 
students attending ESI.

83. Confidential Witness #42 ("CW 42") worked at ESI's Cordova, Tennessee 
campus from approximately September 2004 to March 2010. CW 42 began her/his employment 
as Senior Financial Aid Coordinator and became the Director of Finance for the Cordova campus 
in or around September 2009. During CW 42's tenure as a Financial Aid Coordinator, she/he 
reported to the Director of Finance, Dan Ritchen ("Ritchen"), who was replaced by John Rhodes 
("Rhodes"), who was replaced by Nick Lindvey ("Lindvey") until CW 42 took over the position 
in or around September 2009. As Director of Finance, CW 42 reported to the Campus Director 
who reported to District Manager Todd Clark ("Clark"), who reported to Simich. CW 42 has
information regarding the Company's predatory lending practices, including high default rates and interest rates as high as 48% on private loans made to ESI students.

VI. SUBSTANTIVE ALLEGATIONS

A) Introduction

84. For-profit colleges, which are either privately-owned or owned by publicly traded companies, offer post-secondary education to a wide-variety of students. Unlike their state-operated and not-for-profit brethren, whose primary goal is to provide a quality education for their students, for-profit colleges are profit-driven, bottom-line businesses. Not surprisingly, given their profit-driven goals, for-profit colleges charge their students significantly more to attend than not-for-profit schools (often twice as much or more), and students at for-profit schools end-up with substantially more debt upon graduation (if, indeed, they graduate at all) than students at non-profit colleges. Moreover, most for-profit colleges rely extremely heavily on federal funds (in the form of Pell Grants, Stafford Loans and the like) – up to 90% of their gross revenues are derived in this way.

85. As described more fully throughout this Complaint, in an attempt to cannibalize federal funds, ESI created a business model that mandates its salespeople to engage in predatory recruitment practices and deceptive enrollment practices resulting in extremely low graduation rates and massive amounts of defaulted student loans. Of course, it is not these untoward business practices that create the basis for liability in this case, as ESI is free to conduct its business as it sees fit. Rather, Defendants are liable to Plaintiff and the Class for the damages caused by their failure to disclose ESI’s systemically predatory business model to the market and its shareholders, providing instead a completely different picture of what drives its revenue, and consequently misrepresenting the nature and substance of the Company’s financials and future
business prospects. These misrepresentations and material omissions caused ESI common stock to trade at artificially inflated prices throughout the Class Period.

86. Enrollment at for-profit colleges grew dramatically in the past decade. To be sure, between 1998 and 2008, enrollment at for-profit colleges expanded by approximately 236 percent, while enrollment at traditional institutions of higher learning rose only approximately 31 percent during that same period.\(^7\)

87. ESI's secret business model, as detailed below, was well-hidden for years, until, through a series of partial disclosures, the truth was revealed. When the truth came out, the artificial inflation was removed from the price of ESI common stock, and its shareholders paid the price and incurred substantial damages.

B) ESI's Business Model Depends on Maximizing the Amount of Financial Aid Obtained by Its Students, Regardless of Their Ability to Ever Repay It

1. The For-Profit College Business Model Places Low-Income Students in High Cost Schools

88. Historically, families with greater needs generally sought lower-cost colleges to maximize the utility of available federal loans and grants, getting the most out of every dollar to reduce out-of-pocket expenses and minimize heavy debt burdens. Conversely, families with greater financial resources often sought higher-cost institutions because they could afford to pay in excess of what federal loans covered, and presumably received a better quality education. For-profit colleges have turned this traditional relationship between costs and means on its head by targeting and preying upon students with the greatest financial needs and convincing them to incur massive debt, regardless of their ability to repay the loans should they graduate and find employment.

\(^7\) The expansion of the sector has been so extraordinary that the largest for-profit – the University of Phoenix – today enrolls more students than the entire for-profit sector enrolled in 1991.
89. Indeed, low-income and minority students make up 50 and 37 percent of students at for-profit colleges respectively, while, on average, for-profit colleges cost five and a half times the price of community colleges offering similar programs and degrees. Bachelor’s degree recipients at for-profit colleges have median debt of $31,190.00 compared with $17,040.00 at private, non-profit institutions and $7,960.00 at public colleges. At four-year for-profit colleges, low-income students must find a way to finance, on average, almost $25,000.00 each year, with only a 22% chance of graduating. On the other hand, students at four-year private nonprofit institutions need to finance, typically, only $16,600, and graduate at rates three times higher. Moreover, private non-profit institutions, while costing students less, actually spend three and a half times more on each student than for-profit institutions do.  

90. At ESI, undergraduate tuition ranges from approximately $450 to $520 per credit hour. As detailed herein, a two-year associate’s degree at ESI costs between $40,000 and $45,000, and a four-year bachelor’s degree costs approximately $80,000, or more.

91. Prospective students obtain these funds by turning, usually at the direction of the for-profit colleges themselves, to the federal government. For students with financial need, the federal government helps pay for higher education through Title IV. Title IV covers the administration of the United States federal student financial aid programs, and includes Pell Grants, Stafford Loans, and other forms of federal financial aid. Title IV aid is a combination of grants and low-interest loans available in limited quantity to students enrolled at any type of college.

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2. The Vast Majority of For-Profit College Revenue Comes From Federal Student Aid

92. The reason for-profit colleges recruit low-income students for a high-cost education is as simple as it is nefarious: this formula maximizes the amount of federal loans and grants the students must take on in order to be able to afford classes, and, as a result, maximizes the amount of federal loans and grant monies that the for-profit colleges receive. As much as 90 percent of revenue generated at for-profit colleges comes from federal student aid. Indeed, in 2007-08, approximately 97 percent of undergraduates attending for-profit 2-year colleges took out student loans, while only 13 percent of undergraduates attending 2-year public institutions took out student loans. Similarly, during that same time period, approximately 95 percent of undergraduates attending for-profit four-year colleges took out student loans, while only 47 percent of undergraduates attending public 4-year colleges took out student loans. The staggering statistical disconnect demonstrates the loan driven nature of for-profit colleges, including ESI.

93. Though federal financial aid is intended for the benefit of the student, as a practical matter, aside from education-related expenses, student aid disbursements go directly to the student’s school. Thus – as long as the school can keep enrollment rates steady or increase them – the more money a for-profit college charges per credit, the more revenue the institution will generate in guaranteed federal dollars from loans taken out by low-income and other at-risk students.

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9 Twenty-four percent of 2008 graduates of for-profit colleges took out federal loans in excess of $40,000.00.
94. Federal Pell Grants and Stafford Loans, together with aid from smaller Title IV programs, make up the lion’s share of for-profit colleges’ revenues.\(^{10}\) While for-profit colleges enroll close to 10 percent of all higher education students, they currently receive approximately 24 percent of all Title IV funds. Indeed, between 2000 and 2009, the amount of Pell Grants, Stafford Loans, and other Title IV aid packages given to for-profit institutions grew from $4.6 billion to $26.5 billion, representing a sizeable burden for U.S. taxpayers.\(^{11}\)

95. In ESI’s case, the Company’s reliance on Title IV monies has only expanded in recent years. For example, in 2001, the Company received 65 percent of its total revenues from Title IV and 35 percent from other sources. By 2009, that ratio changed substantially, with ESI receiving approximately 85 percent of its total revenues from Title IV and only 15 percent from other sources. In 2009, ESI’s total revenue exceeded $1.3 billion, with more than $1.1 billion coming straight from federal Title IV funds.

C) The HEA Provides Eligibility Criteria that an Institution Must Meet in Order to Participate in the Federal Student Aid Programs

1. Incentive Compensation for Recruiters Is Not Permitted

96. In the early 1990s, Congress was concerned that certain schools were engaging in a series of unethical practices leading to the admission of unqualified students just to obtain federal financial aid. This led, ultimately, to students being unable to repay their loans – leaving the government holding the bag.

97. Congress and the DOE took a number of actions to address this situation, including enacting the “incentive compensation provision.” The “incentive compensation

\(^{10}\) A Pell Grant is a post-secondary educational federal grant sponsored by the DOE that does not have to be repaid. A Stafford Loan is a student loan offered to eligible students enrolled in accredited American institutions of higher education. The repayment period for a Stafford Loan typically begins upon graduation or withdrawal by the student from the institution of higher education.

\(^{11}\) In 2009, for-profit colleges collected $4.4 billion of the $18.2 billion in Federal Pell Grants.
provision” of the HEA prohibits schools from paying student recruiters and employees involved in financial aid “any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid.” 20 U.S.C. §1094(a)(20). In 2002, the DOE clarified the “incentive compensation plan” by issuing a series of “safe harbor” regulations, 34 CFR 668.14(b)(22)(ii).

98. Relevant here, 34 CFR 668.14(b)(22)(ii)(A) provides that a school may make up to two adjustments (upward or downward) to a covered employee’s annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. Additionally, 34 CFR 668.14(b)(22)(ii)(D) provides that profit-sharing and bonus payments to all or substantially all of a school’s full-time employees are not incentive payments based on success in securing enrollments or awarding financial aid, as long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the school’s full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition. Finally, 34 CFR 668.14(b)(22)(ii)(F) provides that generally, clerical pre-enrollment activities are not considered recruitment or admission activities. Accordingly, a school may make incentive payments to individuals whose responsibilities are limited to pre-enrollment activities that are clerical in nature. However, soliciting students for interviews is a recruitment activity, not a pre-enrollment activity, and individuals may not receive incentive compensation based on their success in soliciting students for interviews.
2. Graduation Rates

99.

ESI is required to report graduation rates to the DOE. Though ESI and other for-profit colleges report graduation rates to the DOE, the data is self-reported and only captures first-time, full-time enrolled students. Given the large number of for-profit college students who attend part-time, or who have previous college experience, a very significant share of students fall outside this reporting requirement. As set forth herein, it was not until April 22, 2010 that ESI publicly reported its graduation statistics, when during a conference call with investors, Modany stated that “historically” ESI had “been in the 45% to 55% range” and that “more recently,” the Company was “probably closer to the lower end of that range.”

3. Cohort Default Rates

100.

The Cohort Default Rate (“CDR”) is the percentage of a school’s borrowers who enter repayment on certain federal student loans during a particular federal fiscal year (October 1 to September 30), and who default prior to the end of the next fiscal year. The “cohort” is the group of students who first enter into student loan repayment during a federal fiscal year, and the CDR for each cohort is the percentage of the cohort members who default on their student loans prior to the end of the following federal fiscal year. The CDR was initiated in the late 1980s to address the growing concern that fly-by-night trade schools were preying upon minorities and low income populations to build their enrollments by enticing academically under-qualified students to apply for grants and guaranteed student loans that the students were unlikely to repay.

101.

To remain eligible to participate in Title IV programs, educational institutions must maintain an appropriate CDR. Under current law, if an institution’s CDR exceeds 10 percent for any one of the three preceding years, it must delay for 30 days the release of the first disbursement of U.S. federal student loan proceeds to first time borrowers enrolled in the first year of an undergraduate program. Institutions with three consecutive CDRs of 25 percent or
greater or with a CDR greater than 40 percent in any one federal fiscal year could lose eligibility to participate in certain Title IV programs.

4. The “90/10” Rule

102. Under HEA, proprietary institutions of higher education – including ESI – must comply with the 90/10 Rule. Specifically, a proprietary institution will be ineligible to participate in Title IV programs if, for any two consecutive fiscal years, it derives more than 90% of its cash basis revenue, as defined in the Rule, from Title IV programs. An institution that derives more than 90% of its revenue from Title IV programs for any single fiscal year will be placed on provisional certification for two fiscal years and will be subject to possible additional sanctions by the DOE in the exercise of its broad discretion.

103. The HEA requires ESI to demonstrate on an annual basis that at least 10% of its revenue is derived from sources other than Title IV programs (the “90/10 Rule”), and ESI must report the calculation as a footnote to its annual audited financial statements. Further, ESI’s certified public accountant is expected to test the accuracy of its 90/10 assertion as part of the audit of the institution’s financial statements. If ESI exceeds the 90% threshold for two consecutive institutional fiscal years, it could be subject to loss of Title IV eligibility.

5. Other Requirements

104. The HEA further requires that programs at for-profit institutions – other than those clearly designated as “liberal arts,” or not designed to lead to a degree – must prepare students for “gainful employment in a recognized occupation” to be eligible for Title IV federal student aid.

105. In addition, state authorization and accreditation by an accrediting commission recognized by the DOE are also required for an institution to become and remain eligible to participate in Title IV programs. As such, ESI is also subject to extensive state regulations and

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requirements of accrediting agencies, including the ACICS, Accrediting Commission of Career Schools and Colleges ("ACCSC"), Commission on Colleges of the Southern Association of Colleges and Schools, Higher Learning Commission of the North Central Association, Middle States Association of Colleges & Schools of the Commission on Higher Education, Northwest Commission on Colleges and Universities, and the Commission on Colleges of the Western Association of Schools and Colleges.

106. For example, ACICS requires each accredited institution to maintain retention and placement standards of 60% and 65%, respectively. An institution with retention and/or placement rates not in keeping with those standards may be subject to reporting. Other requirements of the accrediting agencies include:

- "Advertising, recruiting, and admissions information adequately and accurately represent the programs, requirements, and services available to students."

- "An institution may not delegate without supervision these [recruiting] activities to anyone whose economic incentives are to recruit prospects through means that are unethical or subject to public criticism or to admit ill-prepared applicants."

- "[r]ecruiting shall be ethical and compatible with the educational objectives of the institution. . . . The following minimums apply: (a) An institution shall ensure that any person or entity engaged in admissions or recruitment activities on its behalf is communicating current and accurate information regarding courses and programs, services, tuition, terms, and operating policies."

- Schools are required "to describe themselves to prospective students fully and accurately and to follow practices that permit prospective students to make informed and considered enrollment decisions without undue pressure. The school’s recruitment efforts must attract students who are qualified and likely to complete and benefit from the training provided by the school and not simply obtain enrollments. . . . Each school observes ethical practices and procedures in the recruitment of its students."

- "No misrepresentations should be made in student recruitment, including. . .; b. misrepresenting job placement and employment opportunities for graduates; c. misrepresenting program costs; d. misrepresenting abilities required to complete intended program."
D) "They Don’t Care About the Students... It’s All About the Money" -- "Quotas," "Numbers," and "Starts" – ESI’s Admissions Department was a High-Pressure Sales Environment

107. On August 4, 2010, David Hawkins, the Director of Public Policy and Research for the National Association for College Admission Counseling, provided testimony to the HELP Committee during a “Hearing on Marketing and Recruitment in For-Profit Education,” in which he stated, in relevant part:

Few seem to be prepared for high-pressure sales tactics, and few -- as evidenced by testimony from the previous hearing -- seem aware that a college can be a for-profit company, or that there may be cause to question what recruiters and advertisements are telling them. Whereas consumers may be prepared for a high-pressure sales pitch at a car dealership, home improvement store, or other commercial setting, few are aware that a college recruiter might employ the same tactics. Taking advantage of this trust enables recruiters to exploit a potential student’s lack of awareness of the terms of the interaction.

Students trust post secondary educational institutions and their admission officers because counseling -- as opposed to sales or marketing -- has historically been a prominent part of ethical admission practices at American colleges and universities.\(^{12}\)

108. By taking advantage of potential students’ trust and by focusing on their “pain” in ESI’s manipulative and deceptive sales pitch to “starts,” Defendants knowingly fostered and created the very high-pressure sales environment described by Mr. Hawkins. Put simply, as detailed below through the corroborating accounts of numerous well-placed confidential witnesses, Defendants were fully aware that ESI had uniformly turned ethical admission practices on their heads.

109. According to CW 18, the core of ESI’s success was its focus on enrolling as many students as possible, “at any cost.” This sales mentality was devised and driven from the top-

\(^{12}\) A complete copy of Mr. Hawkins’ testimony may be found on the HELP Committee’s website at http://help.senate.gov/hearings/hearing/?id=19454102-5056-9502-5d44-e2aa8233ba5a (last visited March 30, 2011).
down and was enforced at every level of ESI’s corporate structure. According to CW 11, ESI was a “numbers driven environment.” CW 19, who described ESI as a “conveyor belt,” also stated that the Admissions Department at ESI was “very numbers driven” and that there was “incredible pressure” to meet the numbers. According to CW 14, the Company was so focused on enrollment numbers that “reports went out every hour” showing how many students were enrolled. CW 24 stated the Recruiters were “telemarketers pushing education.” CW 37 reported that “the second” she/he walked in the door to interview with a Recruiter at ESI it felt like “a high pressure sales environment.” Another confidential witness, CW 12 described ESI’s Admissions department as a “high-pressure sales” machine whose sole purpose was to meet or exceed quotas and then send students to ESI’s financial personnel.

110. ESI’s focus was always on the number of students enrolled, not the student’s well-being. According to CW 19, “[t]hey don’t care about the students. It is all about the money.” Similarly, CW 2 stated, “whether they [the students] drop [out] or not is irrelevant.” CW 19 also stated “[i]t was all about getting ‘em in, getting our money and whatever happens – happens.” It was also clear to CW 15 that ESI was only interested in student tuition, not student success, because the job of Recruiters was numbers driven and because it was obvious within ESI that the Company ‘didn’t care at all about students.” CW 8 also stated ESI “doesn’t give a damn about students. They only see money signs.”

111. The enrollment quotas at ESI were determined, on a campus-by-campus basis, by ESI’s corporate office and then shared with campus management, such as the Director of Admissions and the Campus Director. Campus management then determined the quotas for each individual Recruiter, which were adjusted on a quarterly basis.

112. ESI took its quarterly recruiting requirements one step further, as each Recruiter’s individual quotas were based on his/her job level and experience. In that regard, ESI utilized a
tier system that included several layers of Recruiters based on internal rankings. The lowest ranking was sometimes known as a “basic rep,” the next level was known as Senior I, then Senior II, and so on, with the “Master” ranking designated as the highest level.

113. Simply put, ESI’s Recruiters were required to meet enrollment quotas and their compensation was directly tied to the number of students enrolled. According to CW 14, Recruiter compensation was solely premised on “how many students you can sit.” The higher the Recruiter level, the higher the quotas, and the higher the salary for the Recruiter. Therefore, Recruiters ranked as Masters had much higher quotas and salaries than the other Recruiters ranked at lower levels.

114. Failure to meet quotas meant unemployment for ESI’s Recruiters; Recruiters were required to meet quotas to keep their job and obtain raises. It was made crystal clear to Recruiters that they would lose their job if they did not meet quotas. According to CW 14, “[i]f you don’t meet the goals, they will replace you. If you’re not willing to do all the stuff [required by ESI], they will replace you.”

115. Not only did ESI use a strict quota system, but there was continuous analysis within ESI as to whether Recruiters were meeting their mandatory quotas. In addition to hourly reports that informed everybody of the number of students enrolled at any given time, at the end of every quarter, each Recruiter’s quotas were reviewed and evaluated by the Recruitment Manager, the Director of Recruitment and the Campus Director. During the review, each Recruiter was required to make a Power Point presentation to discuss her/his quota for the previous quarter, including the reasons why the quota was missed or exceeded. The Recruiters also had to explain how they planned to meet the quota for the following quarter.

116. Recruiters were also reviewed annually, at which time they could be promoted with a raise or demoted with a decrease in pay – all based on ESI’s internal quota system. Raises
and promotions within the Admissions hierarchy were based solely on past performance and on the number of enrollments.

117. Although ESI purported to evaluate its Recruiters on a variety of metrics, those other criteria were only a façade erected to mislead both regulators and the market. For example, ESI’s employee handbook made it appear as if raises and promotions for Recruiters were based on factors other than enrollment quotas, such as the number of calls made to prospective students, as well as the Recruiter’s appearance and overall attitude. CW 15 recalled that Recruiters were also told “compliance” factors such as teamwork and customer service skills were considered in their raises and promotions. In actuality, a Recruiter’s lead call volume, work habits, or appearance did not have any impact on their performance reviews, pay increases or promotions.

118. Without question, ESI Recruiters could succeed in meeting all of the expectations regarding calls, appearance, and attitude, but if they failed to meet enrollment quotas, not only would they be ineligible for raises or promotions, but they would be fired. According to CW 18, the only metric that mattered was, ‘how many people did you enroll?’” Success at ESI “boiled down to numbers. It was a numbers game.” According to CW 15, “[a]t the end of the day, it was based on your numbers.”

119. CW 24, who was a Director of Recruitment, confirmed that Recruiter performance was evaluated based on the ability to attain assigned enrollment quotas. According to CW 24, the performance evaluations “made it seem on paper” that enrollment numbers only represented 40 percent of Recruitment personnel’s qualification for promotions and raises. In reality, however, the ability to attain enrollment quotas was the sole criteria against which Recruiters were evaluated and compensated.
120. Demotions and pay reductions were also prevalent and based solely on the failure to attain the required number of enrollments. If Recruiters did not meet their quotas within two quarters, their salaries were reduced, they were demoted, and they could be placed on probation. Moreover, reductions in salary for not meeting quotas were significant and could amount to several thousand dollars – so much that it would materially reduce a Recruiter’s annual take-home pay. If the Recruiter failed to achieve her/his quota for a third consecutive quarter, then the Recruiter would be fired, regardless of the Recruiter’s ability to meet other so-called performance metrics. Even if a Recruiter met quotas and was promoted with a salary increase as a result, the Company would not hesitate to demote and cut the salary of that same Recruiter if she/he failed to meet future quotas. It was always about the numbers, nothing more.

121. For example, according to CW 2, a Senior Recruiter, Level I, who enrolled 140 students per year could be bumped up to a Master Recruiter, Level IV with a salary increase to roughly $125,000. If this Recruiter only enrolled 60 students during the following year, the Recruiter would be demoted back to Senior Recruiter, Level I, with a correlated reduction in salary.

122. CW 24 confirmed that a high ranking Recruiter could be demoted and have their salary reduced. For example, one Recruiter who had worked in recruiting for 13 years, was demoted and had her pay reduced in 2010 for failure to attain enrollment quotas. This Recruiter was earning approximately $60,000 annually. When she was “behind” on her enrollments in 2010, however, her salary was reduced by $20,000.13

123. The requirement to achieve enrollment quotas also applied to ESI employees that recruited online students. According to CW 10, ESI’s online Recruiters had to secure and enroll

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13 Plaintiff knows the identity of the recruiter referred to above and will disclose it to Defendants during discovery, but has omitted it from this Complaint to avoid disclosing the recruiter’s compensation information.
15 people a month. CW 10 stated that if Online Recruiters did not “hit the number” for two months in a row, they would be “fired.”

124. In addition to facing demotions and pay cuts, when Recruiters did not meet enrollment quotas they were often subject to ridicule and verbal abuse from ESI management. For example, CW 19 described ESI’s Baker as an ex-Marine who was “constantly yelling” at employees for not “hitting their numbers” and “constantly threatening” employees that they would lose their jobs for not hitting enrollment numbers. CW 19 also said that ESI employees would “constantly” be “belittled and ridiculed” for not hitting enrollment quotas, describing the quota driven environment as “awful.”

125. Similarly, CW 21 stated that Kenty, an ESI Director of Recruitment, often dressed down Recruiters in her office, including CW 21, typically for concerns about enrollment quotas or for recruitment methods. The pressure to meet quotas was so high that Recruiters were made to feel like “the worst person on the face of the Earth” and Recruiters sometimes broke down crying after leaving Kenty’s office.

126. Likewise, CW 24 described the unbearable pressure to meet enrollment quotas that existed within ESI. For example, CW 24 stated Lynn was “like a hammer” regarding enrollment quotas and recalls being berated and screamed at over the failure to attain enrollment quotas, describing the quota driven environment as a “nightmare.”

127. Moreover, Campus Directors constantly reminded the Recruiters of their enrollment quotas – the continuous evaluation of the Recruiters’ numbers was standard practice at ESI. For example, at ESI there were standard weekly meetings attended by Recruiters and led by the Campus Directors to review the Recruiters’ progress for the quarter in terms of enrollments and the enrollment numbers achieved by each Recruiter. The meetings lasted...
approximately 20 to 30 minutes. According to CW 7, the weekly meetings were “never about students,” but were “always all about getting numbers.”

128. For example, CW 15 attended a weekly “show meeting” led by Campus Director Strickert and attended by Director of Recruitment Markovich every Monday at 1 p.m. Similarly, CW 18 attended weekly meetings on Tuesdays and Thursdays at 2 p.m. During the meetings, the Manager of Recruitment Stewart and Director of Recruitment Kenty repeatedly reiterated to the Recruiters that at ESI, it was purely “a numbers game.” In other words, quotas were all that mattered. CW 18 also stated one of Kenty’s favorite sayings at these meetings was “At any cost.” It was clear to CW 18 that Kenty was telling Recruiters to enroll new students at any cost.

129. The pressure to meet enrollment numbers was conveyed with equal strength to Recruiters at the Online Campus via “Pipeline Meetings,” which took place at least three times a week in a small board room near the financial aid office, and lasted approximately 20 to 30 minutes. According to CW 10, the Pipeline Meetings were “very high pressure,” with online Recruiters being required to sit in front of a Director or a Vice President and explain where the Recruiters were in signing up each potential student. CW 10 described it as “push, push, push” and that during the meetings, management “would go line by line” with Recruiters about each student.

130. Similarly, CW 14 stated ESI management was very well aware of the sales tactics employed by Recruiters because management’s compensation was based off enrollment quotas being met as well.

131. Not only were quotas critically important and tracked on a student-by-student basis, but they were constantly increased by ESI, not only when Recruiters were promoted, but also every year, with the increases being based upon previously attained quotas. According to CW 12, quotas were typically increased annually by about 10 percent over the previous year.
CW 5 confirmed the enrollment quotas increased drastically from 2009 to 2010, essentially making the 2010 quota unattainable. For instance, the enrollment quota at the Louisville campus for June 2009 was 150 students for that quarter, and for June 2010, the quota jumped up to 200 students for that quarter.

132. Recalling how enrollment quotas were ever-increasing, CW 24 stated that they became even more aggressive yet unattainable. For example, even in the wake of failures by the Miami campus to “start” an average of 150 and 200 students per quarter, its previously assigned quotas, the numbers kept increasing. For the first quarter 2010, CW 24 was tasked with ensuring the Miami campus Recruiters enrolled 175 students. The campus missed the quota, enrolling only 161 students. For the second quarter 2010, the quota was raised to 205 “starts,” but the Miami campus had only 136. Then, for the third quarter 2010, the enrollment quota was 241, but only 168 students started at the Miami campus. Thus, the pressure to increase enrollments was consistently ratcheted up as quotas were universally increased.

133. Similarly, CW 14 recalled the rapid overall increase of quotas for the Online Campus from an internal goal of 400 students per quarter to a goal of 900 students per quarter. By the time CW 14 left ESI in August 2009, employment, the ESI internal quota for students enrolled at the Online Campus was 1,700 students per quarter. According to CW 23, the Company set “outrageous goals” for Online Campus enrollments.

134. Due to the extreme pressure to meet enrollment quotas, there was significant turnover amongst Recruiters. For example, CW 19 estimated that, on average, Recruiters were “gone in two or three months.” CW 12 also recalled the high turnover rate and stated when she/he started at the Indianapolis campus, there were approximately 21 Recruiters, but there were only eight of those Recruiters left at that campus when CW 12 left 10 months later. Recruiters either left on their own accord or were fired for not meeting enrollment quotas.
135. The allegations herein regarding ESI's enrollment quotas and Recruiter rankings are also based on the corroborating accounts of many Confidential Witnesses, including CW 2, CW 12, CW 14, CW 18, and CW 21. Likewise, allegations herein regarding ESI's reviews of Recruiters and the continuous analysis of whether Recruiters were meeting their quotas are based on the corroborating experiences of CW 2, CW 3, CW 12, CW 14, CW 15, and CW 18. Allegations regarding Recruiter demotions, pay decreases, and the impact of failing to meet quotas (i.e., termination) were also provided by CW 2, CW 12, CW 13, CW 15, CW 21, and CW 22. In addition to the foregoing, allegations regarding the fact that ESI Recruiters were evaluated solely on quantitative ability to meet internal quotas are also based on the corroborating accounts of CW 3, CW 12, CW 15, CW 18, and CW 24. Given the myriad witnesses to ESI's pressure cooker, quota driven, predatory enrollment practices, there is no doubt that ESI's culture bears little resemblance to what was portrayed to its shareholders and the market in Defendants' materially false and misleading statements and omissions during the Class Period.

1. Modany “Knew Everything That Was Going On” – Students Were No More than “Leads” Targeted to Meet Quotas

136. In order to meet enrollment quotas, ESI's corporate office provided Recruiters with “leads,” meaning the names and contact information for prospective students. Leads were collected at the corporate office and then disseminated to Managers and Directors of Recruitment who, in turn, assigned the leads to Recruiters. Leads were also distributed directly to the Recruiters' computers. According to CW 3, Corporate “dropped” leads once per week.

137. CW 2 recalled Modany “knew everything that was going on,” especially “from a lead generation standpoint.” The Vice President of Admissions informed CW 2 that Modany required each Recruiter be supplied with 13 leads per week. In that regard, the Admissions
Directors were permitted to hire new Recruiters once the lead pool exceeded “13 leads per rep per week.”

138. ESI’s leads were generated in several ways. A majority of leads were generated over the internet, for example when a prospective student was applying for a job and clicked on a pop-up advertisement for ESI. Leads were also generated through commercials, and via call-ins and walk-ins. ESI also obtained leads from third-party vendors.

139. CW 15 recalled that within ESI, the leads were ranked as tier one, tier two or tier three leads. Tier one leads were considered the best quality because they came from individuals who had contacted ESI directly. The second tier came from internet inquiries, but were typically comprised of individuals who did not necessarily express an interest in ESI. The third tier were considered the lowest quality and might have come from job fairs or other events.

140. The higher-ranking “Master” Recruiters received the better leads, facilitating their ability to attain their assigned enrollment quotas. As a result, the only way to get better leads was to “be on tier,” which meant Recruiters had to enroll a significant number of students in a week. If accomplished, the Recruiter was given better leads the following week and would be able to meet with prospective students who walked in to the campus or called the campus directly for more information, to the dismay of the other Recruiters. According to CW 18, this was an inequitable system that “kept the people on top, on top and the people on bottom, on bottom.” “You were always working at a disadvantage if you were not on tier,” because it would be harder to achieve enrollment quotas.

141. The overall quality of the leads provided to the Recruiters was very poor, which made it difficult for the Recruiters to make their numbers. According to CW 2, “at least 30 percent of the leads were not good.” CW 5 did “not trust the leads” and believed they were generated from “random places.”
142. CW 5 could make as many as 130 calls per day and not set one appointment because of the lack of quality leads. CW 3 recalled that when Recruiters called the leads generated over the internet, they were often informed the leads were “not interested in enrolling at ESI.” The leads often complained about the calls saying they were “just applying for a job when the window popped up.” Similarly, according to CW 5, some of the leads said they “never submitted information” to ESI and demanded that they not be contacted again.

143. CW 18 confirmed that the leads were very poor quality, and stated many had phone numbers that were out of service or were living out of state and CW 3 confirmed that a significant number of leads had disconnected phone numbers and estimated only five percent of leads were “qualified leads,” meaning that they were actually individuals who showed some interest in attending ESI.

144. Consistent with the top-down establishment of quotas, as described above, Modany was a “very hands on CEO,” who set the targets for enrollment numbers and placement rates, reviewed all budgets, and made all decisions for ESI in order to attempt to maximize ESI’s return on investment and profit projections. Indeed, CW 40 stated that Modany kept a “very close watch” on all aspects of ESI. According to CW 16, “everything went through Modany.” Further, Modany and the Vice Presidents at the corporate office “pressured” employees in a top-down manner to “meet the criteria” set by Modany. According to CW 20, “Modany was the kind of person you did not say no to.

145. In addition to the foregoing, the allegations herein regarding ESI’s corporate-controlled system of generating and disseminating leads was corroborated by a multitude of Confidential Witnesses, including CW 2, CW 3, CW 15, and CW 18.
2. “Call People Three or Four Times Per Day And Bug Them” -
ESI Recruiters were Required to Harass Potential Students in
Order to Meet Quotas

146. Recruiters were required to make a certain number of calls every day to try to
procure interviews with prospective students, with CW 15 estimating she/he was required to
make easily more than 100 calls per day. CW 12 confirmed the requirement was “significant”
and estimated being required to make more than 50 calls per day.

147. The high call volume angered prospective students who were “disgruntled” and
“very upset” at the number of times ESI called them. According to CW 15, it was “too much,”
but it was “what we were required to do.”

148. When leads were given to Recruiters, they remained in the Recruiters’ queues for
two weeks. Thereafter, they were transferred to the queues of other Recruiters until the leads had
been to “three reps’ systems” – that is, until they had been contacted repeatedly by three separate
ESI Recruiters. Therefore, a significant percentage of leads given to Recruiters had already been
called numerous times. According to CW 3, prospective students were “tired of you calling
them” because they had been called by so many other Recruiters.

149. Likewise, CW 5 recalled ESI required Recruiters to “call people three or four
times per day and bug them,” even if the potential leads had already been contacted and
informed the Recruiters that the leads were not interested in attending school at ESI. According
to CW 5, Recruiters would call leads three times daily and sometimes as many as 10 times daily.
CW 3 stated that the prospective students would get “mad” at Recruiters and “hang up,”
“especially when [Recruiters] were calling them four or five times per day.” CW 24 confirmed
the Recruiters were expected to call leads four or five times per day, to the point that the
prospective students often threatened to sue ESI for harassment.
150. The Recruiters marked these leads as “do not call” in the Oracle-based database through which leads were assigned and the outcome of contacts with the leads was tracked. Leads marked as “do not call,” however, would inevitably end up back in the lead pool and the “do not call” designation would be erased.

151. The allegations herein regarding ESI’s aggressive requirement that Recruiters act as telemarketers and hound prospective students by calling them a multitude of times was corroborated by numerous Confidential Witnesses, including CW 3, CW 5, CW 12, CW 15, and CW 24.

b. “Sell the Sizzle, Not the Steak” – Recruiters were Trained to Manipulate Students to Obtain Quotas

152. Recruiters followed a standardized protocol, which was designed by ESI’s corporate office, when calling leads and interviewing prospective students in an attempt to convince them to enroll at ESI. The procedure was drilled into the Recruiters at the commencement of employment, when each Recruiter submitted to a training program in order to uniformly learn how to recruit prospective students. Recruiters were taught to control students limit the information provided to them, and utilize levels of “pain” in order to lure leads into a campus visit and increase the chances of closing the sale.

153. During the training process, which lasted approximately one month, Recruiters were provided with materials to familiarize themselves with the school, the school programs, and to prepare for meeting with and enrolling “leads.” The training materials included a binder with information on the school and its programs, the student handbook, and career services information, such as “career wheels” which provided program and employment details used to determine which possible career avenues and correlated programs “sparked” the potential students’ interests. The career services information provided also included purported facts about the employment possibilities for each program and related salary information.
154. The training materials also included a PowerPoint presentation created by ESI’s corporate office, which was essentially a “script” used by the Recruiters as a tool for enticing students to enroll at ESI. According to CW 10, the sole purpose of the script “was to get the sale.” CW 10 summed up the ESI script and the Company’s relationship with prospective students by stating the Company acted “like a bully.”

155. As part of its induction of Recruiters, Defendants mandated “Effective Phone Techniques” that relied on “control,” aggressive sales tactics and, among other things, stated:

- **Maintain control** of the phone call.[.]
- **Sell the “sizzle,” not the steak** – Understand “why the student is wanting additional education[.]
- Script-Conversational tone, matching the prospect’s excitement. The conversation sound natural, not rehearsed, and the pace is suitable.
- Name Frequently Used- Using the name helps **establish control** and obtain rapport quickly.
- Overcomes Obstacles if Applicable – Rep is utilizing techniques such as third party, direct, and collective approaches. Showing effort to **neutralize objections**.
- **Sells the visit not the school** – Rep should be eliminating detailed information such as degree programs, curriculum, class schedules, etc[.]. “**Do Not Sell the Farm.**”

156. Defendants’ “Effective Phone Techniques” amount to nothing more than effective manipulation techniques suited for high-pressure sales situations, not as Chairman Harkin stated, “a sound method for enrolling students, or a reasonable way to run a college.” See supra at ¶6.

157. Recruiters were required to memorize the script “line by line” before they were allowed to begin interviewing and enrolling students, but they needed to ensure the information they provided to prospective students did not sound scripted. If Recruiters did not get it “word

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14 A true and correct copy of ESI’s internal “Back to Basics: Effective Phone Techniques,” is attached hereto as Exhibit G.
for word” or made too many mistakes, they had to continue practicing the recital of the presentation until they had it completely memorized and could deliver it flawlessly. According to CW 2, the PowerPoint presentation simply “could not be deviated from.”

158. In order to ensure the Recruiters could “master” the PowerPoint presentation and uniformly deliver presentations to prospective students, Recruiters were coached by Recruitment Managers and Directors on exactly how to improve the delivery of the PowerPoint presentation. For example, CW 2 coached Recruiters by role-playing, during which the Recruiters practiced interacting with potential students. Every aspect was coached, from the greeting and a “firm handshake a verbatim recital of the PowerPoint presentation, a tour of the campus, and then an interview” with the prospective student.

