IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM,

Plaintiff,

v.

TODD S. NELSON, JOHN R. McKERNAN, MICK J. BEEKHUIZEN, SAMUEL C. COWLEY, ADRIAN M. JONES, JEFFREY T. LEEDS, LEO F. MULLIN, PAUL J. SALEM, PETER O. WILDE, and JOSEPH R. WRIGHT

Defendants,

and

EDUCATION MANAGEMENT CORP.,

Nominal Defendant.

CIVIL DIVISION

No.: ________________

Code: ________________

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff:
Oklahoma Law Enforcement Retirement System

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JURY TRIAL DEMANDED

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OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM, *Plaintiff*, v. TODD S. NELSON, JOHN R. McKERNAN, MICK J. BEEKHUIZEN, SAMUEL C. COWLEY, ADRIAN M. JONES, JEFFREY T. LEEDS, LEO F. MULLIN, PAUL J. SALEM, PETER O. WILDE, and JOSEPH R. WRIGHT *Defendants*, and EDUCATION MANAGEMENT CORP., *Nominal Defendant*.	CIVIL DIVISION No.: ________________ Code: ________________

COMPLAINT IN CIVIL ACTION

Plaintiff Oklahoma Law Enforcement Retirement System ("OLERS" or "Plaintiff"), by and through its undersigned counsel, asserts this action on behalf of Education Management Corp. ("EDMC" or the "Company") against the EDMC Board of Directors. OLERS makes the following allegations upon knowledge as to itself and upon information and belief (including the investigation of counsel and review of publicly available information) as to all other matters, and alleges as follows.

SUMMARY OF THE ACTION

1. This is a shareholder derivative action that seeks to recover damages incurred by the Company caused by breaches of fiduciary duty by its Board of Directors ("Board").

2. EDMC was taken private in 2006 in a leveraged buy-out ("LBO") led by Goldman Sachs, and then taken public again with an initial public offering in 2009. Since the

LBO, there has been a radical shift in the Company's priorities. The $2 billion debt Goldman Sachs and its fellow investors took on in the LBO has driven the Company to value short-term return over long-term, sustainable growth. This focus has led to aggressive and illegal recruiting techniques to drive up student enrollment.

3. As a result, EDMC has become one of the largest for-profit educational providers in the country. EDMC's primary revenue stream comes from the tuition that students pay to enroll in the Company's various academic programs. The majority of tuition paid at EDMC is funded by federal student financial aid programs authorized by Title IV ("Title IV") of the Higher Education Act of 1965, as amended (the "HEA").

4. In order to continue receiving Title IV funds, EDMC must be compliant with the regulations of both the federal and state governments. Specifically, EDMC must comply with the rules and regulations established by the Department of Education ("DOE"), as well as those established by state agencies and accrediting agencies. These regulations prohibit, *inter alia*, compensating employees based solely on the number of new students they recruit and various aggressive recruitment tactics.

5. Educational institutions receiving Title IV funding must maintain state authorization and accreditation by a recognized accrediting agency. The requirements for agency accreditation include showing that graduates of EDMC schools are "gainfully employed" in a profession that utilizes the degree earned. Most of the agencies accrediting EDMC schools that have specific percentage standards require placement of approximately 65% to 70% of each graduating class in jobs in their chosen field of study to receive accreditation.

6. EDMC maintains that it is fully compliant with all governing rules and regulations, but the reality is that the advent of the LBO and the extraordinary focus on servicing

the debt-load has led it to violate several key requirements. EDMC's practices that are in violation of these rules and regulations include: improperly compensating its employees based solely on the number of new student enrollments; aggressive and misleading recruitment practices; and misrepresentations concerning EDMC graduates' job placement data.

7. As a result of EDMC's misconduct and violations of Title IV and state regulations, EDMC faces the possibility of losing its eligibility to accept Title IV funding, which would threaten close to 90% of its revenue stream and its very existence.

