

**FILED**

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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

██████████ Individually and  
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

ITT EDUCATIONAL SERVICES, INC.,  
KEVIN M. MODANY, and DANIEL M.  
FITZPATRICK,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

**1 : 14 -cv- 1618 SEB -DML**

Plaintiff ██████████ (“Plaintiff”), by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by ITT EDUCATIONAL SERVICES, INC. (“ITT” or the “Company”), with the United States Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by ITT; and (c) review of other publicly available information concerning ITT.

**NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of purchasers of ITT securities between February 26, 2013 and September 18, 2014, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. ITT provides accredited, technology-oriented undergraduate and graduate degree programs through its ITT Technical Institutes and Daniel Webster College. As of September 30, 2013, the Company offered master, bachelor, and associate degree programs to approximately 61,000 students at ITT Technical Institute and Daniel Webster College locations; and short-term information technology and business learning solutions for individuals. The Company operates approximately 149 college locations (including 147 campuses and two learning sites) in 39 states and one training facility.

3. On March 21, 2014, the Company announced that it submitted an inquiry to the Office of the Chief Accountant (“OCA”) of the SEC related to the accounting treatment for the variable interest entity involved in the PEAKS Program.

4. On this news, the Company’s shares fell \$2.24, or over 7%, to close on March 24, 2014 at \$27.71 per share.

5. On May 22, 2014, ITT issued a press release announcing that it was withdrawing its previously disclosed internal goals for the twelve months ending December 31, 2014. According to the Company, the Company submitted an inquiry to the OCA of the Securities and Exchange Commission (the “SEC”) related to the accounting treatment of the variable interest entity (the “PEAKS Trust”) involved in the PEAKS Program, and had not yet received the OCA’s determination regarding that treatment. In addition, the Company revealed that its accountants had not yet completed their audit of the Company’s financial statements for the fiscal year ended December 31, 2013 and the quarter ended March 31, 2014.

6. On this news, shares of ITT declined \$5.30 per share, over 20%, to close on May 22, 2014, at \$20.50 per share, on unusually heavy volume.

7. On June 24, 2014, the Company announced that it will need to restate the unaudited financial statements in its Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2013, June 30, 2013 and September 30, 2013, and that they should no longer be relied upon.

8. On this news the Company's shares declined \$0.60 per share, or 4%, to close on June 24, 2014 at \$16.44 per share.

9. On September 19, 2014 the Company disclosed that it had received a Wells Notice from the SEC, notifying the Company that the Staff had made a preliminary determination to recommend that the SEC file an enforcement action against the Company.

10. On this news the Company's stock fell a further \$2.70 per share, or 35%, to close on September 19, 2014 at \$4.95 per share.

11. Throughout the Class Period, Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose: (1) that the Company had failed to consolidate the financial results of the PEAKS Trust into the Company's financial statements; (2) that ITT's financial statements contained errors related to the accounting of the PEAKS Trust and PEAKS Program; (3) that the Company had improperly accounted for its guarantee obligations under the PEAKS Program; (4) that as a result, the Company's financial results were overstated; (5) that the Company lacked adequate internal and financial controls; and (6) that, as a result of the foregoing, the Company's financial statements were materially false and misleading at all relevant times.

12. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

**JURISDICTION AND VENUE**

13. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

15. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b) and Section 27 of the Exchange Act (15 U.S.C. §78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the preparation and dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. Additionally, ITT's principal executive offices are located within this Judicial District.

16. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

**PARTIES**

17. Plaintiff, as set forth in the accompanying certification attached hereto and incorporated herein as **Exhibit A**, purchased ITT common stock during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

18. Defendant ITT is a Delaware corporation with its principal executive offices located at 13000 North Meridian Street, Carmel, Indiana 46032.

19. Defendant Kevin M. Modany (“Modany”) was, at all relevant times, Chief Executive Officer (“CEO”) and a director of ITT and announced his resignation from both positions on August 4, 2014.

20. Defendant Daniel M. Fitzpatrick (“Fitzpatrick”) was, at all relevant times, Chief Financial Officer (“CFO”) of ITT.

21. Defendants Modany and Fitzpatrick are collectively referred to hereinafter as the “Individual Defendants.” The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of ITT’s reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each “group-published” information, the result of the collective actions of the Individual Defendants.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

22. ITT provides accredited, technology-oriented undergraduate and graduate degree programs through its ITT Technical Institutes and Daniel Webster College. As of September 30, 2013, the Company offered master, bachelor, and associate degree programs to approximately 61,000 students at ITT Technical Institute and Daniel Webster College locations; and short-term information technology and business learning solutions for individuals. As of September 30, 2013, ITT had 149 college locations (including 147 campuses and two learning sites) in 39 states and one training facility.

