

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, AND)
THE STATES OF CALIFORNIA,)
FLORIDA, ILLINOIS, INDIANA,)
MASSACHUSETTS, MINNESOTA,)
MONTANA, NEW JERSEY, NEW)
MEXICO, NEW YORK, AND)
TENNESSEE, AND THE DISTRICT OF)
COLUMBIA, each ex rel. LYNNT OYA)
WASHINGTON and MICHAEL T.)
MAHONEY,)

Plaintiffs,)

v.)

EDUCATION MANAGEMENT)
CORPORATION; EDUCATION)
MANAGEMENT HOLDINGS LLC;)
EDUCATION MANAGEMENT LLC; THE)
ART INSTITUTE OF CALIFORNIA -)
HOLLYWOOD; THE ART INSTITUTE OF)
CALIFORNIA - INLAND EMPIRE; THE)
ART INSTITUTE OF CALIFORNIA - LOS)
ANGELES; THE ART INSTITUTE OF)
CALIFORNIA - ORANGE COUNTY; THE)
ART INSTITUTE OF CALIFORNIA -)
SACRAMENTO; THE ART INSTITUTE)
OF CALIFORNIA - SAN DIEGO; THE)
ART INSTITUTE OF CALIFORNIA - SAN)
FRANCISCO; THE ART INSTITUTE OF)
CALIFORNIA - SUNNYVALE; ARGOSY)
UNIVERSITY, INLAND EMPIRE;)
ARGOSY UNIVERSITY, ORANGE)
COUNTY; ARGOSY UNIVERSITY, SAN)
DIEGO; ARGOSY UNIVERSITY, SAN)
FRANCISCO; ARGOSY UNIVERSITY,)
SANTA MONICA; WESTERN STATE)
UNIVERSITY COLLEGE OF LAW; THE)
ART INSTITUTE OF FORT)
LAUDERDALE; THE ART INSTITUTE OF)
JACKSONVILLE; THE ART INSTITUTE)
OF TAMPA; MIAMI INTERNATIONAL)
UNIVERSITY OF ART & DESIGN;)
ARGOSY UNIVERSITY, SARASOTA;)
ARGOSY UNIVERSITY, TAMPA; SOUTH)

Civil Action
No. 07-CV-461

UNDER SEAL

UNIVERSITY/WEST PALM BEACH;)
SOUTH UNIVERSITY/TAMPA; BROWN)
MACKIE COLLEGE - MIAMI; THE)
ILLINOIS INSTITUTE OF ART -)
CHICAGO; THE ILLINOIS INSTITUTE)
OF ART - SCHAUMBERG; ARGOSY)
UNIVERSITY, CHICAGO; ARGOSY)
UNIVERSITY, SCHAUMBURG; BROWN)
MACKIE COLLEGE - MOLINE; THE ART)
INSTITUTE OF INDIANAPOLIS; BROWN)
MACKIE COLLEGE - MERRILLVILLE;)
BROWN MACKIE COLLEGE - MICHIGAN)
CITY; BROWN MACKIE COLLEGE -)
FORT WAYNE; BROWN MACKIE)
COLLEGE - SOUTH BEND; BROWN)
MACKIE COLLEGE - INDIANAPOLIS;)
THE ART INSTITUTES INTERNATIONAL)
MINNESOTA; ARGOSY UNIVERSITY,)
TWIN CITIES; BROWN MACKIE)
COLLEGE - ALBUQUERQUE; THE ART)
INSTITUTE OF NEW YORK CITY; THE)
ART INSTITUTE OF TENNESSEE -)
NASHVILLE; ARGOSY UNIVERSITY,)
NASHVILLE; THE ART INSTITUTE OF)
ATLANTA; THE ART INSTITUTE OF)
ATLANTA - DECATUR; THE ART)
INSTITUTE OF AUSTIN; THE ART)
INSTITUTE OF CHARLESTON; THE ART)
INSTITUTE OF CHARLOTTE; THE ART)
INSTITUTE OF COLORADO; THE ART)
INSTITUTE OF DALLAS; THE ART)
INSTITUTE OF FORT WORTH; THE ART)
INSTITUTE OF HOUSTON; THE ART)
INSTITUTE OF HOUSTON - NORTH;)
THE ART INSTITUTE OF LAS VEGAS;)
THE ART INSTITUTE OF MICHIGAN;)
THE ART INSTITUTE OF OHIO -)
CINCINNATI; THE ART INSTITUTE OF)
PHILADELPHIA; THE ART INSTITUTE)
OF PHOENIX; THE ART INSTITUTE OF)
PITTSBURGH; THE ART INSTITUTE OF)
PORTLAND; THE ART INSTITUTE OF)
RALEIGH - DURHAM; THE ART)
INSTITUTE OF SAN ANTONIO; THE ART)
INSTITUTE OF SALT LAKE CITY; THE)
ART INSTITUTE OF SEATTLE; THE ART)

INSTITUTE OF TUCSON; THE ART)
INSTITUTE OF VANCOUVER; THE ART)
INSTITUTE OF VIRGINIA BEACH; THE)
ART INSTITUTE OF WASHINGTON; THE)
ART INSTITUTE OF WASHINGTON -)
NORTHERN VIRGINIA; THE ART)
INSTITUTE OF WISCONSIN; THE ART)
INSTITUTE OF YORK - PENNSYLVANIA;)
THE ART INSTITUTES INTERNATIONAL)
- KANSAS CITY; THE NEW ENGLAND)
INSTITUTE OF ART; ARGOSY)
UNIVERSITY, ATLANTA; ARGOSY)
UNIVERSITY, DALLAS; ARGOSY)
UNIVERSITY, DENVER; ARGOSY)
UNIVERSITY, HONOLULU; ARGOSY)
UNIVERSITY, PHOENIX; ARGOSY)
UNIVERSITY, SALT LAKE CITY;)
ARGOSY UNIVERSITY, WASHINGTON)
D.C.; SOUTH UNIVERSITY/SAVANNAH;)
SOUTH UNIVERSITY/MONTGOMERY;)
SOUTH UNIVERSITY/COLUMBIA;)
SOUTH UNIVERSITY/RICHMOND;)
SOUTH UNIVERSITY/NOVI; SOUTH)
UNIVERSITY/VIRGINIA BEACH; BROWN)
MACKIE COLLEGE - AKRON; BROWN)
MACKIE COLLEGE - CINCINNATI;)
BROWN MACKIE COLLEGE - FINDLAY;)
BROWN MACKIE COLLEGE -)
NORTHERN KENTUCKY; BROWN)
MACKIE COLLEGE - NORTH CANTON;)
BROWN MACKIE COLLEGE - ATLANTA;)
BROWN MACKIE COLLEGE - KANSAS)
CITY; BROWN MACKIE COLLEGE -)
SALINA; BROWN MACKIE COLLEGE -)
LOUISVILLE; BROWN MACKIE)
COLLEGE - HOPKINSVILLE; BROWN)
MACKIE COLLEGE - TUCSON; BROWN)
MACKIE COLLEGE - BOISE; BROWN)
MACKIE COLLEGE - TULSA; BROWN)
MACKIE COLLEGE - PHOENIX; BROWN)
MACKIE COLLEGE - GREENVILLE;)
BROWN MACKIE COLLEGE - ST. LOUIS;)
BROWN MACKIE COLLEGE - SAN)
ANTONIO,)

Defendants.

SECOND AMENDED COMPLAINT

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the governmental entities named in the caption (the "Governments") arising from false statements and claims made or caused to be made by the Defendants, Education Management Corporation ("EDMC"), and the subsidiary corporations listed in the caption (collectively, "EDMC" or the "Defendants") in violation of the False Claims Act, 31 U.S.C. §§ 3729, *et seq.* (the "FCA") and the state False Claims Acts enumerated herein (the "State FCAs", collectively, the "FCAs"). At issue are false claims and statements submitted by Defendants to the United States Department of Education (the "Department") and to the states in order to participate in federal and state programs for financial aid for students at the Defendants' post-secondary educational campuses.

2. The FCA prohibits the submission of false or fraudulent claims for payment to the United States or the making of false statements for the purpose of causing a false claim to be paid. The FCA provides that any person who knowingly submits, or causes to be submitted, false or fraudulent claims to the government for payment or approval is liable for a civil penalty of up to \$11,000 for each claim, plus three times the amount of damages sustained by the government. The Act empowers persons with information regarding false or fraudulent claims made to the government, "relators," to bring an action on behalf of the United States and to share in any recovery.

3. Pursuant to the Act, plaintiffs/relators Lynntoya Washington and Michael T. Mahoney seek to recover on behalf of the United States, and the Commonwealths and States listed above, damages and civil penalties arising from false and improper claims for payment that Defendants submitted, or caused to be submitted, to the Governments and in connection with student loan and grant applications under Title IV of the Higher Education Act of 1965 ("HEA"), and related state statutes from at least January 1, 1999, through the present.

4. Defendants are engaged in fraudulent conduct that violates the FCA in several ways:

- a. In order to be eligible to participate and to continue to participate in any Title IV programs, each of the Defendant institutions entered into Program Participation Agreements ("PPAs") with the Department in which it falsely stated that it was obeying and would obey Title IV's incentive compensation ban, when in fact the institution was not and is not in compliance with that ban, and the institution knew that its statements were false (a true and correct copy of a PPA entered into by EDMC is attached hereto as **Exhibit 1**);
- b. Every year, each of the Defendant institutions knowingly falsely certifies that it is complying with 20 U.S.C. § 1094(a)(20) by promising that it is not and that it will not provide any commission, bonus, or other incentive payment

based directly or indirectly on securing enrollments to any person engaged in student recruiting or admission activities, when in fact, EDMC routinely and knowingly compensates and awards its admissions employees based on recruitment numbers;

c. Thousands of times every year, each of the Defendant institutions submits to the Department and causes students to submit loan and grant applications that are false and fraudulent in at least two ways:

i. The Defendants knowingly use, and cause students to use, the false PPAs and annual certifications, which are necessary prerequisites to the Defendants' eligibility for Title IV funds, in the loan and grant applications for payment; and

ii. In each and every loan and grant application, Defendants falsely certify, or cause the students to falsely certify, that the student at issue is enrolled in an eligible institution and that Defendant institutions are in compliance with all statutory and regulatory requirements on which program eligibility and payment are conditioned, misrepresentations that Defendants know to be untrue because of their

ongoing knowing and intentional noncompliance with the incentive compensation ban.

II. PARTIES

5. Relator, Lynntoya Washington, is a resident of Pennsylvania and a United States citizen. Ms. Washington was employed by EDMC as an Assistant Director of Admissions ("ADA") at its Art Institute of Pittsburgh Online Division ("AiO") campus. Her employment commenced on June 1, 2004 and ended May 25, 2007.

6. Ms. Washington brings this action for violations of 31 U.S.C. §§ 3729 *et seq.*, and the related State FCAs on behalf of herself and the Governments. Ms. Washington, through her work as an ADA, has personal knowledge of the false records, statements and claims presented to the government by and for the Defendants named herein and of Defendants' fraudulent certification, billing, and auditing practices.

7. Relator, Michael T. Mahoney, is a resident of Pennsylvania and a United States citizen. Mr. Mahoney was employed by EDMC as its Director of Training for EDMC's Online Higher Education Division from October 2, 2006 through June 22, 2007. During this time, Mr. Mahoney oversaw the training of all of the Defendants' Online Higher Education admissions trainers, ADAs, and their admissions management personnel and trainers.

8. Mr. Mahoney brings this action for violations of 31 U.S.C. §§ 3729 *et seq.*, on behalf of himself and the Governments. Mr. Mahoney obtained information and evidence, through his work as EDMC's Director of Training,

and has personal knowledge, of the false records, statements and claims presented to the government by and for Defendants named herein and of Defendants' fraudulent certification, billing, and auditing practices.

9. EDMC is a Pennsylvania corporation with its principal offices located at 210 Sixth Avenue, Pittsburgh, Pennsylvania. EDMC is one of the largest for-profit providers of post-secondary, higher education in the United States. EDMC maintains one physical campus in Pittsburgh, Pennsylvania, The Art Institute of Pittsburgh, along with three online programs, Argosy University Online, South University Online, and The Art Institute of Pittsburgh Online Division. EDMC has approximately 101 traditional primary campuses in 31 states and Canada, and nationwide online programs, all operated through the wholly-owned subsidiary Defendants. For the fiscal year ended June 30, 2010, EDMC reported its total enrollment "at the beginning of fall quarter" as 136,000 students.