8. EDMC is already facing some of the consequences of these violations. Two *qui tam* actions were filed by relators under the federal and state False Claims Acts, alleging that EDMC has violated governmental regulations while receiving Title IV funding. The federal government and various state governments intervened in the action, which is pending against EDMC in the United States District Court for the Western District of Pennsylvania under the caption *United States of America v. Education Management Corp.*, 2:07-cv-461 (W.D. Pa., filed August 8, 2011) ("Government Action"). EDMC faces substantial liability in the Government Action, including the possibility of treble damages that could total more than $33 billion.

9. Plaintiff learned of the misconduct at EDMC on or about August 8, 2011, when the federal government intervened in the Government Action and the seal that had previously kept the action from public disclosure was lifted. By letter dated August 19, 2011, Plaintiff made a demand on the EDMC Board to bring suit asserting the claims set forth herein ("Demand Letter"). On December 8, 2011, counsel for Plaintiff received a reply letter from R. Todd Cronan, Esquire ("Cronan") at Goodwin Procter LLP ("Goodwin"), which referenced a committee of unidentified "disinterested directors" (the "Committee") which was purportedly

investigating the conduct described in the Demand Letter, and which invited Plaintiff to participate in the investigation by providing information.

10. Counsel for Plaintiff responded to Goodwin's letter by letter dated December 15, 2011, expressing a strong interest in providing the Committee with information and otherwise participating in the Committee's investigation. Plaintiff's counsel also requested that Goodwin identify the Committee members and provide a copy of the resolution of the EDMC Board that created the Committee and defined its authority.

11. Notwithstanding the invitation for Plaintiff to participate in the investigation, and Plaintiff's acceptance of such invitation, Plaintiff did not receive a response from Goodwin or any representative of Board, the Committee or the Company concerning the Committee's investigation. On January 19, 2012, Plaintiff wrote to Cronan again, reiterating Plaintiff's willingness to work with the Committee on the investigation, and supplementing the initial Demand Letter with additional allegations of wrongdoing, including allegations that EDMC's financial health was questionable in light of certain actions of the DOE and that EDMC falsified its job placement data. Given the lengthy amount of time since the Plaintiff's demand was first made, with no substantive response from the Committee, Plaintiff requested a response from the Committee on or before February 20, 2012.

12. On February 17, 2012, Stuart M. Glass ("Glass") of Goodwin wrote to Plaintiff's counsel stating that the Committee expected to have a "response" to "some of the issues addressed in your letters" by the end of the week of February 20, 2012. That response finally materialized on March 6, 2012. In the March 6 response, the Committee refused Plaintiff's demand with regard to the issue of why EDMC was required to post a greater letter of credit and with regard to the issue of false job placement data. The Committee purported to still be

investigating the issue of improper recruitment and other practices that threatened EDMC's receipt of Title IV funds.

13. The Committee has not acted reasonably or in good faith in addressing Plaintiff's demands. First, the Committee members – whose identities were finally revealed in the March 6 response – are conflicted because they are closely connected with two of the investors in the LBO. It is the heavy debt load incurred in the LBO that caused the sea change at EDMC so strongly toward the wrongful recruitment practices. The Committee members were also conflicted as of the time of their decisions reflected in the March 6 response because they are defendants in a securities action ("Securities Action"),[1] and ultimately could have faced significant potential liability in that case. In other words, they had a vested interest in seeing the issues that underlie the Securities Action swept under the rug through a demand refusal.

14. Second, the Committee, despite paying lip service to a desire to meet with the Plaintiff, never responded to Plaintiff's multiple offers to meet and work with the Committee.