159. At the end of the training period, Recruiters were required to video tape themselves reciting the PowerPoint presentation. On the video tape, the Recruiter engaged in role-playing, in which one Recruiter posed as a prospective student and the other acted as a Recruiter attempting to enroll the student. In total, the PowerPoint presentation was approximately 30 slides in length, and took approximately an hour to an hour and a half to deliver depending on whether prospective students asked questions. Once the new Recruiters perfected the recital of the presentation and were able to recite the entire PowerPoint presentation verbatim, without any mistakes, the final video tapes were reviewed by the Recruitment Managers, Directors, and ESI’s corporate office.

160. If personnel reviewing the video tape at the corporate office approved the Recruiter’s delivery of the PowerPoint presentation and appearance -- that is, once it was “exactly” how ESI wanted it to be -- then the Recruiter was considered “certified” and was allowed to begin contacting potential students to schedule interviews and enroll students. These meetings with prospective students, known as “conducts,” took place in small “conduct rooms,”
during which the Recruiter met with prospective students and presented school and program information with the aim of enrolling the students. The “conducts” entailed “verbatim” recitation of the PowerPoint presentation and the use of materials given to the Recruiters in the binders.

161. While the PowerPoint presentation was divided into two parts, one part focusing on ESI and the other focusing on the student, CW 10 stated the ESI enrollment script “was playing on emotions.” Through the script, CW 10 described that there was a lot of “emotional tugging that we were expected to do.” For example, script contained ESI’s “mission statement” to “provide quality education to students of any background” and boasted about ESI’s success. The script then included detailed information such as ESI’s history, campuses, number of graduates, programs, classes, class sizes, a brief overview of the financial aid process, and what students could potentially earn in specific fields of employment in which they might choose to train at ESI, as well as information regarding how ESI would “help with [job] placement” and the Career Services organization.

162. In addition to CW 10, numerous Confidential Witnesses provided information supporting the allegations herein regarding the ESI’s use of the standardized PowerPoint presentation and “script” utilized to convince and manipulate prospective students into enrolling at ESI, including CW 2, CW 3, CW 5 CW 7, CW 8, CW 10, CW 12, CW 15, CW 16, CW 19, CW 20, CW 24, W 29, and CW 30.

   a. The “Funnel of Pain” – Congratulations You Made Them Cry - ESI Manipulated Prospective Students to Induce Them to Enroll

163. As documented by the HELP Committee, internal ESI documents, and a host of Confidential Witnesses, student recruitment at ESI was a very manipulative process. For example, a large portion of the PowerPoint presentation focused on the prospective student – not
ESI’s schools – and contained scripted language designed to solicit information from prospects so that ESI could prey on their vulnerabilities, fears, and “pain.” Recruiters were expected and instructed to zero in on the “pain” that was inspiring the decision for the prospective student to return to school. Examples of such “pain” included needing a new job, improving standard of living, and being a role model for family members. Recruiters were also trained to reinforce to prospective students that they would not earn as much money or receive a promotion if they did not obtain a college degree from ESI.

164. Numerous former ESI employees recalled that they were instructed to prey on pain. CW 24 confirmed the Recruiters were trained to “jump on” any “pain” that the potential students conveyed as being part of their motivation to attend school. Similarly, CW 15 reported being instructed to “feel their pain,” meaning to find out the prospective students’ vulnerabilities and to play on those vulnerabilities in the recruiting process. Admissions Director Haigh frequently congratulated Recruiters if they could get prospective students to cry. CW 15 recalled that if there was “anything” that made prospective students feel vulnerable, Recruiters were trained and expected to “keep bringing that up.”

165. The script was also clearly designed to pressure prospective students. For example, CW 15 recalled that if prospective students balked at the cost of tuition, the Recruiter was encouraged to say things along the lines of, “What are you doing now? You’re not working. Isn’t being in school better?” or some kind of similar statement customized to attack the pain of the student’s personal circumstances. CW 8 confirmed that part of ESI’s script included a “recruiting pitch” based on the so-called return on investment students would realize by attending ESI. According to CW 8, ESI’s script was “such a sales job.”

166. Indeed, on February 7, 2011, ESI’s standardized, manipulative recruiting techniques that focused on levels of pain were brought into focus and addressed by Chairman
Harkin on the floor of the U.S. Senate as being representative of the worst abuses in the for-profit education industry. See supra at ¶¶3-6; see also Exhibits A-D.

167. In addition to the Confidential Witnesses listed above, Chairman Harkin’s statements, and the internal ESI documents attached to this Complaint, Plaintiff’s allegations regarding ESI’s focus on “pain,” making students cry, and the like are further supported by the corroborating accounts of CW 12 and CW 19.

(2) ESI “Played Word Games” – Defendants’ Misrepresented Services Provided, Transferability of Credits and Accreditation to Lure “Leads” to Enroll

168. In addition to “focusing on the pain,” the Power Point presentation or script required Recruiters to make misrepresentations to students. CW 10 described these tactics as “fraudulent.” For example, the script described how students would receive support once enrolled at ESI, including a telephone number students could call any time for tech support, help with computers, tutors, etc. But CW 10 recalled, “that never happened” because “support was never available.” CW 10 recalled many instances in which students she/he enrolled complained about the lack of support because it was not anywhere near what was told to students during the enrollment process.

169. Similarly, the script outlined the career services students would receive at the Online Campus, but according to CW 10, these representations were also “fraudulent” because ESI “didn’t have any of the services in place that they were promising.” According to CW 10, many students dropped out of ESI because they were not getting what was promised. CW 10 summarized her/his sentiments by stating she/he “didn’t have a lot a faith in the script.”

170. One of the primary ways ESI misled students was by misrepresenting the transferability of credits. In that regard, CW 24 believed the script required Recruiters to mislead students regarding the quality of education at ESI. Recruiters were not allowed to tell
prospective students that the credits they earned at ESI were “not transferable” to most other State or local colleges. Instead, ESI “played word games.” The script discussed transferability of credits to other ESI campuses and programs, but failed to disclose the lack of transferability of credits to schools other than ESI was not addressed. Instead, ESI touted its national accreditation (omitting that ESI did not have the much more valuable, and useful regional accreditation) and its script said the transferability of credits was “up to the receiving institution.” ESI misled students in this way even though it was widely known within ESI that a vast majority of other institutions did not accept credits from ESI. According to CW 30, within the last six months, ESI added “fine print” (an essential admission of wrongdoing) to the PowerPoint presentation given to students about the ESI credits not being transferable to other institutions – but these after-the-fact disclaimers were added only because of recent government scrutiny.

171. For example, CW 26 was told by an ESI Recruiter that ESI was nationally accredited, but was never told that any credits she/he earned at ESI would not transfer to another school. CW 26 is “outraged” that ESI did not have proper accreditation to transfer credits to regionally accredited schools and that the two-year degree she/he earned at ESI is worthless. CW 25 also believes the two-year associate’s degree she/he obtained from ESI’s Henderson, Nevada campus is “worthless.” Like scores of other ESI students, CW 25 was told by an ESI representative that the credits she/he earned at ESI would transfer to another school if CW 25 wanted to go on to obtain a bachelor’s degree. After earning an associate’s degree at ESI, however, CW 25 contacted the University of Nevada-Las Vegas and was told ESI credits were not transferable.

172. Similarly, CW 27 met with Recruiter Michael Duell who told CW 27 that ESI was accredited. Further, CW 27 specifically asked whether the credits earned at ESI would transfer to the University of Toledo and the response CW 27 received from both Duell and other
ESI officials was "yes." CW 33 was also told ESI was accredited, which, like other students, was a selling point for CW 33. ESI billed itself as being "accredited nationally." CW 33 has since tried to pursue a master's degree at the University of Central Florida, but was told that none of the credits earned at ESI would transfer and she/he would have to re-enroll as a freshman to receive her/his bachelor's degree prior to entering a master's program. Likewise, CW 37, who intended on transferring credits earned at ESI’s Dayton, Ohio campus to a school in Alaska, was "expressly promised" by a ESI Recruiter prior to enrollment that ESI credits would transfer "anywhere." These empty promises, unfortunately for ESI students, were part of the Company’s standardized practices, which left students like CW 33 holding worthless degrees backed up by in excess of $100,000.00 in student loans.

173. ESI Recruiters were also instructed to mislead students by refusing to answer any questions about financial aid during the enrollment process. CW 2 advised Recruiters not to discuss financial aid and CW 12 confirmed Recruiters were discouraged by ESI's management from discussing financing of their education. According to CW 18, Recruiters were required to follow the script and not answer any questions over the phone, especially regarding the cost of tuition. Instead, Recruiters were instructed to "dance around" the questions to get leads to enroll. Simply put, ESI manipulated prospective students into enrolling at ESI and would not discuss financial aid until the student was enrolled.

174. Despite ESI's policy not to discuss the true facts regarding financial aid, ESI Recruiters would purport to address it in order to further mislead prospective students into enrolling at ESI. For example, CW 34 recalled that Recruiters promised prospective students "the sun and the moon." In other words, Recruiters promised students that their tuition costs would be completely covered by financial aid and that they would easily be able to afford student loan payments with all the money they would earn upon graduation. CW 34 stated that
Recruiters "flat out lied" to students to get them to enroll. All of these tactics were utilized by Recruiters so that they could meet ESI's internal enrollment quotas.

3. At ESI "Being Deceitful is Rewarded" - ESI Engages in a Pattern and Practice of Unethical Behavior to Meet Quotas

175. The pressure to meet or exceed quotas, discussed in detail herein, was enormous, and fostered an well-known environment within ESI where Recruiters routinely engaged in unethical behavior to enroll students. For example, CW 10 recalled that intense pressure to "maintain status" led Recruiters to engage in a variety of unethical practices, including signing paperwork themselves. These, and other, blatantly unethical tactics were encouraged by ESI management. According to CW 19, ESI management wanted CW 19 to tell the prospective students lies in order to boost enrollment numbers. Put simply, CW 19 was expected to be "deceitful" and stated that at ESI, "[b]eing deceitful is rewarded."

176. Deceit was also encouraged in ESI's financial aid department. According to CW 41, ESI's Financial Aid Coordinators were instructed to misrepresent, omit, or lie about financial, aid and not to get into "details" when discussing financial aid with students in order to make them "sign up for loans" so that the Financial Aid Coordinators could meet their quotas.

177. Indeed, CW 42 confirmed that Financial Aid Coordinators were instructed not to discuss lending details with prospective or existing students, including the terms of the private student loans, which had astronomically high interest rates from a low of 28% to a high of 48%. The rates were so high that CW 42 recalled talking to parents of a student who had borrowed approximately $6,000 for tuition and estimated the payoff after a five-year period was more than $100,000. Similarly, CW 33, who attended ESI for approximately 4 years, incurred debt exceeding $100,000. CW 33 was never told the interest rates on her/his loans, or that payments would be approximately $1,000 per month. According to CW 42, when Financial Aid Coordinators expressed concern about the Company's predatory interest rates or that students
were being rushed through important lending information, the Financial Aid Coordinators were informed that they were being negative and should not work at ESI.

a. Students Attending Class for One Day Count as Enrolled

178. For example, Recruiters were able to meet their enrollment quotas and ESI was able to manipulate its enrollment numbers, with complete disregard for either the educational or financial well-being of students, by encouraging them to attend class for just one day. A student who enrolled in school and actually “posted positive attendance” in the first class, was defined as a “new start,” and was considered a “full sit” or enrolled by ESI. Recruiters, therefore, received credit for enrollments so long as the student attended one class. Even if the students signed in and left before the end of the class, the Recruiters, and ESI would get credit for the enrollment. Recruiters advised enrollees to just attend the first class and see if they “liked it.” Similarly, in the Online campuses, the students simply had to “log onto their first class” to be counted as an enrollment for admissions purposes.

179. Thus, according to CW 24, ESI simply was “not starting students” at the rate Defendants represented to the investment community, given the number of students that dropped out after enrollment. For example, CW 24 stated if the Miami campus “sat” 200 students in a quarter, 30 would attend for only the first day, 50 of them would be gone in a week, and after a month, “100 students would be gone.” In other words, the drop-out rate was 50 percent.

180. The pressure to meet enrollment quotas and report substantial enrollment growth to the market was so high that at least two top management employees, Ray and Rumschlag, enrolled former ESI employees and friends to meet enrollment quotas. According to CW 10, the practice of enrolling what amounted to bogus students “had gone on for two years.” Rumschlag, as well as the Registrar, the Campus Director, and a newly hired Director of Admissions were ultimately fired for allowing campus staff to enroll in classes. But, because students had to
attend only one class for the Recruiter to count that student toward their enrollment quotas, these “students” were enrolled and then withdrew from class before owing any tuition. The Recruiters just had to get students to “sit in class for one day” in order for the enrollment to count toward their quotas. According to CW 5, if the enrollees did not “like it,” they could drop the class and would typically only owe something like $100 for that first day of class. If the enrollees attended for a whole first week of classes, they typically “owed for the whole quarter.”

181. Likewise, Recruiters at the “Master” level manipulated enrollments to meet quotas and retain their master status. For example, according to CW 18, Steve Litvine consistently enrolled students who ended up dropping out after the first class or the first few classes. Some of these students were told by Litvine that they could attend classes to see if they liked them. CW 18 recalled how students felt they were lied to and did not want to pay what ESI claimed they owed.

182. Similarly, Belinda Walker enrolled friends and relatives to meet her enrollment quotas. Those people would also drop out after one class. Recruiters complained to Manager of Recruitment, Stewart, and Director of Recruitment, Kenty, about Litvine and Walker. According to CW 18, the Company’s Recruiting Manager and Director knew Litvine and Walker were doing unethical things and it “didn’t matter.” The response from Stewart and Kenty, on several occasions, was “[t]hat’s just Belinda” or for Litvine, “[h]e gets them in here.” CW 18 said it was clear that Walker and Litvine were “untouchable” because they enrolled so many students and it did not matter whether those students stayed at ESI. It only mattered that they showed up for one class and could be reported as enrolled at ESI.

183. The allegations herein regarding ESI’s misleading practice of reporting students as enrolled even if they attended for just one day were corroborated by several Confidential Witnesses, including CW 2, CW 5, CW 10, CW 11, CW 13, CW 24, and CW 38.
b. ESI Would Enroll Students Past the Start Date of Each Semester, Setting Them Up For Failure, In Order to Meet Enrollment Quotas

184. Rather than turning away or postponing the enrollment of students the Company knew would be incapable of succeeding, ESI required Recruiters to enroll students as many as two weeks past the start dates for each quarter in order to meet enrollment quotas and boost reported enrollment. For example, CW 1 reported that at the San Bernardino Campus, Recruiters enrolled students as late as the third or fourth week, or even as far as five weeks into an 11 week program while CW 1 was teaching. CW 1 stated the late enrollment practices at ESI were “deplorable.” Indeed, students who were enrolled after the start date were counted as part of total enrollments for that particular quarter.

185. Likewise, the pressure to make enrollment numbers was so great that CW 2 recalled the Regional Director contacting CW 2 to ask whether there were any students that could “start before 12:00 noon on the last day of the second week of the quarter” because enrollment numbers had to be attained.

186. The students who enrolled after the start date had to play “catch up.” But, it was impossible to get students who enrolled late caught up in ESI’s already condensed courses. More often than not, it was too difficult for the students who enrolled after the start date to catch up and they ended up “dropping and re-enrolling” in another quarter. CW 2 confirmed it was difficult to get the late starting students up to speed and the Company’s late enrollment practices contributed to the drop out rate at ESI. For example, CW 5 learned through discussions with the Program Chairs at the Louisville campus that the drop out rate may have been as high as 50 percent.
187. CW 3 recalled during 2008 that CW 3 enrolled “two buddies who just came out of jail” in a computer networking program after the start date for the quarter. Both students ended up “dropping out” because they were so far behind and were unable to “catch up.”

188. Similarly, when CW 5 gave notice of resignation on the last day of May, before the start of the “June quarter,” Director of Recruitment, Alcorn, asked CW 5 to stay for the entire next week in order to continue to enroll students past the start date to attain the enrollment quota.

c. ESI Deliberately Enrolled Students the Company Knew Were Not Prepared to Succeed in School

189. As detailed by the accounts of many Confidential Witnesses below, ESI had little to no admissions standards. Rather than seeking students likely to succeed, Defendants sought students who could be manipulated into enrolling and taking out large amounts of federal student loans. According to CW 6, ESI knew the Recruiters in charge of enrollment were “very creative” in order to “make the numbers provided to them each quarter.” That is, ESI enrolled a significant number of students who should have been told “thanks, but no thanks” because they were not “college material” for a variety of reasons. Expressing this sentiment, CW 1 was concerned that a significant number of students at ESI’s San Bernardino campus “should not have been in college.”

190. For example, many of ESI’s students had criminal histories, they were parolees, or had misdemeanors or felonies on their records. According to CW 1, one Admissions Representative “set up shop” at the Parole Office in San Bernardino to recruit students. CW 1 recalled the problems was so severe that as many as 60 percent of the students at the San Bernardino campus were on probation, parole, or had a misdemeanor or felony on their records. While teaching, CW 1 noticed that a number of the students had literally been out of jail from charges such as assault or rape for two weeks and then began school at ESI. These students, being recently released from jail, were not prepared to attend school and succeed in the fast-
paced courses at ESI, both from a psychological perspective and from an academic skill set perspective. Yet, ESI knowingly enrolled them to report positive results to the market.

191. CW 3 confirmed many of the potential students were not qualified to attend college, including “students on house arrest,” with felonies, and criminal records. CW 20 stated at least 20 percent of students at the Lake Mary, Florida campus had criminal backgrounds.

   d. ESI Offered “Temp Credit” to Provide Students With Financing to Attend ESI

192. Facing the loss of private lending in 2008, and in order to aggressively boost enrollment numbers and meet ESI’s quotas, the Company created its own financing program known as the “temp credit” program, whereby ESI gave students “temporary credit” to enroll and attend ESI. The “temp credit” program was designed to “get students in school,” to get them approved and packaged, but the students still owed money “on the back end” after they graduated or dropped out of ESI. According to CW 16, the “temp credit” program was “false money.” It was a corporate driven loan initiated by Modany and issued to students at a “high” interest rates that was misleading to students because they were “not getting the disclosures” regarding the terms of the credit agreement at the time they entered into the agreement.

193. According to CW 34, the standards for issuing “temp credit” to students were “really relaxed” in order to allow the ESI campuses to attain enrollment quotas. ESI let “pretty much anyone into” the “temp credit” program. Further, even if the student “failed the application process,” meaning she/he was denied “temp credit,” the Financial Aid Coordinators were trained to “go to the [Finance] Manager” and “present the case.” According to CW 9, ESI’s corporate offices “always approved” students who applied for “temp credit,” including those students whose applications had initially been denied through the ESI internal “temp credit” application system. According to CW 34, nearly every student who applied for “temp credit” at the Troy, Michigan campus was granted “temp credit.” There were essentially no
qualifying parameters or criteria used to evaluate a student's credit worthiness for the "temp credit" program.

4. **Just as Defendants Knew ESI Manipulated Enrollments Through High-Pressure Tactics, Defendants Knew ESI's Graduation Placement Rates Were Consistently and Artificially Inflated**

194. Throughout the Class Period, Defendants touted ESI's ability to find its graduates employment with a salary commensurate to the value of their ESI educations, the so-called "return on investment." To that end, Defendants reported to the market the specific percentages of ESI graduates that purportedly secured employment from each graduating class. As with recruiting, however, ESI's Career Services Department was all about hitting quotas instead of helping students find meaningful work. Indeed, the Career Services Department's primary role was to lend credibility to the ESI brand by allowing Defendants to claim large numbers of successful graduates working in their fields of study. But, as Defendants knew, the numbers ESI reported were neither realistic nor accurate. Indeed, Defendants oversaw an institution that trained its employees to "stretch" job placement numbers and expected them to manipulate employment statistics. Despite Defendants' Class Period statements that purported to present credible information to the market, the truth was that the Company, from the start of the Class Period, was manipulating information received from students to ensure that they could be listed as "gainfully employed" for the purpose of the Company's statistics.

195. Not only were these actions, detailed below, not discouraged by ESI management, they were expected, required, and mandated from the top-down. Specifically, at all relevant times, the rate at which ESI placed its graduates in jobs was a "concern" for Modany. According to CW 6, Modany scrutinized the placement rates and there was an ongoing and concerted effort to boost the placement percentages because of Modany's continued involvement. As with recruiting, the placement mandates resulted in a high-pressure environment where numbers ruled
supreme over all other considerations – there was intense pressure to achieve high placement percentages and to ensure that the Career Directors were doing “everything possible” to meet ESI’s internal placement requirements.

196. Placement rates were a “big issue” at ESI because negative performance in the area of placement put accreditation at risk. By extension, these risks to accreditation translated into risks to Title IV funding because ESI would lose its Title IV funding eligibility if ESI was not accredited. To that end, the ACISC requires ESI to maintain a placement rate of 65 percent. Internally, however, ESI mandated a placement rate of 80 to 85 percent because Defendants knew it was a valuable tool for recruiting purposes – by promising high-paying jobs upon graduation, ESI had an easier time manipulating potential students into enrolling. Thus, for every quarter’s graduating class, the placement rate was supposed to be calculated and monitored based on the percentage of students employed out of the number of students graduating.

197. ESI reported its placement rates to ACICS on September 15th each year. If a campus was not able to attain the required 65 percent placement rate, the campus went on “reporting” for a one year period until September 15th of the next year – the next reporting period. To be on “reporting” meant that the campus was essentially on probation and could not add any new programs during the probationary period. Going on reporting entailed repercussions from the accrediting body and ongoing scrutiny and monitoring, and meant that the Company’s Title IV funding was at risk. According to CW 1, “you never want to go on reporting” with the accrediting body.

198. During the Class Period and despite the fraudulent tactics described below, not only did the majority of ESI’s campuses struggle to attain the corporate target placement percentage of 80 percent, but they also – unbeknownst to the market – struggled to attain the placement rates required by the ACICS.
b. To Report Positive Graduate Employment Statistics to the Market, ESI Regularly Engaged in the Practice of "Stretching" Placements

199. It was standard practice within ESI to engage in a manipulative and deceptive career placement practice that the Company referred to as "stretching," which resulted from intense pressure to meet corporate placement quotas.

200. In that regard, CW 20 recalled the pressure to attain corporate placement targets was so intense that the Directors of Career Services had to be "creative" with job descriptions and criteria. The Directors of Career Services were evaluated, in part, on their ability to grow placement percentages, but the economy did not permit such growth. As such, the placement targets were unrealistic and unachievable. Therefore, ESI inflated job placement numbers. One way the Career Services Department "fudged the numbers" was by being over-inclusive in determining when employment was "related" to the ESI curriculum.

201. Specifically, the ESI Career Services policy and procedures manual dictated that a related placement was one in which the graduates were placed in jobs where their responsibilities required them to use the skills they acquired at ESI from 20 to 49 percent of the time. If the graduates used at least one of the skills from their program of study at least 50 percent of the time, the policy and procedures manual qualified the employment as being "fully employed in the field of study." According to CW 39, "if there was anything" that could be identified in a graduate's daily job tasks that related to just 20 percent of one class the graduate took at ESI, the placement was deemed to be "in a related field."

202. Beginning in 2008, there was mounting pressure to report increases in starting salaries and to attain the corporate placement target of 80 percent, even though student placement was becoming increasingly difficult. According to CW 20, Career Services was "put under the gun to stretch the placements." That is, Career Services was advised by District
Managers, the National Career Services Director, and corporate Vice Presidents to “stretch the criteria” to make it look like there were more “legitimate placements.” The term “stretch” became a “buzzword” within ESI that was used on weekly Career Services conference calls and regular District conference calls during which the Career Services function was discussed.

203. This practice was not only known to, but was encouraged by the Defendants. For example, Modany attended the District conference calls during when the term “stretch” was used to describe the process of using lax “standards” to categorize the jobs in which graduates were placed to make it appear as if the graduates were working in career fields related to their courses of study at ESI. According to CW 20, the term stretch was used on a majority of the district conferences calls and “everyone from corporate” used the term “stretch” at one time or another. CW 20 recalled that stretching was discussed so often internally that it seemed as if it was the “word of the day.” Indeed, CW 20 recalled that Lynn informed the Directors of Career Services that they needed to “stretch the job orders” in Modany’s presence.

204. In 2009, ESI even maintained a Career Services employee “portal” where Career Services Administrators at the corporate office posted examples demonstrating how placements could be “stretched” to make it appear as if graduates were working in related fields of employment. For example, CW 20 recalled the Career Services employee portal instructed the Career Services personnel that placing students who graduated from ESI’s digital entertainment program in positions at GameStop, a retail store where video games were sold, should be categorized as working in a “related” placement.15

205. Despite literally selling video games in a retail environment, ESI graduates were categorized as working in a “related” field. ESI regularly did this even though the GameStop

employed graduates performed only minor sales functions such as ringing the cash register and no degree was needed for employment with GameStop. The skills developed through the digital entertainment program simply were not applicable to the positions ESI graduates had at GameStop, and similar employment positions. CW 35 likewise recalled that some students who graduated from the game design program were counted as being employed in their field even though they were working at minimum wage jobs in the GameStop video game store.

206. In another example, CW 20 recalled the Career Services employee portal instructed ESI Career Services personnel to “stretch” the placement of graduates working at Victoria’s Secret as being “related” to multimedia and visual communications program of study because these graduates were tasked with “changing the mannequins.” Meanwhile, the mannequins at Victoria’s Secret were dressed in accordance with a Victoria’s Secret’s corporate “planogram” that dictated how the mannequins should be dressed, in what outfits they should be dressed, including the color of the clothes in which they should be dressed, and where in the display the mannequins should be placed. Despite knowing this, ESI would report these graduates as successfully placed.

207. Likewise, CW 39 reported that a graduate working as a pharmacy technician at Walgreens was classified as working in a field related to computer aided drafting, and a graduate working in a mall kiosk designing and selling T-shirts was classified as working in a field related to computer aided design because the graduates took a Photoshop class as part of their ESI programs.

208. The practice of “stretching” placements to make it appear as if the placement percentages were increasing and ESI was actually finding employment opportunities for students in their areas of study was not an acceptable standard. Its sole purpose was to report positive
placement statistics to the market, and Defendants were well aware that it violated ESI's own internal policy on related placements, as well as the Ethics Code.

209. The Directors of Career Services not only were required to "stretch" the positions in which students were placed, fraudulently reporting that the placements were related to the career fields of graduates, but also employed other measures to make it appear as if the placements were increasing. For example, according to CW 20, there were Directors of Career Services who "browbeat" students into accepting and admitting that the positions in which they were being placed were somehow related to their fields of study in order to "get the placement counted," when the placement was actually not at all related to the student's career fields.

210. In late 2009, ESI (essentially admitting its fraudulent acts) was forced to change its fraudulent graduate placement tactics because, according to CW 7, the Company knew it was going to be "scrutinized by ACICS and the Feds." For example, CW 7 recalled that Career Services personnel at ESI's Lexington, Kentucky campus underwent an internal audit on placement categories requiring the Career Services Department "to go through all the files" to determine whether each student had been placed in a job that utilized the student's ITT education. CW 7 stated the audit uncovered that the Company had been "very lax" on what was "related" employment. These important facts, however, were never disclosed to investors.

211. Similarly, CW 17 recalled that in 2009, ESI's Career Services Department at the Lathrop, California campus was undergoing a "huge audit" because the previous Director of Career Services, Sabrina Chapman Hunter, had been over-inclusive in determining which employment was "related" to the ESI curriculum. According to CW 7, ESI knew that if the Company was audited by ACICS or the DOE, the Company would be in "big trouble."

212. CW 7 stated that prior to the change in procedure, a former student was counted as obtaining employment in a field "related" to ESI studies as long as the student was utilizing
“one” of her/his “core classes. As a result of the internal audits, in late 2009, the Company temporarily became much more stringent on the guidelines for what was considered “related” employment. Both CW 7 and CW 17 recalled that the change in procedure required Career Services personnel to perform “course mapping,” meaning the Career Services personnel had to map the job description of the employer to the core classes of the student in order to determine that the student was placed in a job that utilized the student’s ESI education and could, therefore, be categorized as related. The course mapping took place on the Company’s internal General Employment Information, or “GEI,” Form.

213. According to CW 17, the audit caused ESI’s placement numbers to drop “considerably.” The impact of the audit and the corresponding drop in placement figures was that “there was a lot of pressure to “get our numbers back up.” CW 36 confirmed that placement rates dropped after “the tide changed,” when the focus moved from stretching placements to “doing things correctly.” According to CW 36, placement rates, which were in the “low 60” percent range in December 2009, “dropped down into the 40s” after the internal audit. Given the tough economy, however, CW 17 stated that instead of continuing to report declining employment figures, ESI’s placement numbers started just “getting fudged again.”

214. In addition, and contrary to Defendants’ Class Period statements, there was so much pressure on meeting enrollment numbers and placing students after graduation that no consideration was given to the students’ abilities to afford their student loan payments. According to CW 20, there should have been “some concern” about students’ abilities to repay their student loans, especially given some of the starting salaries.

215. For example, the graduates employed with GameStop made approximately $8.50 per hour. Similarly, the salaries earned by security guards were “not conducive to repaying a $40,000 student loan,” which was the typical size of a loan students completing associate’s
degrees in criminal justice at ESI incurred. According to CW 36, the graduates were not earning any more than they had been earning prior to attending ESI, but they were now faced with “astronomically high” loan payments. CW 39 confirmed that few of the graduates were in better employment situations than they were before they graduated from ESI. CW 1 saw students “crying” because they had paid for a $87,000 criminal justice bachelor’s degree with student loans, and had student loan payments of $800 per month, with a job that paid $9 per hour – there was no way for the students to make their required student loan payments. Despite this regular occurrence, Defendants always touted the “value proposition” of an ESI education to the market.

a. ESI’s “At Any Cost” Recruitment Practices Required ESI’s Career Services Department to Place Students Who Were Not Qualified for Employment

216. As a result of intense internal pressure to report positive placement results, which were used to further ESI’s manipulative recruiting tactics, many of ESI’s Career Services personnel undertook, and were both asked and expected to undertake, various other unethical practices to increase placement percentages. CW 4 recalled being uncomfortable with what she/he was being asked to do, such as “go door to door” to potential employers and even to “sneak into offices” and try to “bump into human resources personnel in order to develop new employer leads.” According to CW 4, ESI’s tactics were so severe that its Career Services personnel were often thrown out of buildings by security.

217. The extreme emphasis on both enrollment numbers and graduate placement numbers created internal conflicts within ESI, specifically between the Admissions Department and the Career Services Department. Put simply, the Company’s aggressive recruiting tactics – which were driven by quotas – often left the Career Services department “stuck” with students that were virtually unemployable.
218. CW 4 recalled examples when the Company would send former ESI students to jobs for which ESI knew the students were not qualified. According to CW 1, one reason the students were not qualified was that the Recruiters enrolled any type of student, regardless of whether the programs fit the students’ backgrounds or needs, in order to attain enrollment quotas. Therefore, the students were often not employable in the fields they trained. According to CW 1, the Recruiters “had to do what they needed to do” when there was not enough students and they “needed starts” to make budget.

219. One of many troubling problems within ESI was that the practice of targeting, recruiting, and enrolling students with criminal histories, including felons, caused conflict between ESI departments. Indeed, rather than disclose the truth to prospective students with criminal histories, ESI’s Recruiters wanted “butts in the seats” to fulfill their quotas. The Company’s solution was to simply omit the truth during the sales (recruiting) process. These students were often enrolled into the Criminal Justice program at ESI, which “frustrated the hell” out of CW 1 and her/his Career Services team members.

220. CW 1 recalled how prospective students with criminal backgrounds would come in and say, “I want to be a Crime Scene Investigator ("CSI") like I see on TV.” ESI’s Recruiters then, without exception, enrolled the students in ESI’s criminal justice program. But even if the students with criminal histories completed the criminal justice program, they would not be eligible for State or Federal employment opportunities because they would be unable to pass a simple background check. Instead, the students with criminal records were only eligible for security guard jobs that had an average pay of $9 per hour, substantially less than a State or Federal government employee in the criminal justice field. According to CW 20, in some cases, even the security guard positions were off limits to students with criminal backgrounds.
221. According to CW 36, it was difficult to find employment opportunities for the students that had been involved in “crimes and violence.” For example, CW 4 recalled specifically that she/he was tasked with placing a student with an ESI criminal justice degree that had served time in prison for murder. CW 4 was also tasked with placing a student with an ESI criminal justice degree that had five DUI’s and no driver’s license, yet CW 4 was told by ESI “to push him to police departments.”

222. Criminal records also caused problems for students in the Nursing Program in Indianapolis. For example, prior to doing clinical work at hospitals, students would have to get a background check. Hospitals, however, will not employ persons with a criminal background. Therefore, CW 8 attempted to institute a policy requiring background checks for all of the Nursing School applicants because the clinical program typically occurs after the student’s first quarter. CW 8 recalled instructing Modany that background checks were required, but “Modany would not allow it.” According to CW 8, Modany stated it was discrimination to require the background check, but CW 8 stated all Modany really cared about was “butts in the seats. He doesn’t give a shit about the students.” Rather than allowing the background check following the first quarter, Modany forced CW 8 to change the curriculum so that students would not do any clinical work until after their third quarter, so that ESI “got three quarters of fees out them.” CW 31 confirmed ESI refused to administer background checks on potential students until two weeks prior to the student entering a clinical and that, by that time, the Company had taken “three quarters of tuition.” CW 8 emphasized “nothing happened at ESI without [Modany] approving it.”

223. Similarly, the Company’s Lathrop, California campus Career Services Department also had a particular problem with placements because a number of its students had criminal backgrounds. According to CW 17, toward the end of 2009, the Career Services
Department “tried to get Recruiting to do background checks” as part of the admission process for prospective Criminal Justice program students, but “Recruiting didn’t want to do it – and that won out.” Put simply, enrollments were what mattered most at ESI – if background checks could potentially reduce new enrollments, then they simply would not be done.

b. “We Were Told to Lie and Not Worry About the Long Term Relationship” - ESI Graduates Employed for Only One Day Were Counted as Employed

224. Additionally, ESI’s policy was to count former students that were placed in a job for even a single day as employed within their field. According to CW 4, a graduate who worked for even one day, was “off the list” of students who needed to be placed.

225. Because of this Company policy, ESI employees regularly engaged in unethical, short-sighted practices in order to boost their placement rates. For example, CW 4 recalled that a financial services company that was a potential employer of ESI students ran background checks, but only after an employee had begun working. Therefore, ESI would push a student toward employment at the company, knowing the student would fail the background check, because as long as the student was employed for one day it counted toward ESI’s employment numbers. CW 4 recalled that the Company employees were “told to lie” and not worry about ESI’s long term relationship with potential employers. Thus, even when members of ESI’s Career Services department knew students were being set up failure, CW 4 recalled that the prevailing internal sentiment was “oh well, we got our number.” CW 4 recalled that ESI was not making its placement numbers and “we were sending out people for jobs which at we knew they would fail – just to have them employed for one day in an attempt to meet internal placement numbers.”
c. The Student Success Ratio was “By Far, the Worst Thing I Saw At ESI” - ESI Encouraged Grade Inflation Tactics as a Method of Maintaining Enrollment, Resulting in Graduates Who Were Unqualified for Job Placement

226. ESI’s policy on grading students also created conflict within ESI because the system for evaluating teachers at ESI led to fraudulent practices. Instructors were evaluated on the “student success ratio” meaning the instructors’ evaluations were derived from the grades the instructors gave to students, the instructors’ pass rates, and the surveys that students completed. This created an incentive for the instructors to let students “slide” and give students better grades than they deserved. As a result of this evaluation system, grade inflation was rampant at ESI. In CW 32’s opinion, the student success ratio was “by far, the worst thing I saw” at ESI. Simply put, teachers were graded on students’ success, yet the students being enrolled at ESI were not prepared to earn success on their own accord.

227. Based on this system, a teacher who received negative ratings from only a handful of students would be terminated. Further, if an instructor had a number of bad grades in a particular class, then the instructor would not be allowed to teach the class in consecutive quarters. The raises and promotions for instructors were based on how well students performed. Therefore, according to CW 39, classes were “dummied down” to ensure that students with poor writing and communications skills would succeed and graduate from ESI.

228. CW 20 reported that grades were changed for students at the Lake Mary, Florida campus. For example, CW 20 performed mock interviews with students enrolled in the Portfolio and Professional Development to determine how much work the Career Services personnel would need to do with the students to get them prepared to interview with prospective employers and graded the students on their performance. In 2009, an instructor changed the grades CW 20 had given to the students.
229. This became a problem for Career Services because employers wanted to see the transcripts of SI graduates. Employers hired the graduates based on the students’ transcripts, which suggested that they had acquired the necessary technical skills and had an acceptable work ethic. When the graduates began their employment, however, the employers learned that the data in the students’ transcripts was misleading because the students had not earned their grades - their grades had been “handed to them.”