### **Materially False and Misleading Statements Issued During the Class Period**

23. The Class Period begins on February 26, 2013. On that day Defendant Modany presented at the Robert W. Baird & Co. Business Solutions Conference (the, "Baird Conference"). Defendant Modany specifically discussed the Company's compliance with the SEC subpoena, accreditation of its schools, and the Company's future growth.

24. During the Baird Conference Defendant Modany explicitly addressed the PEAKS program and SEC investigation into its accounting practices, but failed to adequately inform investors regarding the latent risks associated with these lending programs and the SEC investigation. Mr. Modany stated:

There are two remaining risk share agreements in place of 2009 risk share agreement and a PEAKS risk share agreement as they're referred to and so, we're really working very hard at trying to understand our risk there. We've adjusted our reserves based on additional data that we collected. And we're just spending resources there trying to put a fence around it as we said in our last call so, again another focus area for the business.

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And lastly just a summary of some of the internal goals that we provided or as some refer to it as our guidance. For new student enrollment, for the full year somewhere between down 5% and up 5% percent versus the prior year. Current projection for EBITDA of about \$165 million to \$190 million. Revenue per student with the implementation of the Opportunity Scholarship and that price discount will be down we believe somewhere between down 6% and down 4% and then our earnings per share internal goal for diluted EPS between \$3.50 and \$4.

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Sure. So previously we had a model, where students would seek private financing sources to help them finance the gap or the difference between our tuition pricing and available funding through Title IV sources and/or agency sources and/or self pay. We transitioned from that model to where we were providing, on balance sheet, I'll say financing, non-interest bearing financing, trade credit, whatever you want to refer to it. So we saw AR balances increasing and an offsetting increase, offsetting, but an increase – corresponding increase in the bad debt rates.

So, we're now we're transitioning to more of a discounting model where we have a gross tuition price with scholarships, institutional scholarships applied on an individual basis for students, based on need – financial need as well as some academic components, that basically eliminate their need for either third party private financing and/or any internal financing. It doesn't completely eliminate it, but we believe it will virtually eliminate the need for the private financing. So it's a fairly significant shift in terms of the model operationally, in terms of the way in which we communicate the value proposition to students, but also impactful on the financials in the sense that you're seeing some of these charges move around where we had bad debt previously, showing up now as more an offset to revenue. And, I think net-net not a huge difference there. The private financing piece, if I go back to the original kind of starting point of this discussion what that model was, was somewhere between 10% and 12% of revenue. And correspondingly that's what the scholarship amounts will be, in that range, somewhere around 10% or 12%. So you're seeing that private lending being replaced by institutional scholarships and all of that financially is currently reflected into the internal goals that we just discussed.

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Well, we really don't know and there's not any specific allegation in connection with this subpoena. In fact the letter that we received indicated that there was no suggestion of any wrongdoing or any unlawful activity, but more so a request for information at this point. So, not really in a position to provide a lot of clarity on it. I can just speak separate from that, that our work relative to the accounting here, we put a lot of effort into it, had a lot of people assisting us in terms of analyzing the appropriate accounting as well as disclosures all of it, as you would expect. So, we feel confident about what we've done, but at the same time we'll certainly

comply with the request for information we've provided, but as far as a specific area of interest from the SEC's perspective, we really don't know what it is.

25. On April 25, 2013, ITT issued a press release entitled, "ITT Educational Services, Inc. Reports 2013 First Quarter Results." Therein, the Company, in relevant part, stated:

ITT Educational Services, Inc. (NYSE: ESI), a leading proprietary provider of postsecondary degree programs in the United States, today reported that new student enrollment in the first quarter of 2013 decreased 3.6% to 17,412 compared to 18,067 in the same period in 2012. Total student enrollment decreased 14.2% to 61,039 as of March 31, 2013 compared to 71,123 as of March 31, 2012.

26. On April 26, 2013, ITT filed its Quarterly Report with the SEC on Form 10-Q for the 2013 fiscal first quarter, reiterating the previously disclosed financial results for the period. In addition, the Form 10-Q included signed certifications pursuant to SOX by Defendants Modany and Fitzpatrick falsely stating that the financial information contained in the Form 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting.