III. JURISDICTION AND VENUE

10. This is an action brought pursuant to the False Claims Act, 31 U.S.C. §§ 3279, *et seq.*, as well as the State FCAs, and pursuant to Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §§ 2000(e) *et seq.*, prohibiting employment discrimination on the basis of race. Jurisdiction of this federal court is invoked pursuant to the Court's federal question jurisdiction, 28 U.S.C. § 1331 and subject matter jurisdiction is invoked pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732, the latter of which

specifically confers original jurisdiction on this Court for actions brought pursuant to 31 U.S.C. § 3730.

11. This Court has supplemental jurisdiction over the subject matter of the claims brought under state laws pursuant to 28 U.S.C. § 1367 because the claims are so related to the claims within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Further, 31 U.S.C. § 3732(b) specifically confers jurisdiction on this Court for actions brought under state laws arising from the same transaction or occurrence as an action brought under 31 U.S.C. § 3730.

12. This Court has in personam jurisdiction over the Defendants under 31 U.S.C. § 3732(a), which authorizes nationwide service of process, and because the Defendants can be found in and transact the business that is the subject matter of this lawsuit in the Western District of Pennsylvania.

13. Venue is proper in the United States District Court for the Western District of Pennsylvania, pursuant to 28 U.S.C. § 1391(b) and (c) and 31 U.S.C. § 3732(a), because EDMC is a Pennsylvania corporation with its principal offices located in Pittsburgh, Pennsylvania and maintains and operates a traditional primary campus and online program within this District, and many of the acts that form the basis of this Complaint, including the execution of the PPA's, occurred in the Western District of Pennsylvania.

14. This case is not based on a public disclosure.

IV. BACKGROUND

15. Title IV of the HEA requires that to be eligible to participate in and receive payment from its loan and grant programs, educational institutions must agree and promise not to provide any commission, bonus or other incentive payment to their student recruiters based directly or indirectly upon success in securing enrollments. EDMC and each of its subsidiary institutions entered into such agreements and made such promises, and submitted and caused to be submitted to the Department thousands of loan and grant applications. Defendants' agreements and promises, and each and every one of their applications, were and are false and fraudulent because, as this Complaint, Ms. Washington's and Mr. Mahoney's first-hand experience, and Defendants' own documents show, Defendants tied their recruiters' compensation directly to the number of students the recruiters enrolled. Over a period of many years, in reliance on Defendants' false and fraudulent agreements and promises, the Department was requested to pay and did pay out hundreds of millions of dollars in student grants, payments of loan interest, and repayment of defaulted guaranteed student loans, all used for tuition payments at EDMC campuses. Each of these requests for payment of such funds constitutes an actionable false claim under the FCA and the State FCAs.

A. The Higher Education Act Of 1965

16. Pursuant to Title IV of the Higher Education Act of 1965 (the "HEA"), 20 U.S.C. §§ 1070 *et seq.*, the Department provides financial assistance

in the form of grants, loans, loan guarantees and interest subsidies to eligible students to help defray the costs of education, including the Federal Pell Grant Program ("Pell"), 20 U.S.C. §§1070a *et seq.*, 34 CFR § 690; the Federal Family Education Loan Program ("FFELP"), 20 U.S.C. §§ 1071 *et seq.*, 34 CFR § 682 (which includes the Federal Stafford Loan Program ("Stafford")); the Federal Direct Student Loan Program, 20 U.S.C. §§ 1087a *et seq.*, 34 CFR § 685; the Federal Perkins Loan Program, 20 US.C. § 1087aa *et seq.*, 34 CFR § 674; the Federal Work Study Program, 42 U.S.C. §§ 2751 *et seq.*, 34 CFR § 675; and the Federal Supplemental Educational Opportunity Grant Program ("FSEOG), 20 U.S.C. §§ 1070b *et seq.*, 34 CFR § 676.

B. Eligibility For Title IV Loan And Grant Programs

17. Each of the Title IV programs requires compliance with specific requirements as a prerequisite to obtaining federal funds. One requirement is that in order to become eligible to receive Title IV funds under these programs, each institution must enter into a PPA with the Department. 20 U.S.C. § 1094(a); 34 C.F.R. § 668.14(a)(1). PPAs expressly "condition the initial and continuing eligibility of the school to participate in a program upon compliance with" the requirements of 20 U.S.C. § 1094 and 34 C.F.R. § 668.14.

18. The statute and PPA explicitly require that schools:

Will not provide any commission, bonus or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance.

20 U.S.C. § 1094(a)(20). *See also* 34 C.F.R. § 668.14(b)(22). Known commonly as "the incentive compensation ban," this subsection of the statute expressly conditions the initial and continuing eligibility of schools to obtain Title IV funding on the requirement that the schools not pay certain types of commissions.

19. In each PPA, the institution certifies, "The execution of this Agreement by the Institution and the Secretary is a prerequisite to the Institution's initial or continued participation in any Title IV, HEA Program." *See Exhibit 1*, at LW001110. The PPA then states, *inter alia*, "By entering into this Program Participation Agreement, the Institution agrees that . . . (22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance" *Id.* at pp. LW001114-1117.

20. To maintain its eligibility to receive Title IV funds, each year the institution also must provide the Department with an annual compliance audit and financial statements prepared by independent auditors. 20 U.S.C. § 1094(c)(a)(A); 34 C.F.R. § 668.23. The audit reports are used to determine whether schools are adhering to applicable requirements for funding, including the incentive compensation ban. As a required part of the audit, EDMC certifies that it complies with the requirements for eligibility to participate in Title IV programs, including the incentive compensation ban.

21. Congress enacted the prohibition against paying commissions, bonuses or other incentive payments based on success in recruiting students because it determined that such payments were associated with the enrollment of unqualified students to receive federal student-aid funds and high loan default rates, which in turn resulted in a significant drain on program funds where the government acts as a loan guarantor. When Congress amended the HEA in 1992 to prohibit schools from paying these incentives, it did so based on evidence of serious program abuses, of which incentive compensation was a part. See S. Rep. No. 58, 102d Cong., 1st Sess., at 8 (1991)("Abuses in Federal Student Aid Programs")(noting testimony "that contests were held whereby sales representatives earned incentive awards for enrolling the highest number of students for a given period"); H.R. Rep. No. 447, 102d Cong., 2d Sess., at 10, *reprinted in* 1992 U.S.C.C.A.N. 334, 343 (noting new provisions that "include prohibiting the use of commissioned sales persons and recruiters").

V. CLAIMS FOR PAYMENT UNDER TITLE IV PROGRAMS

22. After a school becomes eligible to receive Title IV funds by entering into a PPA, claims for payment of those funds can be made in various ways. Under some programs, such as the Pell Grant program, students submit requests for funding directly to the Department, or to the Department with the assistance of schools, while under other programs, such as the Guaranteed Student Loan ("GSL") program and the FFELP, students and schools jointly submit requests for loans to private lenders which are guaranteed by state

guaranty agencies that are, in turn, insured by the Department, which pays only in the event of a student default.

23. With respect to all Title IV programs, the disbursement of federal funds rests on required statements of eligibility made by schools that were necessary for requests for payment to be considered.

A. The Pell Grant Program

24. The Pell Grant program provides federal funds to assist post-secondary school students in financial need. 20 U.S.C. §§ 1070a – 1070a(6).

25. Pell Grants come directly from the Department and are based upon student need as calculated by application of a strict statutory formula. 20 U.S.C. § 1070a(b).

26. The PPA entered into between the institution and the Department must specifically authorize the institution to receive Pell Grant funds from the Department, to accept student applications, and to calculate and disburse Pell Grants in accordance with the rules established by the Department. 20 U.S.C. § 1094(a); 34 C.F.R. § 690(g).

27. In order to receive a Pell Grant, a student must initiate the process by submitting an application to the school which will then electronically transmit it to the Department on his or her behalf or the student can directly submit an application to the Department. 34 C.F.R. § 690.12(b).

28. In either case, the school then certifies that the student is enrolled in an eligible program and that grant payments will be made in accordance with applicable statutes, regulations and instructions.

29. In addition to submitting a Student Aid Report ("SAR") to the Department, schools are required periodically to submit documents entitled "Institutional Payment Summaries" ("IPS"). Schools certify on the IPS that the information contained in the IPS and the SAR is true and correct to the best of their knowledge.

30. The educational institution is also required to periodically submit to the Department "Recipient's Cash Advance Requests" ("RCAR") in order to obtain additional funds from the Department under the Pell Grant program. The RCAR sets forth the institution's planned cash disbursements and certifies that the outlays are made in accordance with the program requirement and that payment is due to the school.

31. Assuming a school's request for disbursement of Pell Grant funds is consistent with the Department's information, the Department of Education transfers the Pell Grant funds electronically, directly into the educational institution's account. Upon receiving the Pell Grant funds, the educational institution credits students for tuition paid.

32. In addition to the grants themselves, the Department also pays to the educational institutions an administrative cost allowance of \$5.00 for each student enrolled in the program, to be used to pay the costs of administering the Pell Grant and other student financial aid programs. 20 U.S.C. § 1096; 34 C.F.R. § 690.10.

B. The GSL Program

33. The GSL program, which encompasses FFELP and Stafford loans, provides for federally insured low-interest loans to qualified post-secondary school students in financial need. 20 U.S.C. §§ 1071 *et seq.*

34. The Department typically does not lend money directly to students under the GSL program. Eligible students apply to private lenders that meet all Title IV eligibility requirements. 34 C.F.R. § 682.200(b). A public or private non-profit guarantee agency guarantees the lender in case of default. 20 U.S.C. § 1078(c). In the event of default, this agency is reimbursed by the Department for all or part of the default claims paid. *Id.*

35. In order to participate in the GSL program, a student completes a portion of the GSL application and submits the application to the educational institution. The institution then completes a portion of the GSL application and certifies the accuracy of the information it provides to the Department. 34 C.F.R. § 682.102.

36. The educational institution then submits the application to a lender. Upon approval by the lender, the lender obtains a loan guarantee from a guarantee agency. 34 C.F.R. § 682.102. The loan is made in reliance upon the accuracy of the information provided by the educational institution.

37. The lender transfers the GSL funds directly into the educational institution's account. Upon receiving the GSL funds, the educational institution credits students for tuition paid.

38. For subsidized Stafford loans, the government pays the interest on the student's behalf during the time the student is enrolled in school on at least a half-time basis and during the student's grace period before repayment commences. 34 C.F.R. § 682.102(d)(2).

39. In the event of default on the loan, the Department pays to the guarantee agency all or part of the unpaid principal and accrued interest as well as administrative costs equal to one (1) percent of the loan. 34 C.F.R. § 682.404.

VI. DEFENDANTS' PARTICIPATION IN HEA TITLE IV PROGRAMS.

A. The Institutions

40. EDMC signs and submits PPAs on behalf of all of its educational institutions throughout the country. In December 2006, EDMC Chairman and CEO, John R. McKernan, Jr., signed all PPAs for EDMC institutions certifying that EDMC is complying with Title IV's incentive compensation ban. In each PPA, EDMC certifies that "[i]t will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA . . ." See **Exhibit 1**, at p. LW001114. EDMC certifies further, in each PPA, that "[i]t will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any recruiting or admission activities or in

making decisions regarding the awarding of student financial assistance . . ."