15. Third, the refusal of the Demand on the issue of EDMC's failing financial reliability in the eyes of the DOE and the need to post increasingly higher letters of credit with the DOE was wrongful. The Committee's "explanation" for the fact that the EDMC has failed to meet the DOE's ratios indicating financial health was that EDMC is carrying a great deal of goodwill on its financial statements since the LBO. The Committee further stated that EDMC believes that the DOE raised the letter of credit requirement from 10% to 15% because it expects EDMC's receipt of Title IV funds to increase by 5% each year. That makes no sense, however,

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[1] The Securities Action, *Gaer v. Education Management Corp., et. al.*, 2:10-cv-1061RCM (W.D. Pa., filed Jan. 1, 2011) was initially filed on August 11, 2010. The case was dismissed for failure to meet the scienter requirement of securities fraud, but was on appeal to the United States Court of Appeals for the Third Circuit at the time of the March 6 Response. On April 18, 2012, EDMC announced that the plaintiffs in the securities case had withdrawn their appeal.

because as Title IV funds increased, so too would the amount of the required 10% letter of credit because 10% of a bigger number yields a higher number itself. Moreover, the DOE was concerned enough about the financial situation at EDMC to give its schools only provisional certification – a determination that is based upon the Secretary of the DOE's belief that the institution is not sufficiently financially stable.

16. Fourth, the refusal of the Demand on the false job placement data reporting was also wrongful. The Committee admits that it did not even conduct its own investigation of the issue, but rather relied on an internal investigation that was biased toward a finding of no falsifications. Moreover, the internal investigation was limited to one division of EDMC, whereas Plaintiff's demand was not so limited.

17. Finally, the Committee, despite its claim to the contrary, has essentially refused demand on the issue of the practices which endanger EDMC's receipt of Title IV funding. The March 6 response states that the Committee has determined that EDMC's internal controls with regard to the issue are "robust" and that the directors and executive officers therefore bear no liability for any wrongs that may have been committed. The Committee's stated reasons for finding "robust" internal controls do not truly address the practices Plaintiff outlined in its demand, and are, in any event, belied by the facts that have been revealed in the Government Action and through other means.

18. For these reasons, Plaintiff asserts that its demands have been wrongfully refused by the Committee, which has not acted reasonably or in good faith. Plaintiff therefore brings this derivative action to address the wrongdoing at the Company that the Board and its Committee have refused to address in a timely fashion.

JURISDICTION

19. This Court has jurisdiction over this action because the Company is headquartered in Pittsburgh, Pennsylvania.

20. As directors of a Pennsylvania Corporation, the Individual Defendants have consented to the jurisdiction of this Court pursuant to Section 5322(a)(7)(iv) of the Judicial Code, 42 Pa.C.S.A. §5322(a)(7)(iv).

THE PARTIES

21. Plaintiff Oklahoma Law Enforcement Retirement System is a public pension retirement fund with an address of 421 NW 13th St # 100 Oklahoma City, OK 73103. Plaintiff has owned EDMC common stock continuously during the time of the wrongful course of conduct by the Defendants alleged herein and continues to hold EDMC stock.

22. Nominal Defendant EDMC is a Pennsylvania corporation with its principal place of business located in Allegheny County at 210 Sixth Avenue, 33rd Floor, Pittsburgh, Pennsylvania 15222. It is one of the largest for-profit education providers in the United States, offering campus-based and online instruction to students through its Art Institute, Argosy University, Brown Mackie College and South University schools. In total, EDMC operates schools in 108 locations across the United States and Canada, and through those schools awards undergraduate and graduate degrees and certain specialized non-degree diplomas in a broad range of disciplines. On October 1, 2009, EDMC offered 20 million shares of its common stock pursuant to a Registration Statement on Form S-1/A ("Registration Statement") and an Initial Public Offering ("IPO") for proceeds of $330 million.

23. Defendant Todd S. Nelson has served as the Company's Chief Executive Officer ("CEO") and a Director since February 2007. Defendant Nelson's address is 3250 East Tere

Street, Phoenix, AZ 85044. Defendant Nelson was formerly the CEO of Apollo Group, Inc., which was the parent company of the University of Phoenix, the nation's largest for-profit post-secondary school educational provider. During Nelson's tenure there, the University of Phoenix was accused by the DOE of misconduct that is very similar to that described herein, and ended up paying a record settlement of the DOE's allegations.