230. Additionally, it was part of the instructors’ jobs to try and lure back students who had dropped out of ITT or who had been dismissed from ITT for missing classes. According to CW 32, ESI aggressively pursued these students because they were “easy money” in that they already had their “financial aid all set.” Further, because instructors and/or chairs of academic departments were evaluated on the number of students they lured back, CW 32 recalled the instructors would do “just about anything” to get them back.

231. ESI employees engaged in a host of other unethical practices in order to maintain the Company’s enrollment and retention numbers. For example, according to CW 1, the way that the instructors were required to report attendance was “deplorable.” If a student was three hours late, the instructors were not permitted to mark the student absent. In addition, instructors were not allowed to report more than three absences in a row because of the consequences associated with attrition rates. Therefore, according to CW 36, even excessive absences were overlooked.

232. The above-allegations, based on the corroborating accounts of many well-placed Confidential Witnesses, are further corroborated and supported by the allegations in litigation filed against ESI on April 15, 2010, by a former ESI Director at the Lathrop, California campus, Jason Halasa, captioned, *Jason Halasa v. ITT Educational Services, Inc.*, Case No. 1:10-cv-0437 (S.D. Ind. Apr. 15, 2010) (the “Halasa Action”). The Halasa Action alleges that Halasa observed
ESI employees engaging in unethical practices to meet enrollment quotas, including altering attendance records, inflating grades, and reporting inaccurate job placement figures. It further alleges that ESI utilized an improper incentive-based compensation system and destroyed files that ESI was required to maintain by state and federal laws. Halasa allegedly reported his concerns over ESI’s egregious behavior to ESI management and the Company’s Director of Human Resources. As a result of his complaints over ESI’s fraudulent conduct and statutory violations, Halasa’s employment with ESI was terminated. As reported by Bloomberg on April 21, 2010, the complaint alleged “Halasa was attempting to halt conduct that was defrauding the federal government.”

d. Defendants Were Intimately Familiar With ESI’s Placement Rate Tactics

233. In approximately January 2009, every ESI school adopted a database placement rate tracking system called Career Services 360 (“CS360”). The CS360 database tracked placement rates of ESI graduates as well as related information. In late 2008 and early 2009, ESI’s Regional Directors visited each campus to explain the importance of the database and answer questions on its use.

234. The graduate placements rates and related data were entered on Excel-based spreadsheets in CS360 that documented each student and detailed the placement percentage for the campus, changes in placement rates from the prior reporting period, starting salaries, and whether graduates from each program were placed in related career positions, fully employed in their field of study, or not employed. The CS360 spreadsheet also detailed the number of outgoing phone calls and employer visits the Career Services personnel made during the reporting period.

235. The Director of Career Services for each ESI campus was required to fill in the CS360 spreadsheet on a weekly basis and submit the spreadsheet to the National Director of
Career Services. For example, CW 20 emailed the CS360 report to both Modany and District Manager Lynn on a weekly basis. Throughout 2009, CW 20 emailed the reports to them on a daily basis because of Modany's ongoing scrutiny of the placement rates. CW 20 knew that Modany reviewed the CS360 reports because CW 20 received a “read report” notification on the emails sent to Modany, signaling that Modany had opened the email containing the CS360 reports.

236. In addition, Modany regularly provided feedback to on the CS360 reports CW 20. For example, if there was improvement indicated in the report, Modany responded to the email noting that the campus had a “good week.” More often than not, in 2009 and 2010, the feedback Modany provided was negative. Most of the time, Modany pointed out that the campus was “missing the target” and that CW 20 “needed to re-evaluate” her/his efforts to determine what could be done to attain the Company’s internal, assigned placement target. Likewise, CW 6 was “certain” that Modany was frequently informed about the issues regarding placement rates. According to CW 6, placement rates were “one of the biggest issues” ESI had.

237. When ESI’s campuses failed to meet assigned rates, which happened with regularity, it was addressed within the Company. To that end, ESI held weekly conference calls for the campuses that were not attaining the required placement rate of 65 percent. The purpose of the calls were to provide updates to ESI’s corporate personnel regarding efforts to improve placement rates, including updates that were given directly to Modany. Each campus required to participate in the weekly conference calls to discuss low placement rates were allotted a 30 minute timeframe on the call. According to CW 6, the call participants “would go down the list” of each graduate who was not employed in her/his field of study. The Career Services personnel then explained the efforts to find jobs for the graduates and discussed the reasons why the graduates were not yet employed in their fields of study.
238. For example, CW 6 participated in weekly calls for non-performing campuses for approximately six weeks beginning in October 2008. The calls were led by National Career Services Coordinator Mitch Lederman ("Lederman"), who worked from the corporate office in Carmel, Indiana, and reported to the National Director of Career Services. The calls were also attended by the Director of Career Services, the Career Services Specialists, and the Career Services Coordinators. Similarly, CW 1 confirmed the Career Services Directors participated in weekly calls to discuss the substandard placement rates at the San Bernardino campus and to provide updates that went "to corporate" about the campuses placement rates.

239. In addition to the weekly Career Services conference calls, there were also quarterly district level conference calls to discuss placement rates. ESI's quarterly district level conference calls were typically attended by the Company's Campus Directors and Directors of Career Services. According to CW 20, although Modany had a "tight schedule," he attended "at least one third" of the quarterly district conference calls in 2009 and into 2010, and Modany sometimes led the calls.

240. During the quarterly conference calls, the Directors of Career Services were required to make presentations regarding how they were achieving placements, their placement projections, how placement numbers could be improved, corporate projections, and the target for the number of phone calls that the Career Services personnel were required to meet, including "cold calls" to prospective employers. The pressure to meet placement rates was evident in the quarterly district level meetings.

241. In addition to the calls, ESI campuses, which were divided into eight districts, were closely monitored by Modany and several of ESI's Vice Presidents, who were each assigned to different districts within the Company and were tasked with monitoring performance in the districts to which they were assigned. Modany and the Vice Presidents rotated their
assigned districts after two or three quarters so that they were each able to gain a comprehensive understanding of the districts. CW 20 stated this included the district’s “personalities,” how the districts were performing, and the factors impacting performance, such as the “business climate” of each district. During at least part of the Class Period, Modany was the group lead for the Southeast District, replacing retired Vice President John Hawthorne. Therefore, Modany was fully informed of the placement rates and placement tactics utilized not only in the Southeast District, but the entire Company.

242. In some instances, there were face-to-face meetings in lieu of the conference calls. For example, in February 2010, CW 20 and the other Southeast District Directors of Career Services traveled to Indianapolis, Indiana to meet with Modany regarding placement rates and Career Services practices. Modany also conducted quarterly operations reviews during which Modany, Feichter, and Simich traveled to campuses throughout the nation to gather insight on the campus’ operations.

243. For example, Modany traveled to the Lake Mary, Florida campus in June 2009 and again in June 2010 and conducted “operations reviews” at the Lake Mary campus once every six months. During the “operations reviews,” Modany met with Lake Mary Campus Director Mathus and CW 20 to discuss placement rates at the Lake Mary, Florida campus.

244. Likewise, according to CW 1, Modany traveled to the San Bernardino, California campus for “town hall meetings” and “went to each department” to meet with the Directors, as well as the Dean and the Program Chairs. During these meetings, Modany was updated on school statistics and issues, including graduation rates, attrition rates, and other information concerning the performance of the San Bernardino campus. According to CW 6, in June 2009, the Directors of Career Services and Campus Directors were “flying to the headquarters in
Indiana" to update Modany about placement rates and the effort to improve the placement rates at each of ESI's campuses.

245. ESI also had a Career Services Leadership Council, which consisted of Directors of Career Services chosen from each district who traveled to different campuses to assist with improving placement rates. Lynn provided the Directors of Career Services in the Southeast District, including CW 20, with an update on the student placement rates collected at corporate on a quarterly basis and a report that provided a break down of each campus' status regarding placements. As a member of the Career Services Leadership Council, CW 20 also discussed placement rates at other campuses with other Directors of Career Services.

246. In addition to the foregoing, the allegations herein concerning ESI's placement rates are based on the corroborating accounts of many Confidential Witnesses, including CW 1, CW 2, CW 4, CW 6, CW 7, CW 16, CW 20, CW 29, CW 32, CW 35, CW 36, CW 39, and CW 40.

247. The foregoing allegations provide telling evidence of both abusive career placement tactics, such as stretching, that were utilized to provide false and misleading information not only to the market, but also prospective students, as well as the Defendants' actual knowledge or reckless disregard of such improper, manipulative, and fraudulent behavior.

XII. DEFENDANTS' FALSE AND MISLEADING STATEMENTS ISSUED DURING THE CLASS PERIOD\textsuperscript{16}


\textsuperscript{16} In order to not just plead Defendants' false and misleading statements without any context, Plaintiff has attempted to provide the Court with context in this section by bolding and italicizing Defendants' statements Plaintiff contends are false and misleading.
to 21,807 compared to 18,270 in the third quarter of 2007. Total student enrollment increased 14.7% to a record 61,556 as of September 30, 2008 compared to 53,675 as of September 30, 2007. Earnings per share (“EPS”) in the third quarter of 2008 increased 30.6% to $1.28 compared to $0.98 in the third quarter of 2007. Revenue in the three months ended September 30, 2008 increased 16.7% to $254.3 million compared to $217.9 million in the third quarter of 2007.

249. The press release also contained Modany’s comments on the Company’s financial results in which he stated, in pertinent part:

In the midst of one of the nation’s most tumultuous economic periods, our organization delivered some of the most impressive results in its history. We could not be more proud of our management, faculty and staff for the results that they produced in the third quarter of 2008.

* * *

As a result of the incredibly strong results in the third quarter that exceeded our internal expectations, we are raising our internal goal for 2008 EPS from the range of $4.65 to $4.75 to a revised range of $4.90 to $5.00.

250. The press release also included Fitzpatrick’s comments on the Company’s increased revenue in which he noted “The increase in revenue was primarily due to the reported increase in total student enrollment and tuition rates.”

251. Fitzpatrick closed his comments by noting, “We believe that we are very well positioned to continue achieving our internal operating and financial goals over the long term, and that the fundamentals of our business remain very strong.”

252. The same day, October 23, 2008, ESI hosted a conference call to discuss its third quarter 2008 financial results and operations. Modany and Fitzpatrick participated in the call on behalf of the Company, during which they misled investors concerning several aspects of ESI’s business: For example, Modany stated, in pertinent part:
As you’ve already read in this morning’s press release we reported wonderful results that once again, exceeded our internal goals due to another quarter of exceptional performance by our management, faculty and staff.

253. Modany also misled the market when he omitted key, material facts as he spoke about the significant increase in student enrollment rates, stating in relevant part:

[The] rate at which [potential] student increase converted [sic] to new students increased in the third quarter of 2008 compared to the same prior year period. We attribute some of this to the improved productivity of the student recruiters, who were hired early in 2008. As many of you are aware the lead conversion rates of student recruiters correlate with their tenure in the position. As a result, more experienced recruiters typically convert student inquiries at a higher rate than less experienced representatives.

We believe that we entered the fourth quarter with a sufficient number of trained and experienced student recruiters to service an increasing number of prospective students who are expressing interest in our programs of study.

254. As the call continued, Modany also spoke about the Company’s graduate employment rate, stating in relevant part:

Recent conversations with organizations that hire our graduates have indicated to us the continued demand for employees with the types of skills possessed by our graduates. Nevertheless, due to the significant increase in the total number of graduates in 2008, compared to ‘07, we do not believe that the graduate employment rate of our ‘08 employable graduates will be higher than the graduate employment rate of our ‘07 employable graduates. Just to remind everyone, 82% of our 2007 employable graduates obtained employment by April 30, 2008. The cut off date for our annual graduate employment calculation.

*   *   *

We continue to believe that demand for skill labor and increases in the average annual salary of our employed graduates are positive indicators that we can continue to increase the value proposition for graduates of our programs of study.

255. During the call, Fitzpatrick reiterated the Company’s increased revenue and increase in student persistence in the third quarter of 2008, compared to the same period in the prior year, as a result of the improved student retention during the quarter.

256. Fitzpatrick also commented on ESI’s future business prospects, pointed to the Company’s “financial merits,” and noted Defendants were:
very confident about the prospects of the business over the next several quarters as economic conditions continue to develop. We believe that we are very well positioned to take advantage of these opportunities. The financial metrics of the Company continue to be very strong, and we believe for the foreseeable future looks very bright for the organization.

257. Thereafter, Modany concurred with Fitzpatrick’s misleading comments stating, in pertinent part:

We continue to experience very favorable macro trends and as a result, have a lot of confidence with regard to our ability to achieve our internal financial and operating goals. The financial markets remain a challenge but this is a challenge that we as an organization are very well position[ed] to successfully navigate. We have no plans to change what we do or who we serve.

We see an outstanding opportunity to fulfill our mission to increase access to high quality post-secondary education for all who are academically qualified. As always, we remain committed to delivering high quality education to our students and increasing the value proposition for ITT Technical Institute graduates across the country. We strongly believe that shareholder value will be created and delivered over the long-term through our efficient execution of the business model and our singular focus on increasing student success.

258. Also on October, 23, 2008, ESI filed its quarterly report on Form 10-Q for the quarter ended September 30, 2008, which confirmed the Company’s financial results and was signed by Fitzpatrick (the “Third Quarter 2008 10-Q”). The Third Quarter 2008 10-Q contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the Form 10-Q did not contain any material misrepresentations. Nevertheless, the Third Quarter 2008 10-Q did contain several false and misleading statements regarding ESI’s financial performance and future business prospects, which were based on an increase in student enrollment, including the following:

Three Months Ended September 30, 2008 Compared with Three Months Ended September 30, 2007. Revenue increased $36.3 million, or 16.7%, to $254.3 million in the three months ended September 30, 2008 compared to $217.9 million in the three months ended September 30, 2007, primarily due to:

• a 12.1% increase in total student enrollment at June 30, 2008 compared to June 30, 2007; and
• a 5.0% increase in tuition rates in March 2008.

*The increase in student enrollment was primarily due to:*

• student enrollment growth in programs of study and at locations that were in existence prior to 2007;
• new programs of study offered by our institutes; and
• operating new institutes.

259. In response to Defendants' false and misleading statements on October 23, 2008, the price of ESI stock rose more than 4%, or $3.05 per share, to close at $74.10 per share on October 24, 2008, on heavy trading volume, as set forth in the chart below:

260. Market analysts responded positively as well, despite expressing some reservations regarding the Company's bad debt levels resulting from the Company's "use of its own balance sheet to lend to students that are having trouble getting private student loans." For example, on October 23, 2008, J.P. Morgan issued a research report stating that "[ESI] knocked the cover of [sic] the ball opening the reporting season for the for-profit education services
companies (4PES) with strong enrollment results and an early indication of the positive industry backdrop.” Likewise, on October 23, 2008, analysts from ThinkPanmure issued a reporting rating ESI as a “buy” with a price target of $95.00 per share. The report stated that ESI’s operating results “exceeded our expectations” and that “[e]nrollment growth with driven by a remarkable 19.4% increase in new student starts.” On October 24, 2008, Barrington Research analysts reiterated their “outperform” rating with a price target of $110 per share and described how ESI’s “enrollment, revenue and earnings significantly topped expectations and full-year 2008 guidance was revised upward.”

261. The statements referenced in ¶¶248-58 were each materially false and misleading when made as they represented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were known to or recklessly disregarded by each of the Defendants, were:

- The Company was solely focused on increasing enrollment numbers at any cost, without regard to students’ academic success or preparedness for employment following graduation. Indeed, defendants viewed students solely as leads and starts. All that mattered to ESI was meeting quotas: the Company would promote Recruiters and increase their compensation on the singular basis of whether those Recruiters met or exceeded their enrollment quotas; and the Company would routinely fire Recruiters who failed to meet those enrollment quotas. Put simply, ESI only evaluated its Recruiters on the basis of quotas despite the guise of considering other subjective criteria and touting a commitment to ethical recruiting and business practices. The Company is nothing more than a sales machine that operates on federal financial aid.

- Contrary to Defendants’ statements, ESI’s enrollment and revenue growth was not attributable to “more experienced recruiters,” an “increasing number of prospective students who are expressing interest in our programs of study,” or new programs of study, but instead was the result of ESI’s systemically predatory business model, including the Company’s diverse predatory recruiting practices extensively detailed herein, such as the “Funnel of Pain.”

- Defendants manipulated ESI’s employment statistics throughout the Class Period. By falsely touting, for example that “82% of [ESI’s] 2007 employable graduates obtained employment by April 30, 2008,” Defendants were, in reality, committing a double-dip fraud. First, they were deceiving students into believing an ESI education offered them legitimate employment opportunities commensurate with
the substantial debt load those students would be taking on. Second, Defendants likewise manipulated the market into believing in the legitimacy of ESI's recruitment efforts and that ESI diplomas delivered value to ESI students. As detailed herein, Defendants accomplished their employment statistics manipulation in several ways. For example, Defendants were well aware that the Company routinely included students who were employed in low-paying jobs that were in no way related to their field of study through widespread practices such as “stretching” of job descriptions.\(^\text{17}\) Had Defendants honestly reported these figures, ESI's enrollment numbers would have suffered materially, ESI's revenues would have declined, and the market would have learned the truth about ESI's financial condition and future business prospects.

- Despite touting bloated employment statistics, Defendants failed to disclose that ESI was solely concerned about meeting quotas, both in recruitment and in career placement statistics. A vast number of students dropped out of ESI very soon after enrolling. The actual graduation rate at ESI was paltry at best, yet ESI students almost universally are left with exorbitant amounts of federal student loans that they will never be able to repay. Rather than disclose these facts to investors, Defendants consistently misrepresented throughout the class period that ESI provided an excellent value proposition to its students.

- As set forth herein, the Company’s recruiting practices were unethical, predatory and in direct violation of Title IV. Among other things, ESI routinely converted leads into starts by using psychological manipulation to coerce perspective students into enrolling. Luring students to the school by giving them as little information as possible, once students agreed to enroll, ESI set its sights on maximizing the amount of federal financial aid that they could obtain. Among other things, ESI’s standard practice was to misrepresent the transferability of credits required at ESI schools. By grossly misrepresenting the value and viability of credits paid for at ESI through federal financial aid dollars (and other sources of financial aid), defendants successfully and consistently misled scores of new students throughout the Class Period. By violating Title IV in this way, defendants were able to boost ESI’s reported financial results and grossly mislead the market as to the truth behind both ESI’s enrollment figures and its financial performance of future business prospects.

- Due to the fact that the Company’s recruiting practices were in blatant violation of Title IV, ESI faced the very real risk of losing the ability to receive federal financial aid – the source of approximately 85% of the Company’s revenue during the Class Period. Despite their knowledge or reckless disregard of these practices, Defendants misled the market through mere boilerplate risk warnings and knowingly false statements.

\(^\text{17}\) Indeed, admitting the fraudulent nature of the “stretching” ESI, at least for the short term, changed its policies because it knew the federal government’s investigations would uncover them.
Due to ESI's predatory recruiting and financial aid practices, which resulted in students routinely and unnecessarily borrowing the maximum federal financial aid available and turning those monies over to ESI, the Company's revenue numbers were inflated throughout the Class Period.

As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the company, the Company's Class Period revenue and enrollment numbers, as well as ESI's future business prospects.

262. In the days following Defendants' false and misleading statements, the price of ESI stock continued to climb, rising 7%, or $5.12 per share, to close at $78.19 on October 28, 2008, and gaining another 5.55%, or $4.34 per share, to close at $82.53 on October 29, 2008. Thus, between October 22, 2008 (when ESI stock closed at $71 per share) and October 29, 2008, the price of ESI stock rose more than 16%, or $11.53 per share, as demonstrated in the chart below:

During the call, Modany continued to make numerous false and misleading statements regarding the Company's business prospects that were designed to artificially inflate the Company's stock price. Despite omitting how ESI boosted its new student enrollment rates, Modany stated, in pertinent part:

_and as you can see here, over the period of time since we've gone public we've had a compound annual growth rate of just about 8%. So as we are thinking about new enrollment we are going to sort of point to that historical performance. We will have periods where we are north of that like we have been recently. There are some periods where we could be south of that. But for the most part if we looked out over the next three to five years, our expectation would be that this is a reasonable kind of new enrollment growth rate that we expect to see; again executing on that strategy that we just went through._

264. Modany also commented on ESI's growth strategy emphasizing the Company's strong lead flow and conversion rates by stating, in pertinent part:

_We talk about the drivers and new student enrollment. In all respects this is mostly just another way to summarize the growth strategy. So we talk about strong lead flow and conversion rates._

265. Modany discussed ESI's planned to increase pricing 5% for March of '09 and stated, in pertinent part:

_We've historically had about a 5% tuition increase on an annual basis, and there is a lot of talk about price increases, tuition increases in this marketplace. We really think about our tuition increases as our ability to increase pricing as it equates to the value proposition for the students. So we look at starting salaries; what is happening to those and they were up 8% last year. We look at interest rates because our students are career changers. They don’t have financial support. They are borrowing, they are getting grants, so changes in cost of money is important for them and interest rates for student loans are down._

266. In response to Modany's false and misleading statements made on November 20, 2008, the price of ESI stock rose 3.5%, or $2.55 per share, to close at $74.85 on November 21, 2008.

267. The statements referenced in ¶263-65 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this
Complaint. In addition, the statements referenced in ¶¶263-65 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- The Company's growth rate was not dependent upon executing any legitimate strategy. To the contrary, ESI's ability to achieve touted growth rates was reliant upon unethical and predatory recruiting practices that not only were in direct violation of title IV, but also the Company's own internal policies and code of conduct and business ethics. Despite knowing of its predatory practices, Defendants misled the market by purporting to discuss what actually drove ESI's new student enrollment, while omitting numerous critical facts.

- ESI's pricing in no way equated to any so-called value proposition for its students. Quite the opposite, Defendants were misleading both students and the market when they proclaimed that an ESI education, complete with increasing tuition costs, offered any tangible value to ESI students. Indeed, Defendants were fully aware that for the small percentage of students who did not drop out, those who graduated would be left with incredible debt burdens that were in no way commensurate with the expected employment opportunities and salaries available to those with an ESI diploma. Moreover, Defendants were also aware that despite selling prospective students on the value of both an ESI education and the Company's "national" accreditation, ESI credits were almost universally non-transferrable. As a result, for the vast sum of ESI students who dropped out prior to earning a degree, they had literally saddled themselves with tens of thousands of dollars of federal student loan debt that they would likely not be able to repay in exchange for absolutely nothing of value.

268. On January 22, 2009, ESI issued a press release announcing its financial results for the fourth quarter and year end December 31, 2008. For the quarter, the Company reported that new student enrollment in the fourth quarter of 2008 increased 29.2% to 14,911 students compared to 11,542 in the same period in 2007. Total student enrollment increased 16.9% to 61,983 as of December 31, 2008, compared to 53,027 as of December 31, 2007. EPS in the fourth quarter of 2008 increased 34.2% to $1.61 compared to $1.20 in the fourth quarter of 2007. Revenue in the three months ended December 31, 2008 increased 21.4% to $279.8 million compared to $230.4 million in the three months ended December 31, 2007.
The press release included Modany’s comments on ESI’s successful year and stated, in pertinent part:

We would like to congratulate the approximately 8,000 faculty, management and staff at the 114 ITT Technical Institute locations across the nation for another outstanding year of contributions toward the continuing success of our organization and the students that we serve. More importantly, we would like to thank our dedicated employees for assisting our students in developing knowledge and skills for the 21st century workforce. As we entered 2009, demand for our programs of study remained incredibly strong as prospective students recognized the importance of learning new skills and enhancing their existing competencies through a high-quality postsecondary education in order to improve their career prospects.

As a result of our terrific performance in the fourth quarter and optimistic outlook regarding the operating environment in 2009, we have set our internal goal for 2009 EPS in the range of $6.25 to $6.45.

Modany concluded his comments in the press release by stating; “We are entering the new year excited about our opportunity to build long-term shareholder value by continuing to execute on our proven growth strategy, and we believe that we are extremely well positioned to achieve our internal operating and financial goals for fiscal 2009.”

In the press release, Fitzpatrick repeated the Company’s increased revenue results and stated “The outstanding results for the fourth quarter and full year of 2008 once again exceeded our internal expectations and put us in a very good position to start the new year.” According to Fitzpatrick, the increase in revenue “was due primarily to robust new student enrollment and higher student retention. The combined increases in new student enrollment and student retention led to an impressive 16.9% year-over-year increase in total student enrollment.”

Fitzpatrick closed his comment in the press release by noting, “The financial condition and fundamentals of the company are incredibly strong, and we entered the new year with a great deal of optimism for a very favorable operating environment in 2009. We
believe that we are well positioned to execute on our established growth plan with the goal of increasing shareholder value over the long-term.”

273. Following the issuance of the press release, on January 22, 2009, ESI hosted a conference call with analysts and investors to discuss the Company’s fourth quarter and year end earnings and operations. Modany and Fitzpatrick participated on behalf of the Company. During the conference call, Modany reiterated the Company’s seemingly impressive financial results and stated, in pertinent part:

_We reported exceptional operational and financial results for fourth quarter of 2008 that far surpassed our internal goals. This amazing performance was achieved through the focused efforts of our management, faculty and staff and their efficient execution of our proven growth strategy. We would like to take a moment to recognize them for their contribution and thank them for their dedication to the organization, our students and employers who hire our graduates._

_As a result of their efforts we ended 2008 on an incredibly high note and entered the year with a great deal of optimism regarding our ability to execute on the strategic plan to deliver additional shareholder value over the long-term. As a result of our terrific performance in the fourth quarter, and optimistic outlook regarding the strong demand for our programs of study as we entered the new year. We set internal goal for 2009 EPS in the range of $6.25, to $6.45. Turning to a review of the key operating results, as you read in the press release, new student enrollment increased a very impressive 29.2% to 14,911 in the three months ended December 31st, 2008. Compared to 11,542 in the same period in the prior year. Significantly exceeding internal expectation._

_The new student enrollment increase in the fourth quarter marked the single largest year-over-year increase in new student enrollment since we became a public company in 1994._

274. Modany attributed much of the increase in new student enrollment to the increased tenure of the Company’s recruitment staff. For example, Modany stated, in pertinent part:

_In addition to the favorable advertising environment and strong demands for our programs of study, the average tenure of our student recruiter staff increased in the fourth quarter of 2008 compared to the same period in the prior year, marking the second consecutive quarter for such a year-over-year increase. As many of you are aware, the lead conversion rates of student recruiters have a historically_
correlated with their tenure in the position, as a result more experienced recruiters typically converts to an increase at a higher rate than less experienced representative. We believe that each of the favorable marketing and recruiting factors previously mentioned contributed to the record new student enrollment increase during the fourth quarter of 2008. Those positive factors continued as we entered the new year.

275. During the call, the increased new student enrollment numbers were also attributed to a strong demand for ESI’s programs, with Modany stating in pertinent part:

As a result, the demand for programs of study measured by the level of inquiries from prospective students was extremely robust as we began the first quarter of fiscal 2009. Further, we believe we are well positioned to service the increased level of perspective student interest, in part because we employed approximately 15% more student recruiters at the beginning of 2009 than we did at the start of 2008.

We believe the current economic environment, while challenging, present several outstanding opportunities for our organization to help students improve their lives through a high quality, career focused, post secondary education and help them prepare for the 21st century work force. We intend to utilize our ample resources and expertise to capitalize on those opportunities for the benefits of our shareholders and most importantly for the benefits of our students and the employers who hire them.

276. Fitzpatrick began his comments on the conference call by reiterated ESI’s financial results and increased revenue noting that the “[r]evenue increase was primarily due to a solid total enrollment increase as of September 30, 2008 compared to same point in 2007.” Continuing, Fitzpatrick stated, in part:

I would like to close out my comments by emphasizing that we believe the fundamentals of the Company are incredibly strong. Our prospect force continued strong performance in 2009 look very good. I would like to reiterate that we are confident that our students will continue to have access to sufficient financing to pay the cost of the ITT Technical Institute education, and we believe that we are incredibly well positioned to achieve our internal 2009 EPS goal in the range of $6.25 to $6.45.
During the question and answer portion of the call, Modany was asked to comment on ESI’s graduation rates, to which he replied, in pertinent part, “We have not given that metric.” 18

277. When questioned concerning the reason that the tenure of the admissions representatives was improving, Modany stated, in pertinent part:

_There were specific initiatives that the operations team implemented relative to hiring of recruitment representatives earlier in the year and towards the tail end of 2007, [and we] implemented some assessment methodology [and hired] reps. We went out and evaluated our best performing representatives with characteristics associated with the higher performing reps. [We included] those in the assessment, so we think [we did a better job] hiring the right person and [we] revised [our] training program [that] we implement[ed] and we are seeing good results from that._

_I know that’s contributing because of [sic] the numbers tell me that’s that it’s contributing. Is there a tail wind from economic shifts? There could be. But I really do believe the majority is coming from the HR and operations teams._

278. Responding to a question concerning the downtrend in job placement rates, Modany assured ESI would devote ‘sufficient resources to the problem, falsely proclaiming, “_There is no more important metric for us than our graduate employment rate._” Modany also commented on the tuition increases at ESI and stated, in pertinent part:

_The best way to answer is to say we will have a increase in March 2009. _Strategy on pricing doesn’t change it really is related to the value proposition. We run that calculation every year and try to see where it’s at. Moving in a positive direction. We don’t have any intention of backing a way from that strategy. As long as we are doing our job and delivering value to our students that strategy we had in terms of pricing over the past 20 years, will stay in place. That’s what we expect right now._

279. Modany also stated that there was a lift in the number of students continuing on to get their bachelor’s degree which, although not a huge piece of enrollment growth, did contribute to the Company’s enrollment increase. For example, in response to a William Blair & Company

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18 Defendants were well aware of ESI’s paltry graduation and high drop out rates. Indeed, when ESI’s graduation rates were publicly disclosed in April 2010, they served as a partial disclosure of Defendants’ fraud and caused a significant decline in the price of ESI stock. See infra at ¶384.
Analyst question regarding whether the quality of the prospective student inquiries had increased, Modany stated in pertinent part:

*We are seeing similar quality leads*, we are always trying to maximize leads. We are improving the lead flow all the time. Then to a certain extent there is truth to that. I wouldn't say it's anything we need to point out on the call.

280. In response to Defendants' false and misleading statements on January 22, 2009, the price of ESI stock soared, rising 10.14%, or $11.61 per share, from $114.55 on January 21, 2009, to a closing price of $126.61 on January 22, 2009, on heavy trading volume, as demonstrated on the chart below:

281. Like the market, analysts responded positively to Defendants' false and misleading statements. For example, on January 22, 2009, J.P. Morgan analysts stated that ESI "significantly exceeded expectations when it reported its 4Q08 results." Taking into account the Company's seemingly positive results, analysts from ThinkEquity LLC raised their price target to $138 per share.
282. On January 23, 2009, analysts continued their positive comments, with J.P.Morgan pointing to the Company’s “strong enrollments,” “impressive” EPS, and “healthy” outlook. Similarly, Morgan Stanley analysts raised their “estimates and price target on ESI following Q4 results,” pointed to ESI’s “outstanding results, with new student starts at historically high levels,” and stated that ESI’s “strong enrollment trends will continue.” On the same day, William Blair & Company stated ESI had “another blowout quarter” and that it would “remain bullish” on ESI.

283. On the heels of Defendants’ materially false and misleading statements, on February 2, 2009, Credit Suisse upgraded ESI from neutral to “outperform,” pointing to continuing expected increases in ESI’s enrollment. Reacting to the positive news, the price of ESI stock increased 5.65%, or $6.92 per share, to close at $129.43 on February 2, 2009, on heavy volume of more than 2.4 million shares traded.

284. On February 18, 2009, after the market closed, ESI filed its annual financial report on Form 10-K for the fiscal year ended December 31, 2008 (the “2008 10-K”). The financial results reported in the 2008 10-K were substantially similar to those reported in the Company’s prior press releases. The 2008 10-K was signed by Modany and Fitzpatrick, among others, and contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the 2008 10-K did not include any material misrepresentations. Nevertheless, the 2008 10-K did contain several false and misleading statements regarding ESI’s financials and future business prospects, including the following statements regarding student recruitment and growth in student enrollment:

We strive to attract students with the motivation and ability to complete the career-oriented educational programs offered by our institutes. To generate interest among potential students, we engage in a broad range of activities to inform potential students and their parents about our institutes and the programs they offer. These activities include television, Internet and other media advertising, direct mailings and high school presentations. We employ
approximately 1,400 full- and part-time recruiting representatives to assist in local recruiting efforts.

* * *

Student recruitment activities are subject to substantial regulation at both the state and federal level and by our accrediting commission. Most states have bonding and licensing requirements that apply to many of our representatives and other employees involved in student recruitment. Our Vice President, Student Services, National Director Student Recruitment and Regional Directors of Recruitment oversee the implementation of recruitment policies and procedures. In addition, our compliance department generally reviews student recruiting practices at each of our institutes on at least an annual basis.

* * *

We strive to admit incoming students who have the ability to complete their chosen programs of study. We require all applicants for admission to any of our institutes’ programs of study to have a high school diploma or a recognized equivalent. Depending on the program of study and the institute, applicants may also be required to pass an admission examination or possess a designated number of credit hours or degree with a specified overall cumulative grade point average from an accredited postsecondary educational institution.

* * *


Revenue increased $145.8 million, or 16.8%, to $1,015.3 million in the year ended December 31, 2008 compared to $869.5 million in the year ended December 31, 2007, primarily due to:

• an average 12.5% increase in total student enrollment in each academic quarter beginning in 2008 compared to 2007; and

• a 5.0% increase in tuition rates in March 2008.

The increase in student enrollment was primarily due to:

• student enrollment growth in programs of study and at locations that were in existence prior to 2007;

• new programs of study offered by our institutes; and

• operating new institutes.

285. The statements referenced in ¶268-79, 284 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained
throughout this Complaint. In addition, the statements referenced in ¶¶268-79, 284 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- The Company was not building “long-term shareholder value by continuing to execute on [ESI’s] proven growth strategy.” In reality, ESI’s “growth strategy” required the uninterrupted use of deceptive recruiting tactics, such as targeting areas of pain and “selling the sizzle, not the steak.” Without such high-pressure sales tactics and related schemes, ESI simply would not have been able to sustain anything approaching the level of growth it manufactured during the Class Period.

- The financial condition and fundamentals of the Company rested upon a foundation of lies, deceit, and fraud. Any “optimism” expressed by Defendants was but a veil used to further obfuscate their fraud and lacked a reasonable basis when made.

- Defendants were well aware that increases in EPS could not be achieved without the ongoing perpetration of both their fraud upon students and investors. Therefore, statements touting those figures, which were riddled with the material omissions, lacked a reasonable basis when made.

- The lead conversion rates of Recruiters touted by Defendants correlated not with tenure, but willingness to deceive prospective students. Indeed, those Recruiters who struggled to follow Defendants’ recruiting “race to the bottom” were demoted, had their pay decreased, and were ultimately terminated. By weeding out Recruiters who were either unwilling to mislead or not as proficient in misleading prospective students, the Company ensured that those who remained, i.e., the tenured Recruiters, would be the ones to effectively execute Defendants’ fraudulent scheme. As detailed by several confidential witnesses herein, there was incredible turnover among the vast majority of Recruiters at ESI.

- All the while touting the graduate unemployment rate as the Company’s most important metric, defendants were well aware that the employment rate was artificially inflated, much like the price of ESI’s stock, due to standardized, top-down processes such as “stretching.”

- Defendants were well aware that the company was not seeing “quality leads.” Rather, defendants knew the ESI’s army of telemarketers, in order to meet enrollment quotas, vigorously pursued any and every lead possible. To that end, ESI regularly enrolled students who were incapable of both succeeding at an institute of higher education and in the job market, including felons and criminals,
mentally challenged students, students who could not read, and students with no computers or computer skills (for online courses).

- The company did not strive to attract motivated students with "the ability to complete their chosen programs of study." Quite the opposite, the Company's goal was to put "butts in the seats" and to meet ever-increasing enrollment quotas by any means necessary in order to maximize the amount of Title IV funds received by ESI. Moreover, to the extent recruiting practices at each of ESI's institutes were reviewed on an annual basis, the Company and Defendants were well aware of the abusive, predatory, and illegal methods by which ESI attracted its student population.

286. Although the 2008 10-K included the false and misleading statements set forth herein, it also included preliminary 2007 cohort default rates. The 2007 default range of 9.7% to 15.3% was a deterioration from the 2006 range of 5.5% to 12.9%, and raised concerns that by exceeding the 10% level, ESI would experience student loan payment delays for first time borrowers. The result of the disclosure of increasing cohort default rates was that the price of ESI stock dropped sharply, falling 14.61%, or $18.17 per share, from a closing price of $124.33 on February 18, 2009 to a closing price of $106.16 on February 19, 2009. If not for Defendants' false and misleading statements regarding ESI's financial and future business prospects, the price of ESI stock would have fallen further. Indeed, on February 20, 2009, as Defendants' false and misleading statements took hold and investors saw what Morgan Stanley analysts labeled a "buying opportunity," the price of ESI stock largely rebounded, climbing 10.73%, or $11.39 per share, to close at $117.55.