Id. at p. LW001117. The following chart indicates the date certain PPAs were signed, those PPAs' expiration date for each EDMC educational institution, along with the individual institution's initial PPA approval date. *See also* the true and correct copy of this chart attached hereto as **Exhibit 2**. Each of EDMC's individual institutions is currently operating under approved PPAs:

School	Date PPA Signed	Dept. of Ed. Approval of PPA	PPA Approval Expiration Date	Initial Approval Date
The Art Institute				
The Art Institute of Atlanta	12/13/2006	12/19/2006	6/30/2009	7/25/1972
The Art Institute of California-Los Angeles	12/13/2006	12/18/2006	3/31/2009	9/9/1981
The Art Institute of California-San Diego	12/13/2006	12/19/2006	9/30/2009	3/27/1986
The Art Institute of Charlotte	12/13/2006	12/18/2006	9/30/2009	10/19/1989
The Art Institute of Colorado (Denver)	12/7/2006	12/8/2006	6/30/2009	6/1/1977
The Art Institute of Dallas	12/13/2006	12/18/2006	9/30/2009	12/1/1967
The Art Institute of Fort Lauderdale	12/13/2006	12/20/2006	9/30/2009	4/28/1971
The Art Institute of Houston	12/13/2006	12/20/2006	12/31/2009	1/1/1965
The Art Institute of Las Vegas	12/7/2006	12/8/2006	12/31/2009	11/12/1992
The Art Institute of New York City	12/13/2006	12/19/2006	3/31/2009	8/10/1987
The Art Institute of Philadelphia	12/7/2006	12/8/2006	9/30/2009	9/16/1968
The Art Institute of Phoenix	12/13/2006	12/18/2006	12/31/2009	4/24/2006
The Art Institute of Pittsburgh	12/7/2006	12/8/2006	3/31/2009	1/16/1968
The Art Institute of Portland	12/7/2006	12/8/2006	6/30/2009	7/19/1967
The Art Institute of Seattle	12/7/2006	12/8/2006	6/30/2009	11/15/1984
The Art Institutes International Minnesota	12/13/2006	12/18/2006	12/31/2009	12/16/1975
Bradley Academy for the Visual Arts (York, PA)	12/7/2006	12/8/2006	12/31/2009	5/1/1986
California Design College (Los Angeles-Wilshire Blvd.)	12/13/2006	12/20/2006	12/31/2009	5/20/1996
The Illinois Institute of Art-Chicago	12/13/2006	12/18/2006	3/31/2009	2/6/1975
Miami International University of Art & Design	12/13/2006	12/20/2006	3/31/2009	2/6/1969
The New England Institute of Art (Boston, MA)	12/7/2006	12/8/2006	6/30/2009	12/1/1978
Argosy University				
Chicago, IL	12/13/2006	12/18/2006	3/31/2009	11/12/1981
Western State University College of Law	12/7/2006	12/8/2006	6/30/2009	8/1/1972
Brown Mackie College				
Cincinnati	12/13/2006	12/20/2006	12/31/2009	3/7/1967
Findlay	12/13/2006	12/20/2006	6/30/2009	11/13/1989
Louisville	12/13/2006	12/18/2006	6/30/2009	1/1/1988
Merriville	12/13/2006	12/18/2006	12/31/2009	6/25/1984
North Canton	12/13/2006	12/20/2006	9/30/2009	1/23/1984
Northern Kentucky				
Salina	12/13/2006	12/18/2006	3/31/2009	7/14/1969
South Bend	12/7/2006	12/8/2006	9/30/2009	7/11/1969
South University				
Savannah, GA	12/13/2006	12/19/2006	3/31/2009	12/19/1975

41. EDMC submits a variety of claims to the government for Title IV funds that it knows to be false based upon its non-compliance with the incentive compensation ban. During the 1998-1999 academic year, EDMC records reflect it received at least \$260,892,000 in Title IV funds for students enrolled in its Art Institute division of educational institutions. See below and the true and correct copy of the Art Institute Federal Aid Chart, attached hereto as **Exhibit 3**, at LW001563.

	1998-1999 Federal Title IV Aid									
	Total Revenue	Pell Grant	SEOG	Perkins Loan	Federal Work Study		FFELP Loans (Net Amounts ^A)			Federal Aid Totals
					Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	
AIA	\$20,277,000	1,377,811	295,322	323,723	63,411	4,767	3,679,094	3,591,705	2,685,932	12,021,765
AID	\$15,393,000	999,048	195,887	N/A	73,772	8,225	2,872,886	3,247,776	1,900,102	9,297,696
AIFL	\$30,419,000	2,285,377	357,985	345,556	90,154	13,361	6,533,619	5,612,391	4,741,910	19,980,354
AIH	\$21,389,000	1,442,978	264,168	492,068	45,820	15,343	4,100,166	4,157,914	2,453,315	12,971,771
AILA	\$5,924,000	604,517	31,808	20,500	0	0	1,230,651	1,139,930	1,065,269	4,092,675
AIM	\$6,696,000	343,229	33,381	N/A	0	1,797	1,156,404	854,022	805,675	3,194,507
AIP	\$31,679,000	2,394,434	453,719	367,774	106,732	17,068	7,712,636	4,210,997	5,041,164	20,304,523
AIPD	\$2,104,000	114,670	1,432	N/A	0	2,916	456,288	411,132	263,755	1,250,194
AIPH	\$29,693,000	2,140,986	304,847	243,000	70,707	20,370	6,910,010	5,576,108	5,821,332	21,087,360
AIPX	\$10,412,000	784,766	89,980	194,692	8,675	5,882	2,197,012	1,906,291	1,612,349	6,799,647
AIS	\$32,705,000	1,616,012	272,017	230,379	90,338	7,860	5,675,482	4,634,138	6,496,489	19,022,714
AISF	\$1,123,000	71,402	9,175	N/A	4,794	512	197,253	222,510	164,540	670,186
CIA	\$22,282,000	1,260,972	248,232	735,314	30,965	7,290	4,541,290	3,928,500	3,105,810	13,858,373
ILIC	\$9,195,000	705,027	90,697	N/A	25,919	4,268	1,982,700	1,711,115	990,669	5,510,395
ILIS	\$5,902,000	237,147	20,159	N/A	13,870	0	1,223,408	1,096,971	894,567	3,486,122
NYRS	\$12,618,000	1,261,995	208,075	N/A	54,916	18,419	2,135,897	2,670,338	809,624	7,159,264
NCPT	\$2,458,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other	\$623,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Totals	\$260,892,000	\$17,640,371	\$2,876,884	\$2,953,006	\$680,073	\$128,078	\$52,604,795	\$44,971,838	\$38,852,502	\$160,707,547

42. During the 1999-2000 academic year, EDMC records reflect it received at least \$307,140,000 in Title IV funds for students enrolled in its Art Institute division of educational institutions. See below and **Exhibit 3**, at LW001564.

	1999-2000 Federal Title IV Aid									
	Total Revenue	Pell Grant	SEOG	Perkins Loan	Federal Work Study		FFELP Loans (Net Amounts ⁴)			Federal Aid Totals
					Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	
AIA	\$24,283,000	1,476,199	293,114	321,858	70,922	20,053	4,212,998	4,676,225	3,137,680	14,209,050
AIC	\$25,209,000	1,283,794	285,121	633,825	26,085	10,123	5,045,150	4,650,116	3,847,311	15,781,525
AICH	\$890,000	159,452					194,404	149,865	60,360	564,081
AID	\$17,981,000	1,094,692	205,839	N/A	25,868	0	3,230,573	3,754,852	2,193,756	10,505,580
AIFL	\$33,455,000	2,418,672	381,081	400,450	127,073	18,185	7,030,277	6,208,922	5,681,097	22,265,756
AIH	\$20,608,000	1,377,927	282,142	690,987	55,848	18,653	4,014,039	4,027,238	2,630,034	13,096,868
AILA	\$12,329,000	1,110,422	89,222	70,900	28,683	0	2,585,659	2,392,793	2,156,990	8,434,669
AILAO	\$24,000	0	0	0	0	0	0	0	0	0
AIM	\$9,545,000	440,471	42,595	N/A	12,379	960	1,785,151	1,270,410	1,141,457	4,693,423
AIP	\$31,781,000	2,135,410	423,688	353,504	0	0	7,416,548	4,012,861	5,664,487	20,006,498
AIPD	\$4,978,000	247,608	18,482	N/A	0	1,323	1,097,434	1,022,129	843,064	3,230,039
AIPH	\$32,339,000	2,002,687	343,489	282,783	87,672	18,187	6,743,236	5,543,559	6,177,979	21,199,592
AIPX	\$11,932,000	830,089	127,686	278,624	24,781	4,158	2,417,279	2,259,877	1,909,296	7,851,789
AIS	\$33,758,000	1,330,766	283,232	328,060	103,766	11,928	5,384,388	4,665,412	6,767,441	18,874,992
AISF	\$2,817,000	206,481	9,743	N/A	4,926	692	544,237	516,827	574,999	1,857,904
AIW	\$12,000	0	0	0	0	0	0	0	0	0
ILIC	\$12,730,000	923,846	97,354	N/A	32,855	4,518	2,782,736	2,434,436	1,483,262	7,759,007
ILIS	\$8,379,000	248,348	22,495	N/A	12,010	0	1,616,748	1,511,804	1,181,046	4,592,451
MCC	\$7,870,000	456,869	35,506	0	0	0	1,706,492	1,134,655	2,191,106	5,524,628
NYRS***	\$13,535,000	1,592,859	108,100	N/A	2,500		2,831,371	3,606,506	1,264,040	9,405,376
NCPT	\$2,685,000	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Totals	\$307,140,000	\$19,336,592	\$3,048,889	\$3,360,991	\$615,368	\$108,780	\$60,638,721	\$53,838,486	\$48,905,403	\$189,853,230

43. During the 2000-2001 academic year, EDMC records reflect it received at least \$370,261,000 in Title IV funds for students enrolled in its Art Institute division of educational institutions. See below and **Exhibit 3**, at LW001565.

	2000-2001 Federal Title IV Funds									
	Total Revenue	Pell Grant	SEOG	Perkins Loan	Federal Work Study		FFELP Loans (Net Amounts ^A)			Federal Aid Totals
					Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	
AIA	\$30,278,000	1,827,077	285,210	326,653	139,084	37,247	5,164,387	5,874,096	3,601,832	17,255,586
AIC	\$27,755,000	1,328,262	348,773	710,295	48,278	18,829	5,536,946	4,898,581	5,140,108	18,030,072
AICA	\$3,077,000	238,417	19,365	0	0	0	483,053	378,239	272,195	1,391,269
AICH	\$1,905,000	192,244	0	0	0	0	438,073	323,713	165,337	1,119,367
AID	\$19,504,000	1,135,057	245,154	0	39,276	3,302	3,180,773	3,808,940	2,739,264	11,151,765
AiFL	\$39,840,000	2,979,220	458,693	489,474	150,351	56,215	8,030,409	6,938,302	6,856,914	25,959,578
AiH	\$19,512,000	1,399,030	283,351	913,253	44,668	30,057	3,646,723	3,812,016	2,551,888	12,680,985
AiLA	\$18,721,000	1,619,094	163,195	113,957	49,353	0	3,653,996	3,132,242	2,859,728	11,591,564
AiLAO	\$3,192,000	208,808	14,500	6,383	3,183	2,199	32,061	422,168	851,556	1,540,858
AiM	\$11,579,000	545,742	78,732	0	45,691	6,418	2,194,668	1,502,181	1,221,914	5,595,345
AiO	\$564,000	4,495	1,100	0	0	0	23,853	28,938	13,968	72,354
AIP	\$33,502,000	2,335,686	426,078	453,567	195,913	12,728	7,557,148	4,173,283	6,226,396	21,380,799
AiPD	\$8,156,000	479,396	38,335	0	828	6,587	1,749,652	1,553,854	1,404,781	5,233,433
AiPH	\$36,827,000	2,546,361	407,242	331,194	157,392	26,808	6,925,423	5,793,640	7,424,961	23,613,021
AiPX	\$14,657,000	993,378	154,248	290,297	44,072	8,030	2,834,329	2,652,230	2,368,444	9,345,029
AiS	\$34,579,000	1,409,138	351,577	362,779	51,922	11,590	5,080,787	4,468,407	6,917,209	18,653,409
AiSF	\$4,731,000	338,933	20,600	0	8,283	1,189	880,494	709,917	809,192	2,768,608
AiW	\$3,122,000	237,537	16,200	13,600	560	0	452,761	500,793	618,947	1,840,398
ILIC	\$16,906,000	1,168,364	111,653	0	29,254	3,738	3,615,870	3,004,965	2,528,377	10,462,221
ILIS	\$10,745,000	378,958	73,174	0	40,094	1,656	2,237,759	1,915,720	1,524,173	6,171,534
MCC	\$13,288,000	708,002	56,567	0	0	0	1,821,946	1,411,075	3,172,814	7,170,403
NYRS	\$15,870,000	2,019,151	230,123	0	99,690	4,108	3,014,905	3,624,586	1,339,414	10,331,977
NCPT	\$1,951,000	0	0	0	0	0	0	0	0	0
Totals	\$370,261,000	\$24,092,350	\$3,783,870	\$4,011,452	\$1,147,892	\$230,701	\$68,556,015	\$60,927,885	\$60,609,409	\$223,359,575

44. During the 2001-2002 academic year, EDMC records reflect it received at least \$458,008,000 in Title IV funds for students enrolled in its Art Institute division of educational institutions. See below and **Exhibit 3**, at LW001566.