24. Defendant John R. McKernan, Jr. ("McKernan") has served as a director of the Company since June 1999, and is currently the Chairman of the Board of Directors ("Board"). McKernan also served as EDMC's CEO from September 2003 until February 2007. Defendant McKernan's address is 337 Foreside Road, Falmouth, ME 04105.

25. Mick J. Beekhuizen ("Beekhuizen") has served as a director of the Company since October 2009. Beekhuizen has been a Managing Director in the Merchant Banking Division of Goldman Sachs & Co. since 2010. Beekhuizen is a designee on the EDMC Board by Goldman Sachs Capital Partners, one of the entities that participated in the 2006 LBO. Defendant Beekhuizen's address is 92 Laight Street, Apartment 9B, New York, NY 10013.

26. Samuel C. Cowley ("Cowley") has served as a director of the Company since October 2009. Defendant Cowley's address is 14629 South 1st Street, Phoenix, AZ 85048.

27. Defendant Adrian M. Jones ("Jones") has served as a director of the Company since June 2006. Jones also serves as a managing director of Goldman, Sachs & Co.'s Principal Investment Area of its Merchant Banking Division. Jones was appointed to the EDMC Board by Goldman Sachs Capital Partners. Defendant Jones' address is 122 Phelps Road, Ridgewood, NJ, 07450.

28. Defendant Jeffrey T. Leeds ("Leeds") has served as a director of the Company since March 2007. Leeds is also the President and a co-founder of Leeds Capital Partners, one of

the entities that participated in the LBO, and was appointed to the EDMC board by Leeds Capital Partners. Defendant Leeds' address is 435 East 52nd Street, Apartment 11G, New York NY 10022.

29. Defendant Leo F. Mullin ("Mullin") has served as a director of the Company since June 2006. Mullin serves as a consultant to Goldman Sachs Capital Partners. Defendant Mullin's address is 710 Fairfield Road, NW, Atlanta, GA 30327.

30. Defendant Paul J. Salem ("Salem") has served as a director of the Company since June 2006. Salem is also a Senior Managing Director and Co-Founder of Providence Equity Partners, one of the participants in the 2006 LBO, and was appointed to the EDMC board by Providence Equity Partners. Defendant Salem's address is 41 Nayatt Road, Barrington, RI 02806.

31. Defendant Peter O. Wilde ("Wilde") has served as a director of the Company since June 2006. Wilde also serves as a Managing Director of Providence Equity Partners and was appointed to the EDMC board by Providence Equity Partners. Defendant Wilde's address is 280 Warren Street, Brookline, MA 02445.

32. Defendant Joseph R. Wright ("Wright") has served as a director of the Company since August 2011. Defendant Wright's address is 10 Gracie Square, #7G, New York, NY 10028.

33. Defendants Nelson, McKernan, Beekhuizen, Cowley, Jones, Leeds, Mullin, Salem, Wilde and Wright are referred to herein collectively as the "Individual Defendants."

34. By virtue of their positions as directors of Education Management and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants at all relevant times had the power to control and influence, and did

control and influence and cause the Company to engage in the practices complained of herein. Each Individual Defendant owed the Company's shareholders fiduciary obligations of candor, due care, good faith, and loyalty and were required to: (1) use their ability to control and manage EDMC in a fair, just, and equitable manner; (2) act in furtherance of the best interests of EDMC's shareholders; (3) govern EDMC in such a manner as to heed the expressed views of its public shareholders; (4) refrain from abusing their positions of control; and (5) not favor their own interests at the expense of the Company and its public shareholders.