287. On February 23, 2009, the Company provided a presentation to securities analysts and investors at the Credit Suisse 11th Annual Global Services Conference. Modany and Fitzpatrick participated on behalf of the Company. Included in the presentation were numerous false and misleading statements regarding ESI's financial results and future business prospects that were designed to and did artificially inflate the price of ESI stock. For example, Modany discussed the growth of new student enrollment stating, in pertinent part:
New student enrollment has been at a compound annual growth rate of about 9% over the period since we've gone public, and all of these operating data and financial data that we’ll provide are over this same period of time.

Clearly, you see in the more recent period we’ve done a little bit better than that, the ‘08 numbers being up about almost 20% over the ‘07 numbers. The market right now and the environment is very favorable in terms of post-secondary education and the opportunity there, so we’re seeing a little bit of an upswing in terms of the overall results on new student enrollment.

* * *

What drives the new student enrollment? Well, really, just a summary of the growth strategy that I talked about. Lead flow, new degree levels, new programs of study, geographic locations. The brand name, again, very important in terms of the way we market and advertise for our programs of study. That brand name comes into play. The delivery models, providing that convenient flexible delivery option for our students, makes the programs of study attractive to our target audience, the working adult.

* * *

We’re very focused on the outcomes for the students, and we have a lot of technology-based applied learning, hands-on learning-type programs, and while simulations exist in the online arena for those types of programs and the content that we need to deliver, again, we’re very careful in terms of how that ultimately impacts the outcomes. So it’s a measured growth rate here, but again, a very nice contributor to our growth, and we expect it to continue to be.

288. Modany also noted that “The reasons behind the margin expansion, not surprisingly -- enrollment growth, tuition increases, as they’ve exceeded our cost increases, maturing colleges, filling those seats, filling the classrooms, new products in the form of additional programs and degree levels, using technology to drive efficiency in the business, and also leveraging our back-office infrastructure.”

289. Summarizing his comments on ESI’s business, Modany stated, in pertinent part:

In terms of the summary, pretty much I’ve said it all, but the business fundamentals right now for the organization are about as strong as they have been, certainly since I’ve been with the organization. It’s a good environment right now for post-secondary education. What we provide to the marketplace is in high demand, and we need to continue executing on our model in order to take advantage of that opportunity, which is what we expect to do.
290. Purporting to address student loan default rates, Fitzpatrick stated that the Company would appeal the preliminary cohort default rates and that the Company was “clearly confident that the increase you saw year over year will be cut in half or reduced significantly.” Further discussing the cohort default rate, Modany attempted to diffuse concerns about default levels, stating, in relevant part:

Yes, so the cohort default rate preliminary ‘06 was 9.7%. The preliminary for the ‘07 cohort is 11.9%. So you’ve got a 220-basis-point spread on the prelims. When we bring it down, we think we can take about 100, 110 basis points off of that, and that’s based upon the work that Dan’s team has already done.

The way this thing works, and we’re getting a little bit into the weeds, but the way it works is that they get into the individual detail of the cohort default calculation student by student, and we look to see if there are students on the list that shouldn’t be, if there were students on the current cohort that were included in last year’s cohort. And you really work through a list of students that you think you can appeal, and you basically say, “We don’t believe,” -- we go to the DOE, and say, “We don’t believe that these students should be included in the calculation.”

In doing that work, and they’re just starting it right now, but in doing that work, we’ve already identified a larger number of opportunities, if you will, than we ever have in the last couple of years.

So that gives us some level of confidence to suggest that we think we can move the Dow on that and that any expectation of some severe movement in the default rate is not accurate based upon the data that we have in front of us, if that makes sense.

291. Responding to another question regarding the cohort default rate, Modany further downplayed the importance of the rate and the impact it would have on new students timely receiving federal student loan monies, stating in part:

So there’s some question as to whether or not the number of schools that might move into this 30-day disbursement, whether that would have a material impact on cash flow, and the answer is it does not. You’re really talking about a subset of a subset of a subset in that.

There are a handful of schools that may move to a 30-day disbursement. But even in those schools, you’re only talking about their new students, and then you’re only talking about their new students that would drop in the first 30 days. And then you’re only talking about the revenue that you would recognize for those new students. And then you have to factor in what the return to Title IV
calculation is for that revenue recognized; it would tell you how much of that money you can keep.

And when you go through that iteration of calculations and you look at the number of schools that had likely moved from the 10-day early disbursement to 30-day delayed disbursement, the impact is immaterial. So it’s not a material point at all.

I guess one last thing I would throw at the group is that prior to ‘06, there wasn’t any ability to have funding 10 days in advance for new students. So all of our schools obtained their funding 30 days after the start prior to ‘06.

So this isn’t a scenario that even if every school was in -- delayed disbursement 30 days after the start for just new students, which that will not be the case, but if it were, it’s not something that we are unfamiliar with per se. So I just want to emphasize that the impact is immaterial, both cash flow and EPS.

292. Also on February 23, 2009, the Company participated in a breakout session at the Credit Suisse conference during which a representative from ESI stated, in pertinent part:19

As long as there’s continuing enrollment gains, we expect to see leverage in the model. And that’s one of the biggest contributors to margin expansion that we’ve seen throughout the years. We’ve had other contributors where we’ve gone in and looked at the business model and made changes to the way we process transactions, we’ve implemented technology, we’ve gotten more efficient in the way we process our transactions. So that adds as well. But in the last couple of quarters, what you’re mainly seeing is really the push on the leverage in the model in terms of enrollment, as well as some contributions from the advertising/marketing shifts that we’ve talked a little bit about. Those have been offset by some of the bad debt changes. But that in a nutshell is kind of what’s happening at the margin line.

*   *   *

Outcomes is the most important thing that we do, so we have a lot of focus there. And we’ll work our through this.

*   *   *

It’s a consistent review that we do in terms of the value proposition. So we just look at our students’ starting salary when they come into school, we look at what their salary is when they graduate from their program of study. We compare that differential over their lifetime of earnings - what is that income differential as a

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19 At this time, Plaintiffs are unable to identify whether the following statements were made by Modany or Fitzpatrick. However, Plaintiffs anticipate being able to name the speaker with specificity through the process of discovery.
return against the investment that they make in terms of tuition cost, debt service cost, all of it rolled in. And we really calculate a return on investment - discount to cash flows back, if you calculate a return on investment. And we’re looking for a threshold rate that we want to maintain. And so, we’re managing all of those different variables that go into that calculation to ensure that the return on investment is there for the student. And that’s how we think about pricing. And that is solely the way we think about it. We price the product in accordance with the value proposition in the marketplace, and that’s how we define it.

* * *

Again, the withdrawal rates we talk about in terms of retention and we’ve seen improvements in the retention. When we talk about [show] rates, we really just talk about conversion, so we’ll go from lead to start. And the conversion rates were slightly up in the most recent quarter. I would attribute that, and we did attribute it to, what we’re seeing in terms of tenure of representatives. We’ve got a higher tenure in the rep group that we currently have today and we know based on the data—looking at the data that we see a direct correlation between tenure and productivity. So a little bit of improvement there.

* * *

We track the percentage of our students who tell us that they’re employed full-time. And so, they—we’re—about 80% of the students are telling us that they’re employed full-time.

293. Market analysts bought into Defendants’ false and misleading statements made at the conference. For example, on February 24, 2009, ThinkEquity LLC analysts described how ESI “addressed concerns about rising cohort default rates and raised FY09 guidance as internal lending requirements are likely to be smaller than management anticipated. We have updated our estimates accordingly. We are maintaining our Buy rating and our price target is now $140.”

294. The statements referenced in ¶¶287-92 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶287-92 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:
• The Company’s growth rate was not dependent upon executing any legitimate strategy. To the contrary, ESI’s ability to achieve touted growth rates was reliant upon unethical and predatory recruiting practices that not only were in direct violation of title IV, but also the Company’s own internal policies and code of conduct and business ethics. Despite knowing of its predatory practices, Defendants misled the market by purporting to discuss what actually drove ESI’s new student enrollment, while omitting numerous critical facts.

• Defendants simply were not focused on “the outcomes for the students.” In reality, ESI was focused upon manipulating its student population at all stages through pie-in-the-sky promises of employment and high salaries, as well as the ability to transfer ESI credits to other colleges and universities. ESI even forced its professors to give inflated grades to underserving students, advancing them through classes without properly educating them, and penalizing those that refused to do so.

• Had Defendants not manipulated prospective students, demand would have drastically declined, the Company’s financial performance would have suffered materially, and the market would have learned that Defendants lacked a reasonable basis for their statements regarding ESI’s financial performance, outlook, and future business prospects. Likewise, Defendants knew that the touted “leverage in the model” was only as strong as Defendants’ ongoing ability to execute their fraudulent scheme on both students and the market.

295. On April 23, 2009, ESI issued a press release announcing it entered into a purchase agreement to acquire Daniel Webster College, a school regionally accredited by the Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, with two campuses in New Hampshire and an enrollment of approximately 1,200 students. In a July 23, 2009 press release, ESI announced it had “successfully completed the acquisition of Daniel Webster College . . .”

296. On April 23, 2009, the Company issued a press release announcing its first quarter 2009 financial results. The Company reported that new student enrollment in the first quarter of 2009 increased a record 36.8% to 18,935 students compared to 13,844 in the same period in 2008. Total student enrollment increased 21.1% to 65,620 as of March 31, 2009 compared to 54,194 as of March 31, 2008. EPS in the first quarter of 2009 increased 47.2% to $1.59 compared to $1.08 in the first quarter of 2008. Revenue in the three months ended
March 31, 2009 increased 22.6% to $288.0 million compared to $234.9 million in the three
months ended March 31, 2008. Commenting on the results, Modany stated, in part:

Our faculty, management and staff delivered another quarter of exceptional
performance for our organization, and we could not be more proud of them for
the remarkable effort that went into producing these fantastic results. We
applaud them for their hard work and dedication in helping a record number of
our students prepare for the 21st Century workforce at a time in our nation’s
history when a high-quality, career-based education is so important.

As a result of our exceptional performance in the first quarter and our
continued optimism with regard to the anticipated operating environment in the
remainder of 2009, we are raising our internal goal for 2009 EPS from the
range of $6.50 to $6.75 to a revised range of $7.00 to $7.25.

At the end of the first quarter of 2009, we had approximately 15% more
recruitment representatives than we did at the same point in 2008. As a result,
we believe that we are very well positioned to service increases in the number of
inquiries regarding our program offerings in the remainder of 2009.

297. Fitzpatrick reiterated the increased revenue and again stated “[t]he increase was a
result of higher new student enrollment and improved student retention, which combined led
to a record-breaking 21.1% increase in total student enrollment as of March 31, 2009
compared to March 31, 2008.”

298. Fitzpatrick closed by noting, “The financial condition and fundamentals of the
company remain incredibly strong, and we continue to believe that we are exceptionally well
positioned to take advantage of the current market opportunities to generate increases in
shareholder value over the long-term.”

299. Also on April, 23, 2009, ESI filed its quarterly report on Form 10-Q for the
quarter ended March 31, 2009, which confirmed the Company’s financial results and was signed
by Fitzpatrick (the “First Quarter 2009 10-Q”). The First Quarter 2009 10-Q contained required
Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the Form 10-Q did
not contain any material misrepresentations. Nevertheless, the First Quarter 2009 10-Q did
contain several false and misleading statements regarding ESI’s financial performance and future
business prospects, which were based on an increase in student enrollment, including the following:

Three Months Ended March 31, 2009 Compared with Three Months Ended March 31, 2008. Revenue increased $53.1 million, or 22.6%, to $288.0 million in the three months ended March 31, 2009 compared to $234.9 million in the three months ended March 31, 2008, primarily due to:

- a 16.9% increase in total student enrollment at December 31, 2008 compared to December 31, 2007;
- a 5.0% increase in tuition rates in March 2009 and March 2008; and
- a 21.1% increase in total student enrollment at March 31, 2009 compared to March 31, 2008.

The increase in student enrollment was primarily due to:

- student enrollment growth in programs of study and at locations that were in existence prior to 2008;
- new programs of study offered by our institutes; and
- operating new institutes.

On April 23, 2009, the Company also hosted a conference call to discuss its operating and financial results for the first quarter of 2009. Modany and Fitzpatrick participated in the call on behalf of ESI and made numerous false and misleading statements designed to artificially inflate the price of ESI stock. For example, Modany stated:

As discussed in the earnings release this morning, we had another incredibly successful quarter both operationally and financially that once again exceeded our expectations. We’d like to take a brief moment to recognize and thank our faculty staff and college management teams for their dedication and commitment to their students and the employers that hire our graduates. Their unwavering passion to help students improve their lives through a high quality career-based education is an inspiration to all of us and we congratulate them for their contributions to another outstanding quarter. As a result of the tremendous performance of our college person in the first quarter of 2009 and our continued optimism for what appears to be a very attractive market opportunity for high quality providers of career-based education we are raising our internal goal for 2009 EPS from the previous range of $6.50 to $6.75 to a new range of $7 to $7.25.
301. Modany repeated the first quarter 2009 operating results, again noting that new student enrollment increased 36.8% to 18,935 in the three months ended March 31, 2009, compared to 13,844 in the same period in the prior year. According to Modany, this result:

*Exceeded our internal goal and represents the single largest year-over-year percentage increase in new student enrollment since we became a public company back in 1994. This increase vested the then record 29.2% year-over-year increase in the fourth quarter of 2008. We had very solid increases in new student enrollment in all six schools of study in the three months ended March 31, 2009 compared to the same period in '08.*

302. Modany also commented on the Company’s recruitment representatives and their ability to convert “leads” into “starts” stating, in relevant part:

> [W]e are pleased to report that the average tenure of our recruiting representatives increased in the first quarter of 2009 compared to the same period in the prior year. As many of you are aware, the lead conversion rates of our student recruiters have historically correlated to their tenure in the position. *As a result, more experienced recruiters typically convert student inquiries at a higher rate than the less experienced recruiters.*

So to summarize the key variables impacting our student recruitment efforts in the 2009 first quarter, advertising costs were at very attractive levels and we believe they will remain that way through the second quarter of 2009 and possibly the entire year. Response rates through advertising placements remain incredibly strong in the first quarter and as we enter the second quarter of 2009. The average experience level of our recruiting staff continued to increase in the past two quarters compared to the same period in the prior year. We believe that each of these variables contributed to the excellent enrollment results we reported in our earnings release this morning and that these conditions are likely to continue through the second quarter and possibly through the remainder of this year, which would put us in an excellent position to achieve our internal goals for 2009.

303. Continuing to discuss student enrollment and employment, Modany stated, in relevant part:

*The incredibly strong increase in new student enrollment, combined with student retention that was higher than expected resulted in a 21.1% increase in total student enrollment to 65,620 as of March 31, 2009, compared to 54,194, as of the same date in 2008. The year-over-year increase in total student enrollment as of the end of the first quarter was also a record high quarterly increase for the Company.*
Turning to graduate employment. You may recall from our January earnings call that as of December 31, 2008, the graduate employment rate over 2008 employable graduates was approximately 700 basis points lower than the graduate employment rate of our 2007 employable graduates at December 31, 2007. Our graduates continue to experience the effects of a challenging employment market, but we are pleased to report as of April 15, 2009, the graduate employment rate of our 2008 employable graduates was only approximately 500 basis points lower than the graduate employment rate of our 2007 employable graduates at the same date in '08.

* * *

I would like to take this opportunity to publicly thank our career services professionals throughout all of the ITT Technical Institutes around the country for their efforts to help our 2008 employable graduates find employment in their fields of study at attractive salaries.

304. Fitzpatrick began his comments in the conference call “as usual by reviewing the key financial highlights of what proved to be a record breaking quarter for us.” Again he noted “[t]he revenue increase was mostly due to a solid increase in total student enrollment as of December 31, 2008, compared to the same point in 2007.

305. Fitzpatrick ended his initial comments by “reiterating that we believe that the fundamentals of the business have never been stronger. And we remain very confident in our ability to achieve our 2009 internal goals. We believe the outlook for the business in 2009 is very attractive and we are incredibly well positioned to achieve our internal 2009 EPS goal in the range of $7 to $7.25.”

306. As the call continued, Modany stated, in pertinent part:

Obviously, we have a great deal of confidence in our ability to achieve our goals for 2009 and we feel really good about the prospects for the business. Our single internal focus continues to be on maximizing students success and helping our students improve their lives through a high quality career-based education offered by our ITT Technical Institutes. We believe that significant shareholder value can be generated over the long-term through this focus. Although these are very trying times economically, for our nation as a whole, we have an opportunity to play a very critical roll in helping to educate the nation’s work force to be competitive in a very challenging 21st century global marketplace. And we are certainly eager to do our part.
307. Later in the call, Modany commented on strong demand, higher response rates and opportunity for attracting new student growth over the next several quarters and stated, in pertinent part:

*We're seeing consistently strong response rates as we head into the second quarter. We're not seeing any slowdown in that regard. We're not going to break it down to any type of detail. We think the variables associated with the front end of our business -- and we touched on some of those -- we think those are aligned properly. The advertising market continues to be very favorable. And the response rates to those more efficiently placed advertising spots. The response rates are very strong. And to sort of handle that, we have more experienced recruiters handling those increased numbers of inquiries.* I would definitely stop short of giving you any specific number.

308. Modany also commented on student success in light of the rapid growth of the Company, noting, in pertinent part:

*We are mindful of student outcome, student success. That's our number 1 priority in terms of the way we manage the business. It has always been the number 1 priority for us. Everything that we do takes that into consideration. What I'm pleased to report and what you can see in the numbers is that we're seeing better student results. So this growth is not straining our ability to provide high quality education to our students nor is it impacting the outcomes that we're seeing, and seeing slightly better retention, slightly better student outcome.*

309. As he had done in earlier conference calls, Modany once again commented on ESI's "value proposition," claimed that it was the determining factor in setting tuition rates, and stated, in pertinent part:

*You've heard me say this many times. We're going to price and put the tuition costs out there totally on the basis of the value proposition. The value proposition is driven in part by starting salaries.*

* * *

So I'm going below that. And those other variables are still in play on a year-over-year comparison driving it forward. *Driving the value proposition higher on a year-over-year basis. Not just the salary. But it is a variable, absolutely. It's something we always look at and we'll continue to monitor that and that along with all the other variables we talked about, drives the value prop which drives the tuition.* But short-term no it doesn't change our view. Long-term it's absolutely part of the equation.
310. When questioned concerning graduate placement rates and the repercussions from ACICS if ESI schools dropped below a 70% placement rate, Modany stated, in pertinent part:

Not giving the color on that sort of placement rate that we’re providing on an interim basis. But just to kind of relate it to a year end number. Quite frankly, I gave you the April 15th number we cut it off at April 30. We’re two weeks away at the time of that number. We ended last year at 82%. So for 500 basis points off. That equates to a 77%. That’s just to give you a little bit of relative comparison in terms of those numbers.

* * *

When you talk about ACICS as part of there accreditation review process looks for schools to be above 65% and we’re 77% now.

* * *

If you’re asking me and we have a material concern here relative to any of that on the ACICS front, I can tell you emphatically, no.

311. In response to false and misleading statements in the April 23, 2009 press release, conference call and the First Quarter 2009 Form 10-Q, the price of ESI stock traded relatively flat, closing at $100.82 on April 23, 2009 and then rising slightly to close at $101.24 on April 24, 2009, as Defendants were able to maintain the artificial inflation in ESI’s stock price.

312. Once again, analysts responded positively to Defendants’ false and misleading statements. For example, on April 23, 2009, J.P.Morgan analysts stated that ESI “significantly exceeded expectations when it reported 1Q09 results this morning.” Likewise, Deutsche Bank analysts pointed to “higher than expected new enrollment growth” and that it was expecting ESI to “our-accelerate[] the industry.” Credit Suisse analysts

313. The statements referenced in ¶¶296-310 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶296-310 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or
misleading. The true facts, which were then known to or recklessly disregarded by each of the
Defendants, were:

- The “record-breaking” increase in student enrollment was attributable to the
  ongoing execution of defendant’s illegal and fraudulent recruiting practices which
  not only violated applicable regulations, but also violated the Company’s
  purported internal policies and controls.

- Rather than taking advantage of “market opportunities,” Defendants were simply
  taking advantage of ESI students. In so doing, they manipulated and inflated the
  company’s reported financial results, which resulted in the artificial inflation of
  the price of ESI stock.

- Defendants failed to disclose that increases in enrollment were driven by internal
  enrollment quotas that Recruiters had to meet or suffer severe consequences. By
  consistently raising those enrollment quotas during the Class Period, Defendants
  were able to amplify the magnitude of their fraud upon prospective students in
  order to grow enrollments at a faster rate.

- ESI graduates were not finding employment in their fields of study at the rate
  reported by Defendants. The truth was Defendants were fully aware the company
  was engaging in a standardized practice of “stretching” reported employment
  figures in order to mislead both prospective students in the market.

- As a result of the foregoing, defendants lacked a reasonable basis for describing
  the Company’s outlook and future business prospects.

- The company lacked any semblance of an internal focus on maximizing student
  success in helping students improve their lives through a high-quality career-
  based education. Such blatant lies are belied by the countless, corroborating
  experiences of former ESI recruiters and employees that are described herein and
  have been detailed through Congressional hearings, testimony, and internal
  Company documents. An organization that relies on a “Funnel of Pain” to boost
  enrollments and saddle both dropouts and poorly educated and unprepared
  graduates with tens of thousands of dollars of student loan debt is not one whose
  sole purpose is to help students improve their lives. Put simply, the pricing of
  tuition was in no way commensurate with the “value” of an ESI education, but
  rather was meant to squeeze every penny out of every student as well as the
  federal government.

- By manipulating the placement rate for ESI graduates, Defendants were
  misleading investors as to the Company’s ability to maintain its ACICS
  accreditation.

Growth Stock Conference, with Modany speaking on behalf of the Company, wherein he made
several additional false and misleading statements. For example, discussing ESI’s growth strategy, Modany stated, in part:

We are nationally accredited through ACICS. The growth strategy has been the same growth strategy for quite some time. So for those of you that know the story, have heard me talk about this many times, but a big part of it is growing our core schools and our core programs through advertising and recruiting and focusing on our brand, all 106 locations, 106 colleges, 115 locations if you add in the nine learning sites that are branded ITT Technical Institutes. So we leverage that brand in a pretty significant way and it gives us a competitive advantage in terms of our marketing and advertising efforts.

315. Discussing enrollment, Modany continued:

So new student enrollment, the compound annual growth rate since 1994, at 9.1%. Obviously we did a bit better than that here in the first-quarter results at 36.8% new student enrollment. . . and that’s indicative of some of the economic factors that we’re dealing with currently. But again, longer-term that compound annual growth rate is probably something that we’d point to as a realistic expectation three to five years let’s say.

Drivers of new student enrollment, really this is a summary of the growth plan. We’re talking about seeing strong lead flow in conversion rates. In our first-quarter conference call we talked a lot about that, seeing a very attractive marketing and advertising environment which allows us to efficiently place our marketing spots, so that gives us an opportunity to be efficient in executing our plan.

The demand for each one of those spots that we’re placing is very, very strong right now. And then our conversion rates are up as a result of several factors, one of which is increasing tenure of our representatives. So the individual recruitment representatives who are handling the customer service needs of the prospective students have been around with us longer, there’s a correlation with tenure and results and we’re benefiting from that as well.

316. Continuing, Modany stated, “The value proposition for what we’re doing continues to increase and I think that that’s sometimes a point that occasionally gets missed.”

317. Discussing the Company’s long-term outlook, Modany stated, in part:

Executing our strategy with those new student enrollment growth rates has led to about an 8% compound annual growth rate in total enrollment over this period of time. And so that’s again indicative of what we think is realistic over a longer term period of time.

*   *   *

- 115 -
Those operating results lead to these kinds of financial results over that same period of time, about a 13% compound annual growth rate in revenues. And that’s indicative of that total student enrollment growth of about 8% plus an annual tuition increase that we’ve had over the past 20 years of about 5%. So that’s again indicative of what we think we can do over the longer term.

* * *

Compound annual growth rate on net income here of 27%, so you see again with 8% enrollment — total enrollment we’ve gotten 27% compound annual growth rate, again the leveraging being clear there. And then on EPS 28%.

* * *

Then just in summary, I should reiterate that currently, I mean the business fundamentals which don’t seem to be as important anymore, but the business fundamentals are absolutely as strong as probably I’ve seen in the seven years I’ve been with the organization. We talked about marketing right now the advertising environment is very attractive and response rates are very strong. Our execution in terms of servicing those prospective students right now in terms of conversion rates — the team is doing every good job on that front.

318. Turning to graduate employment, Modany added:

One of the challenges we are dealing with and, quite frankly, dealing with in a fairly effective way is just graduate employment. Obviously the outcomes are very important to us, have always been, we hold ourselves accountable to that. We talked about our graduate employment rates, probably coming in the range of about 77% for our 2008 graduates.

319. In response to the false and misleading statements made during the May 12, 2009 conference, and the Company’s press release, on May, 12, 2009, the price of ESI stock rose $2.34 per share, or 2.39%, to close at $100.05 per share.

320. The statements referenced in ¶¶314-18 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint.

321. On June 24, 2009, the Company participated in a conference call at the Piper Jaffray Europe Conference with Modany participating on behalf of ESI. During the conference,
Modany made additional false and misleading statements that were intended to deceive the market. For example, Modany stated, in pertinent part:

*So a key metric for us is new student enrollment, the intake, brand new students. And over this period of time, we have had a compound annual growth rate of about 9%. Again, for us, that is probably indicative of what we will expect over the next three to five years. You can see more recently and in our most recent quarter, we are doing much better than that and there is some economic conditions that are spurring that on. There is a countercyclical element to the business. It is not purely countercyclical as some think, but there is a countercyclical element to it. So we are doing much better than our compound annual growth rate from a historical perspective. But long term, we look at that 9% as being very possible.*

*Drivers of new student enrollment, strong lead flow, new degrees, new programs, geographical locations, really a summary of that growth strategy we just talked about. The last point on here though, value proposition continues to increase. That is a key point for us and we differentiate that by the opportunity that is created for people as a result of education. And this is, to us, the most correlated variable to our performance.*

322. Detailing the impact increased enrollment would have on the Company’s financial performance and future business prospects, Modany stated:

*I am going to run through the financials very quickly. I talked about the total student enrollment being 8%. If you add that 5% tuition increase to it, you see that we have had a compound annual growth rate of about 13% in revenues over this period of time. Again, more recently at a much higher rated based upon some of the current economic circumstances.*

323. In response to the false and misleading statements made by Modany during the June 24, 2009 conference, the price of ESI stock rose 1.03%, or $0.95 per share on June 24, 2009, and $3.53 per share, or 3.8%, to close at $96.42 on June 25, 2009. The stock rose an additional 3% as the stock closed at $99.40 on June 26, 2009.

324. Also on June 24, 2009, analysts from RBC Capital Markets initiated coverage on ESI, rating the stock as “outperform” with a price target of $114. Discussing the Company, RBC Capital Market analysts stated:

*We think the strength of the business model lies in ESI’s ability to charge premium tuition rates (e.g., $16,584 annually) above many of its for-profit*
competitors. We believe that ESI is able to charge students a premium because the company has consistently done a solid job of marketing the ability of its graduates to obtain highly paid employment. As of April 30, 2008, per the company, 82% of graduates from the prior year were employed at an average salary of $32,400.

* * *

We have a favorable view of ESI’s experienced management team and have confidence that they will continue to manage the platform’s growth carefully. We like ESI’s management team as we think that they: (a) have developed a culture of compliance that reduces regulatory risk; (b) are among the most effective in terms of using technology to drive efficiencies; and (c) effectively leverage the strength of the brand to lower student acquisition costs.

325. The statements referenced in ¶¶321-22 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶321-22 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

• Despite purporting to describe the key metric of new student enrollment, Modany was well aware that he was misleading investors by omitting critical facts as to how ESI actually recruited new students, because the quotes and the means by which Recruiters preyed on students to achieve them were driven from the top down by Modany himself. As a result of the foregoing, it was unreasonable for Modany to describe expected enrollment trends in the Company’s future business prospects.

326. On July 23, 2009, ESI issued a press release announcing its second quarter 2009 financial results. *The Company reported that new student enrollment in the second quarter of 2009 increased 33.5% to 19,692 compared to 14,751 in the same period in 2008. Total student enrollment increased 26.2% to 69,127 as of June 30, 2009 compared to 54,793 as of June 30, 2008. EPS in the second quarter of 2009 increased 55.8% to $1.87 compared to $1.20 in the second quarter of 2008. Revenue in the three months ended June 30, 2009 increased 28.7% to*
$317.1 million compared to $246.4 million in the three months ended June 30, 2008. The press release also stated, in relevant part:

*Interest in our programs across all six schools of study was incredibly strong during the second quarter of 2009, which led to an impressive increase in new student enrollment compared to the prior year. As we entered the third quarter of 2009, inquiries from prospective students for our high-quality, career-based programs of study remained robust, and we believe that the economic conditions that are stimulating this extraordinary demand may persist throughout the remainder of 2009.*

Modany added, "*As a result of our exceptional results in the second quarter of 2009 and our belief that favorable operating conditions will continue through the second half of 2009, we are raising our internal goal for 2009 EPS from the range of $7.00 to $7.25 to a revised range of $7.55 to $7.85."

327. The press release also quoted Modany as stating the following:

*The period for measuring the employment success of our 2008 graduates ended in the second quarter. Approximately 77% of our 2008 employable graduates obtained employment in positions using skills taught in their programs of study by April 30, 2009 compared to 82% of our 2007 employable graduates by April 30, 2008. The average annual salary reported by our 2008 employed graduates increased to approximately $32,800 compared to the $32,400 average annual salary reported by our 2007 employed graduates.*

328. The press release further quoted Modany as stating, "*The company concluded the first half of 2009 in excellent financial condition and very well positioned to achieve its 2009 internal goals, which we believe will deliver value to our shareholders over the long term.*"

329. Also on July, 23, 2009, ESI filed its quarterly report on Form 10-Q for the quarter ended June 30, 2009, which confirmed the Company's financial results and was signed by Fitzpatrick (the "Second Quarter 2009 10-Q"). The Second Quarter 2009 10-Q contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the Form 10-Q did not contain any material misrepresentations. Nevertheless, the Second Quarter 2009 10-Q did contain several false and misleading statements regarding ESI's financial performance and future business prospects, which were based on an increase in student enrollment, including the following:
Three Months Ended June 30, 2009 Compared with Three Months Ended June 30, 2008. **Revenue increased $70.7 million, or 28.7%, to $317.1 million in the three months ended June 30, 2009 compared to $246.4 million in the three months ended June 30, 2008. The primary factors that contributed to this increase included, in order of significance:**

- a 21.1% increase in total student enrollment at March 31, 2009 compared to March 31, 2008;
- a 5.0% increase in tuition rates in March 2009; and
- a 140 basis point increase in the student persistence rate in the three months ended June 30, 2009 compared to the three months ended June 30, 2008.

The primary factors that contributed to the increase in student enrollment included, in order of significance:

- student enrollment growth in programs of study and at locations that were in existence prior to 2008;
- new programs of study offered at our campuses; and
- operating new campuses.

330. On July 23, 2009, the Company also hosted a conference call to discuss its financial results. Modany and Fitzpatrick participated in the call on behalf of ESI during which they continued to make false and misleading statements. For example, Modany stated in relevant part:

*Let me begin the review of our second quarter results by noting that we had another outstanding quarter of operating and financial performance. The results that we reported to you this morning surpassed even our most optimistic expectations and far exceeded the internal goals that we set for the organization. I believe it’s important for us to take a moment and congratulate the now nearly 9,000 men and women of the 116 ITT Technical Institute locations around the nation for their commitment and dedication to our mission of increasing access to high quality, career-based education, to all who qualify. They once again did an outstanding job responding to and servicing a record-setting number of perspective student inquiries during the second quarter, as we continued to experience a very strong demand for our programs of study.*

* * *

As a result of the very strong second quarter results, we have raised our internal goal for 2009 full year EPS from the current range from $7.00 to $7.25 to a revised range of $7.55 to $7.85. The revised internal goal for our 2009 EPS
represents an increase of approximately 45% to 50% over our 2008 EPS of $5.17.

331. Discussing increases in ESI’s enrollment, Modany stated:

Turning now to a review of our key operating results, to quickly review what we reported in the earnings release this morning, **new student enrollment increased 33.5% to 19,692 in the three months ended June 30, 2009 compared to 14,751 in the same period in the prior year. These results exceeded our most optimistic expectations and represented the second largest quarterly increase in new student enrollment in the history of our organization as a public Company.** As a reminder, **new student enrollment in the second quarter of 2008 increased 22.5%, compared to the same period in 2007.** As a result, we had a very difficult year-over-year comparison for new student enrollment in the second quarter of 2009.

332. As the call continued, Modany touted the Company’s recruiting practices, misleading the market as he stated, in pertinent part:

In addition to experiencing a favorable advertising market, you may recall that we had commented in the last several quarterly conference calls about the **strong demand that we had experienced for our programs of study based on response rates to our advertising.** This strong demand continued in the second quarter. **We also reported that the tenure of our student recruiters had improved, which was again the case in the second quarter. And that the lead conversion rates of our student recruiters have historically correlated with their tenure in their position. In other words, more experienced recruiters typically convert student inquiries at a higher rate than less experienced recruiters.** As we began the second half of fiscal 2009, the advertising environment, the response rate to our advertising, the tenure of our recruiters, and the conversion rate of our student inquiries, all continued to be very favorable and we believe that they could continue to be favorable throughout the remainder of the year.

333. Next, Modany again touted the Company’s increase enrollment:

**The impressive increase in new student enrollment in the three months ended June 30, ‘09, combined with the improvement in the quarterly persistence rate, led to a record setting 26.2% increase in total student enrollment of 69,127 as of June 30, 2009.** Compared to 54,793 as of the same date in 2008.

334. Continuing, Modany purported to highlight the graduation employment rates of former ESI students, stating, in part:

Turning now to graduate employment as we reported in our earnings release, the period for measuring the employment success of our ‘08 graduates ended in the second quarter. **Approximately 77% of our 2008 employable graduates obtained**
employment in positions using skills taught in their program of study by April 30, 2009. Compared to 82% of our ‘07 employable graduates by April 30, ‘08.

335. As Fitzpatrick joined the call, he reiterated the key financial highlights of the quarter, attributing the revenue increase primarily to the seemingly strong increase in total student enrollment as of March 31, 2009, compared to the same point in 2008, the 5% increase in tuition that took effect in March, 2009, and an impressive improvement in student retention in the three months ended June 30, 2009, as reflected in the increase in the quarterly persistence rate.

336. During the question and answer portion of the conference call, Modany also discussed default rates on the Company’s private student loans that it was making directly to ESI students, and stated, in pertinent part:

It probably is too early, Gary, to give you any kind of sense as to how these things are performing as of yet. I can tell you we’re not thinking about them any differently. We only have very, very preliminary data. It’s certainly performance in line with expectations. There’s been no change in our bad debt methodology. We’re not anticipating any changes there right now. It’s pretty much a standardized process. I guess if you’re reaching for something, a proxy of some sort on loan performance. The only data that we really have that would probably be relevant is the CDR data. As you know, that data is available to us on a weekly basis, and so we’re looking at that regularly. Our 2008 cohort right now is performing almost identically with the 2007 cohort. So we’re not seeing any differences there. Now, keeping in mind 2007 did not perform as well as the ‘06 cohort, but we’re pretty flat with that right now. So that’s probably the only data point we can give you that I would say has any relevance in terms of default rates on loans for our students.

337. Later in the call, Modany misled the market as he commented on ESI’s entrance requirements and stated, in pertinent part:

Right now, we’re pretty comfortable with the entrance requirements that we’ve used as an institution for at least 20 years. We’ve not really changed that in any material way. We certainly have tweaked it over the years, but it’s a definition of an entrance requirement that we’re very comfortable with. The colleges understand. We understand what dynamic that creates in the classroom, and we know how to respond to that dynamic. We’re not thinking that we want to make a change there. Our mission is to increase access to education for all folks who qualify based on our criteria. I think we’re
demonstrating with improved retention that we’re driving toward better results even with a larger enrollment. . . . We’re just mindful of quality metrics. We’re in measuring those things on a regular basis. And as long as we stay within our accepted levels, and again, right now we’re seeing better performance on the student success side. We would not put in any changes on that front.

338. Addressing a question regarding the Company’s bad debt guidance for the year, Modany circled back to ESI’s student enrollment and omitted key information when he stated, in part:

"It’s based on the expectations for enrollment, which look favorable right now. I think we’ve talked about the factors impacting enrollment. We talked about the advertising environment. We talked about tenure of our recruiters, and things of that nature — lead conversions. All that looks positive. That leads us to believe that we’re still dealing with a favorable environment in the second half of the year. So on that front, I think it’s a positive story.