	2001-2002 Federal Title IV Funds									
	Total Revenue	Pell Grant	SEOG	Perkins Loan	Federal Work Study		FFELP Loans (Net Amounts [^])			Federal Aid Totals
					Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	
AiA	\$36,210,000	2,362,397	369,792	441,957	163,897	44,817	5,920,626	6,251,939	5,774,992	21,330,416
AiC	\$30,933,000	1,609,124	397,569	745,099	120,864	34,930	5,916,620	5,166,314	5,933,852	19,924,372
AICALA	\$23,513,000	2,252,874	266,266	222,217	74,923	46,045	4,355,957	3,520,814	3,793,013	14,532,108
AICAOC	\$8,939,000	579,379	47,000	54,661	19,359	14,839	1,372,144	1,156,499	2,178,981	5,422,862
AiCASH	\$6,832,000	472,495	65,990	N/A	10,695	5,090	955,592	883,264	1,164,395	3,557,522
AiCASF	\$5,626,000	392,278	52,900	N/A	22,270	1,276	946,380	714,500	1,043,043	3,172,647
AiCH	\$5,032,000	430,813	36,134	6,667	5,484	2,456	871,697	924,296	679,970	2,957,517
AiD	\$20,535,000	1,309,379	294,453	N/A	87,668	23,161	3,135,202	3,437,724	3,578,407	11,865,994
AIFL	\$45,346,000	3,845,320	576,895	646,889	131,285	32,688	8,824,829	7,405,687	7,678,575	29,142,168
AIH	\$21,582,000	1,772,226	362,015	1,115,841	49,124	44,004	3,781,979	4,094,081	3,338,006	14,557,277
AiLV	\$2,902,000	274,921	N/A	N/A	0	0	508,644	663,654	230,871	1,678,090
AiM	\$13,685,000	718,402	104,181	N/A	86,769	7,404	2,737,643	1,909,109	1,209,109	6,772,616
AiNE	\$16,406,000	881,150	131,616	N/A	50,531	8,831	2,325,402	1,550,413	3,837,346	8,785,288
AiNYC	\$19,023,000	2,501,296	273,502	N/A	105,788	14,116	3,025,104	3,706,681	1,422,040	11,048,527
AiO	\$2,339,000	98,182	14,731	2,000	0	0	241,289	391,410	126,380	873,992
AiP	\$34,901,000	2,782,629	496,197	652,683	184,920	28,894	7,446,223	4,496,457	6,090,892	22,178,895
AiPD	\$11,722,000	743,037	95,583	N/A	38,051	8,704	2,471,108	2,147,405	2,194,553	7,698,442
AiPH	\$41,394,000	3,297,151	512,706	373,464	159,471	33,037	7,492,686	6,526,918	8,029,481	26,424,914
AiPX	\$17,548,000	1,257,033	195,927	271,642	65,166	10,050	3,393,219	2,908,904	3,305,762	11,407,704
AiS	\$35,977,000	1,534,547	476,769	439,891	109,621	42,171	4,993,704	4,601,571	7,616,647	19,814,921
AiW	\$8,241,000	601,814	49,900	46,636	1,828	1,502	1,338,649	1,366,796	1,752,210	5,159,335
IFAC	\$13,131,000	1,310,858	17,108	20,100	0	0	2,938,264	2,477,971	1,817,268	8,581,570
ILIC	\$21,429,000	1,624,099	189,534	N/A	91,351	21,843	4,410,603	3,680,859	3,366,341	13,384,629
ILIS	\$13,624,000	609,967	109,721	N/A	67,526	12,942	2,785,993	2,335,202	1,891,206	7,812,557
NCPT	\$1,138,000	0	0	0	0	0	0	0	0	0
Totals	\$458,008,000	\$33,261,373	\$5,136,490	\$5,039,745	\$1,646,591	\$438,800	\$82,189,554	\$72,318,468	\$78,053,341	\$278,084,362

45. During the 2002-2003 academic year, EDMC's records reflect its receipt of Title IV funds increased to at least \$626,297,022 for students enrolled in its Art Institute and Argosy University divisions of educational institutions. See below and **Exhibit 3**, at LW001571.

2002-2003 Federal Title IV Funds											
	Total Revenue	Pell Grant	SEOG	Perkins Loan	HEAL	Federal Work Study		FFELP Loans (Net Amounts [*])			Federal Aid Totals
						Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	
ARGOSY	\$80,568,022	1,032,424	107,350	588,500	7,891,641	681,122	0	36,884,943	44,837,609	279,949	92,303,537
AI	\$545,729,000	43,211,037	6,228,559	5,204,876	0	1,650,825	666,371	97,776,634	83,632,759	97,491,474	335,862,534
EDMC Totals	\$626,297,022	\$44,243,461	\$6,335,909	\$5,793,376	\$7,891,641	\$2,331,947	\$666,371	\$134,661,576	\$128,470,367	\$97,771,423	\$428,166,072

46. During the 2003-2004 academic year, EDMC's records reflect its receipt of Title IV funds continued to increase to \$855,113,000. This amount included funds received for students enrolled at the Art Institutes and South University educational institutions. See below and **Exhibit 3**, at LW001583.

2003-2004 Federal Title IV Funds											
	Total Revenue	Pell Grant	SEOG	Perkins Loan	Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	Federal Aid Totals	Percentage of Revenue by Aid Type:
											6.88%
Ai	\$656,494,000	51,013,807	7,299,979	5,188,713	1,914,231	1,028,975	121,788,547	102,152,726	129,246,951	419,633,929	
AEG	\$103,370,000	1,282,951	124,590	798,000	1,184,706	82,929	52,410,951	67,317,086	267,015	123,468,228	
SubTotal	759,864,000	52,296,758	7,424,569	5,986,713	3,098,937	1,111,904	174,199,498	169,469,812	129,513,966	543,102,157	
AEC	\$52,126,000	17,869,011	925,775	329,805	213,861	84,603	18,446,451	14,364,059	1,236,556	53,470,122	
SU	\$24,710,000	5,510,913	589,650	324,082	83,497	34,452	9,757,547	12,529,153	471,208	29,300,502	
SubTotal	\$76,836,000	23,379,924	1,515,425	653,887	297,358	119,055	28,203,999	26,893,212	1,707,764	82,770,624	
Canada & Other	\$18,413,000	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Totals	\$855,113,000	\$75,676,682	\$8,939,994	\$6,640,600	\$3,396,295	\$1,230,959	\$202,403,496	\$196,363,024	\$131,221,730	\$625,872,781	

47. During the 2004-2005 academic year, EDMC's records reflect its receipt of Title IV funds continued to increase to over \$1 billion in Title IV funds. This amount included funds received for students enrolled at all EDMC educational institutions. See below and **Exhibit 3**, at LW001594.

2004-2005 Federal Title IV Funds									
Total Revenue	Pell Grant	SEOG	Perkins Loan	Federal Work Study		FFELP Loans (Net Amounts^)			
				Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans	
AI	\$765,161,979	56,309,835	7,702,217	5,538,159	2,056,818	543,932	139,738,621	115,435,858	154,529,604
AEG	\$126,545,807	1,429,092	56,300	663,213	942,363	237,754	59,704,533	77,860,849	342,058
SubTotal	891,707,786	57,738,927	7,758,517	6,201,372	2,999,181	781,686	199,443,154	193,296,707	154,871,662
Percentage of Revenue by Aid Type:		6.48%	0.87%	0.70%	0.34%	0.09%	22.37%	21.68%	17.37%
AEC	\$74,405,037	20,759,891	977,060	558,513	167,612	106,566	20,262,882	18,708,443	1,296,446
SU	\$32,722,886	4,464,364	457,786	242,660	101,825	53,266	8,889,525	11,958,616	874,924
SubTotal	\$107,127,923	25,224,255	1,434,846	801,173	269,437	159,832	29,152,407	30,667,059	2,171,370
Sub Total	\$998,835,709	\$82,963,182	\$9,193,363	\$7,002,545	\$3,268,618	\$941,518	\$228,595,561	\$223,963,766	\$157,043,032
Percentage of Revenue by Aid Type:		8.31%	0.92%	0.70%	0.33%	0.09%	22.89%	22.42%	15.72%
Ventura	\$4,527,562								
Connecting Link	\$4,067,617								
SubTotal	\$8,595,179								
US Totals	\$1,007,430,888	\$82,963,182	\$9,193,363	\$7,002,545	\$3,268,618	\$941,518	\$228,595,561	\$223,963,766	\$157,043,032
Percentage of Revenue by Aid Type:		8.24%	0.91%	0.70%	0.32%	0.09%	22.69%	22.23%	15.59%
AITO	\$1,587,785	0	0	0	0	0	418,959	0	0
ITI	\$278,630	0	0	0	0	0	9,039	0	0
AIV	\$7,259,787	0	0	0	0	0	2,823,689	0	0
AIVB	\$7,831,246	0	0	0	0	0	2,982,903	0	0
SubTotal	\$16,957,448	0	0	0	0	0	6,234,590	0	0
Percentage of Revenue by Aid Type:		0.00%	0.00%	0.00%	0.00%	0.00%	36.77%	0.00%	0.00%
EDMC Totals	\$1,024,388,336	\$82,963,182	\$9,193,363	\$7,002,545	\$3,268,618	\$941,518	\$234,830,151	\$223,963,766	\$157,043,032

48. During the 2005-2006 academic year, EDMC records reflect it again received over \$1 billion in Title IV funds. This amount included funds received for students enrolled at all EDMC educational institutions. See below and **Exhibit 3**, at LW001599.

2005-2006 Federal Title IV Funds											
Total Revenue	Pell Grant	SEOG	Perkins Loan	% of Revenue	Federal Work Study		FFELP Loans (Net Amounts ^A)			Federal Aid Totals	
					Regular	Comm. Service	Stafford Subsidized	Stafford Unsubsidized	PLUS Loans		
AI	\$ 856,118,300	\$56,731,037	\$7,838,393	\$ 4,178,679	0.49%	\$1,875,764	\$ 502,010	\$151,914,809	\$129,017,365	\$ 159,315,016	\$ 511,373,073
AEG	\$ 152,517,415	\$ 1,763,643	\$ 122,500	\$ 408,376	0.27%	\$1,066,998	\$ 182,968	\$ 69,349,738	\$103,769,822	\$ 438,986	\$ 177,103,031
SubTotal	\$1,008,635,715	\$58,494,680	\$7,960,893	\$ 4,587,055	0.45%	\$2,942,762	\$ 684,978	\$221,264,547	\$232,787,187	\$ 159,754,002	\$ 688,476,104
Percentage of Revenue by Aid Type:											
	5.80%	0.79%	0.45%			0.29%	0.07%	21.94%	23.08%	15.84%	68.26%
AEC	\$ 98,127,681	\$25,821,859	\$1,142,134	\$ 260,619	0.27%	\$ 135,990	\$ 50,670	\$ 23,332,096	\$ 25,164,385	\$ 1,905,560	\$ 77,813,312
SU	\$ 47,030,704	\$ 5,377,063	\$ 479,035	\$ 122,851	0.26%	\$ 105,085	\$ 50,399	\$ 11,661,702	\$ 16,151,080	\$ 741,480	\$ 34,688,476
SubTotal	\$ 145,158,385	\$31,198,922	\$1,621,169	\$ 383,269	0.26%	\$ 241,055	\$ 101,069	\$ 34,993,799	\$ 41,315,466	\$ 2,647,040	\$ 112,501,788
Sub Total	\$1,153,794,100	\$89,693,602	\$9,582,062	\$ 4,970,324	0.43%	\$3,183,817	\$ 786,047	\$256,258,346	\$274,102,653	\$ 162,401,042	\$ 800,977,892
Percentage of Revenue by Aid Type:											
	7.77%	0.83%	0.43%			0.28%	0.07%	22.21%	23.76%	14.08%	69.42%
Ventura	\$ 2,444,970										
Connecting Lnk	\$ 6,757,749										
SubTotal	\$ 9,202,719										
US Totals	\$1,162,996,819	\$89,693,602	\$9,582,062	\$ 4,970,324	0.43%	\$3,183,817	\$ 786,047	\$256,258,346	\$274,102,653	\$ 162,401,042	\$ 800,977,892
Percentage of Revenue by Aid Type:											
	7.71%	0.82%	0.43%			0.27%	0.07%	22.03%	23.57%	13.96%	68.87%
AITO	\$ 2,616,874	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -	\$ 923,371	\$ -	\$ -	\$ 923,371
ITI	\$ 184,870	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
AIV	\$ 9,547,301	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -	\$ 3,258,388	\$ -	\$ -	\$ 3,258,388
AIVB	\$ 11,246,097	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -	\$ 4,394,511	\$ -	\$ -	\$ 4,394,511
SubTotal	\$ 23,595,141	\$ -	\$ -	\$ -	0.00%	\$ -	\$ -	\$ 8,576,270	\$ -	\$ -	\$ 8,576,270
Percentage of Revenue by Aid Type:											
	0.00%	0.00%	0.00%			0.00%	0.00%	36.35%	0.00%	0.00%	36.35%
EDMC Totals	\$1,186,591,960	\$89,693,602	\$9,582,062	\$4,970,324	0.42%	\$3,183,817	\$ 786,047	\$264,834,616	\$274,102,653	\$ 162,401,042	\$ 809,554,162

49. For the fiscal year ending June 30, 2010, EDMC's total Title IV receipts had grown to \$2,239,400,000.00, or 89.3% of EDMC's net revenue.