SUBSTANTIVE ALLEGATIONS

I. THE GROWTH AND PROBLEMS OF THE FOR-PROFIT EDUCATION SECTOR

A. The Relationship of For-Profit Institutions, Title IV Funding and the Incentive Compensation Ban

35. For-profit universities and colleges are known primarily for training students for "passion" fields, such as art, cooking, fashion design and the like. EDMC is of that mold, having acquired the Art Institute of Pittsburgh in 1970 and having grown to more than 70 campuses nationwide by 2006 with its brand names of the Art Institutes, Brown Mackie College, Argosy University and South University.

36. For-profit universities rely heavily on funding from the federal government in the form of financial aid for their students. For example, from July 1, 2003 through June 30, 2011, EDMC received over $11.1 billion in Title IV funding for students enrolled in EDMC institutions. On a yearly basis, those amounts ranged from $656 million in "Award Year" 2003-2004 (an Award Year runs from July 1 through June 30 of the following calendar year) to over $2.5 billion in Award Year 2010-2011.

37. Title IV of the HEA, 20 U.S.C. §§ 1070, *et seq.*, governs the provision of various student loan and grant programs, including, *inter alia*, the Federal Pell Grant Program ("Pell"),

the Federal Family Education Loan Program ("FFELP") and the Federal Direct Loan Program ("FDLP") (collectively, "Title IV Funding"). The purpose of Title IV Funding is to assist students in paying for a post-secondary school education who would otherwise not be able to afford the tuition and other associated costs.

38. The regulations surrounding the grant of Title IV Funding are meant to protect these resources from abuse. For example, if a student defaults in repaying a loan under FFELP, a state or private guaranty agency reimburses the lender or the subsequent holder of the loan for the outstanding balance and takes assignment of the loan. 34 C.F.R. § 682.401(b)(14). If the guaranty agency is unable to collect from the borrower, the DOE reimburses the guaranty agency for any loss, 20 U.S.C. § 1078(c)(1)(A), and the DOE may, in its discretion, take assignment of the loan. 20 U.S.C. § 1078(c)(8). In this way, the government – not the for-profit institution – ultimately bears the losses for any unpaid loans.

39. Each of the programs under Title IV requires that certain conditions be met before students, and ultimately the institutions they attend, are eligible to receive federal funds. Specifically, in order to receive Title IV Funding, a student must attend a school that had first entered into a program participation agreement ("PPA") with the DOE. 20 U.S.C. § 1094(a); 34 C.F.R. §668.14. Pursuant to the PPA, the university must certify that its educational institutions are compliant with various regulations.

40. Any act which violates the HEA, including falsely certifying that an institution's schools are entirely compliant with HEA regulations or submitting false PPAs, threatens an institution's ability to receive Title IV funding. In addition, violations of the HEA laws can subject the institution to substantial fines, including in some cases, treble damages.

41. One key provision that educational institutions must comply with in order to receive Title IV funding is the "Incentive Compensation Ban." Section 487(a)(20) of Title IV of the HEA, 20 U.S.C. § 1094(a)(20) requires 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. . . ."

42. This means that in order to receive Title IV Funding, an institution may not pay its employees based on the number of new students those employees recruit. The Incentive Compensation Ban was enacted because there was a correlation between high loan default rates and the payment of commissions, bonuses, or other incentive payments based upon the success in recruiting new students to an institution. Not surprisingly, where an employee's compensation is based upon the number of students he or she is responsible for enrolling – and in turn the tuition and fees that student pays to the institution – there is an incentive for that employee to relax the admissions standards and/or to aggressively target students who are not actually qualified to either attend the institution or to repay the loans. The high loan default rates occurring before the Incentive Compensation Ban were causing a significant drain on funds where the government was acting as loan guarantor. The impetus for the Ban was Congressional findings of significant abuses in federal student aid programs, including, e.g., "contests" that "were held whereby sales representatives earned incentive awards for enrolling the highest number of students for a given period." S. Rep. No. 58, 102nd Cong., 1st Sess., at 8 (1991).