339. When discussing the tuition rates as compared to community colleges, Modany pointed to the so-called “value proposition” of ESI, and stated, in part: “The price and the tuition that we are putting out in the marketplace is directly related to the value proposition that our students obtain. So, we always think about it that way. We’re always thinking about tuition pricing in accordance with the value.”

340. Responding to Defendants’ statements, analysts pointed to “impressive” enrollments and “strong” EPS guidance, but expressed concerns regarding increasing bad debt levels caused by the Company’s funding of student loans from ESI’s own balance sheet. For example, on July 23, 2009, Deutsche Bank analysts stated ESI had “better than expected new enrollment and student retention” but that the “[o]nly blemish in results is increase to bad debt expectations” caused by a “[h]igher demand for internal student funding.” Likewise, RBC Capital Markets labeled the Company’s results a “Blow-Out Earning Performance” with “Healthy Enrollment Trends,” and “Massive Operating Margin Expansion,” all of which was accompanied by a “spike in bad debt.” On July 24, 2009, Credit Suisse analysts stated, “We hope management will consider providing more disclosures about its internal lending program.”
341. Despite Defendants’ continuing fraud and many false and misleading statements, the market expressed uncertainty and, as Deutsche Bank stated, was “ignoring great growth due to lack of clarity in funding sources” because ESI was self-financing its own private student loans. As a result, the price of ESI stock dropped 4%, or $4.32 per share, to close at $102.00 on July 23, 2009. The stock dropped an additional 3.76%, or $3.84 per share, to close at $98.16 on July 24, 2009. But for Defendants’ many false and misleading statements, the price of ESI stock would have dropped even more.

342. The statements referenced in ¶¶326-39 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶326-39 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- Defendants’ statements regarding the level of interest in ESI programs and “impressive increase” in new student enrollment omitted critical facts regarding the hyper aggressive and high pressure sales tactics the Company used to deceive new students into enrolling at ESI campuses. Rather than experiencing extraordinary demand, the Company was experiencing the fleeting results of Defendants’ fraudulent scheme.

- It was both deceptive and misleading to tout the Company’s financial condition to the market without disclosing the truth behind how that financial condition was achieved on a daily basis.

- The Company was not mindful of quality metrics and, in reality, had no discernible admissions standards. In truth, ESI would accept any student, regardless of background or criminal history, who was willing to sign up and take out large amounts of student loans.

- The price of tuition was in no way correlated to the value proposition obtained by ESI students. Had Defendants actually tailored the cost of an ESI education to the value proposition for its students, ESI would have had to drastically lower its tuition rates and its financial performance would’ve suffered greatly during the entirety of the Class Period.
• As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, the Company’s Class Period revenue and enrollment numbers, as well as ESI’s future business prospects.

343. As time went on, Defendants’ false and misleading statements about the Company’s expected financial performance and the reasons behind its enrollment growth and trends took hold. More specifically, on August 3, 2009, analysts from RBC Capital Markets stated that “We think market concerns about ESI’s bad debt reflect a limited understanding and create a compelling opportunity to increase exposure,” and advised investors to “Double Down” on ESI. Unaware of the falsity of Defendants’ statements about enrollment growth, financial results, and future business prospects, the analysts further stated that “bad debt concerns are overblown.” In that regard, the price of ESI stock remained artificially inflated and experienced steady and substantial gains in August 2009, rising from $100.78 on August 3, 2009, to $109.13 on August 26, 2009, as demonstrated in the chart below:
344. On September 11, 2009, the SEC sent correspondence to Fitzpatrick regarding issues noted by the SEC pertaining to ESI’s 2008 Form 10-K and Second Quarter 2009 Form 10-Q. In its correspondence, the SEC questioned the Company regarding its accounting method for direct costs incurred that relate to the enrollment of new students, and asked for the following information concerning student recruiting:

- A detailed description of your recruiting representatives’ job responsibilities and an analysis of 100% of their time spent on each job function, clearly indicating those functions that you believe meet the definition of direct costs in paragraph 6b of SFAS No. 91. Clearly indicate the amount of time spent by representative outside of the interviewing process.

- A description of the process that a prospective student goes through from the initial point of contact through enrollment; and

- A description of the student interview, including the amount of time spent per interview, the major components of the interview, and the percentage of time typically allocated to each component.

345. On September 17, 2009, ESI participated in the BMO Markets Back to School Conference. Modany participated in the conference on behalf of the Company, wherein he made several false and misleading statements designed to artificially inflate the price of ESI stock. For example, Modany stated, in pertinent part:

So if you look at new student enrollment, a compound annual growth rate -- since we went public in 1994 -- of about 9%, and again, more recently much more attractive than that. But you are looking at a longer term growth trend of 9%, we think is representative of what’s possible.

* * *

And really the last item down here, the value proposition, that is a big component of the growth opportunity we think exists for us. The value proposition that we are delivering to students continues to increase, and we see that opportunity in terms of the unemployment rate by educational attainment level.

346. Continuing, Modany tied together the increases in ESI enrollment with its overall financial performance, stating, in part:
Go over the financial summary, some of those operating numbers then translating into strong financial performance. *I talked about that 8% total enrollment compound annual growth rate over this same period of time with that 5% tuition increase is what we’ve averaged during this period to get to about a 13% compounded growth rate.*

*The interesting part of it is the leverage in the model, the efficiency with which we execute the business plan – 13% revenue growth, 26% operating income growth over this same period of time.*

And then the margins again telling the same story at this particular point. *Obviously with some very substantial growth in enrollment over the last couple of periods, we are seeing very strong margin expansion.* No one is suggesting that this is a level of margin expansion that we carry forward. When we think about this and we think about that historical performance level, we are always talking about maybe 100 to 150 basis points of margin expansion that we think we can get if we are seeing our historical growth rates.

347. The statements referenced in ¶¶345-46 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint.

348. Defendants were fully aware that the SEC’s September 11, 2009 request for additional information would require disclosure of ESI’s improper recruiting tactics and quota driven business and, ultimately, exposure of their fraud. Thus, on October 21, 2009, Fitzpatrick penned a letter to the SEC wherein ESI stated in pertinent part:

This letter is intended to respond to your comment letter dated September 11, 2009, and subsequent calls with your Staff. *With your permission, rather than respond to the three comments raised in your letter, I will summarize the Company’s plans to change, in the fourth quarter of 2009, its accounting method for direct costs incurred that relate to the enrollment of new students (“direct marketing costs”).

* * *

*The Company will implement the change in accounting method for direct marketing costs in its fourth quarter of 2009. Nevertheless, the Company will disclose the upcoming change in its earnings call later this week and in its Form 10-Q for the third quarter of 2009. Since this is a change from one acceptable GAAP accounting method to another that is preferable and there was no error in the Company’s accounting for direct marketing costs, the Company*
will follow the guidance in ASC 250 for adjusting its financial statements in its upcoming Form 10-K.

349. On October 22, 2009, ESI issued a press release announcing its third quarter 2009 financial results, which revealed slowing new enrollment rates and worsening bad debt. The Company reported that new student enrollment in the third quarter of 2009 increased 27.2% to 27,738 compared to 21,807 in the same period in 2008. Total student enrollment increased 28.7% to 79,208 as of September 30, 2009 compared to 61,556 as of September 30, 2008. EPS in the third quarter of 2009 increased 56.3% to $2.00 compared to $1.28 in the third quarter of 2008. Revenue in the three months ended September 30, 2009 increased 33.6% to $339.6 million compared to $254.3. Notably, the October 22, 2009 press release did not include any commentary on the Company’s financial performance, unlike the Company’s prior earnings releases.

350. On October 22, 2009, ESI filed its quarterly report on Form 10-Q for the quarter ended September 30, 2009, which confirmed the Company’s financial results and was signed by Fitzpatrick (the “Third Quarter 2009 10-Q”). The Third Quarter 2009 10-Q contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the Form 10-Q did not contain any material misrepresentations. Nevertheless, the Third Quarter 2009 10-Q did contain several false and misleading statements regarding ESI’s financial performance and future business prospects, which were based on an increase in student enrollment, including the following:

In the fourth quarter of 2009, we decided to change our accounting method for direct costs that relate to the enrollment of new students (“Direct Marketing Costs”). Under the accounting method for Direct Marketing Costs that we used through the third quarter of 2009, we capitalized and amortized those costs over the period during which the revenue streams from the associated contracts were recognized. Under our new accounting method for Direct Marketing Costs, we will expense those costs in the period incurred. We evaluated both methods of accounting and determined that expensing Direct Marketing Costs in the period incurred is a preferable accounting method under GAAP, primarily because it will
improve the comparability of our financial statements to those of other publicly traded companies in our industry which generally expense such costs as incurred.

* * *

Three Months Ended September 30, 2009 Compared with Three Months Ended September 30, 2008. Revenue increased $85.4 million, or 33.6%, to $339.6 million in the three months ended September 30, 2009 compared to $254.3 million in the three months ended September 30, 2008. The primary factors that contributed to this increase included, in order of significance:

- a 27.6% increase in total student enrollment at June 30, 2009 compared to June 30, 2008;
- a 5.0% increase in tuition rates implemented in March 2009; and
- a 140 basis point increase in the student persistence rate as of June 30, 2009 compared to June 30, 2008.

The primary factors that contributed to the increase in student enrollment included, in order of significance:

- student enrollment growth in programs of study and at locations that were in operation prior to 2008;
- new programs of study offered at our campuses; and
- operating new campuses.

Also on October 22, 2009, ESI also hosted a conference call to discuss the earnings results. Modany and Fitzpatrick participated in the call on behalf of the Company wherein they made several false and misleading statements designed to artificially inflate the price of ESI stock. For example, Modany stated, in pertinent part:

The response rates to our advertising continue to be strong in the third quarter and remain so as we enter the fourth quarter. We experienced another uptick in the tenure of our student recruiters compared to the same period in the prior year, and we believe that this contributed to a higher conversion rate of our perspective student inquiries during the third quarter of '09 compared to the third quarter of '08. In addition, as of September 30, 2009, we had 15% more recruiters than at the same point in the prior year. The 110 basis point improvement in our persistence rate, as of September 30, 2009 compared to the same date in the prior year, was directly attributable to improved student retention during the quarter compared to the third quarter of '08.
352. During the question and answer portion of the call, Modany commented on the so-called value of an ESI education, stating, in pertinent part:

_**I think as we look in 2010 right now, the expectation is 4% or 5% tuition increase. As we have historically done based upon our analysis of the value proposition with current numbers included in that calculation.**_

353. Discussing ESI’s recruitment efforts and admission standards, Modany stated, in pertinent part:

On the first part in terms of recruitment, are we doing anything on the recruitment front to manage [cohort default rate] The answer to that is no. _**We’re not changing our admission standards. We’ve had these in place for probably 15 or 20 years. We feel very comfortable with those admission standards, and understand that profile. We’re certainly not going to turn our back on those individuals at a period of time when they need us most.**_ It’s really our responsibility to kind of step in there and help manage some of this from a default perspective, keeping in mind what’s happening in the market and what’s happening to other institutions.

*   *   *

We’ve not made any changes there. I don’t know what kind of specificity I can give in terms of the call, but we disclose all of that in our catalogs. _**We have testing that we do. A test that’s utilized. The students have to pass the test. The testing levels haven’t changed for many years. We just feel comfortable, and confident in our ability to service that student profile.**_ I don’t anticipate that there would be any changes going forward. We don’t do any ATB, if that’s what you’re getting to; and I know that’s been sort of a buzz word or topic that’s been thrown around recently on the regulatory front. No ATB here, none in the past, and none going forward.

354. Although the market reacted negatively to news that the Company was altering its accounting standards in response to the SEC inquiry, with the price of ESI stock dropping 7.30%, or $8.06 per share, to close at $102.37 on October 22, 2009 on very heavy trading volume, Defendants were successful in keeping their fraudulent scheme under wraps. Indeed, had Defendants actually answered the SEC’s detailed questions, the market would have learned the truth and the price of ESI stock would have dropped further.
355. For example, responding to Defendants' false statements and omissions, on October 22, 2009, analysts from William Blair & Company stated:

Despite the stock retreating 7% on the day, we view ITT's third-quarter results and management commentary on the call as in line with expectations and view the new call format (fewer prepared remarks and more Q&A) and accounting change to expense direct marketing costs as incurred (rather than capitalizing and amortizing the costs over the student's tenure) as positive moves from a transparency and communication perspective... While the retention trend could reverse as the job market continues to languish, we view second- and third-quarter continuing student numbers as evidence that ITT is not stretching for students or enrolling students that are ill-prepared for the tasks at hand.

356. Likewise, on October 22, 2009 ThinkEquity LLC analysts pointed to ESI's "very strong Q3 performance with strong new student enrollment growth" and stated "[w]e believe enrollment will remain strong in the near term, but that growth with likely slow into 2010 from the robust levels of recent quarters." Barrington Research concurred, highlighting ESI's "enrollment revenue and earnings [that] all topped consensus." RBC Capital Markets analysts viewed the October 22, 2009 "price decline... as a buying opportunity."

357. The statements referenced in ¶¶348-53 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶348-53 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- Defendants were well aware that if ESI provided the SEC with a "detailed description of your recruiting representatives job responsibilities and an analysis of 100% of their time spent on each job function," as well as a "description of the process that a prospective student goes through from the initial point of contact through enrollment," it would have been forced to reveal Defendants' fraudulent scheme to the market. Rather than disclose this truth, Defendants went so far as to change the Company's accounting principles while simultaneously misrepresenting to the market their reasons for doing so.
• Defendants again continued to misrepresent the primary factors behind the Company’s increase in revenues, enrollment, and financial performance. Defendants omitted the critical fact that such increases, in reality, translated to nothing more than increases in the intensity of the Company’s manipulative and abusive recruitment practices, and misrepresentations made to students regarding not only the transferability of credits but also bloated and misleading employment statistics.

• As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, the Company’s Class Period revenue and enrollment numbers, as well as ESI’s future business prospects.

358. On January 20, 2010, the Company issued a press release announcing it had entered into a guarantee agreement in connection with a new private education loan program for ESI students, called the PEAKS private Student Loan Program.

359. On January 21, 2010, the Company issued a press release announcing its fourth quarter and full year financial results for the period ending December 31, 2009. The press release provided, in pertinent part: new student enrollment in the fourth quarter of 2009 increased 31.2% to 19,563 compared to 14,911 in the same period in 2008. Total student enrollment increased 30.3% to 80,766 as of December 31, 2009 compared to 61,983 as of December 31, 2008. EPS in the fourth quarter of 2009 increased 59.0% to $2.56 compared to $1.61 in the fourth quarter of 2008. Revenue in the three months ended December 31, 2009 increased 33.8% to $374.4 million compared to $279.8 million in the three months ended December 31, 2008. Once again, the Company’s earnings release did not include any commentary on the Company’s financial results.

360. Also on January 21, 2010, the Company hosted a conference call to discuss its fourth quarter and year end financial results. Modany and Fitzpatrick participated in the call on behalf of the Company wherein they made several false and misleading statements designed to artificially inflate the price of ESI stock. For example, Modany stated, in pertinent part:

Just to remind everyone, we reported in our 2009 earnings conference call that as of October 20, 2009 the graduate employment rate for our 2009 graduates was
approximately 560 basis points below the rate for 2008 graduates at the same date in 2008. We are very pleased to report this morning that as of January 20, 2010 the graduate employment rate for our 2009 graduates was approximately 240 basis points below the rate for our 2008 graduates at that same date in 2008. Obviously we made significant progress during the fourth quarter in narrowing the year-over-year gap in our graduate employment rate for our 2009 graduates, as compared to our 2008 graduates. However we believe that we can narrow gap even further for the period measuring our graduate employment rate of our 2009 graduates end on April 30, 2010.

361. Unlike previous conference calls, Fitzpatrick stated he would not review the Company's financial results, except to discuss private student loans (see, e.g., supra at ¶¶255, 276, 297-98, 304-05). Moreover, Modany also stated he would not address DOE rulemaking proposals or their estimated impact on ESI. In the following question and answer portion of the call, Modany discussed enrollment growth, and stated, in pertinent part:

And clearly the comps for us are very difficult. We had some outstanding performance in 2009 that we're going to be bumping up against. And some of that was comped against some incredible numbers in 2008, and so the bar continues to rise for us. As we think about that, and although we’re not giving guidance in terms of the enrollment, I think it is appropriate to think about us trending more towards the compound annual growth rate, that historical growth rate that is in that 9% range, or that 8%, 9%, 10% range. So we start working our way there, Gary, I think, over the next couple of quarters, and that is not reflective of demand. We continue to see strong demand.

362. Claiming to be transparent with the market regarding the value proposition of ESI, Modany continued:

But we've been very public with our commentary with regard to the way that we set tuition pricing. And we really, truly have a model where we focus on the return on investment for students. And that is the basis for setting everything we think about.

*   *   *

Many may not believe that, but that is absolutely true. So we have not changed our focus there. It is ROI driven, it is outcome-based. That is the way that we've run this institution for 40 years, and we really do not have any intentions of changing there. Should there be regulatory constraints that make us and force us to think about it differently, then we'll do that. We've complied with regulations again for 40 years, we'll do it again if they change on us. But it is just tough for us right now for us, to give you guys the kind of specificity I am sure you would
like to obtain, when we don’t have any certainty of where this thing plays itself out.

363. During the question and answer portion of the call, an analyst from Stifel Nicholas asked Modany about the frequency of student rejections. Modany responded, in part:

_We don’t typically break that out in any level of detail, but you know how the process works. And we’ve got an admissions test, and so there’s some percentage there that actually gets filtered out. And then you get into financial aid, and there is some percentage there gets filtered out. And once you make it through those two filters for the most part, you are into class – and there’s not a lot of capacity issues in terms of people not getting into classes from a capacity perspective. It happens, but you would more see that reflective in their loads. So the number of courses carried as opposed to somebody being pushed out or in, if that makes sense._

364. When asked to discuss the average (and exorbitant) debt levels of ESI graduates in 2009, Modany evaded the true response, and misleadingly stated:

_Yes. We’re not going to give debt levels of our graduates. And I think that you can understand why we would not want to put them out this in the spotlight, but we can try to provide you some color there. I think that the data is out there for you to get fairly close. If you look at our grads, probably the first thing we need to be thinking about is about 10% of the credits that they have going towards their degree basically are transferred in. And so that is something that is not being earned, while they are on our meter, if you will. You have to discount for that._

365. In response to the false and misleading statements made by Modany during the January 21, 2010 conference call and in the Company’s press release the price of ESI stock rose 6.22% from a closing price of $97.91 on January 20, 2010 to $104.00 per share on January 21, 2010. The following day, ESI stock gained an additional 4.14%, or $4.31 per share, to close at $108.31 on January 22, 2010, as demonstrated in the chart below:

367. On February 1, 2010, Morgan Stanley analysts downgraded ESI to “Equal-Weight” because of the “specter of harsh “gainful employment” regulations, which will link program eligibility with a ratio of student debt to potential earnings, puts ITT’s programs at high risk for tuition cuts.”
368. On February 19, 2010, ESI filed its annual report on Form 10-K for the fiscal year ended December 31, 2009 (the “2009 10-K”). The financial results reported in the 2009 10-K were substantially similar to those reported in the Company’s prior press releases. The 2009 10-K was signed by Modany and Fitzpatrick, among others, and contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the 2009 10-K did not contain any material misrepresentations. Nevertheless, the 2009 10-K did contain several false and misleading statements regarding ESI’s financials and future business prospects, including the following statements regarding student recruitment and growth in student enrollment:

*We strive to attract students with the motivation and ability to complete the career-oriented educational programs offered by our campuses. To generate interest among potential students, we engage in a broad range of activities to inform potential students and their parents about our campuses and the programs they offer.* These activities include television, Internet and other media advertising, direct mailings and high school presentations. We employ approximately 1,700 full- and part-time recruiting representatives to assist in local recruiting efforts.

369. The 2009 10-K also stated, in pertinent part “Our National Director of Recruitment and Regional Directors of Recruitment oversee the implementation of recruitment policies and procedures. In addition, our compliance department reviews student recruiting practices at each of our campuses on at least an annual basis.”

* * *

We require all applicants for admission to any of our campus’ programs of study to have a high school diploma or a recognized equivalent. Depending on the program of study and the campus, applicants may also be required to:

- pass an admission examination;
- possess a designated number of credit hours or degree with a specified overall cumulative grade point average from an accredited postsecondary educational institution;
- complete the Scholastic Assessment Test or American College Testing examination;
• tour the campus; and
• submit a letter of recommendation and an essay.

* * *

We believe that the success of our graduates who begin their careers in fields involving their programs of study is critical to the ability of our campuses to continue to recruit students. We try to obtain data on the number of students employed following graduation. The reliability of such data depends largely on information that students and employers report to us. Based on this information, we believe that approximately 77% of the Employable Graduates (as defined below) from programs of study at the ITT Technical Institutes during 2008 either obtained employment by April 30, 2009, or were already employed, in positions that required the direct or indirect use of skills taught in their programs of study.

370. Discussing the Company’s 2009 financial results, the 2009 10-K stated, in pertinent part:

Revenue increased $303.9 million, or 29.9%, to $1,319.2 million in the year ended December 31, 2009 compared to $1,015.3 million in the year ended December 31, 2008. The primary factors that contributed to this increase included, in order of significance:

• an average 27.1% increase in total student enrollment in each academic quarter beginning in 2009 compared to 2008;
• a 5.0% increase in tuition rates in each of March 2009 and March 2008; and
• a 16.9% increase in total student enrollment at December 31, 2008 compared to December 31, 2007.

The primary factors that contributed to the increase in student enrollment included, in order of significance:

• student enrollment growth in programs of study and at locations that were in operation prior to 2008;
• new programs of study offered at our campuses; and
• operating new campuses.
371. As before, the 2009 10-K included information on ESI’s preliminary 2008 cohort default rates. The 2009 10-K revealed that cohort default rates had increased in 2008 to a range of 3.6% to 15.5%, up from 2007 rates of 2.7% to 15.2%.

372. The statements referenced in ¶¶359-64, 368-70 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶359-64, 368-70 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

• The Company’s reported graduate employment rates continued to be materially inflated by well-established practices, such as “stretching.” Although the Company changed its policy regarding calculation of graduate employment rates in late 2009/early 2010 in an effort to evade regulatory scrutiny, essentially admitting that its prior methods were fraudulent, Defendants likewise failed to disclose this change in methodology to the market.

• Defendants were anything but “very public” in their “commentary with regard to the way that [they] set tuition pricing.” What Defendants knew, but did not disclose, was that rather than focusing on the “return on investment” for students, Defendants focused solely on ESI’s return on the federal government’s investment (via federally funded grants and student loans) in students who were duped into enrolling into a for-profit sales machine that was disguising itself as a legitimate institute of higher learning.

• Defendants were fully aware that the Company was not in compliance with regulations. ESI’s entire recruiting methodology, which focused on misrepresentations, pain, and quotas, including that Recruiters’ careers with ESI lived and died solely on the quantitative basis of whether quotas were met, was a known violation of applicable regulations.

• Defendants were fully aware that ESI had virtually no admissions criteria. Rather than “filter[ing] out” unqualified students, ESI was more than willing to enroll any “lead” in classes so that the Company could further stuff its coffers with federal student loan dollars. Moreover, rather than attempting to “inform potential students and their parents” about ESI, Defendants were well aware that students were, as part of ESI’s standard operating procedure, misinformed about a host of key facts, including transferability of credits, the value of an ESI
education, and their ability to find gainful employment remotely commensurate with their debt load in the unlikely event they actually graduated from an ESI school. Indeed, contrary to ESI's public statements, Defendants required Recruiters and Financial Aid Advisors to tell students as little information as possible, keeping them in the dark in order to control and exploit them.

- As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, the Company's Class Period revenue and enrollment numbers, as well as ESI's future business prospects.

373. On February 22, 2010, Modany, on behalf of ESI, presented at the Credit Suisse Global Service Conference. During the conference, Modany made additional false and misleading statements. For example, Modany stated, in pertinent part:

Those of you that have heard me talk before or heard Dan talk; *we talk a lot about value proposition and the return on student investment, return on their investment in education over their working lifetime. That's been a principle part of the way we run this business and will continue to be part of it.* And again, we're bringing that over to the Daniel Webster side as well.

374. As the conference call continued, Modany touted the Company's growth rates:

But a hallmark of our organization is that we've been executing and we've been executing very well and the results speak for themselves. You can see that the compound annual growth rate since 1994 in terms of what we see as a very key metric, *total enrollment has grown at about 10%, 9.5% compound annual growth rate. Clearly over the last couple of years we've seen a growth rate north of the historical trend.* Clearly there are some tailwinds, there's some impact from the economic disruption that has driven results north of that.

* * *

Looking at net income, what have we done with a 9.5% compound annual growth rate on total enrollment? Well, we've driven a compound annual growth rate of about 28% in net income. So clearly we've been efficient, clearly we've driven strong margin expansion within the model. Again, we like to fashion ourselves as very efficient executors of our model, very efficient operators. And again, I think the data proves that out.

* * *

We still feel as if that's the case right now with our strategy that we have in place, leveraging our fixed overhead and, again, getting the leverage of increasing enrollment. *So, we think it's possible for us to have again, 9% to 10% enrollment growth, somewhere in the 20% income growth. And again, that's looking term based upon what we see with our model and our opportunity.*
What you’re seeing with our 2010 internal goals in terms of a 30% increase in EPS roughly in that range with a 60% plus increase in free cash flow, you’re seeing the liquidation of some of those assets that were put onto the balance sheet and a return to a more correlated relationship between the income and the cash flow. I think that’s a point that should be emphasized that we’re seeing that now in 2010. And that would be our expectation going forward.

375. Touting demand, Modany stated, in part:

*just in closing, business fundamentals right now are as strong as I've seen them and I've been with the organization for about eight years. The demand is very, very strong. We continue to see that type of demand going forward.*

376. In response to Defendants’ false and misleading statements, the price of ESI stock increased 3.09%, or $3.19 per share, on February 22, 2010, to close at $106.50.

377. The statements referenced in ¶¶373-75 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶373-75 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- The “principle part” of how Defendants ran ESI was to maximize enrollment through continuously expanding enrollment quotas and to then maximize the amount of federal financial aid taken out by ESI students. Rather than running the business with an eye towards students’ return on investment, Defendants were running the business based on a secret, systemic predatory sales scheme that, if disclosed, would materially diminish ESI’s enrollment and financial results.

- As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, the Company’s Class Period revenue and enrollment numbers, as well as ESI’s future business prospects.

378. On March 4, 2010, Bloomberg published an article entitled, “Your Taxes Support For-Profits as They Buy Colleges,” which revealed disturbing practices at, among other
practice, ESI. Specifically, the article discussed and described the Company’s acquisition of Daniel Webster College in June 2009, and stated, in part:

ITT Educational Services Inc. paid $20.8 million for debt-ridden Daniel Webster College in June. In return, the company obtained an academic credential that may generate a taxpayer-funded bonanza worth as much as $1 billion.

ITT Educational, the U.S.'s third-biggest higher education company with a market value of $3.8 billion, may increase it by 26 percent, or $1 billion, within five years because of the purchase of 1,200-student Daniel Webster in Nashua, New Hampshire, according to Michael Clifford, an investor in Del Mar, California, who has participated in the acquisitions of four nonprofit colleges. At least 75 percent of new revenue would come from access to the more than $100 billion a year in financial aid the U.S. hands out to college students, he said.

Key to tapping that money is Webster's regional accreditation, which is the same gold standard of academic quality enjoyed by Harvard University and helps students transfer course credits from one college to another. Daniel Webster’s accreditation was its “most attractive” feature to ITT Educational, said Michael Goldstein, an attorney at Dow Lohnes, a Washington law firm that has represented the company.

“Companies are buying accreditation,” said Kevin Kinser, an associate professor at the State University of New York at Albany, who studies for-profit higher education. “You can get accreditation a lot of ways, but all of the others take time. They don’t have time. They want to boost enrollment 100 percent in two years.”

Exploiting Loopholes

The nation’s for-profit higher education companies have tripled enrollment to 1.4 million students and revenue to $26 billion in the past decade, in part through the recruitment of low-income students and active-duty military. Now they’re taking a new tack in their quest to expand. By exploiting loopholes in government regulation and an accreditation system that wasn’t designed to evaluate for-profit takeovers, they’re acquiring struggling nonprofit and religious colleges -- and their coveted accreditation. Typically, the goal is to transform the schools into online behemoths at taxpayer expense.

* * *

Buying accreditation lets the new owners benefit immediately from federal student aid, which provides more than 80 percent of revenue for some for-profit colleges, instead of having to wait at least two years. Traditional colleges are also more inclined to offer transfer credits for courses taken at regionally approved institutions, making it easier to attract students nationwide.
The six nonprofit regional accrediting bodies, which rely on academic volunteers, bestow the valuable credential with scant scrutiny of the buyers’ backgrounds, Barmak Nassirian, associate executive director of the American Association of Collegiate Registrars & Admissions Officers in Washington, said in a telephone interview.

While accrediting bodies treat these purchases as changes of ownership, the acquisitions, in reality, create new colleges that should be required to earn certification from scratch, Kinser said.

* * *

ITT Educational Services, which was spun off from ITT Corp. in the 1990s, wasted no time making changes at Daniel Webster. It renovated a main building and razed a dilapidated dormitory. It also dismissed one fourth of the staff, fired President Robert Myers, and has been accused by faculty members of misleading the New England accreditor, the Commission on Institutions of Higher Education, based in Bedford, Massachusetts.

“ITT didn’t really have much interest in anything other than having acquired a regionally accredited institution,” said Myers, now president of the New England Culinary Institute in Montpelier, Vermont. “If I had it to do all over again, I wouldn’t have gone anywhere near ITT. The fundamental nature of the college has changed.”

“We’re making fantastic progress with the cultural assimilation” of Daniel Webster, Modany said in a Jan. 21 call with analysts. “Things are going really well there, great group of staff and faculty, and everybody is getting on board.”

* * *

Regional accreditation is important to for-profit colleges because students are attracted to its cachet and can transfer course credits more easily. Only 14 percent of nonprofit universities accept credits transferred from nationally certified schools, according to a 2006 study by the University Continuing Education Association, in Washington.20

379. On April 22, 2010, ESI issued a press release announcing its financial results for the first quarter of 2010. The press release reported that new student enrollment in the first quarter of 2010 increased 21.8% to 23,064 compared to 18,935 in the same period in 2009. Total student enrollment increased 28.9% to 84,555 as of March 31, 2010 compared to 65,620

as of March 31, 2009. The press release included a statement issued by Modany in which he said, in pertinent part:

We are very pleased with our financial, operating and academic results which exceeded our internal expectations. As a result we are raising our 2010 internal goal for EPS from the range of $10.00 to $10.50 to a revised range of $10.50 to $11.25.

380. Also on April 22, 2010, ESI filed its quarterly report on Form 10-Q for the quarter ended March 31, 2010, which confirmed the Company’s financial results and was signed by Fitzpatrick (the “First Quarter 2010 10-Q”). The First Quarter 2010 10-Q contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the Form 10-Q did not contain any material misrepresentations. Nevertheless, the First Quarter 2010 10-Q did contain several false and misleading statements regarding ESI’s financial performance and future business prospects, which were based on an increase in student enrollment, including the following:

Three Months Ended March 31, 2010 Compared with Three Months Ended March 31, 2009. Revenue increased $95.9 million, or 33.3%, to $384.0 million in the three months ended March 31, 2010 compared to $288.0 million in the three months ended March 31, 2009. The primary factors that contributed to this increase included, in order of significance:

• a 30.3% increase in total student enrollment at December 31, 2009 compared to December 31, 2008;

• a 5.0% increase in tuition rates implemented in March 2010 and March 2009; and

• a 28.9% increase in total student enrollment at March 31, 2010 compared to March 31, 2009.

The primary factors that contributed to the increase in student enrollment included, in order of significance:

• student enrollment growth in programs of study and at locations that were in operation prior to 2008;

• new programs of study offered at our campuses; and
• operating new campuses.

381. On April 22, 2010, the Company also hosted a conference call for analysts and investors to discuss the Company’s financial results. Modany and Fitzpatrick participated in a conference call on behalf of the Company. During the call, Modany discussed graduate employment rates and the Company’s outlook stating, in pertinent part:

Today, we are reporting that the graduate employment rate of our 2009 graduates on April 19, 2010 was approximately 300 basis points below the rate of our 2008 graduates on the same date in 2009.

*   *   *

They were no material changes to the other key elements of our strategic plan during the first quarter of 2010. Given that the 2010 first quarter results exceeded our expectations, we are raising our 2010 internal EPS goal from the range of $10.00 to $10.50 to a revised range of $10.50 to $11.25.

382. Once again, Fitzpatrick refused to review the Company’s financial results, which was a departure from the Company’s past reporting practices. Similarly, Modany stated he would not be discussing the impact of DOE regulations.

383. Later in the call, Modany answered a question regarding growth rates by stating, in relevant part:

We still think we’ve got a good bit of runway here, purely just on the ITT Technical Institute brand. And then, of course, we will introduce other variables to continue to grow. That being said, we’re not suggesting that the kind of enrollment growth we’ve seen over the past probably six, eight quarters is anything that is reflective of the longer term. We’re not trying to say that. We really are more saying that — over time, and we’re starting to see some of that happen, we’ll start to revert back to historical levels. And the historical level of 8%, 9% new student enrollment growth is probably something that makes sense when you think about a longer term trend there of three, five-year kind of trends. So we still feel good about it. The details — again, our detail strategic plan suggest there’s runway there, and a historical growth rate is something we feel pretty good about.

384. As the call continued, Defendants were asked to discuss graduate completion rates for ESI. In response, Modany revealed to the market, ESI’s graduated rates, stating:
Sure. We’ve *not* given a lot of specificity there except to say that historically we’ve been in the 45% to 55% range. And then just more recently with some of the new programs that we’ve added and demographic shifts that we’ve seen, probably closer to the lower end of that range. And that’s not materially changed recently, so still in that range, but toward a little bit of the lower end of the range right now just based on mix.

385. When asked to discuss demand trends, Modany stated, in pertinent part:

Sure. We talked a little bit about advertising specifically, and spot costs, and when we think about lead flow if you are referring to that as an indicator of demand. The two variables that go into that are -- what are you paying for it, and what is your budget? What are you going to spend? And then, what is the response rate on each one of those spots. And digging a little bit deeper into demand, it is best to look at that response to each one of those impressions that you get in the market. And thus far, we’ve been holding pretty solidly there across the median. We don’t see any issues there. **That is where we come up with that comment that we continue to see solid demand. We base that on response rates to spots.** Changes in the market from the past couple of quarters are really just in the spot costs, in some media outlets. And we’re working our way through that and managing through that. We talked about now a 15% to 20% increase relative to prior years for spending in the next couple of quarters. Keeping in mind, that’s on a comparative number that was relatively low. So spot costs -- certainly manageable, but up a little bit from the last couple of quarters. **Demand in terms of response rate on the spots, still very healthy.**

386. As the call continued, an analyst asked the Company to comment on the filing of the Halasa Action. In response, Modany stated, in part:

Well, I’m -- let me just say this much. I’m sure you can appreciate that I cannot comment specifically on any legal claims, quite frankly. But I will tell you this much -- based on the current knowledge we have and the information that we have with respect to the claims of this former disgruntled employee. **We certainly believe that the allegations are completely without merit and certainly intend to vigorously defend ourselves.** Beyond that, I probably can’t say too much.

387. Market analysts responded positively to Defendants’ false and misleading statements, despite expressing concerns over potential regulatory pitfalls. For example, on April 22, 2010, Deutsche Bank analysts pointed to ESI’s raised EPS guidance and stated that ESI’s “[e]nrollment deceleration [was] not as bad as feared” and pointed to “strong enrollment trends [and] improved bad debt.” Similarly, on April 22, 2010, ThinkEquity LLC analysts stated that ESI’s financial results were “solid” but also pointed out that slower growth was on the horizon.
for the Company. Likewise, analysts from RBC Capital Markets stated that ESI’s “strong” quarter drove a “material” increase in guidance, pointing to “healthy” enrollment trends.

388. Despite Defendants’ false and misleading statements, on April 22, 2010, the price of ESI stock fell 4.62%, or $5.46 per share, to close at $112.69, on heavy trading volume. But for Defendants’ false and misleading statements, the price of ESI stock would have fallen further.

389. The statements referenced in ¶¶379-86 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶379-86 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- Defendants continued to omit that the so-called “solid demand” the Company was experiencing depended upon continued execution of Defendants’ fraudulent scheme. Without outright deception and manipulation of prospective students, demand would have substantially diminished, and ESI’s financial results would have suffered as a result.

- Defendants were fully aware that the allegations of the Halasa Action were spot-on. Rather than admitting the truth to the market, Defendants continued to mislead, misrepresent, and hide the truth from investors regarding the Company’s hidden recruitment, retention, and career placement practices.

- As a result of the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, the Company’s Class Period revenue and enrollment numbers, as well as ESI’s future business prospects.