VII. THE ROLE OF ADAs IN THE ENROLLMENT AND FINANCIAL AID PROCESS

50. ADAs, such as Ms. Washington, are Defendants' "in-school recruiters" responsible for recruiting applicants for admission into EDMC institutions, including securing and managing new inquiries, achieving enrollment and start rate goals and participating in appropriate recruitment and enrollment activities. See EDMC's Guide to the Admissions Performance Plan for Assistant Directors of Admission, ("Guide to the Admissions Performance Plan"), a true and correct copy of which is attached hereto as **Exhibit 4**, at p. 3. An ADA is in constant contact with potential students during the entire recruitment and enrollment process. The ADA's name is on all of the student's applications and financial aid documents to ensure that the ADA receives credit for enrolling the student.

51. ADAs' salaries, other compensation and advancement in the company are all a result of EDMC's relentless and exclusive focus on the number of new students an ADA is able to recruit, and thus, in direct violation of the Title IV incentive compensation ban.

52. To boost its enrollment numbers, EDMC urges ADAs to enroll students before thoroughly reviewing their transcripts to determine their academic qualifications to attend the institution or online program. Although EDMC publishes academic requirements for incoming students, EDMC accepts all potential students who complete an application and submit a 150-word essay. EDMC approves all student applications regardless of the applicant's

high school GPA or the quality of the written essay, although some deficient students are required to take extra credits before they may enroll.

53. During the recruitment pitch, ADAs are instructed to inform potential students that EDMC and its schools have very high career placement percentages and that the Career Services Office will contact the student six (6) weeks prior to graduation and will set up interviews for the student with prospective employers. However, in actuality, in order for students to receive the benefit of the Career Services Office, they must be proactive and initiate the process. Furthermore, a student is allowed to use the Career Services Office only for a limited time after graduation even though many ADAs tell students that they will have lifetime access to the Career Services Office.

54. ADAs pressure prospective students to enroll so that the ADAs can receive points on EDMC's Annualized Salary Chart, referred to as "the Matrix," and receive corresponding salary increases. For example, while working on temporary job assignment at AiO as a Student Advising Specialist to study "persistence" (dropout) rates, Ms. Washington had contact with a dissatisfied student attending AiO who wanted to delay his start date. The student expressed that his ADA pressured him to start classes even though he did not have the requisite books or software. The student was also experiencing events in his personal life that would prevent him from giving his full attention to his classes. Although classes had not yet begun and the student had not yet become financially obligated to pay for the classes in which he had registered, the ADA misinformed the student it was too late to change his start date and

he was already financially liable for the classes. Because the ADA did not want to lose credit for this student's enrollment for that start period, he intentionally misled the student into believing that he had no other choice but to begin classes when in fact the ADA could have easily completed a "New Student Adjustment Form" to change the student's start date to the next start period.

55. In order for an ADA to receive credit for enrolling a student, the student must post a biography on the class website for a class in which he or she enrolled, thereby confirming enrollment and becoming financially liable for the class. An ADA will receive credit and New Student Points (as defined below) for the Matrix salary purposes only when a student confirms a class, and thus becomes financially liable to EDMC.

56. During the week before a new start period, ADAs will receive Daily Confirmation Reports three (3) times per day updating them as to whether their students have confirmed enrollment in their classes. If an ADA's student has not confirmed enrollment in his or her class schedule, the ADA is expected to call the student and urge him or her to confirm and even walk the student through the confirmation process on the webpage. During the days leading up to a start, ADAs are expected to check their e-mail throughout the weekends and follow up with students on weekends urging them to confirm enrollment in their classes.

57. Due to the requirement of enrollment confirmation, ADAs remain in contact with the student via telephone calls and e-mails until confirmation and continuously urge the student to confirm enrollment in a class, even if a

student expresses doubts about doing so. After a student confirms enrollment, whether the student succeeds or fails in the class is of no concern to the ADA because at that point, the ADA has earned the New Student Points towards his or her salary increase. This leads to the enrollment of unqualified and uninformed students resulting in a 40 percent "persistence" (turnover or drop-out) rate at EDMC institutions.

58. An ADA is also in constant contact with the Financial Aid Officers during the enrollment process. It is the ADA's job to make sure the students complete all of their loan applications and submit them to the school and the federal government. The ADA seeks to ensure that his or her name will be on all of the student's applications and financial aid documents in order for the ADA to receive credit for enrolling the student. ADAs e-mail or fax these forms to students or instruct the students to print the necessary forms from the website. Once all applications are complete, the ADA will forward them to the assigned Financial Aid Officer.

59. Once a student's financial aid forms are complete, a Financial Aid Officer will calculate the student's financial aid plan based on a Department formula and inform the student. The student can accept or reject the financial aid plan. If a student rejects a financial aid plan, often because the student does not qualify for enough financial aid to cover the entire amount of tuition, it is the ADA's job to convince the student to accept the financial aid package and enroll in school. ADAs have a number of tactics to convince students to enroll in school:

- a. ADAs may convince a student to change his or her status from full time to part time so that the student's financial aid package will cover the tuition. A majority of students will do this as then they usually receive a refund from financial aid; however, most ADAs do not inform the students that the refund is still part of the student loan and it will eventually have to be repaid.
- b. ADAs will pressure Financial Aid Officers to offer the students Merit Award Scholarships to cover the outstanding tuition balance.
- c. ADAs will arrange for a payment plan so that the students can make payments on their outstanding balances.

60. Once a student accepts his or her financial plan, the EDMC Financial Aid Officer certifies the student's loans and grants, which are then submitted to the Department for approval and payment.

VIII. DEFENDANTS' FALSE CLAIMS, FRAUDULENT CONDUCT AND VIOLATIONS OF THE INCENTIVE COMPENSATION BAN

A. Violation of the Incentive Compensation Ban

61. Since in or around 1999 and continuing to this day, EDMC and the subsidiary Defendants compensate ADAs, including Ms. Washington, and their supervisors, the Directors of Admission, based upon the number of new students enrolled. In direct violation of the ban on incentive compensation, Defendants created a "boiler room"-style sales culture, in which they not only pay incentive compensation, but they make the recruitment of students to their

schools the sole focus of their compensation regime. Defendants knowingly violate HEA, Title IV; the implementing regulations; the promises made in the PPAs; and the representations made by Defendants in connection with the annual compliance audits.

62. As explained in EDMC's Guide to the Admissions Performance Plan," ADA compensation "is based [on] . . . the number and types of new students you recruited over the past 12 months." See **Exhibit 4**, at p. 5. "The number of new students you recruited over the previous 12 months is converted into points, and the point total determines the salary range. Your salary within the range is determined by your manager's evaluation of performance against quality factors, as described above." *Id.* at p.6.

63. The Guide to the Admissions Performance Plan, which was provided to Ms. Washington, and is provided to all ADAs, includes the "Annualized Salary Chart," *id.* at p.7, known as "the Matrix," setting forth the new student numbers necessary for an increase in base salary. The Matrix lists salary schedules, with a salary range corresponding to the number of students recruited. "Quality factors" (such as "meets expectations," "highly effective" and "outstanding") are considered, if at all, only to adjust salary within the range set by the number of new students recruited.

64. The Matrix is also presented in a PowerPoint presentation to prospective employees during their interviews and to new employees during their initial training and orientation sessions. During Ms. Washington's initial training, she was told that "the number of points based on new students

recruited for the prior 12 months determines a person's salary range and 'quality factors' determine the person's position within the salary range." See "The Art Institute Online: New Employee Introduction" PowerPoint Presentation, a true and correct copy of which is attached hereto as, **Exhibit 5**, at slide 27.

65. EDMC's Admissions Department openly admits that salary is tied to enrollment numbers. During Ms. Washington's initial interview for her ADA position with EDMC employees Dave Bryant and Gregg Schneider, Mr. Bryant showed her the PowerPoint presentation and explained the Matrix. When Ms. Washington then interviewed with EDMC Vice President of Admissions Ken Boutelle in May 2004, he told her that her compensation would depend on the number of students she enrolled and promised that her salary would increase within the first six (6) months of employment if she met enrollment goals.

66. Using the Matrix, an ADA is able to determine the minimum increases to his or her base salary for each and every new student he or she enrolls during each six-month evaluation period, regardless of any "quality factors."

67. The instructions provided to individual ADAs in the Matrix are reinforced in a document provided to all Directors of Admissions, ("DOAs") who manage ADAs, and who serve as the primary recruiting and marketing manager for each EDMC subsidiary institution. The Manager Guidelines for the Admissions Performance Plan specify that the Plan "work[s] the same way

for all participants, to ensure that Associate and ADA compensation is standardized and rewards performance." EDMC's Manager Guidelines for the Admissions Performance Plan, (the "Manager Guidelines") at p.11, a true and correct copy of which is attached hereto as **Exhibit 6**. The Manager Guidelines go on to specify that the salary range for each ADA is determined strictly by a point total that is reached by converting the number of new students recruited over the previous 12 months. *See id.*

68. EDMC's emphasis of, and reliance on, new student enrollment as the exclusive basis upon which it determines an ADA's compensation is demonstrated by the extreme emphasis it places on training its ADAs to "sell" enrollments.

69. All ADAs are continually measured against their "Student Start Plan," which sets out the number of students they are expected to recruit on a monthly basis for the coming months. These plans are initially formulated in meetings between ADAs and their immediate supervisory Director of Admissions. Typically, the Director asks the new ADAs to imagine their "dream car" or other financial goal, or just to name the overall compensation they hope to earn. A plan is then formulated to show the ADA exactly how many new students she needs to recruit in order to reach the target compensation. Quality factors are neither discussed nor included in an ADA's "Student Start Plan." These plans, which focus entirely on the number of students recruited, are updated quarterly to reflect ADAs' progress toward their recruitment goals. Additionally, whether an ADA's compensation is dictated by the Matrix—or in

EDMC's words, whether the ADA is "on" the Matrix—is a function of whether or not she is meeting her monthly recruiting numbers or "Student Start Plan." An example of a compilation of Ms. Washington's "Student Start Plan," and her performance against that plan, is shown below and a true and correct copy of which is attached hereto as **Exhibit 7**. Nowhere on these documents is there any reference to or inclusion of any "quality factors." In fact, these documents solely measure quantitative factors.

EDMC

Education Management Corporation

The Art Institutes

Education for World Citizens
Washington, Lynn T.

AIO

Date of Hire: 6/1/2004

Quarterly Data	NOV	JAN	FEB	APR	MAY	JUL	AUG	OCT	AY TD	AY Total
New Students										54
ADA Last Year	0	15	1	8	7	5	6	12	0	70
ADA Plan	8	11	5	10	5	10	5	16	8	
ADA Actual	3	0	0	0	0	0	0	0	3	
% of Plan	38%									
% B(W) LY										
*Inherited LY	0	0	0	0	0	0	1	0	0	1
*Inherited TY	0	0	0	0	0	0	0	0	0	0
Adj. LY	0	15	1	8	7	5	7	12	0	55
Adj. Plan	8	11	5	10	5	10	5	16	8	70
Adj. Actual	3	0	0	0	0	0	0	0	3	
% of Adj. Plan	38%									
% B(W) Adj. LY										

Original Gross Apps	NOV	JAN	FEB	APR	MAY	JUL	AUG	OCT	AY TD	AY Total
Last Year	0	26	5	13	12	14	12	24	0	106
Plan	17	21	11	19	11	19	11	31	17	140
Actual	5	0	0	0	0	0	0	0	5	

Start Rate %	NOV	JAN	FEB	APR	MAY	JUL	AUG	OCT	AY TD	AY Total
Adj. LY	0%	58%	20%	62%	56%	38%	54%	60%	0%	51%
Adj. Plan	47%	52%	45%	53%	46%	53%	45%	52%	47%	50%
Adj. Actual	60%	0%	0%	0%	0%	0%	0%	0%	60%	

Apps for Future Start Dates	NOV	JAN	FEB	APR	MAY	JUL	AUG	OCT
(as of end of Dec) Original App Actual	0	15	1	0	0	0	0	1
Active App Actual	0	14	0	0	0	0	0	0

Monthly Data - 12/23/03	Inqs	Apps	Invs	Apps	Set Rate	Show Rate	Commit Rate	Conv Rate
LY	2,005	398	262	108	20%	74%	37%	5.4%
OCT	244	36	32	7	15%	88%	22%	2.9%
NOV	141	19	16	8	11%	100%	50%	5.7%
DEC	68	15	14	6	23%	93%	43%	9.1%
3 MRA	150	22	21	7	15%	93%	34%	4.7%

Plan and Performance Measures	December AY06		Adms Year to Date	
	Plan	Actual	Plan	Actual
Monthly Gross Applications	7	6	35	21
3 Month Average Applications	na	na	12	7
PDR Inquiries	8	0	26	4

*Start Rate Calculation for AY TOTAL

70. This document, and documents like it, are used by Defendants' Directors of Admission as part of each ADA's review (as well as for regular

informal feedback). Typically, ADAs are told at the end of their reviews exactly how many student enrollments they need to garner during the next six-month review period in order to be on track to reach their identified financial goals. ADAs are given no similar prodding or incentivizing with respect to any of the "quality factors." Reaching their financial goals is presented to the ADAs as a matter solely of achieving an identified number of enrollments.