43. The Incentive Compensation Ban was amended in 2002 to clarify that schools may pay "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)(ii)(A) ("Regulatory Safe Harbor").

B. Apollo Group, Under Defendant Nelson's Leadership, Tests The Bounds Of The Incentive Compensation Ban And Pays A Record Settlement

44. The leader of the for-profit educational sector is the Apollo Group ("Apollo"), which runs the University of Phoenix. About a decade ago, Apollo's enrollment and revenues took off – with Defendant Nelson at the helm, first as President, then as CEO and Chairman.

45. Under Nelson's guidance, Apollo tripled its revenues between 2001 and 2006. Between 1998 and 2003, Apollo tripled its enrollment. All told, it was the success story of the industry.

46. The growth and success were not without a price, however. In early 2004, the DOE issued a report that alleged Apollo was garnering these remarkable results through predatory admissions practices at its University of Phoenix – practices which violated the Incentive Compensation Ban.

47. The DOE report stated that admissions officers at the University of Phoenix were little more than salespeople who were constantly pressured to increase the number of students they admitted.

48. Successful admissions officers, *i.e.*, those who met their student enrollment quotas, were rewarded with lavish trips and other perquisites. Admissions officers who did not meet their quotas were subjected to ridicule, humiliation and threats of firing. Underperformers were forced to do their jobs from the "red room," which was constantly monitored by supervisors, and were denied vacation time and breaks. Admissions officers' "performance" –

the number of students they recruited – was tracked daily on dry erase boards for the entire department to see.

49. Admissions officers' compensation was determined according to a system called the "Matrix." Under the Matrix, there was a direct correlation between an officer's compensation and the number of students they recruited. Other "quality of performance" factors were also supposedly considered in determining compensation, but in reality what really drove compensation was the number of students an officer enrolled.

50. In September 2004, the University of Phoenix settled the charges leveled by the DOE for a record amount at the time – $9.8 million. Defendant Nelson left Apollo in January 2006, having been pushed out by Apollo's founder for his ruthless pursuit of short term profits to temporarily bolster the stock price.

II. THE PERFECT STORM – DEREGULATION, MORE FEDERAL DOLLARS AND EDMC'S 2006 GOLDMAN SACHS-LED LBO

51. 2006 was an eventful year for the for-profit institutions. The federal government was making more Title IV funding available for students who wanted to go to college, and it also lifted certain regulations that constrained for-profit institutions in their growth models. Specifically, the government lifted the requirement that at least 50% of students be enrolled in brick and mortar institutions. Until that change, the for-profit institutions could never have their online students account for more than 50% of their student body.

52. This deregulation and increased financial aid created a potential for growth that the sector had not seen before. The for-profit institutions wasted no time expanding their recruiting efforts for online students.

53. Goldman Sachs recognized the unique opportunity that the confluence of these factors created. Thus, in 2006, it and a small consortium of investors (Providence Equity

Partners and Leeds Capital Partners) bought EDMC in a leveraged buy-out for $3.4 billion. In total, EDMC took on $2 billion in debt to finance the purchase.

54. Not surprisingly, once Goldman Sachs, Providence and Leeds took over, the composition of the board of directors changed as well. By the time of the IPO in 2009, 50% of the EDMC Board was appointed by the LBO investors. Goldman Sachs appointed Defendants Beekhuizen and Jones, both Goldman Sachs employees. Leeds appointed Defendant Leeds, who is a co-founder of Leeds. Providence appointed Defendants Salem and Wilde, both of whom are Managing Directors of Providence.

III. THE NEW CULTURE OF EDMC – ENROLLMENT ABOVE ALL ELSE

55. According to the CFO who retired shortly after the LBO, Robert T. McDowell, the debt from the LBO changed EDMC's focus. As McDowell observed, when "you take on that amount of private-equity debt, you need to earn high rates of return for these investors." Indeed, a former EDMC vice president for marketing and admissions operations noted that once the LBO investors took over in 2006, the "new group managed [EDMC] short term."