27. On July 25, 2013, the Company issued a press release entitled, "ITT Educational Services, Inc. Reports 2013 Second Quarter Results." Therein, the Company, in relevant part, stated:

ITT Educational Services, Inc. (NYSE: ESI), a leading provider of technology-oriented postsecondary degree programs, today reported that new student enrollment in the second quarter of 2013 increased 7.5% to 16,883 compared to 15,698 in the same period in 2012. Total student enrollment decreased 11.7% to 58,617 as of June 30, 2013 compared to 66,397 as of June 30, 2012.

28. On July 26, 2013, ITT filed its Quarterly Report with the SEC on Form 10-Q for the 2013 fiscal second quarter reiterating the previously disclosed financial results for the period. In addition, the Form 10-Q included signed certifications pursuant to SOX by Defendants Modany and Fitzpatrick falsely stating that the financial information contained in the Form 10-Q was

accurate and disclosed any material changes to the Company's internal control over financial reporting.

29. On October 24, 2013, the Company issued a press release entitled, "ITT Educational Services, Inc. Reports 2013 Third Quarter Results." Therein, the Company, in relevant part, stated:

ITT Educational Services, Inc. (NYSE: ESI), a leading provider of technology-oriented postsecondary degree programs, today reported that new student enrollment in the third quarter of 2013 increased 5.2% to 20,307 compared to 19,298 in the same period in 2012. Total student enrollment decreased 7.1% to 60,997 as of September 30, 2013 compared to 65,662 as of September 30, 2012.

30. On October 29, 2013, after the market close, ITT filed its Quarterly Report with the SEC on Form 10-Q for the 2013 fiscal third quarter reiterating the previously disclosed financial results for the period. In addition, the Form 10-Q included signed certifications pursuant to SOX by Defendants Modany and Fitzpatrick falsely stating that the financial information contained in the Form 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting.

31. The Form 10-Q, in relevant part, stated:

On February 8, 2013, we received a subpoena from the SEC. In a letter accompanying the subpoena, the SEC states that it is conducting an investigation of us. The SEC's subpoena requests the production of documents and communications that, among other things, relate to our actions and accounting associated with: (a) agreements that we entered into with the 2009 Entity to create the 2009 Loan Program, including, without limitation, the 2009 RSA; and (b) agreements that we entered into to create the PEAKS Program. On May 9, 2013, we received a second subpoena from the SEC requesting the production of certain communications related to the same subject matter as the subpoena received on February 8, 2013. We are cooperating with the SEC in its investigation, and we have provided documentation, communications and other information, including testimony of one of our officers, to the SEC in response to both subpoenas. There can be no assurance, however, that the ultimate outcome of the SEC investigation will not have a material adverse effect on our financial condition or results of operations.

32. On this news, shares of ITT declined \$1.00 per share, over 2%, to close on October 30, 2013, at \$40.92 per share, on heavy volume.

33. The statements contained in ¶¶24-31 were materially false and/or misleading when made because defendants failed to disclose or indicate the following: (1) that the Company had failed to consolidate the financial results of the PEAKS Trust into the Company's financial statements; (2) that ITT's financial statements contained errors related to the accounting of the PEAKS Trust and PEAKS Program; (3) that the Company had improperly accounted for its guarantee obligations under the PEAKS Program; (4) that as a result, the Company's financial results were overstated; (5) that the Company lacked adequate internal and financial controls; and (6) that, as a result of the foregoing, the Company's financial statements were materially false and misleading at all relevant times.

33. On March 21, 2014, the Company announced that it submitted an inquiry to the OCA of the SEC related to the accounting treatment for the variable interest entity involved in the PEAKS Program.

34. On this news, the Company's shares fell \$2.24, or over 7%, to close at \$27.71 per share on March 24, 2014, on unusually heavy volume.

35. On May 22, 2014, ITT issued a press release entitled, "ITT Educational Services, Inc. Reports Preliminary 2014 First Quarter Results And Provides Update On Status Of Financial Statements." Therein, the Company, in relevant part, stated:

ITT Educational Services, Inc. (NYSE: ESI), a leading proprietary provider of postsecondary degree programs in the United States, today reported that new student enrollment in the first quarter of 2014 decreased 3.8% to 16,746 compared to 17,412 in the same period in 2013. Total student enrollment decreased 6.4% to 57,125 as of March 31, 2014 compared to 61,039 as of March 31, 2013.