71. In late July or early August of 2006, Mr. Mahoney interviewed with EDMC's Ken Boutelle, for the Director of Training of EDMC's online division.

72. During this initial interview, and in a subsequent interview on September 1, 2006, Mr. Boutelle told Mr. Mahoney that EDMC's goals included:

- a. increasing the total number of students enrolled in its schools from approximately 4,500 to 50,000 within five years;
- b. increasing ADAs' average new student enrollments from 1.6 to 3.0 per week;
- c. increasing EDMC's then-current turnover rate for its ADAs from 17%, which Mr. Boutelle characterized as "too low," to 25% by firing ADAs who did not meet their enrollment "sales" targets.
- d. increasing total student enrollments by increasing the number of ADAs, which stood at approximately 530, to 800 ADAs within six (6) to eight (8) months, and then to 1000 within two (2) years; and
- e. hiring someone to oversee the training of the new ADAs, EDMC's "sales force," and admissions management personnel and trainers.

Mr. Mahoney understood that EDMC's goals were driven by its desire to increase student enrollments at all costs.

73. Mr. Boutelle knew Mr. Mahoney had extensive experience in sales and sales training from over 15 years in the automotive industry. Mr. Boutelle was extremely interested in Mr. Mahoney's ability to train sales people in car dealers' high-pressure "closing" techniques. Mr. Boutelle hired Mr. Mahoney to fill EDMC's newly created Director of Training position effective on October 2, 2006.

74. When Mr. Mahoney was hired, EDMC utilized well-known and commonly-used sales/intelligence screening tools to ascertain if an applicant would succeed as an ADA. However, because that process was time-intensive and was not allowing EDMC to keep pace with its hiring goals, the sophisticated screening tools were eliminated, and EDMC began to hire large numbers of ADAs out of so-called "cattle calls," with little or no screening.

75. As the Director of Training, Mr. Mahoney was charged with revamping EDMC sales training for its ADAs. When he started, EDMC's training materials for its ADAs did not mention the incentive compensation ban. Mr. Mahoney was never advised by EDMC management that an incentive compensation ban existed, and consequently, none of the sales training materials he created contained any reference to, let alone an acknowledgement of, the prohibition regarding incentive-based compensation.

76. In approximately March 2007, Mr. Boutelle directed Mr. Mahoney to create a compliance training program for Defendants' schools that could be

presented to ADAs. At the time of Mr. Boutelle's request, the Defendants did not have compliance materials or a compliance program for its ADAs. Working on his own, and without the assistance of legal counsel, Mr. Mahoney researched what he believed were the rules and regulations applicable to Defendants' industry and created a compliance training program. The program Mr. Mahoney created did not contain any reference to a ban on incentive compensation.

77. While employed at EDMC, Mr. Mahoney never heard anyone focus on, or even discuss, the "quality factors" reflected on the Matrix. To the contrary, EDMC's focus on the performance of its ADAs, and therefore their compensation, was limited solely to the number of new student enrollments the ADAs obtained.

78. The so-called "quality" factors have no real impact on the manner in which EDMC's compensation plan is implemented. The quality factors were never mentioned when Ms. Washington received her oral reviews. Moreover, to the extent "quality" is considered at all, it is simply an evaluation of factors that correlate directly with enrollment numbers. For example, in Ms. Washington's written "quality" assessment, under the category "Business Practices and Ethics," Ms. Washington's reviewer made the following comment in two separate reviews: "For Business Practices, I would like to see Lynn increase her weekly and daily activity. If she increases her overall activity her overall production will increase considerably." See Washington "Quality" Assessment, a true and correct

copy of which is attached hereto as **Exhibit 8**, at p.1. These comments are just an example of how the "quality factors" link directly to EDMC's focus on the enrollment numbers.

79. Mr. Mahoney was EDMC's Director of Training. His core function was to train those EDMC employees who would train the ADAs. Not once during his employment at EDMC did Mr. Mahoney give any training whatsoever regarding the "quality factors." Indeed, during the eight (8) months that Mr. Mahoney was employed at EDMC, he never heard anyone focus on, or even discuss, the "quality factors" reflected on the Matrix, in any context.

80. EDMC views the number of students enrolled as the single performance factor that determines all employment actions, good and bad. An October 11, 2006 e-mail from Direct of Admissions Gregg Schneider to ADAs is illustrative. See Schneider E-mail, a true and correct copy of which is attached hereto as **Exhibit 9**. In his e-mail, Mr. Schneider reprimanded ADAs for failing to meet their October goals and he reminded them of their November "plans" and of the fact that failing to meet their "numbers" could result in their termination: "[t]his number is not a casual level that I want you to be at but rather a number that you must hit to have a good review, get promoted or keep your position here." See *id.*

81. On August 24, 2005, while meeting with EDMC's then President of Online Higher Education, Stephen Weiss, Ms. Washington expressed

concerns about a recent dip in her "quality factor" rating. Mr. Weiss responded by explaining to Ms. Washington that since she had met her student enrollment numbers, her "quality factor" rating would have no effect whatsoever on her compensation.

82. EDMC meticulously tracks each ADA's enrollment activities on a daily, weekly, monthly, quarterly and annual basis. Each ADA's enrollment activity is then included in the following reports which are disseminated throughout EDMC at the indicated intervals:

	<u>Report</u>	<u>Interval</u>
(a)	Electronic Operations Dashboard	Real-Time
(b)	CARS Plan Status Report	Daily
(c)	CARS Anchor Point Report	Daily
(d)	Underachiever Report	Daily
(e)	Stacked Rankings-Applications	Daily
(f)	Aging Report	Weekly
(g)	ADA Trend Analysis	Weekly
(h)	3 App Tracker	Weekly
(i)	O/O E Movement Report	Weekly
(j)	Stacked Rankings-Starts	Quarterly
(k)	Conversion Reports	Periodically

These reports contain only quantitative information, and focus exclusively on the applications and enrollments achieved by ADAs. None of these reports,

which EDMC uses to manage, evaluate, and compensate its ADAs, contains any information regarding any qualitative factors.

83. In addition to salary, EDMC recognizes the top 10% performing admissions personnel across the EDMC system who recruit the most students for a year in the form of all-expenses paid "President's Club" trips to such locations as Puerto Vallarta and Cancun, Mexico and Las Vegas, Nevada. President's Club members are allowed to bring a family member or significant other along with them on the trips at no extra cost. The only criterion EDMC considers for these lavish awards is the number of new student enrollments an ADA achieves. During the year, EDMC's managers send mass e-mails to the ADAs on a weekly basis detailing the top performers for the previous week. The results and the rankings consist of only the numbers of appointments, interviews, and applications an ADA was able to secure. On March 15, 2007, EDMC's Lee Colker sent an e-mail to all of EDMC's admissions personnel. See Colker E-mail, a true and correct copy of which is attached hereto as **Exhibit 10**. The e-mail contains the re line: "AI Mega Grand Slam and Top Achievers!!! Week ending 3/9/07." In the body of the e-mail Mr. Colker lists the top performers for that week. He also encourages the recipients to: "Pour it on everyone and become a member of this year's event in Puerto Rico!" *Id.* at p.1.

84. By regularly and repeatedly promoting the President's Club trips, EDMC dangles these rewards in front of its ADAs in an attempt to incentivize them to increase the number of students they enroll.

85. The trips are not designed to educate or improve the skills of the ADAs, at least not in any way that complies with the incentive compensation ban. Instead, the trips are simply incentive prizes used to spur ADAs to compete against one another to achieve the most enrollments.

86. EDMC provides other awards to those ADAs who excel in student enrollments. For instance, on March 16, 2007, Mr. Boutelle sent the following e-mail to all of EDMC's ADAs system-wide. See Boutelle E-mail, a true and correct copy of which is attached hereto as **Exhibit 11**. The e-mail lists EDMC's "Circle of Achievement Winners for the prior quarter," which Mr. Boutelle describes as "the best of the best." *Id.* The only criteria upon which these award winners are evaluated is the number of new student starts that the ADA achieved in the prior quarter:

From: Boutelle, Kenneth
Sent: Friday, March 16, 2007 4:20 PM
To: _AiO ADAS; _SUO ADA; _AUO ADAS
Subject: Circle of Achievement Winners
Importance: High

I want to recognize our Circle of Achievement Winners for the prior quarter. The Circle Achievement Award winners are the top performers for the quarter and these individuals are the best of the best across AiO, SuO and AuO.

I want to recognize all of these folks for an outstanding job!

Great job to each of you for a job well done.

Outstanding Admissions Performance

ADA	Fall 2	Winter 1	Total Starts
AiO Veteran Winners			
Klink, Daniel	11	18	29
Chesney, Jamie	11	15	26
Patterson, Patrick R	4	21	25
Baker, Christine	11	13	24
Brown, Stacy	6	18	24
Meliksetian, Eileen B	6	18	24
AiO Rookie Winners			
Critelli, Anthony	1	13	14
Perry, Keith	7	13	20
Morgan, Randall		10	10
Clark, Judith	8	10	18
Bier, Scott		9	9
Conner, Mark		9	9
SuO Veteran Winners			
Sheraw, Kristen	13	9	22
Samarco, Amber	9	12	21
Julian, Brandi	7	14	21
McManus, Gabriela	6	15	21
Menin, Victor	8	11	19
SuO Rookie Winners			
Strouse, Allison		14	14
Strouse, Carly		10	10
Kearns, Heather	9	8	17
AuO Veteran Winners			
Martini, Mike	5	16	21
Romanias, Emanuel W	8	13	21

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87. The top-recruiting ADAs for briefer time periods or in particular offices win smaller bonuses as well, including Godiva Chocolate gift baskets, movie tickets, Pittsburgh Pirates baseball tickets, amusement park tickets,

various restaurant and Starbucks gift cards and free lunches with management. At other times, ADAs with a large number of new students will be given permission to leave work early, yet still be paid for an entire work day.

88. In addition, Defendants' e-mails show that they precisely and relentlessly monitor their ADAs' recruitment numbers and provide financial incentives for enrolling more students. For example, an April 5, 2005, e-mail from Director of Admissions Christina Neft offered a \$20 Starbucks gift card to the first ADA to get a student application before 8 p.m. See April 5, 2005 6:14 p.m. Neft E-mail, a true and correct copy of which is attached hereto as **Exhibit 12**. Another e-mail from Ms. Neft that same day promised free lunch to whoever obtained 15 referrals or 30 applications. See April 5, 2005 5:33 p.m. Neft E-mail, a true and correct copy of which is attached hereto as **Exhibit 13**. Similarly, on May 23, 2005, Ms. Neft listed seven (7) ADAs who met the goals and would receive lunch with her that Thursday and would be permitted to leave at 3 p.m. that Friday. See May 23, 2005 Neft E-mail, a true and correct copy of which is attached hereto as **Exhibit 14**.

89. An April 19, 2005 e-mail from Ms. Neft replaced the free lunch reward with "one hour off of work paid." See April 19, 2005 Neft E-mail, a true and correct copy of which is attached hereto as **Exhibit 15**. She also promised to call prospective students from the winning ADA's phone so that the ADA would receive credit for more students (and more remuneration) even during that hour off. See *id.* The next month, Ms. Neft communicated a contest whereby the ADAs who obtained the most enrollment applications

could leave work early. Another Director of Admissions, Gregg Schneider, continued the paid time-off incentive program in June and July 2006.

90. The emphasis on obtaining enrollments is pervasive throughout EDMC. The direct and exclusive connection between obtaining applications and an ADA's compensation is a fact that is widely understood and touted by EDMC management, as demonstrated by the following e-mail sent by Brian Summy, at the time a Director of Admission at EDMC's South University Online, to EDMC's admissions sales force about the achievements of Glenn Washington, one of EDMC's ADAs. See Summy E-mail, a true and correct copy of which is attached hereto as **Exhibit 16**. In the e-mail, which includes the picture, Mr. Summy equates ADA Mr. Washington's two (2) new student applications with cash:

From: Summy, Brian
Sent: Thursday, October 26, 2006 8:53 AM
To: _SUO ADA
Subject: APP IN!

Glenn Washington X2!!!!!!!



This oft-used e-mail reflects the sales techniques used on a daily basis that equates an ADA's enrollment success with increased compensation.