56. In pursuit of those short term, high rates of return, the consortium turned to Defendant Nelson. In February 2007 – virtually as soon as his non-competition agreement with Apollo had expired – EDMC brought on Defendant Nelson as its new CEO.

57. Soon thereafter, other former Apollo executives were brought on board – Robert Carroll (Apollo's former CIO), Craig Swenson (a former Senior Vice President of the University of Phoenix), Ken Boutelle, Sam Yaghoubi, David Preece, Phil Clark, Sean St. Clair, Jamie Wellnitz, Mary Dyer-St. Clair, Anthony F. Digiovanni (Senior Vice President of Marketing and Admissions) and John Kline (President of EDMC Online Higher Education).

58. With the change in management came a change in culture at EDMC. Admissions, which had always been important, became the paramount focus of the administration. According to Kathleen Bittel, who started her career at EDMC as a recruiter at its Argosy University in the first year after the LBO, "it was an absolute feeding frenzy. They were on us every minute of the day. We had managers who were just literally circling the pods, listening to every word that was spoken. I swear I thought they were going to wear out the carpeting."

59. Admissions staff grew exponentially, from 950 to 2,600. The "sales" focus of the admissions process was bolstered by hiring career salespeople rather than people experienced in the academic arena. For example, in late July or early August of 2006, Michael Mahoney interviewed with the Vice President of Admissions for EDMC's Online Higher Education division, Ken Boutelle (a former Apollo employee under Nelson), for the position of Director of Training for EDMC's online division. Mr. Mahoney's background was in sales and sales training in the automotive industry. During that meeting and in a subsequent interview, Mr. Boutelle informed Mr. Mahoney of EDMC's enrollment goals, including: (a) increasing the total number of enrollees ten-fold within five years; (b) increasing the average number of new enrollees for each Assistant Director of Admissions ("ADA") from 1.6 to 3.0 students per week; (c) increasing the turnover rate for ADAs from 17% to 25%, by firing ADAs who did not meet their enrollment quotas; (d) increasing the number of ADAs from 530 to 1,000 within two years; and (e) hiring an individual to oversee training of new ADAs, referenced sometimes as EDMC's "sales force."

60. During the Mahoney interviews, Mr. Boutelle was extremely interested in Mr. Mahoney's sales experience and indicated that Mr. Mahoney would be hired, in part, to write a training manual on how to "close the sale" and get a student to enroll. Mr. Mahoney was then

hired to fill EDMC's newly-created "Director of Training" position, effective October 2, 2006, with the understanding that he would use his sales experience in the automotive industry to help achieve EDMC's new student enrollment targets through a new training program.

61. Mr. Mahoney's core function was to train EDMC employees who would then train the ADAs. The pre-existing training materials did not mention Title IV's ban on incentive based compensation, and Mr. Mahoney was never instructed to add any description of the Incentive Compensation Ban to the materials. New marketing scripts and internal teaching brochures were handed down that listed typical reasons potential students gave for not enrolling and forbade the staff to accept those reasons. Scripts of ways to get around the potential recruits' reasons were distributed.

62. None of the sales training materials referred to or acknowledged the prohibition regarding incentive-based compensation. Moreover, during his employment at EDMC, Mr. Mahoney never gave any instruction – nor was he told that he should – regarding the "quality factors" that EDMC purports to use in determining an ADA's salary, *i.e.*, those factors that supposedly keep the compensation from being based solely on new student enrollment. In fact, he never heard anyone even discuss the "quality factors."

63. In order to meet the aggressive quotas that were set, ADAs began enrolling "anyone and everyone," according to a former HR Manager for EDMC's Online Division, including people who "barely passed high school," and who would "never pass in this college environment."

64. The "find the pain" technique was taught to admissions personnel. They were taught to determine what a prospective student's emotional weakness was and to press that issue as a reason to enroll at an EDMC school. For example, a current admissions officer for the