\* \* \*

As previously disclosed, the company has submitted an inquiry to the Office of the Chief Accountant (the "OCA") of the Securities and Exchange Commission (the "SEC") related to the company's accounting treatment of the variable interest entity (the "PEAKS Trust") involved in the PEAKS Private Student Loan Program (the "PEAKS Program"), and has not yet received the OCA's determination regarding that treatment. The company has been consulting with the OCA related to whether the financial results of the PEAKS Trust should be consolidated into the company's financial statements and, if so, during which periods, as well as matters related to the company's accounting for its guarantee obligations under the PEAKS Program. In addition, the company's independent registered public accounting firm has not completed its audit of the company's financial statements for the fiscal year ended December 31, 2013 and has not completed its review of the company's financial statements for the fiscal quarter ended March 31, 2014. Further, until the financial statements for those periods can be finalized following receipt of the OCA's determination, certain additional information related to the performance of the private student loan programs that becomes available to the company must be taken into account.

As a result of the pending OCA determination, certain of the operating data in this release are preliminary and subject to change. The company also reiterates that the preliminary financial and operating information included in the company's press release issued on January 30, 2014 and provided during the conference call on that same day (collectively, the "January 2014 Release") were preliminary and remain subject to change. The finalized, reviewed financial and operating data that will be included in the company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2014 (the "First Quarter 2014 Form 10-Q") and the finalized, audited financial and operating data that will be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2013 (the "2013 Form 10-K") when filed with the SEC may be materially different from the data included in this release and in the January 2014 Release, based on the OCA's determination, the company's auditor's review and audit and other factors.

In addition, due to the uncertainties related to the accounting treatment of the PEAKS Trust and the company's guarantee obligations under the PEAKS Program, the company is withdrawing its previously-disclosed internal goals for the twelve months ending December 31, 2014, and investors should not rely on those internal goals. The company expects to disclose its revised internal goals for the twelve months ending December 31, 2014 at a later date, following the finalization of its financial statements for the year ended December 31, 2013 and the quarter ended March 31, 2014.

Our inquiry to the OCA relating to the accounting treatment of the PEAKS Trust has caused delays associated with completing the company's financial statements, footnotes and related disclosures for the 2013 Form 10-K and the First Quarter 2014 Form 10-Q. As a result, the company was not able to timely file the 2013 Form 10-K or the First Quarter 2014 Form 10-Q with the SEC. Following receipt of the

OCA's determination, the company plans to work diligently to complete its financial statements, footnotes and related disclosures, and to have its independent registered public accounting firm complete the related audit and review. The company's goal is to file the 2013 Form 10-K and First Quarter 2014 Form 10-Q with the SEC as soon as reasonably practicable.

36. On this news, shares of ITT declined \$5.30 per share, over 20%, to close on May 22, 2014, at \$20.50 per share, on unusually heavy volume.

37. On June 24, 2014, the Company filed an 8-K with the SEC announcing that it will need to restate the unaudited financial statements in its Quarterly Reports on Form 10-Q for each of the fiscal quarters ended March 31, 2013, June 30, 2013 and September 30, 2013, and that they should no longer be relied upon. The Form 8-K provided in relevant part:

**Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**

*On June 18, 2014, the Audit Committee of the Board of Directors of ITT Educational Services, Inc. (the "Company") determined that, beginning on February 28, 2013, the Company should have consolidated the financial results of the trust (the "PEAKS Trust") that purchased, owns and collects private education loans made under the PEAKS Private Student Loan Program (the "PEAKS Program"), in the Company's consolidated financial statements (the "Consolidation").* The Company had previously treated the PEAKS Trust as an unconsolidated variable interest entity. As previously disclosed, on March 18, 2014, the Company submitted an inquiry to the Office of the Chief Accountant (the "OCA") of the Securities and Exchange Commission (the "SEC") related to whether the financial results of the PEAKS Trust should be consolidated in the Company's consolidated financial statements and, if so, during which periods. On June 18, 2014, the OCA told the Company that it had determined that it would be appropriate for the Company to consolidate the financial results of the PEAKS Trust in the Company's consolidated financial statements at the time that the Company had the substantive unilateral right to remove the servicer of the private education loans owned by the PEAKS Trust and to consent to a replacement servicer. In consideration of the OCA's determination and following discussions with Company management, the Company's Audit Committee reached its conclusion that the Company should have consolidated the financial results of the PEAKS Trust in the Company's consolidated financial statements beginning on February 28, 2013. The Company's Audit Committee and management have each

discussed the matters disclosed in this Item 4.02 with the Company's independent registered public accounting firm, PricewaterhouseCoopers LLP.