91. The walls and cubicle partitions of EDMC's offices are festooned with posters and charts graphing the progress of each ADA toward her sales goals and whatever the current prize is that she is competing for. When an audit or accreditation is scheduled, however, EDMC's management makes sure that these materials are taken down and hidden away, only to be put back up again once the auditors leave.

92. In addition to rewarding admissions personnel who were meeting their "sales" quotas, EDMC closely monitors their "underachievers," admissions personnel who are not meeting their enrollment targets. Admission personnel were routinely terminated for failing to achieve an acceptable number of new enrollments, without regard to the so-called "quality factors" factors of their performance. Indeed the written warnings that are routinely sent to underachieving admission personnel focus entirely upon the number of applications and enrollments the employee has obtained over a specific period of time.

93. If an ADA fails to meet his or her individual enrollment goal, EDMC will administer a written warning, known as a Performance Improvement Plan ("PIP"), advising the ADA he or she must conduct a minimum of ten (10) interviews with potential students and submit a minimum of three (3) Admissions Applications per week for the next 30 days. However, the number of interviews is not as important as the number of completed Admissions Applications. Furthermore, the requirement of three (3) completed Admissions Applications per week is a flexible requirement, in that as long as the ADA can

submit 12 Admissions Applications within the 30 day period, he or she will not be terminated. The PIPs are based exclusively on an ADA's failure to meet sales projections. An ADA who is meeting projections is rarely, if ever, the subject of a PIP. Thus, compensation is not simply affected but, in fact, eliminated altogether through termination based exclusively on sales results.

94. Ms. Washington's salary history substantiates EDMC's policies. Ms. Washington's starting salary was \$35,000 in June 2004. After her first six (6) months of employment, Ms. Washington enrolled 15 students, but that was not enough students to "go on the Matrix." Therefore, she received the standard salary increase of \$1,050, which increased her salary to \$36,050. After the next six (6) months, Ms. Washington became eligible to "go on the Matrix," and all new students she enrolled would be used to determine future salary increases. Between December 2004 and June 2005, Ms. Washington enrolled 37 students and her salary was increased to \$37,132. By the time of her January 2006 evaluation, Ms. Washington had enrolled an additional 58 students, which equated to 168 new student points on the Matrix, and her salary was increased to \$41,000. As of her July 2006 evaluation, she had recruited 64 new students, resulting in 188 new student points on the Matrix, and an annual salary of \$48,000.

B. EDMC's Conduct Does Not Qualify for the Safe Harbor

95. The Department promulgated "safe harbor" regulations, in effect from 2002-2010, which allowed certain compensation practices, including the following payment structure:

The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as long as that compensation is not adjusted up or down more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid.

34 C.F.R. § 668.14(b)(22)(11)(A).

96. EDMC's conduct does not fall within the safe harbor for a number of reasons.

97. First, and as detailed in this Complaint, EDMC's "quality factors" are "window dressing" on a compensation system that is in fact driven entirely by student enrollment numbers. In its implementation, EDMC creates an environment in which ADAs understand that their compensation is determined solely by the number of students they enroll. Consequently, EDMC's compensation system violates the incentive compensation ban and does not qualify for safe harbor protection.

98. Second, the safe harbor by its terms does not protect "any" discrete or individual adjustment to compensation based solely on enrollments. Yet, EDMC expressly adjusts compensation based solely on enrollments, in direct contravention of the safe harbor, in at least four ways:

- a. Despite what is contained in the Guide to the Admissions Performance Plan, attached hereto as **Exhibit 4**, initial eligibility for the Matrix, which carries with it a significant increase in compensation, is strictly a matter of enrollment numbers.

- b. Once an ADA is on the Matrix, each subsequent salary adjustment is made solely on the basis of the number of new students recruited. The Admissions Performance Plan explains that "[t]he number of new students you recruited over the previous 12 months is converted into points, and the point total determines the salary range." Only after the enrollment numbers set a salary range are the "quality factors" even ostensibly taken into account.
- c. The Matrix, by its own express terms, creates instances where salary adjustments are based solely on enrollment success. For example, if an ADA's "quality" rating stays the same for two review periods, but her salary changes, that salary adjustment is based solely on the number of new students recruited. Indeed, an ADA earns no salary adjustment for maintaining the same quality rating. ADAs who maintain the same quality rating earn adjustments only based on the number of new students they enroll.
- d. The lavish trips and other rewards that are unabashedly compensation are doled out based solely and exclusively on student enrollment numbers. See, *inter alia*, ¶¶ 81-89, above.

99. Third, the safe harbor regulation applies only to "fixed compensation, such as a fixed annual salary or a fixed hourly wage," and the ADAs are paid neither. Payment derived from the Matrix is not a "fixed annual salary" as contemplated by the safe harbor regulation. Instead, it is a

commission or incentive-based compensation system, decoupled from the actual time worked by the ADA, and based, nakedly, on the ADA's success in obtaining sales or enrollments. The enrollment goals and the commissions that are paid for achieving those goals are pre-established, and relentlessly communicated to the ADAs in an effort to incentivize the ADAs. Each ADA's compensation is constantly adjusted, in a clear and pre-defined manner, based directly on the ADA's success in obtaining student enrollments, and the ADA is acutely aware of those adjustments. These features of the Matrix are similar to those used in other commission-driven industries. The fact that these adjustments are accumulated and then paid to the ADAs in bi-weekly installments in the subsequent six-month period does not change the fact that the ADAs are not being paid a fixed annual salary or fixed hourly wage.

100. With respect to the safe harbor, the Department noted that in the Preamble to the Notice of Proposed Rulemaking for the safe harbor the Secretary of Education admonished the industry that salary adjustments based solely on the number of students recruited, admitted, enrolled, or awarded financial aid do not fall within the safe harbor, that the safe harbor was not intended to protect salary adjustments that are formulated to circumvent the statutory prohibition against incentive compensation, and that salary adjustments based on success in securing enrollments remain prohibited.

101. EDMC knows that its conduct violates the incentive compensation ban and that it does not qualify for the safe harbor. Consequently, when EDMC made statements in its PPAs with respect to its compliance with the

incentive compensation ban, those statements were knowingly false. Indeed, the very existence of the Matrix and the compensation plan implemented pursuant to it are inconsistent with EDMC's statements in the PPA's. Moreover, in August 2003, the Department conducted a Program Review of the University of Phoenix ("UOP"). UOP is the largest for-profit provider of post-secondary higher education in the United States. UOP had employed a compensation system similar to the one used by EDMC. In its report issued on February 5, 2004, the Department found that: (a) the UOP compensation system was an illegal attempt to circumvent the incentive compensation ban, and did not qualify for safe harbor protection. See Program Review of the University of Phoenix, a true and correct copy of which is attached hereto as **Exhibit 17**, at p. 29.

102. EDMC's compensation system is not materially different from UOP's system with respect to its violation of the incentive compensation ban. Indeed, it represents a more blatant violation in key respects. The link between enrollments and compensation is more clearly detailed in EDMC's system as compared to the compensation system plan described in the UOP Program Review. EDMC thus could not reasonably believe that the Department would conclude that its conduct does not violate the incentive compensation ban but that UOP's conduct did.

103. The Department Program Review of UOP was made public and circulated throughout the industry. EDMC knew that the Matrix-based

compensation plan and the sales culture it had created did not satisfy the safe harbor.

104. On September 3, 2004, the Department and UOP entered into a settlement agreement to resolve the Department's Program Review. While UOP disputed the program review report's methodology and conclusions, UOP paid the Department \$9.8 million as part of the settlement. The settlement agreement, a true and correct copy of which is attached hereto as **Exhibit 18**, was signed by Todd S. Nelson, the Chairman and Chief Executive Officer of Apollo Group, Inc., UOP's parent corporation. Mr. Nelson was employed by Apollo from 1987 through January 2006.

105. In February 2007, Mr. Nelson was hired as President and Chief Executive Officer of EDMC, titles he holds today. In addition to Mr. Nelson, the following individuals left UOP following UOP's settlement with the Department, and were subsequently employed by EDMC in management-level positions: Ken Boutelle, Sam Yaghoubi, David Preece, Phil Clark, Sean St. Clair, Jamie Wellnitz, and Mary Dyer-St. Clair.

106. Therefore, EDMC's senior management knows that the compensation system it administers violates the incentive compensation ban and fails to qualify for the safe harbor.

C. The Submission of False Claims

107. Every request for a federal grant, every GSL, and every interest payment on a subsidized Stafford Loan made on behalf of a student attending an EDMC institution constitutes a separate false claim.

108. The following examples of student financial aid packages illustrate EDMC's false claims:

- a. AiO student [REDACTED] received a financial aid package of \$534 in Pell Grant funds, \$100 in SEOG Grant funds, \$875 in Stafford subsidized loan funds, and \$1,334 in Stafford unsubsidized loan funds for the 2006 summer and fall terms and the 2007 winter term. [REDACTED] accepted her financial aid package and received her summer 2006 AiO class schedule on July 6, 2006.
- b. AiO student [REDACTED] received a financial aid package of \$1,350 in Pell Grant funds, \$300 in SEOG Grant funds, \$875 in Stafford subsidized loan funds, and \$1,334 in Stafford unsubsidized loan funds for the 2006 summer and fall terms and the 2007 winter term. [REDACTED] accepted her financial aid package and received her summer 2006 AiO class schedule on June 15, 2006.
- c. AiO student [REDACTED] received a financial aid package including a \$150 AIIN Merit Award, \$875 in Stafford subsidized loan funds, and \$1,334 in Stafford unsubsidized loan funds for the 2006 fall term and the 2007 winter and spring terms. [REDACTED] accepted her financial aid package and received her fall 2006 AiO class schedule on August 16, 2006.

- d. AiO student [REDACTED] received a financial aid package of \$667 in Creative Education Loan Program funds, \$763 in Stafford subsidized loan funds, and \$1,446 in Stafford unsubsidized loan funds for the 2006 summer and fall terms and the 2007 winter term.
- e. AiO student [REDACTED] received a financial aid package including a \$300 AIIN Merit Award, \$1,167 in Stafford subsidized loan funds, and \$1,334 in Stafford unsubsidized loan funds for the 2006 fall term and the 2007 winter and spring terms. [REDACTED] accepted her financial aid package and received her fall 2006 AiO schedule on September 7, 2006.

109. Each of the grant awards listed and described above and each government repayment of loan interest or defaulted loan principal was caused by Defendants' false certifications and promises in the PPAs and false representations in each grant and loan application that it was in compliance with the incentive compensation ban, was not paying incentive compensation, and was therefore eligible to receive Title IV funds. Defendants' made these false certifications and promises despite the fact that they had actual knowledge of their falsity. Each request for payment constitutes a false claim under the False Claims Act.

COUNT I

The False Claims Act, 31 §§ U.S.C. 3729(a)(1), (a)(2) and 3732 (b)

110. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

111. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. §§ 3729, *et seq.* as amended.

112. Through the acts described above, Defendants and their agents and employees knowingly submitted or caused to be submitted to the United States government, the District of Columbia, as well as to the commonwealths and states referred to in paragraph 1 and in the caption, knowingly false or fraudulent claims for student grants and loans.

113. Through the acts described above, Defendants and their agents and employees knowingly made, used or caused to be made or used false statements and records to get such false and fraudulent claims paid and approved by the United States government, the District of Columbia, and the commonwealths and states referred to in paragraph 1 and in the caption.

114. The United States, the District of Columbia, the commonwealths and states referred to in paragraph 1 and in the caption, unaware of the falsity of the records, statements and claims made by the Defendants, paid the Defendants for claims that would otherwise not have been allowed.

115. By reason of the Defendants' false records, statements and claims, the United States government, the District of Columbia and the

commonwealths and states referred to in the paragraph 1 and in the caption, have been damaged and continue to be damaged in the amount of hundreds of millions of dollars.

COUNT II

The California False Claims Act **Cal. Gov't Code §§ 12650 - 12655**

116. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

117. This is a claim for treble damages and penalties under the California False Claims Act, California Government Code §§ 12650 -12655.

118. The State of California provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

119. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of California and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of California.

120. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of California to approve and pay false and fraudulent claims.

121. The State of California, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

122. By reason of the payments made by the State of California and each of them as a result of the Defendants' fraud, the State of California has suffered millions of dollars in damages and continues to be damaged.

123. The State of California is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

COUNT III

The Florida False Claims Act **Florida Code § 68.081, et seq.**

124. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

125. This is a claim for treble damages and penalties under the Florida False Claims Act, Florida Code § 68.081, *et seq.*

126. The State of Florida provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

127. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of Florida and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of Florida.

128. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of Florida to approve and pay false and fraudulent claims.