390. On May 19, 2010 the Company participated in the Robert W. Baird Growth Stock Conference, with Modany speaking on behalf of ESI. During the conference Modany made several false and misleading statements. For example, Modany discussed ESI’s so-called “value proposition” and stated, in pertinent part:
And, again, we talk about relevant-- relevancy of the program offerings. There’s certainly recent conversations around the term gainful employment. This is something in terms of student value proposition that the organization has always thought of. The programs that we offer-- We look and only offer programs that present the student with a very strong value proposition in terms of starting salaries, earnings potential relative to their investment and their education, as well as the number of employment opportunities. So it’s a very critical component of our program selection criteria. Again, it’s been part of our organization for the past 20 years. So it’s new on the scene today in terms of the discussion point, but it’s something that’s been part of our organization and our methodologies for a very long time.

391. Discussing the Company’s financial results and future business prospects,

Modany stated, in pertinent part:

A quick look at financial results, just to give you a snapshot. You can see new student enrollment; obviously, the growth metric here. Compound annual growth rate over the period of time since 1994, which is our IPO date, of about 9%. And that’s important because, when we speak to sort of longer-term growth rates when we say, over the next three to five years, what do we think we can do from a new student enrollment perspective, we always point back to sort of our historical compound annual growth rate - 8% to 10%, somewhere in that range.

You could see more recently, with the economic disruption and the element of cyclical that exists in the business, we’ve done much better than that. So you can see, even for 2009, 30% and 2008 20%. So, obviously, the comps are pretty tough here as we head into 2010. But first quarter was pretty strong as well, with 20%. So it gives you a sense of what we see on the new student enrollment front.

And then total enrollment, which will give you a clear indication into revenue opportunities; here, a compound annual growth rate of about 9.5%.

So, again, that 8% to 10% range for new and total is probably a reasonable way to think longer term with regard to what we think we can do going forward. And, again, at the bottom, you get a sense of the trending. And I know you have all this data. But, again, I think it’s important to point out some of the most recent numbers with the economic environment we’ve been in. 2009 had total enrollment growth of 30%, which obviously is well in excess of what the historical rate is. And, longer term, we’re pointing to coming down to that historical rate and seeing some of these tougher comps being part of that story, obviously, as we go into 2010.

With that enrollment, we obviously have done very well, have been very efficient. I think there’s two things going on here that are worth pointing out. There’s clearly leverage in the model. When there’s enrollment growth, there’s leverage in each incremental student. I think most people that know the business
understand that. But, in addition to that, we’ve been able to generate efficiencies in the way in which we process our transactions. We have lowered the cost per transaction and have, again, driven some leverage opportunities here. So, with 9% total enrollment growth to 10% total enrollment growth, we’ve driven a compound annual growth rate in net income of 28%. So I think that speaks to our ability to efficiently run the business.

392. On May 25, 2010, the Company participated in the Bank of America Merrill Lynch Services Conference, with Modany speaking on behalf of ESI. At the conference, Modany discussed the ESI “value proposition,” and made several false and misleading statements. For example Modany stated, in pertinent part:

There has been a lot of talk lately about gainful employment and value proposition for students. This is something we have looked at for a very, very long time, internally focused on degrees and programs with jobs, a significant number of jobs, and salaries that provide our students with a good value proposition.

393. Turning to ESI’s enrollment trends, Modany discussed slowing growth rates and stated, in pertinent part:

A question that we are getting quite often is whether or not we are able to manage that shift in the economic environment, and whether we will see a fall off in terms of the enrollment rate. Clearly no one is anticipating a continuation of 30% year-over-year growth rates going forward in perpetuity. But we think it is possible for us to manage that and see a more subtle decline, or at least not going negative as some have suggested. We don’t see that as the likely scenario. And more so see ourselves kind of falling down to the historical levels in and around that level and managing that a bit.

Total enrollment, right about the same at about 9.5% rate. Again, an important metric because we are pointing to this when we think about the three to five year run rate and what we think is possible. A 9% enrollment rate we think is very realistic, given the strategy that we have in front of us.

Obviously, we have been very efficient as an organization. And there is obviously a lot of leverage in the post-secondary education model, and we have taken advantage of that with enrollment growth of 9.5%. Over this period of time we have driven compound annual growth rate at the net income line of 28.1%, and even more recently higher than that.
394. In response to a question regarding incentive compensation and the safe harbor for enrollment advisors, rather than revealing the truth about how ESI’s recruiters were compensated and evaluated, Modany stated, in pertinent part:

Well, I think it takes away the clarity that exist today. And I think probably as opposed to creating any kind of operational risk for us, really create I think [legal risks], and just make it more difficult for us, because it puts uncertainty, ambiguity out there relative to what [is] possible.

The Safe Harbors were very useful for us to mitigate those types of unnecessary, frivolous type lawsuits that we get relative to compensation. So you are back to like 1992. So it is an environment that we have operated in before. We know how to do that.

But again the clarity that the Safe Harbors provided was welcome. I think the elimination of that then takes us back to that period of time when there was no certainty around the definition of the statute as it relates to compensation.

How it impacts us and what we would do there, there is a lot of opportunities for us again based upon what we have previously done to appropriately evaluate the performance of individuals. And that is really what this gets down to, just evaluating performance, as we are all evaluated on a regular based on our performance and our ability to do that.

There is opportunities to do that. I am not getting into any specifics at this point, just as I didn’t want to talk to any of the specifics of gainful employment until we know exactly how the regulation is ultimately structured.

395. The statements referenced in ¶¶390-94 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶390-94 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

- The Company was not focused on finding its students gainful employment. Rather, for a vast majority of the Class Period, the Company was focused on manipulating employment placement statistics for the purpose of misleading prospective students and “feeding the machine.” Had ESI accurately reported placement numbers, potential students would have been less inclined to burden themselves with incredible amounts of student loan debt.
Total enrollment was a misleading indicator of the strength of ESI's business because it depended upon continuous addition of hordes of new students, as well as the continuous execution of Defendants' fraudulent scheme and ESI's secret business model. Indeed, as set forth above, between 2008 and 2010, the Company recruited more than 240,000 new students, but increased its total enrollment by only 22,700 students.

Defendants were aware that ESI violated applicable regulations by operating a quota-driven enrollment environment where Recruiters were judged solely upon their generation of "starts" vis-à-vis enrollment quotas, and would be fired for failure to meet those quotas. ESI only evaluated the performance of its employees based on their ability to meet quotas – nothing else mattered.

396. On June 10, 2010, Chairman Harkin announced that he would be holding a series of hearings to examine federal spending at for-profit colleges. The press release provided in pertinent part:

Senator Tom Harkin (D-IA), Chairman of the Health, Education, Labor and Pensions (HELP) Committee, today announced that he plans to hold a series of hearings to examine federal education spending at for-profit higher education institutions. The hearings will begin June 24th.

"In the past two years we have made major new investments to expand federal financial aid," said Harkin. "Pell Grants and student loans now provide more than $20 billion to for-profit higher education companies every year. We need to ensure for-profit colleges are working well to meet the needs of students and not just shareholders. We owe it to students and taxpayers to make sure these dollars are being well spent."

Between 1998 and 2008 the for-profit sector has grown from 550,000 students to 1.8 million, a 225 percent increase. Students at for-profit institutions are borrowing more, and more frequently, than their peers at non-profit schools, and according to the Department of Education, one in five students who left a for-profit college in 2007 defaulted on their loan within three years.

The Committee will examine a broad range of issues related to the growing role of the for-profit higher education sector, including the scope and rapid growth of the federal investment in for-profit higher education and the corresponding opportunities and risks for students and taxpayers. Details on the first hearing will be available in the coming weeks.

397. On June 16, 2010, the DOE announced that it was preparing new tougher regulations on the for-profit education industry designed to protect college students and taxpayers from abusive or fraudulent practices.
398. On June 24, 2010, the HELP Committee held a hearing on the for-profit education industry. As part of the hearing, the HELP Committee released a report entitled, “Emerging Risk? An Overview of the Federal Investment in For-Profit Education.”

399. The report noted that “[e]vidence suggests that for-profit schools charge higher tuition than comparable public schools, spend a large share of revenues on expenses unrelated to teaching, experience high dropout rates, and, in some cases, employ abusive recruiting and debt-management practices.” The report further noted “mounting reports of questionable practices” at for-profit colleges. With regard to job-placement data provided by colleges in the for-profit education industry to prospective students, the report found that “there is no agreed-upon definition of how placement in a relevant field is calculated. For example, a restaurant dishwasher or even a janitor might be considered a ‘placement’ by a culinary school.” Pointing to financial results bloated by Title IV dollars, the report further stated:

For-profit schools have significant operating profit margins among companies listed on U.S. stock exchanges. For FY2009, one company reported an operating profit of $489 million on revenues of $1.3 billion, a 37 percent margin. By comparison, this margin was more than triple that of Raytheon, and double that of Apple.

Notably, ESI’s 2009 revenues were $1.3 billion and its operating profit was $489 million.

400. As a result of these and similar partial disclosures calling into question the practices of for-profit school, by the end of June 2010, ESI’s stock was trading at $83.02, down more than 15% from it’s closing price of $97.89 on June 1, 2010.

401. On July 1, 2010, U.S. Senator Durbin was quoted in a variety of media reports expressing criticism of for-profit colleges and calling for more regulation. Comparing the

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growth of for-profit educational institutions to the subprime mortgage bubble, Senator Durbin discussed the need for “legislation to strengthen regulation of for profit-schools” because the schools were leaving students with “worthless diplomas” and “whopping levels of debt.”

402. On July 22, 2010, ESI issued a press release announcing its 2010 second quarter financial results. The Company reported that new student enrollment in the second quarter of 2010 increased 10.1% to 21,673 compared to 19,692 in the same period in 2009. Total student enrollment increased 21.2% to 84,695 as of June 30, 2010 compared to 69,889 as of June 30, 2009. The press release stated, in pertinent part:

Kevin M. Modany, Chairman and Chief Executive Officer of ITT/ESI, said, “We are very pleased with the solid financial and operating results in the second quarter of 2010 and congratulate our faculty, campus management and staff for their contributions to our institutions and unavering commitment to our students’ success. As a result of our performance in the first half of 2010, we are raising our 2010 internal goal for EPS from the range of $10.50 to $11.25 to a revised range of $11.00 to $11.35.”

Modany added, “The period for measuring the employment success of our 2009 graduates ended in the second quarter. Approximately 73% of our 2009 employable graduates obtained employment in positions using skills taught in their programs of study by April 30, 2010 compared to 77% of our 2008 employable graduates by April 30, 2009. The average annual salary reported by our 2009 employed graduates was approximately $31,600 compared to approximately $32,800 reported by our 2008 employed graduates.”

403. Also on July 22, 2010, the Company held a conference call to discuss its financial results. Modany and Fitzpatrick participated in the call on behalf of ESI. During the call, several false and misleading statements were made. For example, Modany stated:

There were no material changes to the other key elements of our strategic plan during the second quarter of 2010. As a result of the second quarter performance, we are raising our 2010 internal EPS goal from the range of $10.50 to $11.25, to a revised range of $11.00 to $11.35.

We have updated two of our internal goals for 2010. We are increasing our internal goal for free cash flow for the full-year 2010 from approximately $475 million to approximately $500 million. We are increasing our internal goal for diluted earnings per share from a range of $10.50 to $11.25, to a revised range of $11.00 to $11.35. Free cash flow is a non-GAAP measurement that is reconciled
to the comparable GAAP operating cash flow measure on our website at www.ittesi.com.

404. Fitzpatrick again refused to review the Company’s financial results, in contrast to what he had routinely done during conference calls earlier in the Class Period. As the call continued, Modany discussed admission and enrollment standards, while omitting key facts, as well as demand, and stated, in relevant part:

I don’t know if we can do that, Jerry, to help you to help you come up with some quantitative way to do that. We certainly can provide you some color. In terms of whether or not there were any actions on our part to regulate flow, if you will, maybe through changes in admission standards or something along those lines, we can say that we have not done any of that. We have not made any changes in the enrollment standards. We still feel very confident and comfortable with our ability to deal with the demographic that we have dealt with for 40 years. So no changes on that front.

In terms of what we are seeing in terms of student demand and interest level relative to some sort of counter cyclical per se, we really are not seeing that, quite frankly. Obviously there are some changes in the advertising market. And it is not just strictly a linear analysis that we could just run advertising costs up, and get the same kind of return if we want to spend our way through that. That has not been our approach. So we are just kind of just trying to be efficient as we can, as we work through some changes there. But on a relative basis, we are not seeing any real indicators in changes in student demand.

405. When later questioned regarding ESI’s placement rates and salaries, Modany once again pointed to the so-called “value proposition” of an ESI education, stating in pertinent part:

Yes, I think it is a great question, and I will answer it outside the realm of gainful employment, because if there are regulations that require us to do otherwise, we certainly will have to think differently, as opposed to what we view as a very solid ROI analysis on the value perspective per student.

406. Discussing a slowdown in the conversion rate of potential students to actual students, Modany stated, in pertinent part:

We have seen a little bit of slippage there, not a lot in a year-over-year basis, keeping in mind again in the last couple quarter where is we had little bit of an economic tail wind, we saw some very, very high conversion rates. We are not yet to a point where we would say this is a historical conversion rate level. We are still a little north of that. We saw just a little bit of slippage there. And I am saying that in terms of a mix adjusted basis, so different types of media generate
different inquiries that convert at different rates. If you normalize for that, just a little bit of slippage there

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I don’t think we will see it come down more, but I think we are kind of at a rate where we will probably hold. One of the other contributing factors is a just little up tick in the representative turn over. Nothing again alarming, and keep in mind again, we have had some of the lowest turnover there that we have ever seen over the last year and a half years, or two years. So we feel pretty good at the rate we are at right now. If we can hold this, its again, over and above the historical levels, but we don’t expect material slippage then.

407. On July 23, 2010, ESI filed its quarterly report on Form 10-Q for the quarter ended June 30, 2010, which confirmed the Company’s financial results and was signed by Fitzpatrick (the “Second Quarter 2010 10-Q”). The Second Quarter 2010 10-Q contained required Sarbanes-Oxley certifications signed by Modany and Fitzpatrick stating that the Form 10-Q did not contain any material misrepresentations. Nevertheless, the Second Quarter 2010 10-Q did contain several false and misleading statements regarding ESI’s financial performance and future business prospects, which were based on an increase in student enrollment, including the following:

Three Months Ended June 30, 2010 Compared with Three Months Ended June 30, 2009. Revenue increased $84.7 million, or 26.7%, to $401.8 million in the three months ended June 30, 2010 compared to $317.1 million in the three months ended June 30, 2009. The primary factors that contributed to this increase included, in order of significance:

• a 28.9% increase in total student enrollment at March 31, 2010 compared to March 31, 2009; and

• a 5.0% increase in tuition rates implemented in March 2010.

The primary factors that contributed to the increase in student enrollment included, in order of significance:

• student enrollment growth in programs of study and at locations that were in operation prior to 2009;

• new programs of study offered at our campuses; and
• operating new campuses.

408. Analysts were underwhelmed by the Company’s results. For example, on July 22, 2010, Morgan Stanley analysts pointed to decelerating enrollment growth, lower placement rates, and the looming threat of regulation. As a result, Morgan Stanley analysts cut long-term estimates for the company, labeling ESI’s results as “disappointing.” Likewise, RBC Capital Markets analysts stated that “gainful employment fears overshadow solid results” and Deutsche Bank analysts stated enrollment deceleration was “more pronounced.”

409. Despite Defendants’ false and misleading statements, they could not hide slowing results and declining enrollment fears amongst the looming threat of potential regulation. The price of ESI stock declined 3.93%, or $3.48 per share, to close at $85.18 on July 22, 2010. If not for Defendants’ ongoing fraud, the price of ESI stock would have dropped further and the artificial inflation would have been removed.

410. The statements referenced in ¶¶402-07 were each materially false and misleading when made for the reasons set forth in ¶261 and the factual detail contained throughout this Complaint. In addition, the statements referenced in ¶¶402-07 were each false and misleading when made as they misrepresented and/or omitted adverse facts which then existed and disclosure of which was necessary to make the statements not false and/or misleading. The true facts, which were then known to or recklessly disregarded by each of the Defendants, were:

• In light of pending investigations and scrutiny on for-profit education companies, including ESI, Defendants lacked a reasonable basis for raising the Company’s 2010 EPS guidance.

• Defendants were fully aware that ESI lacked any semblance of admissions standards. Defendants’ statements to the contrary served to hide the truth behind ESI’s predatory and manipulative business model, thus allowing Defendants to omit key facts concerning the reasons behind the Company’s financial performance as well as its expected financial performance and future business prospects.
411. On July 23, 2010, the stock prices of for-profit colleges rallied, including a small increase in the price of ESI stock, in response to an announcement that the U.S. government was relaxing its proposal governing access to federal financial aid.

412. On July 25, 2010, Deutsche Bank analysts downgraded their rating for ESI to “hold,” lowering the estimated earnings per share guidance to account for proposed gainful employment regulations, which analysts stated would restrict a significant proportion of ESI’s programs. Analysts also noted that ESI would “have to increase its admission criteria over time to increase its repayment rates,” making it difficult for the Company to grow.

413. On August 3, 2010, news began to leak into the market concerning the findings from an undercover operation conducted by the U.S. Government Accountability Office (“GAO”) on recruiting techniques used in the for-profit higher education industry. For example, on August 3, 2010, The New York Times published an article entitled, “For-Profit Colleges Mislead Students, Report Finds,” stating, in pertinent part, as follows:

Undercover investigators posing as students interested in enrolling at 15 for-profit colleges found that recruiters at four of the colleges encouraged prospective students to lie on their financial aid applications – and all 15 misled potential students about their programs’ cost, quality and duration, or the average salary of graduates, according to a federal report.

The report and its accompanying video are to be released publicly Wednesday by the Government Accountability Office, the auditing arm of Congress, at an oversight hearing on for-profit colleges by the Senate Committee on Health, Education Labor and Pensions.

The report does not identify the colleges involved, but it includes both privately held and publicly traded institutions in Arizona, California, Florida, Illinois, Pennsylvania, Texas and Washington, D.C. According to the report, the colleges in question were chosen because they got nearly 90 percent of their revenues from federal aid, or they were in states that are among the top 10 recipients of Title IV money.

The fast-growing for-profit education industry, which received more than $4 billion in federal grants and $20 billion in Department of Education loans last year, has become a source of concern, with many lawmakers suggesting that too
much taxpayer money is being used to generate profits for the colleges, instead of providing students with a useful high-quality education.

The report gave specific instances in which some colleges encouraged fraud. At one college in Texas, a recruiter encouraged the undercover investigator not to report $250,000 in savings, saying it was “not the government’s business.” At a Pennsylvania college, the financial representative told an undercover applicant who had reported a $250,000 inheritance that he should have answered “zero” when asked about money he had in savings – and then told him she would “correct” his form by reducing the reported assets to zero, a change she later confirmed by e-mail and voicemail.

At a college in California, an undercover investigator was encouraged to list three nonexistent dependents on the financial aid application.

In addition to the colleges that encouraged fraud, all the colleges made some deceptive statements. At one certificate program in Washington, for example, the admissions representative told the undercover applicant that barbers could earn $150,000 to $250,000 a year, when the vast majority earn less than $50,000 a year. And at an associate degree program in Florida, the report said, a prospective student was falsely told that the college was accredited by the same organization that accredits Harvard and the University of Florida.

According to the report, courses in massage therapy and computer-aided drafting that cost $14,000 at a California for-profit college were presented as good values, when the same courses cost $520 at a local community college.

Six colleges in four states told the undercover applicants that they could not speak with financial aid representatives or find out what grants and loans they were eligible for until they completed enrollment forms agreeing to become a student and paid a small application fee.

And one Florida college owned by a publicly traded company told an undercover applicant that she needed to take a 50-question test, and answer 18 questions correctly, to be admitted – and then had a representative sit with her and coach her through the test. A representative at that college encouraged the applicant to sign an enrollment contract, while assuring her it was not legally binding.

But in some instances, the report said, the applicants were given accurate and helpful information, about likely salaries and not taking out more loans than they needed.

414. As a result, on August 3, 2010, ESI stock declined $3.74, or 4.53%, from a closing price of $82.63 per share on August 2, 2010, to a closing price of $78.89 per share on August 3, 2010. As more news leaked out concerning details of the government’s investigation
and the anticipated repercussions from the investigation on ESI's business and prospects, ESI stock continued to decline.

415. On August 4, 2010, the GAO issued its report detailing its findings. At the request of Congress, the GAO undertook an undercover investigation to determine if for-profit colleges engaged in fraudulent, deceptive or otherwise questionable marketing practices. The GAO's report cited many instances of abuse in the sector, finding that many of the companies in the industry employed fraudulent and deceptive practices in their student recruitment, targeting students who used federal financial aid to pay for their schooling. The study was presented at a HELP Committee education hearing held on August 4, 2010, as part of the ongoing government inquiry into the for-profit education sector. This was the second of the HELP Committee's hearings on the industry, and was entitled "For Profit Schools: The Student Recruitment Experience."22

416. Specifically, the GAO report detailed severely abusive recruiting practices. For example, the GAO report documented that four fictitious prospective students received numerous repetitive calls from for-profit colleges attempting to recruit the students when they registered with internet sites designed to link for-profit colleges with prospective students. The report stated:

Once registered, GAO's prospective students began receiving calls within 5 minutes. One fictitious prospective student received more than 180 phone calls in a month. Calls were received at all hours of the day, as late as 11 p.m. To see video clips of undercover applications and to hear voicemail messages from for-profit recruiters, see http://www.gao.gov/products/GOA-10-948T.

* * *

Our covert testing at 15 for-profit colleges found that four colleges encouraged fraudulent practices, such as encouraging students to submit false information about their financial status. In addition all 15 colleges made some type of deceptive or otherwise questionable statement to undercover applicants, such as misrepresenting the applicant’s likely salary after graduation and not providing clear information about the college’s graduation rate. Other times our undercover applicants were provided accurate or helpful information by campus admissions and financial aid representatives. Selected video clips of our undercover tests can be seen at http://www.gao.gov/products/GAO-10-948T.

* * *

Admissions or financial aid representatives at all 15 for-profit colleges provided our undercover applicants with deceptive or otherwise questionable statements. These deceptive and questionable statements included information about the college’s accreditation, graduation rates and its student’s prospective employment and salary qualifications, duration and cost of the program, or financial aid. Representatives at schools also employed hard-sell sales and marketing techniques to encourage students to enroll.

417. In addition to the foregoing, the GAO report detailed severe abuses and misrepresentations concerning accreditation information, graduat

418. On August 6, 2010, ESI issued a press release announcing that it received a request for information and documents from the HELP Committee relating to the HELP Committee’s review of matters related to for-profit colleges receiving Title IV student financial aid. The press release stated in pertinent part:

The request states that it seeks information and documents to more accurately understand how the Company uses Federal resources, including how it recruits and enrolls students, sets program price or tuition, determines financial aid including private or institutional loans, tracks attendance, handles withdrawal of students and return of Title IV dollars and manages compliance with the requirement that no more than 90% of revenues come from Title IV dollars. The request also seeks a complete understanding of the number of students who complete or graduate from programs offered by the Company, how many of those students find new work in their educational area, the debt levels of students enrolling and completing programs and how the Company tracks and manages the number of students who risk default within the cohort default rate window.

The Committee requests detailed information about a broad range of the Company’s business. The Company intends to cooperate with the Committee and to work with the Committee to provide the requested information in a manner that does not compromise the Company’s sensitive proprietary operating and other
information. The Committee has requested that the Company provide a portion of the specified information by August 26, 2010 and the remainder of the information by September 16, 2010.

419. Following publication of the GAO report, the price of ESI stock declined $3.53, or 4.47%, to close at $75.40 per share on August 5, 2010. In response to the August 6, 2010 revelation that ESI was being required to produce documents to the HELP Committee, the price of ESI common stock dropped sharply on heavy trading volume. Indeed, the stock fell 5.94%, or $4.48 per share, to close at $70.92 on August 6, 2010.

420. On August 13, 2010, after the market closed, the DOE released data on student-loan repayment rates at the nation's colleges and universities. The data showed that the repayment rates were 54% at public colleges and universities, 56% at private nonprofit institutions and 36% at for-profit colleges. The data showed that the repayment rates at ESI's schools were just 31%.

421. In addition, the DOE proposed new regulations for programs to continue to be eligible to receive federal financial aid. The tests for eligibility would be based on repayment rates and debt-to-income loads. Under the proposed "gainful employment" regulations, programs would need to have a repayment rate of at least 45% to continue to be eligible for federal financial aid. The regulations if adopted will go into effect in July 2011. Based on the proposed regulations, many of ESI's programs are in jeopardy of losing their financial aid status.

422. On this news, the price of ESI stock decreased an additional 7.17%, or $4.97 per share, from a closing price of $69.30 on August 12, 2010, to a closing price of $64.33 on August 13, 2010. The next trading day, August 16, 2010, the price of ESI stock plummeted 14.61%, or $9.40 per share, to close at $54.93, on heavy trading volume.

423. As a result of Defendants' false statements and omissions, ESI common stock traded at artificially inflated prices during the Class Period. After the above revelations seeped
into the market, however, the Company's shares were hammered by massive sales, sending them down approximately **58%, or $76 per share**, from their Class Period high.

**XIII. POST CLASS PERIOD EVENTS**

424. Following the close of the Class Period, additional events reached the market and further demonstrated not only the falsity of Defendants' Class Period statements, but also the extent to which ESI's financial performance and future business prospects depended upon Defendants' ability to defraud both ESI students and investors by continuing to implement ESI's systemically predatory business model.

425. For example, on September 30, 2010, the HELP Committee held a third hearing focusing on whether for-profit colleges were benefitting their students. As part of the hearing, and based in part on the documents produced by ESI and other for-profit education companies to Chairman Harkin, the Committee released a report titled "[t]he Return of the Federal Investment in for-Profit Education: Debt without a Diploma."23

426. The report made a number of notable findings, including that student enrollment at for-profit colleges masks high withdrawal rates. For instance, fourteen out of sixteen schools analyzed recruited a greater number of new students than their entire starting enrollment in 2008-09, however their net enrollment only increased by 22 percent. The report also found that students at for-profit colleges leave without a diploma at an alarming rate. For example, while 959,000 students enrolled at the 16 schools reviewed during 2008-09, 547,000, or 57 percent, withdrew by August 2010. The report also found that almost all students at for-profit schools take out student loans and they are likely to amass significant debt. For example, for 2008-09

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23 Materials from the September 30, 2010 HELP Committee hearing can be found online at: http://help.senate.gov/hearings/hearing/?id=3e235bb6-5056-9502-5df5-5d5b0f000e01 (last visited Mar. 30, 2011). A copy of the report is also available online at: http://help.senate.gov/imo/media/doc/Education%20Report.pdf.
students withdrawing from associate’s or bachelor’s programs, median attendance was approximately 20 weeks; a student who attended a for-profit college for that length of time would have to pay approximately $8,000 to $11,000 in tuition.

427. Once prospective students – like the market - became aware of ESI’s fraudulent business practices, new student enrollment at ESI began to drop precipitously following the close of the Class Period. For example, on October 21, 2010, ESI issued a press release announcing its third quarter 2010 results and reporting a decrease of 3.9% in new student enrollment. The next day, October 22, 2010, ESI filed its quarterly report on Form 10-Q for the quarter ended September 30, 2010, which reiterated the 3.9% decrease in new student enrollment and also noted a decrease in the rate at which inquiries from prospective students resulted in new student enrollments in the three months ended September 30, 2010. The Company’s declining enrollment trends continued when, on January 20, 2011, ESI issued a press release announcing that new student enrollment in the fourth quarter of 2010 decreased 9.4%.

428. These post-Class Period events serve to further corroborate the detailed accounts of myriad confidential witnesses described herein. Put simply, once the curtain was pulled back and Defendants’ scheme was revealed, ESI’s performance suffered. The declining enrollment trends are further indicia of how ESI would have performed during the Class Period absent Defendants’ fraudulent omissions and misrepresentations concerning ESI’s systemically predatory business model that required, for example, use of deceptive tools such as the “Funnel of Pain.”

XIV. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING ESI’S BUSINESS CONDUCT AND ETHICS

429. During the Class Period, ESI repeatedly discussed the Company’s commitment to its reputation which is based on integrity and trust. For example, the Company’s February 18, 2009 Form 10-K cited to ESI’s Ethics Code. But, the Ethics Code, contained a host of false and
misleading statements that were designed to mislead the market. For instance, the Ethics Code states, that ESI “operates it business in accordance with the highest ethical standards and all applicable laws, regulations and rules.” Further, ESI’s “corporate culture demands not only legal compliance, but also responsible and ethical behavior.” The Ethics Code further states, in pertinent part:

ITT/ESI’s policy is to provide full, fair, accurate, timely and understandable disclosures in all reports and documents that ITT/ESI files with or submits to the Securities and Exchange Commission, as well as in all other public communications made by ITT/ESI.

430. The business conduct and integrity of ESI and its management are material to investors. Contrary to statements made by Defendants during the Class Period, neither ESI nor its management were acting ethically or with integrity. Not only were Defendants in violation of multiple rules and regulations, such as Title IV, but they failed to adequately disclose their unethical, abusive, and fraudulent business practices to investors.

XV. ADDITIONAL SCIENTER ALLEGATIONS

431. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding ESI, their control over, and/or receipt and/or modification of ESI allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning ESI, participated in the fraudulent scheme alleged herein.
432. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including each of the Individual Defendants.

433. The Individual Defendants were further motivated to commit fraud as a result of the Company’s executive compensation structure. During the Class Period, the Company awarded ESI’s executives annual bonuses based on the executive’s individual performance and the Company’s financial and operating performance. Accordingly, the ESI “Executive Bonus Parameters” is performance-based compensation that purports to consider four factors; diluted earnings per share, total student enrollment, Free Cash Flow, and graduate employment rates. As established herein, ESI’s student enrollment figures and reported graduate employment rates were artificially and ultimately manipulated throughout the Class Period so that, among other things, the Individual Defendants could further their own financial interests. Indeed, by fraudulently inflating the Company’s enrollment, graduate employment rates, and, ultimately, its financial performance, the Individual Defendants were able to greatly increase their compensation during the Class Period, as set forth in the chart below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Base Salary</th>
<th>Annual Bonus</th>
<th>Bonus As % of Annualized Base Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$675,000</td>
<td>$1,181,250</td>
<td>175%</td>
</tr>
<tr>
<td>2009</td>
<td>$725,000</td>
<td>$1,450,000</td>
<td>200%</td>
</tr>
<tr>
<td>2010</td>
<td>$769,000</td>
<td>$480,625</td>
<td>62.5%</td>
</tr>
</tbody>
</table>
Fitzpatrick:

<table>
<thead>
<tr>
<th>Year</th>
<th>Base Salary</th>
<th>Annual Bonus</th>
<th>Bonus As % of Annualized Base Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$285,000</td>
<td>$299,250</td>
<td>105%</td>
</tr>
<tr>
<td>2009</td>
<td>$305,000</td>
<td>$396,500</td>
<td>130%</td>
</tr>
<tr>
<td>2010</td>
<td>$324,000</td>
<td>$131,625</td>
<td>40.6%</td>
</tr>
</tbody>
</table>

434. After the truth about Defendants' tactics was revealed at the close of the Class Period, and as a result of increased scrutiny into the for-profit sector, along with new regulations by the DOE, in 2011 the Company changed its compensation structure so that bonus awards would no longer be tied to school enrollment. As reported by the Indianapolis Business News in a March 9, 2011 article entitled, “New federal rules prompt [ESI] to change bonus-pay criteria,” which stated, in part:

ITT Educational Services Inc. still will pay bonuses to its top executives, but the awards no longer will be tied to school enrollment, the Carmel-based for-profit educator said in its annual proxy statement.

The decision stems from new regulations by the Department of Education, which are designed to slow the growth of for-profit schools and boost graduation rates. The regulations were in response to concerns schools were placing too much emphasis on enrollment growth vs. the success former students had in finding employment.

Rules require that at least 45 percent of former students be actively paying down their loans after leaving a for-profit school. If former students fail to achieve that threshold, the government will not allow a for-profit education program to accept federal student-loan funding. And, if repayment rates fall below 35 percent, the government will cut off student-loan funding entirely for any new students.

“As a result of the prohibition on basing any portion of the executives’ compensation on performance, the Compensation Committee did not establish a bonus program for 2011,” ITT said in its proxy filed on Tuesday.

Still, ITT CEO Kevin M. Modany is slated this year to earn a $1.1 million bonus, according to the proxy, though the amount is no longer based on performance metrics, such as enrollment growth.

While ITT said it no longer can base compensation on performance, the company said it still will strive to offer pay packages that “reflect the competitive marketplace in order for us to attract, retain and motivate talented executives.”
ITT said it also will include stock-based compensation in the packages “in order to align the executives’ interests with those of our shareholders.”

Daniel M. Fitzpatrick, ITT’s chief financial officer, is set to receive a $324,000 bonus, and three other executives should receive additional compensation ranging from $263,000 to $319,000.

Modany earned a total of $6.7 million in 2010, 11.5 percent less than the previous year. Much of the decline was in performance pay—$1.4 million in 2009 compared with $480,625 last year. He received nearly the same amount of stock option awards, valued at $5.4 million, both years.

ITT’s CEO earned a base pay of $769,000 in 2010 and is expected to receive a 2.5-percent raise this year, pushing his annual base salary to $788,250 in 2011.

CFO Fitzpatrick earned $1.4 million in total compensation last year, 20 percent less than in 2009. He also will receive a 2.5-percent increase this year in base salary, which will climb to $332,000.

435. In addition to the foregoing, the Individual Defendants were privy to confidential and proprietary information concerning ESI, its operations, finances, financial condition, and present and future business prospects. The Individual Defendants also had access to material adverse non-public information concerning ESI, as discussed in detail below. Because of their positions with ESI, the Individual Defendants had access to non-public information about its business, finances, enrollment, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors meetings and committees thereof and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or were severely reckless in disregarding the fact that adverse facts specified herein had not been disclosed to, and were being concealed from (in order to mislead), the investing public.

436. Throughout the Class Period, the Individual Defendants were able to, and did, control the contents of the Company’s SEC filings, reports, press releases, and other public statements. The Individual Defendants were provided with copies of, reviewed and approved,
and/or signed such filings, reports, releases, and other statements prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. The Individual Defendants were also able to, and did, directly or indirectly, control the conduct of ESI’s business, the information contained in its filings with the SEC, and its public statements. Moreover, the Individual Defendants made or directed the making of affirmative statements to the investing public, and participated in meetings, conference calls, and discussions concerning such statements. Each of the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations that were being made were then false and misleading. As a result, each of the Individual Defendants is responsible for the accuracy of ESI’s corporate releases detailed herein and is therefore responsible and liable for the misrepresentations and omissions contained therein.

437. The Individual Defendants are liable as direct participants and co-conspirators with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors, were “controlling persons” within the meaning of §20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of ESI’s business.

438. As senior executive officers and/or directors and controlling persons of a publicly traded company whose common stock and other securities were, and are, registered with the SEC pursuant to the Exchange Act, and whose shares traded on the NYSE and are governed by the federal securities laws, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with respect to ESI’s financial condition and performance, growth,
operations, financial statements, business, markets, management, earnings and present and future business prospects and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of ESI's common stock would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

439. The Individual Defendants are liable as primary participants in a fraudulent scheme and wrongful course of business which operated as a fraud or deceit on purchasers of ESI common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The fraudulent scheme employed by the Individual Defendants was a success, as it: (i) deceived the investing public regarding ESI's prospects and business; (ii) artificially inflated the price of ESI common stock; and (iii) caused Plaintiff and other members of the Class to purchase ESI common stock at inflated prices and suffer losses when the relevant truth regarding ESI's true financial condition was revealed and the artificial inflation was removed from the price of the stock.

XVI. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

440. At all relevant times, the market for ESI common stock was an efficient market for the following reasons, among other things:

(a) ESI common stock met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, ESI filed periodic public reports with the SEC; and

(c) ESI regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services.
441. As a result, the market for ESI common stock promptly digested current information regarding ESI from all publicly-available sources and reflected such information in the price of ESI common stock. Under these circumstances, all purchasers of ESI common stock during the Class Period suffered similar injury through their purchase of ESI common stock at artificially inflated prices and a presumption of reliance applies.

XVII. LOSS CAUSATION/ECONOMIC LOSS

442. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the value of ESI common stock throughout the Class Period. Defendants’ creation and implementation of a systemically predatory business model operated as a fraud or deceit on Class Period purchasers of ESI common stock by misrepresenting the Company’s financials and future business prospects, including but not limited to, misrepresenting the strength and source of the Company’s revenues, the volume of student enrollments in ESI’s degree programs, the employment statistics for graduates, and the ability of the Company to meet its financial projections.

443. Defendants’ false and misleading statements had their intended effect and directly and proximately caused, or were a substantial contributing cause of ESI’s common stock trading at artificially inflated levels, reaching a Class Period high of $133.21 per share on February 3, 2009.