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*As a result of its determination that the Company should have consolidated the financial results of the PEAKS Trust in the Company's consolidated financial statements beginning on February 28, 2013, the Company's Audit Committee concluded that the Company will need to restate the unaudited financial statements in its Quarterly Reports on Form 10-Q for each of the fiscal quarters ended March 31, 2013, June 30, 2013 and September 30, 2013, and that those previously-issued financial statements should no longer be relied upon. Further, the preliminary financial information included in the Company's press releases issued on January 30, 2014 and May 22, 2014, and provided during the conference calls on those same days, should no longer be relied upon.* The Company is in the process of preparing restated financial statements for each of the fiscal quarters ended March 31, 2013, June 30, 2013 and September 30, 2013, and its financial statements for the fiscal quarter ended March 31, 2014 and for the year ended December 31, 2013, in each case to consolidate the financial results of the PEAKS Trust in the Company's consolidated financial statements. The Company hopes to file (i) the amendments to its Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2013, June 30, 2013 and September 30, 2013, (ii) its Annual Report on Form 10-K for the fiscal year ended December 31, 2013, and (iii) its Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2014, with the SEC as soon as practicable.

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*The Company is in the process of assessing the effectiveness of its internal control over financial reporting ("ICFR") and its disclosure controls and procedures in light of the matters disclosed in this Current Report on Form 8-K. The Company will report the results of those assessments in future filings, but expects that, as a result of the identification of at least one material weakness that resulted in the restatement of its unaudited financial statements for the first three fiscal quarters of 2013, it will conclude that its disclosure controls and procedures were not effective as of March 31, 2013, June 30, 2013, September 30, 2013 and December 31, 2013.*

[Emphasis added.]

38. On this news the Company's shares declined \$0.60 per share, or 4%, to close on June 24, 2014 at \$16.44 per share.

39. The statements contained in ¶¶24-31 and 33-37 were materially false and/or misleading when made because defendants failed to disclose or indicate the following: (1) that the Company had failed to consolidate the financial results of the PEAKS Trust into the Company's

financial statements; (2) that ITT's financial statements contained errors related to the accounting of the PEAKS Trust and PEAKS Program; (3) that the Company had improperly accounted for its guarantee obligations under the PEAKS Program; (4) that as a result, the Company's financial results were overstated; (5) that the Company lacked adequate internal and financial controls; and (6) that, as a result of the foregoing, the Company's financial statements were materially false and misleading at all relevant times.

**Disclosures at the End of the Class Period**

40. On September 19, 2014 the Company disclosed that it had received a Wells Notice from the SEC, notifying the Company that the Staff had made a preliminary determination to recommend that the SEC file an enforcement action against the Company. the Company further stated that,

According to the Staff, the enforcement action would allege violations of Sections 10(b), 13(a) and 13(b)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act" ), and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 13a-15 under the Exchange Act. The SEC's notice said that the Staff's recommendation may:

involve a civil injunctive action, public administrative proceeding and/or cease-and-desist proceeding against us; and

seek remedies that include an injunction, a cease-and-desist order and monetary relief, including civil monetary penalties.

41. On this news the Company's stock fell a further \$2.70 per share, or 35%, to close on September 19, 2014 at \$4.95 per share.

**ITT'S VIOLATION OF GAAP RULES IN ITS FINANCIAL STATEMENTS  
FILED WITH THE SEC**

42. These financial statements and the statements about the Company's financial results were false and misleading, as such financial information was not prepared in conformity with GAAP, nor was the financial information a fair presentation of the Company's operations due to the Company's failure to consolidate performance of the PEAKS Trusts and improper recording of its liabilities, in violation of GAAP rules.

43. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. § 210.10-01(a).

44. The fact that ITT announced that its financial statements will need to be restated, and informed investors that these financial statements should not be relied upon is an admission that they were false and misleading when originally issued (APB No.20, 7-13; SFAS No. 154, 25).