129. The State of Florida, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

130. By reason of the payments made by the State of Florida and each of them as a result of the Defendants' fraud, the State of Florida has suffered millions of dollars in damages and continues to be damaged.

131. The State of Florida is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

COUNT IV

Illinois Whistleblower Reward and Protection Act **Title 740 ILCS §§ 175/1 - 175/8**

132. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

133. This is a claim for treble damages and penalties under the Illinois Whistleblower Reward and Protection Act, Title 740 Illinois Consolidated Statutes §§ 175/1 - 175/8.

134. The State of Illinois provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the

Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

135. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of Illinois and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of Illinois.

136. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of Illinois to approve and pay false and fraudulent claims.

137. The State of Illinois, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

138. By reason of the payments made by the State of Illinois and each of them as a result of the Defendants' fraud, the State of Illinois has suffered millions of dollars in damages and continues to be damaged.

139. The State of Illinois is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

COUNT V

Indiana False Claims and Whistleblower Protection Act **IC §§ 5-11-5.5-1 - 5-11-5.5-18**

140. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

141. This is a claim for treble damages and penalties under the Indiana False Claims and Whistleblower Protection Act, Indiana Code §§ 5-11-5.5-1 – 5-11-5.5-18.

142. The State of Indiana provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

143. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of Indiana and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of Indiana.

144. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of Indiana to approve and pay false and fraudulent claims.

145. The State of Indiana, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

146. By reason of the payments made by the State of Indiana and each of them as a result of the Defendants' fraud, the State of Indiana has suffered millions of dollars in damages and continues to be damaged.

147. The State of Indiana is entitled to the maximum penalty of \$5,000 and treble damages for each and every violation alleged herein.

COUNT VI

Massachusetts False Claims Act **Massachusetts Gen. Laws c. 12 § 5(A), et. seq.**

148. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

149. This is a claim for treble damages and penalties under the Massachusetts False Claims Act, Massachusetts Gen. Laws c. 12 § 5(A), *et seq.*

150. The Commonwealth of Massachusetts provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

151. Through the acts described above, Defendants knowingly presented and caused to be presented to the Commonwealth of Massachusetts and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the Commonwealth of Massachusetts.

152. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the Commonwealth of Massachusetts to approve and pay false and fraudulent claims.

153. The Commonwealth of Massachusetts, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

154. By reason of the payments made by the Commonwealth of Massachusetts and each of them as a result of the Defendants' fraud, the Commonwealth of Massachusetts has suffered millions of dollars in damages and continues to be damaged.

155. The Commonwealth of Massachusetts is entitled to the maximum penalty of \$10,000 per violation, and up to three times the amount of damages it sustains as result of each and every violation alleged herein.

COUNT VII

Minnesota False Claims Act **M.S. § 15C.01, et. seq.**

156. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

157. This is a claim for treble damages and penalties under the Minnesota False Claims Act, M.S. § 15C.01, *et seq.*

158. The State of Minnesota provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

159. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of Minnesota and any

political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of Minnesota.

160. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of Minnesota to approve and pay false and fraudulent claims.

161. The State of Minnesota, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

162. By reason of the payments made by the State of Minnesota and each of them as a result of the Defendants' fraud, the State of Minnesota has suffered millions of dollars in damages and continues to be damaged.

163. The State of Minnesota is entitled to the maximum penalty of \$11,000 and treble damages for each and every violation alleged herein.

COUNT VIII

Montana False Claims Act **MCA § 17-8-401, et. seq.**

164. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

165. This is a claim for treble damages and penalties under the Montana False Claims Act, MCA § 17-8-401, *et seq.*

166. The State of Montana provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

167. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of Montana and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of Montana.

168. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of Montana to approve and pay false and fraudulent claims.

169. The State of Montana, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

170. By reason of the payments made by the State of Montana and each of them as a result of the Defendants' fraud, the State of Montana has suffered millions of dollars in damages and continues to be damaged.

171. The State of Montana is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

COUNT IX

New Jersey False Claims Act
N.J.S. 2A:32C-1, et. seq.

172. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

173. This is a claim for treble damages and penalties under the New Jersey False Claims Act, N.J.S. 2A:32C-1, *et. seq.*

174. The State of New Jersey provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

175. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of New Jersey and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of New Jersey.

176. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of New Jersey to approve and pay false and fraudulent claims.

177. The State of New Jersey, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

178. By reason of the payments made by the State of New Jersey and each of them as a result of the Defendants' fraud, the State of New Jersey has suffered millions of dollars in damages and continues to be damaged.

179. The State of New Jersey is entitled to the maximum penalty of \$11,000 and treble damages for each and every violation alleged herein.

COUNT X

New Mexico Fraud Against Taxpayers Act
N.M.S. § 44-9-1, et. seq.

180. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

181. This is a claim for treble damages and penalties under the New Mexico Fraud Against Taxpayers Act, N.M.S. § 44-9-1, *et. seq.*

182. The State of New Mexico provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

183. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of New Mexico and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of New Mexico.

184. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which

also omitted material facts in order to induce the State of New Mexico to approve and pay false and fraudulent claims.

185. The State of New Mexico, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

186. By reason of the payments made by the State of New Mexico and each of them as a result of the Defendants' fraud, the State of New Mexico has suffered millions of dollars in damages and continues to be damaged.

187. The State of New Mexico is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

COUNT XI

New York False Claims Act **State Finance Law §§ 187-194**

188. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

189. This is a claim for treble damages and penalties under the New York False Claims Act, State Finance Law §§ 187-194.

190. The State of New York provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

191. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of New York and any

political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of New York.

192. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the State of New York to approve and pay false and fraudulent claims.

193. The State of New York, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

194. By reason of the payments made by the State of New York and each of them as a result of the Defendants' fraud, the State of New York has suffered millions of dollars in damages and continues to be damaged.

195. The State of New York is entitled to the maximum penalty of \$11,000 and treble damages for each and every violation alleged herein.

COUNT XII

Tennessee False Claims Act **T.C. 4-18-101, et. seq.**

196. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

197. This is a claim for treble damages and penalties under the Tennessee False Claims Act, T.C. 4-18-101, et. seq.

198. The State of Tennessee provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

199. Through the acts described above, Defendants knowingly presented and caused to be presented to the State of Tennessee and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the State of Tennessee.

200. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statement which also omitted material facts in order to induce the State of Tennessee to approve and pay false and fraudulent claims.

201. The State of Tennessee, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

202. By reason of the payments made by the State of Tennessee and each of them as a result of the Defendants' fraud, the State of Tennessee has suffered millions of dollars in damages and continues to be damaged.

203. The State of Tennessee is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

COUNT XIII

District of Columbia False Claims Act
DC ST § 2-308.14

204. Plaintiffs reallege and incorporate by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

205. This is a claim for treble damages and penalties under the District of Columbia False Claims Act, DC ST § 2-308.14.

206. The State of District of Columbia provides financial aid to students who attend institutions whose receipt of such aid is conditioned on compliance with the Incentive Compensation Ban. Upon information and belief, some of the students use such aid to pay tuition at an EDMC school.

207. Through the acts described above, Defendants knowingly presented and caused to be presented to the District of Columbia and any political subdivision thereof and officials that administered loans, false and fraudulent claims, in order to obtain payment and approval from the District of Columbia.

208. Through the acts described above, Defendants knowingly made, used, and caused to be made and used false records and statements which also omitted material facts in order to induce the District of Columbia to approve and pay false and fraudulent claims.

209. The District of Columbia, unaware of the falsity of the records, statements, and claims made and submitted by Defendants, and as a result thereof, paid money that otherwise would not have been paid.

210. By reason of the payments made by the District of Columbia and each of them as a result of the Defendants' fraud, the District of Columbia has suffered millions of dollars in damages and continues to be damaged.

211. The District of Columbia is entitled to the maximum penalty of \$10,000 and treble damages for each and every violation alleged herein.

WHEREFORE, Plaintiffs/Relators pray for judgment against Defendants as follows for Counts I through XII and that this Honorable Court grant them the following relief, including all monetary and equitable relief available under each statute, including but not limited to actual damages, trebled damages, statutory penalties, and attorneys' fees and costs.

COUNT XIV

**Race Discrimination in Employment in
Violation of Title VII of the Civil Rights Act of 1964,
42 U.S.C. §§ 2000(e) et seq.**

212. Plaintiff, Lynntoya Washington, realleges and incorporates by reference the allegations made in the preceding paragraphs of this Second Amended Complaint as though fully set forth herein.

213. Ms. Washington, who is African-American, was employed continuously by Defendant, EDMC, for a period of approximately three consecutive years, from June 1, 2004, until she was notified on May 22, 2007, by John Olivera, Director of Human Resources for Defendant, EDMC, that her employment with EDMC would be terminated effective May 25, 2007.

214. Ms. Washington's job position, at the time of EDMC's termination of her employment, was Assistant Director of Admissions. Her primary job duties as an Assistant Director of Admission consisted of recruiting applicants for admissions to AiO, which included, managing and securing new student inquiries, scheduling and conducting interviews of potential students, determining the appropriateness of potential students for admission and achieving enrollment and start rate goals.

215. On or about April 25, 2005, EDMC posted a job listing for the position of AiO Project Associate Director of Admissions and requested that internal resumes be submitted to management on or before May 6, 2005. This position would have required the supervision of 12-16 Assistant Directors of Admission and included a \$3,000 to \$5,000 increase in salary.

216. Ken Boutelle, Vice President of AiO, conducted a preliminary round of interviews and referred the two strongest candidates for the second round of interviews. Ms. Washington was ranked third during the first round of interviews, thus she was not asked to participate in a second interview.

217. Both of the top two candidates selected by Boutelle for second interviews were ultimately rejected for the position of Associate Project Director of Admissions.

218. Instead of promoting Ms. Washington, the third ranked candidate for the position, Boutelle directed Christina Neft, AiO Director of Admissions, to reopen the position of Associate Project Director of Admissions and seek

additional applicants. This time, no cut off date was set for receipt of applications.

219. Ms. Washington re-applied for the Associate Project Director of Admissions.

220. After a second round of preliminary interviews, Ms. Washington and a Caucasian female were considered the two strongest candidates for the position.

221. Ms. Washington had always received either "highly effective" or "outstanding" Quality Factor Rankings on her bi-annual Performance Reviews.

222. In the previous year, Ms. Washington enrolled five more students than the Caucasian female applicant.

223. AiO awarded the position to the Caucasian female over Ms. Washington.

224. Ms. Washington alleges that she would have received the promotion to Project Associate Director of Admissions except for impermissible considerations of race.

225. Ms. Washington believes that she has been discriminated against because of her race, in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §§ 2000(e) *et seq.*

226. As a direct result of the denial of the promotion to Associate Director of Admissions, Ms. Washington has suffered severe emotional and physical distress, embarrassment, humiliation, and pain and suffering, and is entitled to compensatory damages in an amount to be determined by a jury.

227. In denying Ms. Washington the promotion to Associate Project Director of Admissions, Defendants acted knowingly, willfully, intentionally, in bad faith and with reckless disregard of the law. Ms. Washington is entitled to recover punitive damages from Defendants, in an amount to be determined by a jury.

228. Ms. Washington filed a timely charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") at EEOC Charge No.: 172-2005-01227.

229. On or about May 10, 2007, the EEOC issued a Determination that the evidence obtained during its investigation of Charge No.: 172-2005-01227 established a violation of Title VII of the Civil Rights Act of 1964, as amended.

230. On or about July 31, 2007, the EEOC issued a Notice of Right to Sue letter at Charge No.: 172-2005-01227 to Ms. Washington.

231. All prerequisites to the filing of this action have been satisfied.

WHEREFORE, Plaintiff/Relator Lynntoya Washington prays for judgment against Defendants as follows for Count XIII and that this Honorable Court grant her the following relief:

- a. The present value of the loss of benefits resulting from Defendants' denial of Ms. Washington's promotion to Associate Project Director of Admissions;
- b. All back pay and other benefits to which she would be entitled, plus pre-judgment interest at the lawful rate on the liquidated amount;

- c. The issuance of a judgment declaring Defendants' failure to promote Ms. Washington to Associate Project Director of Admissions, was in violation of her right to be free from race discrimination in employment, as guaranteed to her by Title VII of the Civil Rights Act of 1964, as amended;
- d. Damages for the loss of front pay and benefits;
- e. Compensatory damages in an amount to be determined by a jury;
- f. Punitive damages in an amount to be determined by a jury;
- g. Attorneys' fees and costs and expenses of litigation;
- h. Such other and further relief as may be appropriate.

Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs/Relators hereby demand trial by jury.

Dated: March 31, 2011

Respectfully submitted,

/s/ Thomas J. Farrell

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