444. As a result of Defendants’ fraudulent conduct as alleged herein, the prices at which ESI common stock traded were artificially inflated, at varying levels, throughout the Class Period. When Plaintiff and other members of the Class purchased their ESI common stock, the true value of such common stock was substantially lower than the prices actually paid by Plaintiff and the other members of the Class.
445. During the Class Period, Defendants improperly concealed ESI’s true financial condition and future business prospects, failing to disclose ESI’s systemically predatory business model. Consequently, the price of its common stock was artificially inflated throughout the Class Period. Defendants also misrepresented the reasons behind ESI’s reported results and made numerous false and misleading statements regarding many aspects of its business, including, but not limited to, the strength of the Company’s student enrollment numbers, the legality of the Company’s recruiting practices and the quality of its degree programs. Later, however, when the truth regarding ESI’s true financial circumstances was revealed through a series of partial disclosures set forth in detail above, and Defendants’ prior misrepresentations and fraudulent conduct became apparent to the market, the price of ESI common stock fell as the prior artificial inflation was removed. As a result of their purchases of ESI common stock during the Class Period at artificially inflated prices, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages under federal securities laws, when such artificial inflation dissipated.

446. By misrepresenting the success of the Company’s business and concealing its improprieties, Defendants presented a misleading picture of ESI’s financial condition and future business prospects. For example, Defendants’ consistent statements that the Company was achieving strong and ever-increasing enrollment results, caused and maintained the artificial inflation in the price of ESI common stock throughout the Class Period – even as negative news reached the market – until the truth was finally and fully revealed at the close of the Class Period.

447. As a result of Defendants’ materially false and misleading statements and documents, as well as the adverse, undisclosed information known to the Defendants, Plaintiff and other members of the Class relied, to their detriment on such statements and documents, and/or the integrity of the market, in purchasing their ESI common stock at artificially inflated
prices during the Class Period. Had Plaintiff and the other members of the Class known the truth, they would not have taken such actions.

448. As explained herein, these false statements directly or proximately caused, or were a substantial contributing cause of, the damages and economic loss suffered by Plaintiff and other members of the Class, and maintained the artificial inflation in the prices of ESI’s common stock throughout the Class Period until the truth leaked out and was partially revealed to the market, at which time the prior inflation came out of the stock. Defendants’ false and misleading statements had the intended effect and directly and proximately caused, or were a substantial contributing cause, of ESI’s stock trading at artificially inflated levels throughout the Class Period.

449. Through a series of partial disclosure events regarding the Company’s financial outlook and future business prospects, which culminated in the revelations that, among other things, student-loan repayment rates at ESI were only 31% – in contradiction of Defendants’ Class Period statements regarding the Company’s financials and future business prospects – the artificial inflation came out of the price of ESI common stock.

450. The events and partial disclosures during the Class Period, set forth more specifically above, included an April 22, 2010 disclosure of extremely poor completion rates at ESI institutions, and a June 24, 2010 disclosure in a HELP Committee report indicating that for-profit schools experience high dropout rates and, in some instances, employ abusive recruiting and debt-management practices.

451. Defendants, however, mitigated or at least minimized the impact of these partial revelations of the truth in a further attempt to mislead the market’s expectations for the Company by, among other things, declaring that the high dropout rates did not take into account the majority of enrolled students in those classes, most of whom had purportedly enrolled as
transfers, and by consistently declaring that the Company was not engaged in abusive recruiting practices. For a time, Defendants were successful. Defendants' false and misleading statements limited the declines and maintained the artificial inflation in ESI's common stock.

452. Nevertheless, the market's expectations were ultimately corrected on August 13, 2010, with the disclosure of ESI's low student loan repayment rate of 31% along with an announcement by the DOE regarding its proposed new regulations governing an institution's eligiblity to receive federal financial aid. These partial disclosures had a dramatic effect on the price of ESI common stock. For example, it fell by 14.6%, or $9.40 per share, from a closing price of $64.33 on August 13, 2010, to a closing price of $54.93 per share on August 16, 2010, the following trading day, on heavy increase in trading volume. The cumulative impact of these declines was that the price of ESI common stock fell 58.8% from its Class Period high, causing substantial harm to investors who suffered losses as the artificial inflation generated by Defendants' fraud was removed.

453. The timing and magnitude of the decline in ESI common stock negates any inference that the loss suffered by Plaintiff and other Class members were caused by changed market conditions, macroeconomic factors or Company-specific facts unrelated to the Defendants' fraudulent conduct. As a result of their purchases of ESI common stock during the Class Period, Plaintiff and other members of the Class suffered economic loss, i.e., damages, under the federal securities laws when the above-described revelations reached the market and the artificial inflation was removed.

XVIII. NO SAFE HARBOR

454. The federal statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-
looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of ESI who knew that those statements were false when made. Moreover, to the extent that Defendants issued any disclosures designed to "warn" or "caution" investors of certain "risks," those disclosures were also false and misleading since they did not disclose that Defendants were actually engaging in the very actions about which they purportedly warned and/or had actual knowledge of material adverse facts undermining such disclosures.

XIX. COUNT I: FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER AGAINST ALL DEFENDANTS

455. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein. This claim is asserted against all Defendants.

456. During the Class Period, ESI and the Individual Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of ESI common stock; and (iii) cause Plaintiff and other members of the Class to purchase ESI common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, ESI and the Individual Defendants took the actions set forth herein.
457. These Defendants: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s common stock in an effort to maintain artificially high market prices for ESI’s common stock in violation of §10(b) of the Exchange Act and Rule 10b-5. These Defendants are sued as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued as controlling persons of ESI, as alleged below.

458. In addition to the duties of full disclosure imposed on Defendants as a result of their making of affirmative statements and reports, or participating in the making of affirmative statements and reports, to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. §210.01, et seq.) and S-K (17 C.F.R. §229.10, et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company’s operations, financial condition, future business prospects, and operational performance, so that the market prices of Company common stock would be based on truthful, complete and accurate information.

459. ESI and each of the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, business practices, performance, operations and future business prospects of ESI as specified herein.

460. These Defendants each employed devices, schemes and artifices to defraud while in possession of material adverse non-public information. These Defendants also engaged in
acts, practices, and a course of conduct, as alleged herein, in an effort to assure investors of ESI’s value, performance, and financial and operational growth. These acts included the making of, or the participation in the making of, untrue statements of material facts and omitting to state necessary facts in order to make the statements made about ESI and its business operations and future business prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of ESI common stock during the Class Period.

461. Each of the Individual Defendants’ primary liability and controlling person liability arises from the following facts: (i) each of the Individual Defendants was a high-level executive and/or director at the Company during the Class Period; (ii) each of the Individual Defendants, by virtue of her/his responsibilities and activities as a senior executive officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company’s financial performance, projections and/or reports; and (iii) each of the Individual Defendants was aware of the Company’s dissemination of information to the investing public, which each knew or disregarded with recklessness was materially false and misleading.

462. Each of these Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that each failed to ascertain and to disclose such facts, even though such facts were available to each of them. Such Defendants’ material misrepresentations and/or omissions were done knowingly or with recklessness and for the purpose and effect of concealing ESI’s operating condition and future business prospects from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by Defendants’ misstatements of the Company’s
financial condition and performance throughout the Class Period, each of the Individual Defendants, if he or she did not have actual knowledge of the misrepresentations and omissions alleged, was reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false and misleading.

463. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market prices of ESI common stock were artificially inflated, at varying levels, throughout the Class Period. In ignorance of the fact that market prices of ESI common stock were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the common stock trades, and/or on the absence of material adverse information that was known to or disregarded with recklessness by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired ESI common stock during the Class Period at artificially high prices and were damaged thereby, as evidenced by, among other things, the common stock price declines identified herein that released the artificial inflation from the price of ESI common stock.

464. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known of the true performance, future business prospects and intrinsic value of ESI, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their ESI common stock during the Class Period, or they would not have done so at artificially inflated prices which they paid.

465. By virtue of the foregoing, ESI and the Individual Defendants have each violated §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.
466. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company’s common stock during the Class Period, as evidenced by, among other things, the common stock price decline on or about August 16, 2010, that released the artificial inflation from ESI’s common stock.

XX. COUNT II: FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS

467. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein. This claim is asserted against the Individual Defendants.

468. Each of the Individual Defendants acted as a controlling person of ESI within the meaning of §20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company’s operations and/or intimate knowledge of the Company’s fraudulent financial reporting and actual performance, each of the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Each of the Individual Defendants was provided with or had unlimited access to copies of the Company’s reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

469. In addition, each of the Individual Defendants had direct involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercised the same.
As set forth above, ESI and the Individual Defendants each violated §10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their controlling positions, each of the Individual Defendants is liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period when the artificial inflation was released from ESI common stock, as detailed herein.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action and designating Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

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

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

XXI. JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.
DATED: April 1, 2011

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Lead Counsel for Plaintiffs
CERTIFICATE OF SERVICE

I, Kelly Stadelmann, hereby certify that on April 1, 2011, I caused a true and correct copy of the attached:

CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

to be: (i) filed by hand with the Clerk of the Court of the Southern District of New York;

and (ii) served by United States mail to:

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JENNIFER L. CONN
200 Park Avenue
47th Floor
New York, NY 10166-0193

GIBSON, DUNN & CRUTCHER LLP
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JOSEPH P. BUSCH III
3161 Michelson Drive
Irvine, CA 92612

Kelly Stadelmann
EXHIBIT “A”
June Analysis 2007

The immediate reflection of June 2007 is dismal as we missed the start, but in that reflection there are things that I will discuss and interpret. The MP was 158 and we came short at 130, leaving 28 SITS that have to be recovered. The raw data collected is from the time frame of 3/25-6/23.

As a campus we scheduled 965 appointments, and had 329 conducts (34%). Of the 329 conducts we wrote 316 applications (96%). Of the 316 applications, 308 (97%) were applied. From the 308 applied, 244 went through the FAI (79%), and 130 counted for the SIT report (53%). As a campus our conversion rate was 7%.

From the amount of appointments that were schedule and actual conducts completed, I believe the first obstacle is the “selling of the appointment”. The department needs to focus on the selling the appointment by digging in and getting to the pain of each and every prospective student. By getting to the pain, the representatives will be able to solidify the appointments and have a better show rate for the actual conducts. When looking at the amount of applied students, it would appear that the representatives have the knowledge...but do they actually use it? My observation would be that they hurry through the interviews in order to avoid such elaborate questioning and rejections. The next major statistical data would be the FAT. The reps can increase their individual show rate by following up and getting the students through the entire process. The assumption is that once they are written, the student is good! And therefore, no contact is interpreted as good news! The fear of rejection or removing people from the ASR is psychological to the reps and not looked at as accountability or constructive criticism.

From a DOR perspective, there needs to be more training and accountability/ownership conveyed to the reps. The concept of accountability and ownership has been broached, but yet to be unanimously accepted and practiced. This coupled with the weaknesses of overcoming obstacles or objections, working the student completely through the entire process and still maintaining contact throughout the whole quarter is something else that we need to focus on...which includes from FAI to SIT. Our referral campaign has been anything but that if a campaign. The department needs to focus more on generating more PDL's and converting them for the September start. These are all areas of training opportunity and will be implemented in the early stages of the next quarter, as well as increased observations, more structured activities, and better review of pending contacts. Our threats are the obvious...loss of reps, lack of PDL’s, and complacency and lack of ownership. The positives are a very large increase in phone activities and applied to accepted (which should be).

If you have any questions please contact me as soon as possible.

[Redacted] Director of Recruitment
EXHIBIT "B"
Ways to combat "drops" in Marketing during the class building period.

Communication
- Remain centered, focused and calm. Remember, most of the time drops late in the quarter are due to FEAR!
- Don’t take things personally
- Stay in constant contact through phone calls, emails, etc. Remember nothing can replace voice to voice contact.
- Remind them of their motivation often. Use this to keep them motivated.
- Remind them of what things will be like if they don't continue forward and earn their degrees.
- Poke the pain a bit and remind them (if applicable) who else is depending on them and their commitment to a better future.
- Use visuals and analogies. Remember most humans are visual learners.
- Avoid words such as "concerns" or "issues". Many times these words imply there are not solutions. Instead talk about "obstacles". Obstacles can generally be moved in order to continue going down a specific path.
- Watch the stress tone in YOUR voice when communicating with them. Remember, they are NOT numbers...they are students.
- Use positive speak. Example "When you come to classes next week."

Invite the obstacles
- Do not fear obstacles; embrace them. The better you are at inviting them, being patient to work on them, and taking on the role of "solutions provider" the stronger you will be as a Rep. AND the better your students will feel as you became their advocate to success.
- In the initial (or future) phone calls listen for things which may give you some insight on potential obstacles. Things dealing with kids (potential time, money and transportation obstacles?), things dealing with transportation (shuttle passes?), spouses (are they supportive? Co-signer potential?), parents (are they supportive? Co-signer potential?), grandparents (supportive? Co-signer potential?), etc. Ask about their current employment situation. Are there potential work schedule conflicts? If so, how supportive is the employer? Can we assist the student through Career Services seeking more "education friendly" employers allowing an appropriate work schedule for your student to attend class?
- Remember, if cost is an obstacle...it is also part of their motivation! (If they don’t make a change, where do they see their finances in 2 years, 5 years, 10 years? If they DO have a degree, where do they see their finances?)
- Remember EVERYONE wants to graduate, but NO ONE wants to start. AVOID statements in your initial conversations such as "when do you see yourself starting classes?" Instead use phrases such as "How soon do you see yourself GRADUATING?"
EXHIBIT “C”
2. Pain Funnel and Pain Puzzle

Eight Questions

Level 1 Pain
1. Tell me more about that...
2. Can you be more specific? Give me an example.
3. How long has it been a problem?

Level 2 Pain
4. What have you tried to do about that?
   (What have you done to fix it?)
5. And did that work?
   (What results did you get?)
6. What has it cost you?

Level 3 Pain
7. How do you feel about that?

Level 4 Pain
8. Have you given up trying to deal with the problem?

Does the prospect have enough pain to qualify for the next step?

Is the problem one that you can fix?

Does the prospect recognize the problem?

Do they acknowledge it is a problem?

Are they committed to fixing it?

Are they willing to do something about it now?
EXHIBIT “D”
ITT Technical Institute Questionnaire

EXHIBIT 3

High school/GED questions

How would you describe your high experience?
Did you feel successful in high school?
Tell me more about that; Can you be more specific; Give me an example
How did that make you feel?
How did your parents feel?
What could you do differently?
What subjects did you feel most successful?
What do you think was attributable to your success?
What subjects did you feel least successful?
What do you think attributed to that?
What have you tried to do about it? And did that work?
What has it cost you?
Level 2 Pain
What have you tried to do about it? And did that work?
What has it cost you?
Level 3 Pain
What are you willing to change now or have you given up trying to deal with the problem?

Additional education

How long have you been going to the college?
Have you worked while attending?
Have you wanted to work while attending?
Why did you put off attending college after high school?
How would you describe your college experience?
Did you feel successful at the college?
Tell me more about that; Can you be more specific; Give me an example
How did that make you feel?
How does your family feel?
What have you tried to do about that? And did that work?
What subjects did you feel most successful?
What do you think was attributable to your success?
What subjects did you feel least successful?
What do you think attributed to that?
What have you tried to do about it? And did that work?
Do you feel that spending a amount of time at the college has held you back from where you want to be?
What has it cost you?
How do you feel about that?
Level 3 Pain
What are you willing to change now or have you given up trying to deal with the problem?
**employment**

| Level 1 Pain | How well would you say you have been able to support your family in this position? |
| Level 2 Pain | How well would your family say you have been willing to support them? |
| Level 3 Pain | Tell me more about that; Can you be more specific; Give me an example |
| Level 4 Pain | How did that make you feel? |
| Level 5 Pain | What have you tried to do about that? |
| Level 6 Pain | And did that work? |
| Level 7 Pain | What has not having a college education cost you? |
| Level 8 Pain | In self worth? |
| Level 9 Pain | Financially? |
| Level 10 Pain | How do you feel about that? |
| Level 11 Pain | What are you willing to change now or have you given up trying to deal with the problem? |
EXHIBIT "E"
ITT Educational Services, Inc.

Code of Business Conduct and Ethics
Code of Business Conduct and Ethics

A Message from the Chairman, CEO and President

ITT Educational Services, Inc. ("ITT/ESI") has been in business since 1969, and we are proud of the reputation and trust we have earned. This is a reputation that we are determined to protect and enhance. Our Code of Business Conduct and Ethics ("Code") contains the policies which must be followed by everyone who does business on behalf of ITT/ESI.

All employees, agents, consultants and representatives of ITT/ESI and all members of ITT/ESI's Board of Directors ("directors"), have the responsibility to read, understand and abide by the principles and standards contained in this Code. It is difficult to make a policy that applies to every situation, and there will be times when the Code does not address a particular question. Applying common sense, good judgment and integrity to every business issue will help to ensure that your decisions are consistent with ITT/ESI's values and this Code. If you are an employee and you have questions, please contact your supervisor, the Human Resources Department or the Chief Compliance Officer. If you are not an employee, please feel free to ask your ITT/ESI contact.

ITT/ESI's success depends upon each of us. Acting with integrity and the highest ethical standards is not only good policy, it is also good business. Every ITT/ESI employee and shareholder relies upon you to do the right thing. I know that our confidence in you is well placed.

Sincerely,

Kevin M. Modany
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ETHICS AND COMPLIANCE

ITT/ESI operates its business in accordance with the highest ethical standards and all applicable laws, regulations and rules. The company places the highest value on the integrity of each of its employees, representatives and directors. In addition, all directors, employees, agents, consultants and representatives of ITT/ESI are responsible for complying with all applicable laws, regulations and rules, in both the United States and other countries. ITT/ESI’s corporate culture demands not only legal compliance, but also responsible and ethical behavior.

Unless otherwise specifically noted, the policies in this Code apply across ITT/ESI, in all subsidiaries, businesses, countries and states. The Code does not cover all ITT/ESI policies or all laws. If a law, regulation or rule conflicts with a policy in this Code, you must comply with the law, regulation or rule. Your business or state may have policies and practices which require more of you than is required by this Code, and the same may be true of local law. In all of those instances, you must follow the stricter policy, practice or law. Think of this Code as a baseline, or a minimum requirement, which must always be followed. The only time you can go below the baseline is if a law, regulation or rule absolutely requires you to do so.

ITT/ESI’s Chief Executive Officer is the only person who can waive compliance with any policy in this Code by any ITT/ESI employee (except for ITT/ESI executive officers), agent, consultant or representative. Any waiver of compliance with any policy in this Code by any ITT/ESI director or executive officer can only be made by ITT/ESI’s Board of Directors and must be promptly disclosed to ITT/ESI shareholders.

Every director, employee, agent, consultant and representative must read and understand this Code before undertaking any work on behalf of ITT/ESI.

POLICY VIOLATION

All ITT/ESI employees, agents, consultants and representatives must understand and comply with ITT/ESI’s Code. Violation of the Code will not be tolerated and will result in discipline for employees and other appropriate consequences for non-employees. If you have any questions about the Code, please see Seeking Advice.

Each director, employee, agent, consultant and representative is responsible for adhering to ITT/ESI policy in all matters related to ITT/ESI business. If you know or have good grounds for suspecting that any illegal or unethical conduct has occurred or is planned by any employee, you must report it to either the Chief Compliance Officer, Director of Human Resources, Director of Internal Audit or General Counsel at ITT/ESI. Your report may be anonymous. Reports of Code violations will be promptly investigated. Reasonable measures will be undertaken to preserve the confidentiality of information that is reported during the investigation and to protect persons who report information from retaliation. Following the investigation, appropriate corrective measures will be taken.
All ITT/ESI managers and supervisors are accountable for the actions of their employees. They must make sure that all of the employees reporting to them adhere to ITT/ESI policy. The primary responsibility for compliance rests on their shoulders and this responsibility cannot be delegated. To achieve compliance, it is the managers' and supervisors' assignment to ensure that all employees are made fully aware of the importance of compliance and understand the procedure for reporting violations.

**NON-RETALIATION**

Anyone who in good faith raises an issue regarding a possible violation of law, regulation, rule or company policy will be protected from retaliation by any ITT/ESI director or employee. It is a violation of this Code for anyone to be discriminated against or harassed for contacting ITT/ESI's Chief Compliance Officer or for making a good faith report to the company of a suspected violation of law or policy. If you feel that you are being retaliated against in violation of this policy, please follow the procedures for reporting suspected violations (please see Seeking Advice).

**FULL, FAIR, ACCURATE, TIMELY AND UNDERSTANDABLE DISCLOSURE**

It is ITT/ESI's policy to provide full, fair, accurate, timely and understandable disclosures in all reports and documents that ITT/ESI files with or submits to the Securities and Exchange Commission, as well as in all other public communications made by ITT/ESI. In furtherance of this policy, ITT/ESI's executive officers will design, implement and amend as necessary disclosure controls and procedures and internal controls for financial reporting (collectively "Controls and Procedures"). All ITT/ESI officers, directors and employees will comply with the Controls and Procedures to promote full, fair, accurate, timely and understandable disclosures by ITT/ESI.

Employees can express any complaints or concerns they may have regarding ITT/ESI’s accounting, internal accounting controls or auditing matters to the Audit Committee of ITT/ESI’s Board of Directors by contacting the Chief Compliance Officer, which can be done on a confidential or anonymous basis. The Chief Compliance Officer will cause any such complaint or concern to be presented to the Audit Committee, which will direct an investigation of such complaint or concern. The Audit Committee will determine what action, if any, is appropriate based on the results of its investigation and will ensure that ITT/ESI carries out any such action. If the employee identifies himself or herself and requests a report on the disposition of the complaint or concern, the Chief Compliance Officer will provide the employee a case reference number. Thereafter, the employee may call the Chief Compliance Officer, mention the case reference number and receive a report.

**VOLUNTARY DISCLOSURE OF IRREGULARITIES**

ITT/ESI is committed to operating its worldwide business in accordance with the highest level of integrity and ethical standards. Should an improper practice or irregularity occur within the
company, the company is committed to making all necessary corrections, taking remedial action to prevent recurrence and making timely and appropriate disclosure of the improper practices or irregularities to the proper authorities.

CONFLICT OF INTEREST

ITT/ESI directors and employees must exercise sound judgment guided by the highest personal standards of honesty and integrity in all matters affecting ITT/ESI. No director or employee may abuse a corporate position for personal advantage or to promote any action contrary to ITT/ESI’s stated ethical standards. Private interests of directors or employees that interfere or appear to interfere with ITT/ESI’s interests are prohibited. Actions or interests of a director or employee that make it difficult to perform his or her company work objectively and effectively are prohibited.

ITT/ESI directors and employees must attempt to avoid conflicts of interest and if an apparent conflict of interest develops, the ITT/ESI employee must promptly disclose the situation to his/her supervisor or to the ITT/ESI Director of Human Resources, and the ITT/ESI director must promptly disclose the situation to the ITT/ESI General Counsel.

No employee may be affiliated with any competitor, customer or supplier of ITT/ESI without prior written approval of the ITT/ESI Director of Human Resources.

No employee having any influence on any ITT/ESI business decision, and no member of any such employee's immediate family, may have any financial interest in a non-publicly owned enterprise if that enterprise is a competitor, customer or supplier of ITT/ESI, without prior written approval of the ITT/ESI Director of Human Resources.

Any executive, managerial, professional or technical ITT/ESI employee engaged in any non-ITT/ESI business must fully and promptly disclose the relevant facts to his/her supervisor and the ITT/ESI Director of Human Resources. Each employee must promptly disclose to his or her supervisor any family or personal relationships that might give the appearance of influencing the employee's judgment in his or her ITT/ESI work activities.

No employee may take or approve any action that would result in incurring any ITT/ESI obligation or paying or promising to pay any ITT/ESI funds that is not authorized under company policy.

No employee may use ITT/ESI facilities, property or working time to promote non-ITT/ESI or non-work-related interests of the employee or of third parties without the prior consent of his/her supervisor.

No director or employee may disclose or use any confidential information of ITT/ESI for the personal profit or advantage of the director or employee or of any other person. This prohibition includes speculation or investment in securities.
Directors, employees and their family members may not accept any gifts of cash, food or other items of more than token value from anyone in connection with ITT/ESI business or as a result of the director’s or employee’s position in the company. Each employee must report immediately to his/her supervisor any offer or attempted gift of more than token value. Each director must report immediately to the ITT/ESI General Counsel any offer or attempted gift of more than token value.

It is prohibited for ITT/ESI to extend or maintain credit, arrange for the extension of credit or renew any extension of credit in the form of a personal loan to or for any director or executive officer of ITT/ESI.

Any violation of this Conflict of Interest policy by any (i) employee will result in disciplinary action up to and including termination of employment or (ii) non-employee will result in appropriate consequences.

CORPORATE OPPORTUNITIES

ITT/ESI directors and employees are prohibited from:

- Taking for themselves opportunities that are discovered through the use of ITT/ESI property, information or position.

- Using ITT/ESI property, information or position for personal gain.

- Competing with ITT/ESI.

ITT/ESI directors and employees owe a duty to ITT/ESI to advance its legitimate interests when the opportunity to do so arises.

FAIR DEALING

ITT/ESI directors and employees must deal fairly with the company’s customers, suppliers, competitors and employees. No unfair advantage should be taken of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair practice.

GIFTS AND GRATUITIES

No ITT/ESI director, employee, agent or representative will directly or indirectly give, offer, ask for, or accept a gift or gratuity from an employee or other representative of any current or potential customer or supplier, or of a regulatory authority, in connection with a transaction or proceeding between ITT/ESI and the other organization. Gifts and gratuities that are not connected with a transaction or proceeding are acceptable if they meet the rules set forth in the paragraphs below. However, if a customer, supplier or government agency has adopted a more stringent policy than ITT/ESI’s regarding gifts and gratuities, ITT/ESI directors, employees, agents and representatives must comply with that more stringent policy.
**Government Employees in the U.S.:**

No ITT/ESI director, employee, agent or representative anywhere in the world will give, offer or promise an employee of a local, state or federal government in the U.S., or a member of their immediate family, anything of value, with the following exceptions:

**Federal Government Executive Branch:** (This includes all federal government agencies with the exception of the courts and the Congress.) Gifts from ITT/ESI worth $20 or less, with a calendar maximum value of $50 for any one federal government employee are allowed; and refreshments such as coffee, juice or soft drinks during a business meeting are allowed. The following are also permitted and not considered to be gifts: the provision of food to a federal government employee at an event where the federal government employee speaks; and payment of a federal government employee’s admission to “widely attended” (i.e., industry) gatherings.

**Federal Government Congressional Branch:** No gifts worth $10 or more may be given to members or employees of the Congressional Branch without the prior written permission of ITT/ESI’s General Counsel. Food and refreshments of nominal value or incidental to a meeting may be provided.

**State and Local Government:** In some states, no gift of any kind may be given. In other states, gifts from ITT/ESI of token value are allowed; lunches and dinners in connection with a business meeting, conference, seminar or convention are allowed; and refreshments such as coffee, juice or soft drinks during a business meeting are allowed. Where state law is more stringent than ITT/ESI policy, the state law must be followed.

**Government Employees Outside the U.S.:**

Many countries have laws or rules about giving gifts to people who are employed by the government of that country. Some countries have laws that limit the gifts that can be given to people who are employed by the government of other countries. It is ITT/ESI policy to fully comply with all of those laws and rules. In addition, a U.S. law, the Foreign Corrupt Practices Act (“FCPA”), prohibits ITT/ESI, or anyone acting on behalf of ITT/ESI, from making a payment or giving a gift to a non-U.S. government official for purposes of obtaining or retaining business. The FCPA applies to ITT/ESI everywhere in the world we do business. The FCPA applies to you even if you are not a U.S. citizen.

A violation of the FCPA occurs when a payment is made to a non-U.S. government official while “knowing” that the payment will be used to unlawfully get or keep business or direct business to anyone else. Under the FCPA, “knowing” includes situations where the circumstances make it fairly obvious that an illegal payment will occur, even if the ITT/ESI representative did not actually know the payment would be made.

We are required by the FCPA to keep books, records and accounts that accurately and fairly show ITT/ESI’s assets and how the company’s money has been spent. A system of internal accounting controls must be maintained to provide reasonable assurances of adequate corporate supervision over the accounting and reporting activities at all levels.
People not Employed by any Government:

Unsolicited gifts, gratuities or business courtesies from or to a non-governmental business associate, including meals and entertainment, are permissible if they: (1) are customary in the trade or industry; (2) do not exceed token value; and (3) are given and accepted without an express or implied understanding that the recipient is in any way obligated. It is never acceptable to solicit gifts, gratuities or business courtesies for the benefit of an ITT/ESI director, employee, family member or friend.

Bribery, Kickbacks and Payoffs:

Bribery is unacceptable. It is absolutely imperative that each and every person who does business with ITT/ESI understands that we will not, under any circumstances, give or accept bribes, kickbacks or payoffs.

CONTRIBUTIONS

ITT/ESI will not make any contribution, directly or indirectly, to any candidate for public office, political party, political action committee, other political organization or referendum campaign, unless permitted by applicable law and only upon the prior approval of the ITT/ESI General Counsel. In addition, employees may not be given time off with pay for political activity, although time off without pay may be possible if consistent with local policies and laws.

ITT/ESI does not contribute to certain types of organizations, such as the following: (a) religious, when the benefits of such contributions inure exclusively to the particular religious group; (b) racial, when the benefits of such contribution inure exclusively to the particular racial group; and (c) veterans, unless funds are being sought for purposes which will benefit all the people in the community. (Note: minor items, such as the purchase of tickets or courtesy “advertising” in souvenir programs, etc., which may be considered as “donations” to social and welfare organizations, are not prohibited by this policy.)

Under no circumstances will ITT/ESI support or permit contributions to any group or association listed by the Office of the United States Attorney General as being subversive to the interests of this country.

INTERNATIONAL BOYCOTTS

ITT/ESI employees may not engage in or support a restrictive trade practice or boycott by any foreign country against any country, person, firm or corporation. Examples of prohibited conduct include supplying information regarding the race, religion, sex or national origin of a person; refusing to do business with a boycotted firm or country; or acting on any document that contains boycott language. The law requires that solicitations to support such restrictive trade practices or boycotts be reported to the United States Government. Consequently, employees should immediately report any of these solicitations to the ITT/ESI General Counsel.
EXPORT AND IMPORT CONTROL LAWS AND REGULATIONS

ITT/ESI must comply with the export and import control laws and regulations of all countries in which it does business. Failure to comply may result in heavy fines and penalties and loss of exporting and importing privileges. None of ITT/ESI's services may be used in the manufacture or production of chemical, biological or nuclear weapons or missiles to deliver these weapons. All employees are responsible for advising their supervisor or the ITT/ESI General Counsel of any export and import control related occurrence, development or investigation of possible legal significance to ITT/ESI.

INSIDER TRADING

ITT/ESI has a long-standing commitment to comply with all securities laws and regulations. U.S. securities laws, which apply to ITT/ESI, prohibit persons from trading in the securities of a company on the basis of material non-public information. Material non-public information is any information concerning a company’s business, prospects, securities or market which an investor might consider important in deciding whether to buy or sell the securities, or which could affect their market price. Examples of material information include: actual or estimated class start results; possible mergers, acquisitions or divestitures; actual or estimated financial results; purchases and sales of investments in companies; obtaining or losing significant contracts; significant discoveries or product developments; threatened major litigation or developments in such matters; and major changes in business strategies. If you have access to material information, whether it pertains to ITT/ESI or another company, do not buy or sell ITT/ESI securities or those of the other company until at least three business days after the information has been disclosed to the public by press release or similar announcement.

Two simple rules can help protect you in this area: (1) don’t use material non-public information for personal gain; and (2) don’t pass along such information to someone else who has no need to know.

It is also improper and inappropriate for any ITT/ESI director or employee to engage in short-term or speculative transactions involving ITT/ESI securities. Therefore, it is our policy that directors and employees should not engage in either of the following activities with respect to ITT/ESI securities:

(1) Short sales.
(2) Buying or selling puts or calls.

Any questions should be directed to the ITT/ESI General Counsel.

CONFIDENTIALITY OF INFORMATION

ITT/ESI directors and employees must maintain the confidentiality of information entrusted to them by the company or its customers (except when disclosure is authorized or legally mandated), including all non-public information that might be of use to competitors or harmful to ITT/ESI or its customers if disclosed. ITT/ESI directors and employees must protect and
restrict the transfer of confidential company and customer information to anyone outside of ITT/ESI.

ITT/ESI strives to disclose financial and operational information consistent with legal and regulatory requirements to foster orderly behavior in the market. ITT/ESI’s goal is to develop and maintain realistic investor expectations by making all material financial and operational disclosures on a broadly disseminated basis, so that all members of the public have fair access to financial and operational information.

The following ITT/ESI officials are the Authorized Spokespersons for the company:

- Chief Executive Officer
- President
- Chief Financial Officer
- Director of Investor Relations

The Authorized Spokespersons are the only ITT/ESI representatives authorized to communicate externally on behalf of the company with respect to matters pertaining to ITT/ESI’s finances and operations, including, without limitation, the company’s financial condition, revenues, financial forecasts, earnings, cash flows, growth plans, student census, student enrollments, school expansions or stock performance.

This policy also prohibits any ITT/ESI director or employee who is not an Authorized Spokesperson from initiating or responding to any information, rumor, speculation or any other reference regarding ITT/ESI’s finances or operations in a public forum, unless authorized to do so by an Authorized Spokesperson. A public forum includes, but is not limited to, external communication with one or more individuals via verbal or written communication and participation in any form of Internet communication, such as chat rooms or bulletin boards. If an ITT/ESI director or employee hears or sees any misinformation, factual error or speculation in any public forum, the director or employee must report it promptly to the ITT/ESI Director of Investor Relations.

It is the policy of ITT/ESI not to comment on rumors or speculation.

**RESPONSE TO INQUIRIES AND REQUESTS FOR INFORMATION**

Any inquiry and/or request for information from newspapers, magazines, television or radio stations or consumer organizations is to be communicated to ITT/ESI Corporate Relations Department immediately and no response can be made until approved by ITT/ESI’s CEO, President and/or Corporate Relations Department.
PROTECTION AND PROPER USE OF COMPANY ASSETS

ITT/ESI directors and employees must protect company assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on ITT/ESI’s profitability. All ITT/ESI assets should be used for legitimate business purposes.

Information, intellectual property and innovative ideas are valuable ITT/ESI assets. These intangible assets must be appropriately managed and protected. Information pertaining to growth and strategic plans, technology, competitive position, directional strategy, students, salaries, trade secrets, etc. must be protected from misuse. Intellectual property rights, including patents, trademarks, copyrights, trade secrets and know-how must be planned for and managed with the same degree of care as any other valuable asset. New concepts and ideas will be identified for purposes of evaluation and protection, as appropriate, to support the long-term and short-term goals of the company.

All equipment and supplies purchased by ITT/ESI are the property of ITT/ESI. This includes, but is not limited to, office supplies, office furniture, fax machines, computers, software and hardware, Internet access, telephone equipment and electronic mail. ITT/ESI’s property, materials, supplies or equipment may not be used by any ITT/ESI director or employee for any personal reason, unless (a) the ITT/ESI Board of Directors specifically approves such director’s use in advance or (b) the employee’s supervisor specifically approves such employee’s use in advance. Waste or disregard for company property is also prohibited. Director or employee use of any ITT/ESI equipment or property, including, without limitation, its telephone, computer and e-mail systems, may be monitored and/or searched by ITT/ESI and, by engaging in such use, ITT/ESI directors and employees consent to such monitoring and searching.

ITT/ESI directors and employees have an obligation to protect and manage company software and intellectual property rights. “Software” includes programs, routines and procedures that cause a computer system to perform a predetermined function or functions, as well as the supporting documentation. This includes algorithms, flow charts, diagrams, specifications, diagnostic and testing materials and operating or maintenance manuals. ITT/ESI directors and employees using, acquiring or developing software must make sure that the appropriate intellectual property rights (copyrights, patents and trade secrets) in the software are obtained and secured, whether the software is to be used inside ITT/ESI or marketed outside ITT/ESI. Software must be identified, accounted for, controlled, documented, priced and classified for security purposes by the ITT/ESI business unit which develops or acquires the software. All software use must be in compliance with applicable laws and contractual obligations assumed by ITT/ESI, including copyright laws and necessary licensing. No ITT/ESI director or employee may use unlicensed software or create or use unauthorized copies of software. For questions concerning software protection, acquisition or distribution, contact the ITT/ESI Director of Administrative Services.

FRAUD, THEFT OR SIMILAR CONDUCT

Any act that involves theft, fraud, embezzlement or misappropriation of any property, including that of the company or any of its directors, employees, suppliers or customers, is prohibited.
COPYRIGHT COMPLIANCE

ITT/ESI believes strongly in respecting the intellectual property rights of others, including the copyrighted works of authors, publishers and programmers.