45. Given these accounting irregularities, the Company announced financial results that were in violation of GAAP and the following principles:

(a) The principle that "interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements" was violated (APB No. 28, 10);

(b) The principle that “financial reporting should provide information that is useful to present to potential investors and creditors and other users in making rational investment, credit, and similar decisions” was violated (FASB Statement of Concepts No. 1, 34);

(c) The principle that “financial reporting should provide information about the economic resources of ITT, the claims to those resources, and effects of transactions, events, and circumstances that change resources and claims to those resources” was violated (FASB Statement of Concepts No. 1, 40);

(d) The principle that “financial reporting should provide information about ITT’ financial performance during a period” was violated (FASB Statement of Concepts No. 1, 42);

(e) The principle that “financial reporting should provide information about how management of ITT has discharged its stewardship responsibility to owners (stockholders) for the use of ITT resources entrusted to it” was violated (FASB Statement of Concepts No. 1, 50);

(f) The principle that “financial reporting should be reliable in that it represents what it purports to represent” was violated (FASB Statement of Concepts No. 2, 58-59);

(g) The principle that “completeness, meaning that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions” was violated (FASB Statement of Concepts No. 2, 79); and

(h) The principle that “conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered” was violated (FASB Statement of Concepts No. 2, 95).

42. The adverse information concealed by Defendants during the Class Period and detailed above was in violation of Item 303 of Regulation S-K under the federal securities law (17 C.F.R. §229.303).

### **CLASS ACTION ALLEGATIONS**

43. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all those who purchased ITT's securities between February 26, 2013 and September 18, 2014, inclusive (the "Class Period") and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

44. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, ITT's securities were actively traded on the New York Stock Exchange (the "NYSE"). While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Millions of ITT shares were traded publicly during the Class Period on the NYSE. As of September 30, 2013, ITT had 23,369,914 shares of common stock outstanding. Record owners and other members of the Class may be identified from records maintained by ITT or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

45. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

46. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

47. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of ITT; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

48. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

#### **UNDISCLOSED ADVERSE FACTS**

49. The market for ITT's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures

to disclose, ITT's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired ITT's securities relying upon the integrity of the market price of the Company's securities and market information relating to ITT, and have been damaged thereby.

50. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of ITT's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. Said statements and omissions were materially false and/or misleading in that they failed to disclose material adverse information and/or misrepresented the truth about ITT's business, operations, and prospects as alleged herein.

51. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about ITT's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

### **LOSS CAUSATION**

52. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

53. During the Class Period, Plaintiff and the Class purchased ITT's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **SCIENTER ALLEGATIONS**

54. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding ITT, his/her control over, and/or receipt and/or modification of ITT's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning ITT, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE (FRAUD-ON-THE-MARKET DOCTRINE)**

55. The market for ITT's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, ITT's securities traded at artificially inflated prices during the Class Period. On January

21, 2014, the Company's stock closed at a Class Period high of \$45.40 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of ITT's securities and market information relating to ITT, and have been damaged thereby.

56. During the Class Period, the artificial inflation of ITT's stock was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about ITT's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of ITT and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company stock. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

57. At all relevant times, the market for ITT's securities was an efficient market for the following reasons, among others:

- (a) ITT stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;
- (b) As a regulated issuer, ITT filed periodic public reports with the SEC and/or the NYSE;
- (c) ITT regularly communicated with public investors *via* established market communication mechanisms, including through regular dissemination of press releases on the

national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) ITT was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

58. As a result of the foregoing, the market for ITT's securities promptly digested current information regarding ITT from all publicly available sources and reflected such information in ITT's stock price. Under these circumstances, all purchasers of ITT's securities during the Class Period suffered similar injury through their purchase of ITT's securities at artificially inflated prices and a presumption of reliance applies.

**NO SAFE HARBOR**

59. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading,

and/or the forward-looking statement was authorized or approved by an executive officer of ITT who knew that the statement was false when made.

**FIRST CLAIM**  
**Violation of Section 10(b) of**  
**The Exchange Act and Rule 10b-5**  
**Promulgated Thereunder Against All Defendants**

60. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

61. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase ITT's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

62. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for ITT's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

63. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about ITT's financial well-being and prospects, as specified herein.

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

65. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

66. The defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to

ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing ITT's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

67. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of ITT's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired ITT's securities during the Class Period at artificially high prices and were damaged thereby.

68. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that ITT was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their ITT securities, or, if they had

acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

69. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

70. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

**SECOND CLAIM**  
**Violation of Section 20(a) of**  
**The Exchange Act Against the Individual Defendants**

71. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

72. The Individual Defendants acted as controlling persons of ITT within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

73. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to

control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

74. As set forth above, ITT and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**PRAYER FOR RELIEF**

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

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

DATED: October 3, 2014