Directors and employees are permitted to make copies of only internal documents produced by ITT/ESI and those works which are not the subject of a third party's copyright. Works that are not subject to copyright, such as U.S. government works and works already in the public domain, may be freely photocopied. If a director or employee has a question regarding whether a work is in the public domain, such question should be addressed to the ITT/ESI Legal Department.

With regard to newsletters, magazines or other publications, only limited photocopying which constitutes de minimus or fair use is authorized. Such authorized copying includes the table of contents of copyrighted newsletters, magazines or other publications which are used to allow individuals to determine whether those contents are of interest, where the actual copy of the newsletter, magazine or other publication is made available in a company library or otherwise circulated. The photocopying of entire copyrighted articles, or large portions of the articles, is not authorized by ITT/ESI.

If a director or employee does wish to receive multiple copies of copyrighted articles or other publications for internal distribution, options are available. The director or employee may be able to obtain the specific permissions necessary for such duplication from the copyright holder, which is typically the publisher and/or the author. The director or employee must obtain this permission in writing.

Computer software is also covered by copyright under U.S. laws. ITT/ESI has specific licensing agreements with the owners of software copyrights for all software installed by the ITT/ESI MIS Department or Administrative Services Department on ITT/ESI computers. Directors and employees must not copy any software installed on ITT/ESI computers for installation on computers at the directors' or employees' homes or elsewhere without obtaining the permission of the ITT/ESI Administrative Services Department. Similarly, directors and employees should not install personal software on ITT/ESI computers without obtaining the permission of the Administrative Services Department.

Under U.S. law, the subject matter of copyright is very broad. Copyright applies to all creative works of authorship. This includes, but is not limited to, books, magazines, newspapers, cartoons, trade journals, newsletters, instruction manuals, pictures, drawings, maps, sound recordings, television programs and videotapes. If a director or employee wishes to copy materials such as a videotape or material found on the Internet, the director or employee must first obtain permission in writing from the copyright holder.

COMPUTING AND ELECTRONIC INFORMATION

ITT/ESI, in furtherance of its educational objectives, provides computing and network services, usually without charge, to its educational community. These services, the hardware associated with providing them and all information transmitted by, received from or stored therein are all
considered part of the company infrastructure and are the property of ITT/ESI. Use of ITT/ESI's computing and network systems is limited to authorized users (i.e., students admitted and attending class and ITT/ESI directors and employees). All usage of ITT/ESI’s computing resources, networks and software is to be made for legitimate business, educational, research or employment purposes related to ITT/ESI. Any commercial or other use of ITT/ESI computing resources, networks or software is strictly prohibited.

User network IDs, computer sign-ons and passwords are the property of ITT/ESI and should never be shared. A user must use only his or her own network ID, computer sign-on or password and should never provide his or her network ID, computer sign-on or password to any other user. ITT/ESI resources or private computer hardware connected to ITT/ESI’s computer systems must not be used to provide access to any ITT/ESI network to anyone who is not an authorized user. No ITT/ESI resources may be used to route non-ITT/ESI network traffic through any ITT/ESI computer system without the prior written consent of ITT/ESI’s Director of Administrative Services.

All electronic mail ("e-mail") accounts and the contents thereof are the property of ITT/ESI. ITT/ESI provides e-mail services to its directors and employees at ITT/ESI’s expense to assist them in furthering ITT/ESI’s business and educational mission. E-mail messages should not be regarded as private, and ITT/ESI can not guarantee the confidentiality of e-mail messages. ITT/ESI has the capability to access, review, copy and delete any messages sent, received or stored on the ITT/ESI e-mail system. ITT/ESI, although it does not regularly monitor e-mail communications, reserves the right to inspect, monitor, disclose or discontinue e-mail communications without consent or notice for any reason whatsoever, including, without limitation, when consistent with and/or required by law, there is evidence or reason to believe violations of law or ITT/ESI policy are taking or have taken place, or computer maintenance or operational concerns require such action.

ITT/ESI e-mail services may not be used for: unlawful activities; commercial purposes (whether or not under the auspices of ITT/ESI); personal financial gain; or any other use that violates any other ITT/ESI policy or guideline, including any policy regarding intellectual property or regarding sexual or other forms of harassment. Each user must use his or her name, e-mail address and time and date of transmission on all e-mail messages he or she sends and shall not employ any false identity on e-mail messages. Users shall not be permitted to send unsolicited "junk" e-mail or mass electronic mailings or chain letters without a legitimate ITT/ESI business or educational purpose.

ITT/ESI e-mail systems are intended for purposes related to ITT/ESI’s business purposes and educational mission. If directors or employees do make incidental personal use of the e-mail system, however, such personal communications are not private and are subject to the same conditions as all other e-mail, as described above. Users shall also not give the impression that they are representing or otherwise making statements on behalf of ITT/ESI in such personal communications.

Directors and employees must exercise a greater degree of caution in transmitting ITT/ESI confidential information or educational records on the e-mail system than with other means of
communication (such as letters and phone calls) because of the reduced effort required to redistribute such information. Confidential information must never be transmitted or forwarded to individuals or entities outside of ITT/ESI not authorized to receive that information and must not be forwarded to other ITT/ESI employees not authorized to receive that information. Particular care should be exercised when using distribution lists to distribute sensitive information, as such lists are not always kept current. Some of the messages sent, received or stored on the ITT/ESI e-mail system will constitute confidential, privileged communications between the company and its attorneys. Upon receipt of a message either from or to counsel, a user must not forward such message to anyone without authorization from the ITT/ESI Legal Department.

All use and access of the Internet from ITT/ESI’s computing systems is subject to the following guidelines:

- Access to pornographic, gambling, "hate speech" or similar Web sites is strictly prohibited. Web sites accessed by ITT/ESI directors and employees using ITT/ESI’s computing systems may be monitored.

- Any Web page created must be authorized by the ITT/ESI Advertising Control Committee. Each such Web page must include contact information, including an e-mail address, of the writer or publisher on each page.

- Creation of any Web page must comply with copyright laws for all content, including photographs, illustrations and other graphic images that were created by others. Downloading an image from any Web site without permission usually violates copyright law.

- Directors and employees are prohibited from discussing any information about ITT/ESI in Internet chat rooms or posting any information about ITT/ESI on any Internet bulletin or message board without the prior written authorization of the ITT/ESI CEO, President or Director of Corporate Relations.

Users of ITT/ESI’s computing systems must respect the privacy and rules governing all information accessible through the systems. For example, users must not intentionally seek information on, obtain copies of or modify files, tapes or passwords belonging to other users or ITT/ESI available on ITT/ESI’s computing systems. Users of ITT/ESI’s computing systems must respect the finite capacity of the computing systems. For example, users shall limit usage of the computing systems so as to not interfere with the usage of others and must not use the computing systems for profit-making or fund-raising activities without specific written authorization from the ITT/ESI Director of Human Resources to do so. Users of ITT/ESI’s computing systems must respect the integrity of the computing systems. For example, users must not knowingly download, transmit or install any virus, Trojan horse, worm or other potentially destructive code on any ITT/ESI computing system. Users of ITT/ESI’s computing systems must ensure that their usage of such systems complies with all applicable local, state and federal laws.
If ITT/ESI receives any evidence of any violation of this policy, security breach or use of ITT/ESI resources for an illegal purpose (including the unauthorized use of copyrighted materials or licensed software), ITT/ESI may terminate the user's network access without consent or notice and impose other disciplinary action.

MAINTAIN ACCURATE AND COMPLETE RECORDS

Every employee has the responsibility to maintain accurate and complete records. No false, misleading or artificial entries may be made on ITT/ESI's books and records. No funds or assets may be maintained by the company for any illegal or improper purposes. All transactions must be fully and completely documented and recorded in the company's accounting records.

TRUTH IN ADVERTISING

It is ITT/ESI policy to avoid any misstatement or misrepresentation of fact or misleading impression in any of its advertising, literature, exhibits or other public statements. All statements made in support of our products and services should be true and supported by documentation. Any questions about whether an advertisement or other marketing material meets the requirements of this policy should be directed to the ITT/ESI General Counsel.

RESPONSIBLE MANAGEMENT OF GOVERNMENT FUNDS

Federal law and regulations prohibit ITT/ESI from participating in any federal student financial aid program under Title IV of the Higher Education Act of 1965, as amended, if ITT/ESI has any employee who has been convicted of, or pled nolo contendere or guilty to, any crime involving the acquisition, use or expenditure of federal, state or local government funds, or who has been administratively or judicially determined to have committed fraud or any material violation involving federal, state or local government funds. To ensure that ITT/ESI does not violate these regulations, each employee must certify in writing that no such convictions, pleas or determinations have been made with respect to him or her as a condition of employment. If any current or future ITT/ESI employee is affected by any such conviction, plea or determination, their employment or prospect for employment with ITT/ESI will immediately cease.

CONFIDENTIALITY OF STUDENT RECORDS

The Family Educational Rights and Privacy Act of 1974, as amended ("FERPA") contains requirements designed to afford parents and students privacy and other rights with respect to student educational records. In addition, FERPA includes limitations on what student records institutions can disclose and to whom institutions can disclose student records without the student's prior consent. FERPA applies to the education records of all current and former students of ITT/ESI's colleges. ITT/ESI will fully comply with all of the FERPA requirements, and each employee at each of ITT/ESI's colleges is responsible for knowing, understanding and following the FERPA requirements. The FERPA requirements are explained in detail in ITT/ESI policy AA 9.0.
EQUAL EMPLOYMENT OPPORTUNITY

ITT/ESI provides equal opportunity to all employees and applicants for employment without regard to race, religion, color, sex, age, national origin, disability or any other legally protected status, and practices non-discrimination in all aspects of its work environment. This policy applies to all conditions of employment including, without limitation, recruitment, selection, placement, transfer, promotion, training, compensation, benefits and termination. All decisions regarding conditions of employment are based on an individual's overall qualifications and his or her ability to meet the requirements of the position. Qualified individuals with legally recognized disabilities shall be provided with reasonable accommodation, except where such accommodation would cause ITT/ESI an undue hardship.

ITT/ESI believes that it is the responsibility of managers and employees alike to make known to the appropriate supervisor of Equal Employment Opportunity (“EEO”) violations, complaints or concerns so that corrective action may be taken. It is the policy of ITT/ESI to give prompt attention and review to any complaints by employees regarding alleged violations of company EEO policies.

If you have an EEO related problem, you should first attempt to discuss it with your supervisor. If that is not feasible, then your next level supervisor should be consulted for a solution. If you are not satisfied with either the response or corrective action, you may take your problem to the ITT/ESI Human Resources Department or Chief Compliance Officer. Confidential counseling will be provided to you.

ANTI-HARASSMENT AND ANTI-DISCRIMINATION GUIDELINES

ITT/ESI believes in providing a work environment free of discrimination and harassment. That means that employment discrimination or harassment based on sex, race, age, disability, religion, national origin, color, gender or any other protected status of employees or applicants for employment (collectively, “Employees”), students or student applicants (collectively, “Students”) or any other ITT/ESI customer, invitee or licensee (collectively, “Customers”) will not be tolerated.

Employees are prohibited from harassing Students, Customers and Employees whether or not the incidents occur on ITT/ESI premises and whether or not the incidents occur during business hours.

Managers and employees with supervisory responsibility may not have a romantic, dating or sexual relationship with any Employee with whom they assign work, evaluate or influence employment or compensation decisions without both parties promptly advising the ITT/ESI Human Resources Department in writing of such a relationship, so that appropriate assurances/arrangements can be made to assure mutual consent and no adverse impact in the workplace.

Reports and/or complaints of a discriminatory working environment for Employees, learning environment for Students or business environment for Customers, sexual advances, or other discriminatory or harassing conduct or practices will be promptly investigated. Reasonable
measures will be undertaken to preserve the confidentiality of information that is reported during
the investigation and to protect persons who report information from retaliation.

Following the investigation, corrective measures will be taken, including, but not limited to, the
counseling, reprimand, suspension or discharge of individuals engaging in any prohibited
harassment or discrimination. Appropriate documentation of the matter will also be made.

EMPLOYEE/STUDENT INTERACTION

The conduct of an employee entering into a personal, social or romantic relationship with a
student or prospective student is inconsistent with the obligations of an ITT/ESI employee to
maintain a professional demeanor toward the student or prospective student. ITT/ESI employees
are prohibited from (i) pursuing a social relationship with any student or prospective student that
involves any interaction outside the normal scope of the educational services ITT/ESI provides
to the student, (ii) pursuing a romantic relationship with any student, (iii) dating any student or
(iv) cohabiting with any student, unless the employee is related by marriage or blood to the
student. Violation of this policy will result in disciplinary action up to and including
termination.

EMPLOYMENT OF CLOSELY RELATED INDIVIDUALS

It is ITT/ESI policy not to employ persons closely related to ITT/ESI directors or officers
without the approval of the Chief Executive Officer. Closely related persons may not be
employed at ITT/ESI when such employment creates a situation in which one employee has
effective control over any aspects of the other’s employment or if the employees share
responsibility for control or audit of significant corporate assets. Further, closely related
employees are prohibited from positions in which there may be the potential or an appearance of
favoritism or conflict of interest.

CONFIDENTIALITY OF EMPLOYEE RECORDS

It is ITT/ESI policy to safeguard the confidentiality of employee records. Only those ITT/ESI
directors and employees having a substantial and legitimate business need to know may have
access to an employee’s records. Any director or employee given access to such records will
safeguard them and will maintain the confidentiality of information acquired. Medical records of
ITT/ESI employees will be kept separate, will be maintained privately and confidentially, and
will not be made available without written release from the employee concerned unless required
under applicable law.

ENVIRONMENT, HEALTH AND SAFETY

It is ITT/ESI policy to establish and manage a safe and healthy work environment and to manage
its business in ways that are sensitive to the environment and conserve natural resources.
ITT/ESI will comply with all environmental, health and safety laws and will internally establish
and comply with our own stricter standards where we believe the applicable laws do not
adequately protect health, safety or the environment.
ALCOHOL, DRUGS AND WEAPONS

The use and abuse of alcohol and the illegal use of drugs can affect an employee's productivity and efficiency, jeopardize the safety of the employee, co-workers and the public, and harm the reputation of ITT/ESI and its employees. Accordingly, the possession, use, distribution, manufacture or sale of illegal drugs or alcohol on ITT/ESI premises, on company time or in connection with ITT/ESI business is prohibited. Any violation shall constitute grounds for disciplinary action up to and including dismissal. Coming to work under the influence of alcohol or illegal or illicitly used drugs or the consumption of these substances during work hours is prohibited and will result in immediate termination of employment.

Carrying or possessing any handguns, firearms, weapons, explosives or other dangerous weapons, instruments or materials in the workplace, on ITT/ESI premises, or while on job-related business, unless authorized in writing by the ITT/ESI Director of Human Resources, is not acceptable conduct and is prohibited. Any violations of this policy can lead to disciplinary action, up to and including termination.

ANTITRUST - COMPETITION

All directors and employees must comply with antitrust and competition laws throughout the world. These laws protect the free enterprise system and encourage vigorous, but fair, competition. All product and service development and sales efforts must conform to the highest ethical standards. Engaging in or conspiring to do any of the following is strictly forbidden:

- price fixing, bid rigging, colluding to allocate customers or markets, boycotting suppliers or customers;
- controlling the resale pricing of distributors and dealers;
- disparaging a competitor;
- misrepresenting our own products or services;
- stealing trade secrets; and
- offering or paying bribes or kickbacks.

All mergers, acquisitions, strategic alliances and other types of extraordinary business combinations which raise concerns of market domination or abuse should receive timely legal review to assure that we compete aggressively but not unlawfully. The same is true as to the company's routine business.

Antitrust laws are vigorously enforced. Failure to comply with antitrust or competition laws could result in heavy fines and imprisonment in criminal cases and high damage awards and injunctions in civil cases. Directors and employees should seek the advice of ITT/ESI's General Counsel when confronted with business decisions involving significant risks of antitrust exposure for ITT/ESI or individual employees.
SALES AGENTS, CONSULTANTS OR OTHER PROFESSIONAL SERVICES

Sales agents, consultants and representatives are required to observe the same standards of conduct as ITT/ESI directors and employees when conducting business with or for ITT/ESI. No director or employee may indirectly, through agents, do anything the director or employee is prohibited from doing under ITT/ESI policy. No payment on behalf of the corporation or any of its subsidiaries will be approved or made with the intent that any part of the payment is to be used for any purpose other than that described by the documents supporting the payment. Business integrity is a key standard for the selection and retention of those who represent ITT/ESI. It is extremely important that we engage in thorough due diligence before retaining any sales agent or consultant.

WHEN IN DOUBT

If you are in doubt about a business conduct situation, ask yourself the following questions:

Is it legal?
Does it violate ITT/ESI policy?
Is it consistent with ITT/ESI’s values?
Is it fair and just?
How does it make me feel about myself?
What would my family think about it?
How would it look in a newspaper article?
Will I sleep soundly tonight?
What would I tell my child to do?

If you are unsure about what to do, ask questions and keep asking until you are certain you are doing the right thing.

SEEKING ADVICE

ITT/ESI is committed to operating its business in accordance with the highest level of integrity and ethical standards and all applicable laws, regulations and rules. The company wants to make sure that everyone who does business on behalf of ITT/ESI fully understands what this Code requires and is able to ask questions if advice is needed. Should an improper practice or irregularity occur within the company, we are committed to correcting the problem and taking appropriate steps to make sure it cannot happen again.

If you are unsure of what a policy requires of you, are concerned that ITT/ESI may be in violation of law or feel that a company policy is being violated, you may seek advice from your supervisor, upper management, the ITT/ESI Human Resources Department, ITT/ESI Chief Compliance Officer or the ITT/ESI General Counsel.
You may seek advice on a confidential basis from the ITT/ESI Chief Compliance Officer, in the following ways:

**Call:**
1-800-388-3368, extension 421
Or
1-800-420-4340 (ITT/ESI Alert line administered by Global Compliance Services, formerly Pinkerton Compliance Services)

Or

**Write to:**
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, Indiana 46032-1404
Attn: Chief Compliance Officer

**Revised: January 18, 2010**
EXHIBIT “F”
Ethics and Compliance Program:

This Ethics and Compliance Program (the "Program") is intended to highlight ITT Educational Services, Inc.’s ("ITT/ESI") commitment to the highest standards of ethics and compliance. As part of that commitment and in accordance with the Sarbanes-Oxley Act (Public Law 107-204 §805), the Program will be in full compliance with organizational guidelines as set forth in Chapter 8 of the U.S. Sentencing Guidelines. The Program formalizes ITT/ESI’s existing compliance program and also entails: periodically reviewing and reassessing ITT/ESI’s standards (i.e., the Code of Business Conduct and Ethics (the “Code”)) and policies; providing for more training for ITT/ESI employees, officers and Directors (collectively, “Covered Persons”) on the standards and policies; and enhancing the mechanisms for monitoring, auditing, reporting, investigating and enforcing compliance. The Program also enhances ITT/ESI’s ability to measure the Program’s effectiveness by strengthening the organizational structure supporting the Program. Each of these elements is detailed below.

The Program elements are supported at all levels of ITT/ESI. Providing direction, guidance and oversight are the Audit Committee of the Board of Directors and the Ethics and Compliance Policy Committee consisting of senior management.

1. Goals

The goals of the Program are to provide:

(a) an organizational culture that encourages ethical conduct and a commitment to compliance with the law;

(b) assurance that all Covered Persons are aware of their duties and responsibilities in establishing and sustaining an environment based on ethical behavior and compliance with applicable laws, regulations and standards; and

(c) a mechanism for continuously assessing the effectiveness of that environment in assuring that all of ITT/ESI’s business is conducted with integrity.

2. Organization

All of the following individuals and groups support ITT/ESI in fulfilling the requirements of the Program:

(a) Compliance Department – The Senior Vice President, Business Practices and Compliance – Chief Compliance Officer (“CCO”) and the Compliance Department (which will be managed by the CCO) will be responsible for the day-to-day direction and implementation of the Program. This includes developing resources (including policies, training programs and communication tools) for and providing support (including operating the Ethics Line, conducting program assessment and providing advice) to Covered Persons at all of ITT/ESI’s facilities.

(i) Reporting – The CCO will report directly to CEO and indirectly to the Chairperson of the Audit Committee. The CCO will be a member of senior management of
ITT/ESI, make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or the Board of Directors (through the Audit Committee) of ITT/ESI, and be authorized to report to the Board of Directors (through the Audit Committee) at any time. The CCO will be responsible for monitoring the day-to-day activities engaged in by ITT/ESI to further its compliance objectives.

(ii) Department Resources — ITT/ESI’s internal audit function will be incorporated into the Compliance Department. The Compliance Department will include such other professional and administrative resources as are necessary for it to fulfill its responsibilities under the Program.

(b) Ethics and Compliance Policy Committee — The Ethics and Compliance Policy Committee will be chaired by the CCO and include the: Chief Executive Officer; President and Chief Operating Officer; Senior Vice President and Chief Financial Officer; Senior Vice President, General Counsel and Secretary; and Senior Vice President, Operations. The Ethics and Compliance Policy Committee will oversee the effectiveness of the Program, make decisions on investments in the Program and approve all compliance-related policies.

(c) Responsible Executives — While primary responsibility for the development and implementation of the Program will rest with the CCO, the staff of the Compliance Department and the Ethics and Compliance Policy Committee, there will be other employees who have responsibility for and contribute in significant part to the development and implementation of the Program with respect to portions that pertain to their areas of focus and expertise ("Responsible Executives").

Responsible Executives will be individuals at ITT/ESI’s Headquarters who have experience in various areas of compliance risk and who are called upon in their areas of experience to contribute to policy and training development efforts, conduct monitoring and auditing as appropriate, and provide advice.

Responsible Executives will be responsible for:

(i) developing compliance policies in their areas of responsibility and presenting them to the Ethics and Compliance Policy Committee;

(ii) in consultation with the Compliance Department, ensuring that implementing guidance and training regarding adopted policies are provided to all affected Covered Persons;

(iii) in consultation with the Compliance Department, establishing monitoring processes, or working with other departments to establish such processes, for their areas of compliance risk;

(iv) reviewing Internal Audit and other monitoring and analytic reports to identify trends, variations, aberrations and spikes and issue corrective guidance as appropriate and necessary;
(v) reviewing audit reports to determine whether training needs to be provided and whether existing policies need to be revised or additional ones developed;

(vi) monitoring and distributing information relating to new developments in their areas of compliance responsibility and recommending changes to the Code or existing policies as necessary;

(vii) providing advice relating to the policies in their areas of responsibility, including establishing and maintaining helplines, if necessary; and

(viii) reporting periodically to the Ethics and Compliance Policy Committee regarding their efforts.

(d) **Local Ethics and Compliance Officers** – Playing a key role in ensuring the successful implementation of the Program, Local Ethics and Compliance Officers ("ECOs") will be responsible for distributing standards, ensuring training is conducted, conducting monitoring, responding to audits, investigating and resolving Ethics Line calls, and otherwise administering the Program at their facilities and in their departments.

The school Director of each of ITT/ESI’s ITT Technical Institutes will be the ECO for that facility. Each ECO will be responsible for implementation and oversight of the Program at his/her facility. ITT/ESI will make proper execution of ECO duties a component of the performance evaluations of ECOs. The Compliance Department will periodically assess the effectiveness of ECOs, and the methods and findings of any such assessments will be reported by the CCO to the CEO and the Audit Committee.

(e) **Human Resources Partners** – The Human Resources Partners will be another important resource who may be able to address issues arising out of the Code and policies. Human Resources Partners are highly knowledgeable about many of the compliance risk areas described in the Code that pertain to employment and the workplace and are responsible for ensuring compliance with various employment laws. If a concern relates to specific details of an individual’s work situation, rather than larger issues of organizational ethics and compliance, a Human Resources Partner will be the most appropriate person to contact. Emphasis will be placed on resolving workplace conduct and employment practice issues through the individual’s supervisor and a Human Resources Partner. Experience has shown that this is an effective and productive way to deal promptly with these matters. It is the policy of ITT/ESI to hire and promote individuals so as to ensure that all individuals of ITT/ESI will perform their assigned duties in a manner consistent with the exercise of due diligence and the promotion of a culture that encourages ethical conduct and a commitment to compliance with the law.

(f) **Governing Authority Oversight** – The Board of Directors of ITT/ESI shall be the governing authority for the Program. It shall be responsible for:

(i) being knowledgeable about the content and operation of the Program; and
(ii) exercising reasonable oversight with respect to the implementation and effectiveness of the Program.

3. Code of Business Conduct and Ethics

The Code provides additional guidance to all Covered Persons and assists them in carrying out their daily activities within appropriate ethical and legal standards. These obligations apply to ITT/ESI's relationships with students, regulators, lenders, servicers, subcontractors, independent contractors, vendors, consultants and between Covered Persons.

The Code is a critical component of the Program. The Code is intended as a compendium of existing and supplemented policies to make access to these policies more convenient. The Code was developed to ensure that ITT/ESI meets its ethical standards and complies with applicable laws and regulations.

The Code is intended to be comprehensive and easily understood. In some instances, the Code deals fully with the subject covered. In other cases, additional guidance may be necessary. To provide additional guidance, ITT/ESI has developed a comprehensive set of policies which expand upon or supplement some of the principles articulated in the Code. The standards set forth in the Code are mandatory and must be followed by all Covered Persons. A copy of the Code is available on ITT/ESI's website at: www.ittesi.com.

ITT/ESI will distribute the Code to all Covered Persons. Compliance with ethical standards and policies has always been an evaluation element. In order to further emphasize this obligation and to provide incentive to Covered Persons to perform in accordance with the Program, ITT/ESI will make the promotion of, and adherence to, the Code a formal element in evaluating the performance of all Covered Persons.

ITT/ESI will implement a procedure to obtain an acknowledgment from each Covered Person that he/she has received a copy of the Code, understands that it represents mandatory policies of ITT/ESI and agrees to abide by it. New Covered Persons will receive the Code and complete the required acknowledgment within 30 days after becoming a Covered Person. ITT/ESI will review the Code at least annually and make any necessary revisions. These revisions will be distributed promptly after initiating such a change. ITT/ESI will obtain an acknowledgment from each Covered Person that he/she has received the revised Code, understands that it represents mandatory policies of ITT/ESI and agrees to abide by it.

4. Policies

As part of the Program, standards are set through the Code, policies and, occasionally, through other guidance mechanisms. It is the responsibility of each Covered Person to be aware of those policies that pertain to his/her responsibilities and to follow those policies.

ITT/ESI will assess and update as necessary its policies at least annually and more frequently, as appropriate. ITT/ESI will distribute all policies to all Covered Persons. Compliance Department staff, ECOs and Responsible Executives will be available to explain any and all policies.
5. Training

Comprehensive training will be used to ensure that all Covered Persons are aware of the standards that apply to them. Code training will be conducted at the time a Covered Person joins the organization and annually for all employees. Compliance training in areas of compliance risk will be required of certain individuals. The Compliance Department and the Responsible Executives will create a training program that will include annual refresher training on the Program and the Code, compliance training on ITT/ESI’s policies and training for new Covered Persons.

All ethics and compliance training will be recorded in ITT/ESI’s learning management system ("LMS"). Through the LMS, compliance with each Covered Person’s training requirements will be tracked and such information will be reported as necessary.

6. Monitoring and Auditing

The Compliance Department will develop compliance monitoring and auditing programs designed to assess the effectiveness of the Program.

Monitoring systems will be designed to be incorporated into day-to-day processes. Auditing efforts typically will use a retrospective approach. The Compliance Department will develop monitoring programs and the Internal Audit function will develop compliance audit plans and conduct audits.

(a) Active Monitoring Systems — These systems will include, without limitation:

(i) Audits – Routine and surprise audits will be conducted by internal and/or external auditors, depending on the circumstances.

(ii) Investigations – Internal and/or external investigators will be used to conduct investigations depending on the circumstances.

(iii) Reviews – Members of the Compliance Department (“Reviewers”) will conduct on-site Compliance Process Reviews during which the Reviewers interview a random sample of facility employees to determine the strengths and weaknesses of the Program’s implementation at the facility. The Reviewers also will conduct analytics and testing on required processes to ensure that the Code and policies are known, followed and implemented.

The aggregate findings of the Compliance Process Reviews will be analyzed on an on-going basis for indications of trends, variations, aberrations and spikes, and such indications will be reported to the CCO when identified. Trends, variations, aberrations, spikes and findings will be communicated to ITT/ESI’s facilities via the issuance of reports, email communications and presentations. An analysis of annual aggregate findings and identified trends, variations, aberrations and spikes will be presented each year to the Audit Committee of the Board of Directors.
(iv) External Evaluation – In order to assist ITT/ESI assess the effectiveness of the Program, it will conduct periodic, external evaluations of ITT/ESI’s compliance efforts in high-risk areas.

(v) Surveys – Students and employees will be surveyed as necessary to help determine the effectiveness of the Program.

(vi) Certifications – Certain ITT/ESI employees will be required to provide periodic written certifications of compliance.

(vii) Analysis – The Compliance Department will conduct analytics to look for trends, variations, aberrations and spikes.

(viii) Risk Assessment – The Compliance Department will conduct ongoing risk assessments with the Ethics and Compliance Policy Committee to identify areas for increased scrutiny and enhanced policy-making or training. The Compliance Department will adapt its compliance efforts to address the risk of any violations of any applicable laws, rules, regulations, accreditation standards, the Code or any ITT/ESI policy identified by the risk assessment.

(b) Passive Monitoring Systems – These systems will include, without limitation:

(i) Ethics Line – Even the most effective compliance training program will not prevent a small number of employees from engaging in activity that does not comply with the organization’s policies or with the law. Every ethics and compliance program needs a method for identifying and addressing this type of conduct.

ITT/ESI will provide a toll free “Ethics Line” to enable employees, contractors, agents or other individuals to disclose to the Compliance Department or some other person who is not in the disclosing individual’s chain of supervision any issues or questions associated with ITT/ESI’s policies, practices or operations that the individual believes to be inappropriate. ITT/ESI will publicize the existence of the Ethics Line to all Covered Persons. ITT/ESI will establish a policy governing its handling of disclosures made through the Ethics Line and operate the Ethics Line through such policy. ITT/ESI will forbid retribution or retaliation for disclosures and will allow for anonymous, confidential disclosures. The Compliance Department will maintain a confidential disclosure log, which will include a record and summary of each allegation received, the status of the respective investigation, and any corrective action taken in response to the investigation. The Ethics Line will be included in the Code and publicized at ITT/ESI’s facilities.

(ii) Complaint Procedure

(iii) Open Door Policy
7. Guidance, Reporting and Investigation

To obtain guidance on an ethics or compliance issue or to report a concern, Covered Persons may choose from several options. It is good practice for a Covered Person to raise concerns first with his/her supervisor. If the circumstances make this inappropriate, the individual may discuss the situation with a Human Resources Partner, an ECO or another member of management at either the facility or Headquarters. Covered Persons always will be free to contact the Ethics Line.

ITT/ESI will endeavor to maintain, to the extent it is reasonably practical, the confidentiality of the identity of any individual who reports concerns or possible misconduct. There will be no retribution or discipline for anyone who reports a concern in good faith. Any Covered Person who deliberately makes a false accusation with the purpose of harming or retaliating against another Covered Person will be subject to discipline.

(a) Internal – ITT/ESI is committed to investigating all reported concerns promptly and confidentially to the extent possible. The Compliance Department will coordinate any findings from Headquarters-led investigations and promptly recommend corrective action or changes that need to be made. ITT/ESI expects all Covered Persons to cooperate with investigation efforts.

(b) External – Law firms, auditing firms, forensic information technology consultants, forensic accountants and other external parties will be utilized to assist in, or conduct independent investigations as the situation dictates.

(c) Honor Code – ITT/ESI is committed to ethical and legal conduct that is compliant with all relevant laws and regulations and to correcting wrongdoing wherever it may occur in the organization. The responsibility and accountability for compliance rests with each Covered Person. Each Covered Person also has an individual responsibility for reporting any activity by any Covered Person, student, subcontractor or vendor that appears to violate applicable laws, rules, regulations, accreditation standards, the Code or any ITT/ESI policy. Any Covered Person who is aware of any violation of applicable laws, rules, regulations, accreditation standards, the Code or any ITT/ESI policy by any Covered Person, student, subcontractor or vendor will be in violation him/herself if he/she fails to report the violation. If a matter that poses serious compliance risk to ITT/ESI or student safety is reported locally, and if the reporting individual doubts that the issue has been given sufficient or appropriate attention, the individual should report the matter to higher levels of management or the Ethics Line until satisfied that the full importance of the matter has been recognized.

8. Enforcement

Where an internal investigation substantiates a reported violation, it is ITT/ESI’s policy to initiate corrective action, including, as appropriate, making prompt restitution of any overpayments, notifying the appropriate governmental agency, instituting whatever disciplinary action is necessary, and implementing systemic changes to prevent a similar violation from recurring in the future. The Compliance Department, with the assistance of the Ethics and Compliance Policy Committee, will
promulgate enforcement policies and directives that will be fair and consistent, and that will provide a graduated discipline system.

9. Measuring Effectiveness

ITT/ESI is committed to assessing the effectiveness of the Program through various efforts. A primary method will be provided by the Internal Audit function, which routinely conducts internal audits of issues that have regulatory or compliance implications. Responsible Executives will routinely monitor compliance with the Code and policies. Each facility will conduct self-monitoring, and the Compliance Department will conduct reviews of and assess facility implementation of the Code and policies, Ethics Line and related investigations and monitoring efforts. These compliance process reviews will permit the Compliance Department to identify and share best practices.

Most of these methods of assessment will result in reports of findings by the reviewers and corrective action plans by the facilities that are reviewed. Through these reviews, ITT/ESI will assess the effectiveness of the Program and find ways to improve it.

10. Periodic Assessment of Risk of Criminal Conduct Consistent with the U.S. Sentencing Guidelines

(a) ITT/ESI will periodically assess the risk that criminal conduct will occur, including assessing the following:

(i) The nature and seriousness of such criminal conduct.

(ii) The likelihood that certain criminal conduct may occur because of the nature of ITT/ESI's business. If, because of the nature of ITT/ESI's business, there is a substantial risk that certain types of criminal conduct may occur, ITT/ESI shall take reasonable steps to prevent and detect that type of criminal conduct. For example, ITT/ESI personnel have an obligation to ensure that all representations, whether written or oral, made to prospective, current or former students are truthful and complete. Likewise, all school personnel have an obligation to properly conduct the affairs of the school and ensure that all records are accurate and complete.

(iii) Formal complaints and allegations of misconduct.

(b) ITT/ESI will periodically prioritize, as appropriate, the actions taken pursuant to the Program in order to focus on preventing and detecting the criminal conduct identified above as most likely to occur.

(c) ITT/ESI will modify, as appropriate, the actions taken pursuant to the Program to reduce the risk of criminal conduct identified above as mostly likely to occur.
EXHIBIT “G”
Effective Phone Techniques

Back to Basics:

- Listens intently and respond accordingly
- Show genuine enthusiasm
- Use the prospective student’s first name frequently
- Follow the approved script
- Build rapport from the beginning
student is wanting additional education
Sell the "sizzle", not the steak – Understand "why" the
Maintain control of the phone call
Clear voice – easy to understand
Control and obtain rapport quickly.

- Name (Frequently Used) - Using the name helps to establish excitement. The conversation sounds natural, not rehearsed.
- Script - Conversational tone, matching the prospect's opening during the beginning of the conversation.
- Intro/Rapport Developed - A natural customer service

Effective Phone Techniques

Back to Basics:
Important you have an upbeat attitude.

It is often said that smiles can be heard through phones, so it is enthusiasm and warmth should radiate from your voice. It is

Goals.

enthusiastic about helping prospective students achieve their

show enthusiasm for your product or service. You must be

Effective Phone Techniques

Back to Basics:
their needs.

direct the conversation forward in a manner consistent with
questions when you demonstrate the ability to listen and

Listening Skills — Prospective students are more open to

Effective Phone Techniques

Back to Basics:
but not programs or specifics.
Example: Peek interest in visiting the school by giving schools of study,
etc., "Do Not Sell the Farm!"
Informations such as degree programs, curriculum, class schedule
Sells the visit not the school - Rep should be eliminating detail

Effort to neutralize objections
Such as third party, direct, and collective approaches. Showing
overcomes obstacles if applicable - Rep is utilizing techniques
control of the conversation.
Example: Answer a question and follow up with a question to regain
conversation.
Maintains Control of Conversation - Rep is directing the

Effective Phone Techniques:
Back to Basics:
set aside blocks call time base on strong contacts results. Reps should call everyday and result of consistent habits. Successful phone appointment scheduling comes as a

Effective Phone Techniques: Back to Basics.
Most Common Issues

Not being consistent i.e. calling everyday.

Not confirming appointments.

Scheduling appointment outside of 3 days.

The representative did not attempt to set the appointment,

but instead mailed a brochure or sent a follow up call.

The prospect got too much information over the phone.

The representative sounded boring on the phone.

In... no perceived value in the visit.

Representative did not give the prospect any reason to come.

Lack of rapport at the beginning of the call.

Back to Basics: