

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| , Individually and on | : | Civil Action No. |
| Behalf of All Others Similarly Situated, | : | |
| | : | <u>CLASS ACTION</u> |
| Plaintiff, | : | |
| | : | COMPLAINT FOR VIOLATION OF THE |
| vs. | : | FEDERAL SECURITIES LAWS |
| | : | |
| ITT EDUCATIONAL SERVICES, INC., | : | |
| KEVIN M. MODANY and DANIEL M. | : | |
| FITZPATRICK, | : | |
| | : | |
| Defendants. | : | |
| | : | |
| | : | <u>DEMAND FOR JURY TRIAL</u> |

INTRODUCTION

1. This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of ITT Educational Services, Inc. (“ITT” or the “Company”) between April 22, 2010 and February 25, 2013, inclusive (the “Class Period”), against ITT and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 (“1934 Act”).

2. ITT is a provider of post-secondary degree programs in the United States. ITT offers master, bachelor and associate degree programs to approximately 73,000 students. The Company has 144 locations (including 141 campuses and three learning sites) in 39 states. The Company designs its education programs to help graduates prepare for careers in various fields involving their areas of study.

3. During the Class Period, defendants issued materially false and misleading statements regarding the Company’s business and financial results in press releases, analyst conference calls, and filings with the Securities and Exchange Commission (“SEC”), specifically with respect to the Company’s compliance with relevant accounting standards when reporting its risk-sharing activities in loan programs. As a result of defendants’ false statements, ITT stock traded at artificially inflated prices during the Class Period, reaching a high of \$112.69 per share on April 22, 2010.

4. On February 22, 2013, after the market closed, ITT filed its Form 10-K with the SEC for its fiscal year ended December 31, 2012. The Form 10-K disclosed that the SEC was investigating ITT’s involvement in some private student-loan agreements. ITT revealed that it had received a subpoena from the SEC on February 8, 2013, along with a letter informing the Company of the investigation. The subpoena issued by the SEC requested documents related to a 2009 loan risk-sharing agreement and ITT’s PEAKS Private Student Loan Program (“PEAKS Program”). The Company’s Form 10-K stated in part:

There can be no assurance . . . that the ultimate outcome of the SEC investigation will not have a material adverse effect on our financial conditions or results of operations.

5. As a result of this news, ITT's stock plunged \$3.10 per share to close at \$15.53 per share on February 25, 2013, a one-day decline of nearly 17% on volume of over 1.7 million shares.

6. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) The Company failed to properly account for the 2009 loan risk-sharing agreement and its PEAKS Program.

(b) The Company failed to maintain proper internal controls to ensure that risk-sharing agreements were properly recorded.

7. As a result of defendants' false statements and omissions, ITT's common stock traded at artificially inflated prices during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 86% from their Class Period high.

JURISDICTION AND VENUE

8. The claims asserted herein arise under and pursuant §§10(b) and 20(a) of the 1934 Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder by the SEC.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §27 of the 1934 Act.

10. Venue is proper in this District pursuant to §27 of the 1934 Act and 28 U.S.C. §1391(b). ITT maintains offices in this District and many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

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

PARTIES

12. Plaintiff purchased ITT common stock as described in the attached certification and was damaged thereby.

13. Defendant ITT is a provider of post-secondary degree programs in the United States.

14. Defendant Kevin M. Modany (“Modany”) is, and at relevant times was, Chief Executive Officer (“CEO”) and Chairman of the Board of ITT.

15. Defendant Daniel M. Fitzpatrick (“Fitzpatrick”) is, and at relevant times was, Chief Financial Officer (“CFO”) and Executive Vice President of ITT.

16. Defendants Modany and Fitzpatrick (the “Individual Defendants”), because of their positions with the Company, possessed the power and authority to control the contents of ITT’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. They were 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 with the Company, and their access to material non-public information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein.

FRAUDULENT SCHEME AND COURSE OF BUSINESS

17. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about ITT. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of ITT common stock was a success, as it: (i) deceived the investing public regarding ITT's prospects and business; (ii) artificially inflated the price of ITT common stock; and (iii) caused plaintiff and other members of the Class to purchase ITT common stock at inflated prices.

BACKGROUND

18. ITT provides post-secondary degree programs in the United States. It offers master, bachelor, associate, and career-oriented education programs in various fields, such as information technology, electronics technology, drafting and design, business, criminal justice, and nursing and health sciences. The Company's information technology programs include communications, network administration, technical support, network technology, and systems technology; and its electronics technology programs comprise communications, computer technology, electronics product design and fabrication, industrial electronics, instrumentation, and telecommunications. Its drafting and design programs comprise architectural and construction drafting, civil drafting, computer aided drafting, electrical and electronics drafting, interior design, landscape architecture, mechanical drafting, and multimedia communications; business programs include accounting, business administration, financial services, manufacturing, marketing and advertising, and sales; and criminal justice programs consist of corrections, cyber security, investigations, and security and policing. The Company's health sciences programs consist of health information technology and nursing. The Company provides master, bachelor, and associate degree programs to approximately 73,000 students in 144 locations, including 141 campuses and three learning sites in 39 states, as

well as online programs to students who are located in 48 states. The Company was founded in 1946.

19. On January 20, 2010, ITT entered into a guarantee agreement and related documents in connection with a new private education loan program for its students, the PEAKS program. Under the PEAKS Program, an unaffiliated lender would make private education loans to eligible students and, subsequently, sell those loans to a trust. The trust issued senior debt in the aggregate principal amount of \$300 million (“Senior Debt”) to investors. The assets of the trust (which included, among other assets, the student loans held by the trust), served as collateral for, and were intended to be the principal source of, the repayment of the Senior Debt. The Senior Debt bears interest at a variable rate based on the London Interbank Offered Rate plus a margin and matures in January 2020. In connection with the PEAKS Program, ITT transferred to the trust a portion of the amount of each private student loan disbursed to it, in exchange for a subordinated note issued by the trust to ITT. Under the guarantee agreement, ITT guaranteed payment of principal, interest and certain call premiums on the Senior Debt, and administrative fees and expenses of the trust.

20. Due to the guarantee, ITT was required to consider whether a liability should be accrued on its balance sheet and determined not to record such liability.

**DEFENDANTS’ FALSE AND MISLEADING
STATEMENTS ISSUED DURING THE CLASS PERIOD**

21. On April 22, 2010, ITT issued a press release announcing its first quarter 2010 financial results. The Company reported net income of \$87.5 million, or \$2.46 diluted earnings per share (“EPS”), and revenue of \$384.0 million for the first quarter of 2010. The release stated in part:

Kevin M. Modany, Chairman and Chief Executive Officer of ITT/ESI, said, “We are very pleased with our financial, operating and academic results which exceeded our internal expectations. As a result we are raising our 2010 internal goal for EPS from the range of \$10.00 to \$10.50 to a revised range of \$10.50 to \$11.25.”

22. After releasing its first quarter 2010 results on April 22, 2010, ITT hosted a conference call for analysts, media representatives and investors during which defendant Fitzpatrick represented the following:

Turning to a brief update on the private education loan programs offered to our students, we successfully began processing student loan applications through the new PEAKS Private Student Loan Program during the latter part of the first quarter. We received approximately . . . \$30 million of private student loan disbursements from the PEAKS Program during the first quarter of 2010. Thus, we believe that we will see an increase in the amount of disbursements from the PEAKS Program in the remaining quarters of 2010.

23. On April 22, 2010, ITT filed with the SEC its Form 10-Q for the quarter ended March 31, 2010, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany. The Form 10-Q stated in part:

We transfer to the trust a portion of the amount of each private student loan disbursed to us under the PEAKS Program, in exchange for a subordinated note issued by the trust to us. The trust also issued senior debt in the aggregate principal amount of \$300,000 (the "Senior Debt") to investors. The trust utilizes the proceeds from the issuance of the subordinated note and the Senior Debt to purchase private education loans made by the unaffiliated lender to our students. The subordinated note does not bear interest, and principal is due on the subordinated note following the repayment of the Senior Debt and the payment of fees, expenses and certain reimbursement obligations of the trust. The carrying value of the subordinated note as of March 31, 2010 was not material.

As a result of this arrangement and our guarantee to the trust as described in Note 11, we held a variable interest in the trust, but we are not considered the primary beneficiary for purposes of including the financial results of the trust in our consolidated financial statements.

24. On April 22, 2010, ITT stock reached its Class Period high, closing at \$112.69 per share.

25. On July 22, 2010, ITT issued a press release announcing its second quarter 2010 financial results. The Company reported net income of \$96.0 million, or \$2.78 diluted EPS, and revenue of \$401.8 million for the second quarter of 2010. The release stated in part:

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

26. After releasing its second quarter 2010 results on July 22, 2010, ITT hosted a conference call for analysts, media representatives and investors during which defendant Modany represented the following:

[ANALYST:] And finally, do you think you are going to use or get close to kind of using the \$300 million PEAKS capacity this year?

[MODANY:] No, we won’t. It is going a little bit slower, and I think there is a good story behind that. It probably runs us into Q2 of 2011 is what the expectation, through Q2 of 2011 is at this particular point. There has been widely reported increases obviously in some of the grant programs that our students have been able to participate in, which ultimately means some of these levels of debt balances that we have been talking about for our graduates will be positively impacted. While we are not at a point where we can give you any kind of clarity, in terms of what does that mean relative to that roughly \$30,000 graduate debt level we had talked about previously, we can say certainly, it will be a favorable impact. So we are encouraged by that.

[ANALYST:] Why is it delayed?

[MODANY] I didn’t say delayed –

[ANALYST:] You said there is a good story behind why you don’t get the \$300 million until Q2, is that because of the grants?

[MODANY:] Yes, because students are using grants as opposed to loans.

27. On July 23, 2010, ITT filed with the SEC its Form 10-Q for the quarter ended June 30, 2010, signed by Kirkpatrick, with a certification of ITT’s internal controls signed by Modany. The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three or six months ended June 30, 2010 that we were not contractually required to provide, and we do not intend to provide any such

support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of June 30, 2010 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three or six months ended June 30, 2010. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

28. On October 21, 2010, ITT issued a press release announcing its third quarter 2010 financial results. The Company reported net income of \$93.2 million, or \$2.82 diluted EPS, and revenue of \$400.6 million for the third quarter of 2010. The release stated in part:

Kevin M. Modany, Chairman and Chief Executive Officer of ITT/ESI, said, “Based on our performance in the first nine months of 2010 and our outlook for the remaining quarter of 2010, we are reiterating our 2010 internal goal for EPS in the range of \$11.00 to \$11.35.”

29. After releasing its third quarter 2010 results on October 21, 2010, ITT hosted a conference call for analysts, media representatives and investors during which defendant Modany represented the following:

[ANALYST:] Thanks. Just wondering how much capacity is left on the PEAKS Program? Thank you.

[MODANY:] We’ve got enough volume in all the – kind of looking at all the private education loans together. We’ve got enough availability at this point that should take us through the first six months of 2011. That’s a very positive thing. And we’ve had some conversations with parties about, let’s say, a renewal or PEAKS 2 if you will, however you want to refer to it. And there has been a great deal of interest on that front so we are cautiously optimistic with regard to our ability to re-up that. But right now we have got ourselves covered through the second quarter of 2011.

30. On October 22, 2010, ITT filed with the SEC its Form 10-Q for the quarter ended September 30, 2010, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany. The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three or nine months ended September 30, 2010 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of September 30, 2010 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three or nine months ended September 30, 2010. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

31. On January 20, 2011, ITT issued a press release announcing its fourth quarter and full-year 2010 financial results. The Company reported net income of \$97.5 million, or \$3.14 diluted EPS, and revenue of \$410.1 million for the fourth quarter of 2010. The Company further reported net income of \$374.2 million, or \$11.17 diluted EPS, and revenue of \$1.6 billion for the full year of 2010.

32. On February 18, 2011, ITT filed with the SEC its Form 10-K for the fourth quarter and fiscal year ended December 31, 2010, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany. The Form 10-K stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the fiscal year ended December 31, 2010 that we were not contractually required to provide, and we do not intend to provide any such support

to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of December 31, 2010 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our consolidated financial statements for the fiscal year ended December 31, 2010. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our consolidated financial statements.

33. On April 21, 2011, ITT issued a press release announcing its first quarter 2011 financial results. The Company reported net income of \$85.4 million, or \$2.91 diluted EPS, and revenue of \$383.2 million for the first quarter of 2011.

34. After releasing its first quarter 2011 results on April 21, 2011, ITT hosted a conference call for analysts, media representatives and investors during which defendant Modany represented the following:

[ANALYST:] Could you give us a quantitative update on the Peaks of the private loan program? What's been your take up rate? How much left is in Peaks? And I think if I caught it in the introductory remarks, I think you mentioned that you're working on another program?

[MODANY:] Yes, Andrew, just to your latter point, we are in the midst of negotiations with various parties relative to another program, or however you want to look at reloading the current program from the third-party providers. Those discussions are ongoing. Positive conversations there. We feel confident relative to the level of investor interest that we are seeing there that there are interested parties to put together a third-party loan program similar to the Peaks program. So that is ongoing.

In terms of how much runway remains, relative to the program, we have been saying all along, through the end of the second quarter. And that continues to be the case, probably into July. And that relates to the Peaks program, the credit union program that we still have out there. We still have some more runway with that. That

will continue to be in place regardless. But it is our expectation right now that, based upon the discussions and negotiations ongoing, that there should not be a disruption in the availability of third-party financing for our students once we complete the utilization of what's available under Peaks.

35. On April 22, 2011, ITT filed with the SEC its Form 10-Q for the quarter ended March 31, 2011, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany.

The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three months ended March 31, 2011 or 2010 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of March 31, 2011 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three months ended March 31, 2011. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

36. On July 21, 2011, ITT issued a press release announcing its second quarter 2011 financial results. The Company reported net income of \$79.0 million, or \$2.85 diluted EPS, and revenue of \$387.9 million for the second quarter of 2011.

37. After releasing its second quarter 2011 results on July 21, 2011, ITT hosted a conference call for analysts, media representatives and investors during which defendant Modany represented the following:

[ANALYST:] Okay. Fair enough. Dan, I think the other question related to the kind of forward expectations is – sounds like you might have a bit of a gap with respect to the lending situation? PEAKS has expired, and you don't yet have the new

program in place? Would we expect some kind of a bump as you guys maybe are forced to loan from your balance sheet in bad debt expense? How's that going to work?

[MODANY:] Trace, this is Kevin. We actually have other third party private financing programs – typically, I think referred to as the credit union programs. Others have referred to them as that. That will provide us with funding through the end of the third quarter – at least through the end of the third quarter. And then, as we mentioned in the call, we're cautiously optimistic about the prospects for an additional third party lending program being made available to our students during that third quarter. So, at this point, we don't see a gap in the financing made available, but we still have to complete discussions and negotiations on that other third party program.

38. On July 25, 2011, ITT filed with the SEC its Form 10-Q for the quarter ended June 30, 2010, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany. The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three or six months ended June 30, 2011 or 2010 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of June 30, 2011 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three or six months ended June 30, 2011. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

39. On October 20, 2011, ITT issued a press release announcing its third quarter 2011 financial results. The Company reported net income of \$67.3 million, or \$2.48 diluted EPS, and revenue of \$360.6 million for the third quarter of 2011.

40. On October 21, 2011, ITT filed with the SEC its Form 10-Q for the quarter ended September 30, 2011, signed by Kirkpatrick, with a certificate of internal controls signed by Modany.

The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three or nine months ended September 30, 2011 or 2010 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of September 30, 2011 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three or nine months ended September 30, 2011. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

41. On January 26, 2012, ITT issued a press release reporting its fourth quarter and full-year 2011 financial results. The Company reported net income of \$76.0 million, or \$2.87 diluted EPS, and revenue of \$368.3 million for the fourth quarter of 2011. The Company further reported net income of \$307.8 million, or \$11.13 diluted EPS, and revenue of \$1.5 billion for the full-year 2011.

42. On February 24, 2012, ITT filed with the SEC its Form 10-K for the fourth quarter and fiscal year ended December 31, 2011, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany. The Form 10-K stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the fiscal year ended December 31, 2011 that we were not contractually required to provide, and we do not intend to provide any such support

to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of December 31, 2011 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our consolidated financial statements for the fiscal year ended December 31, 2011. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our consolidated financial statements.

43. On April 26, 2012, ITT issued a press release reporting its first quarter 2012 financial results. The Company reported net income of \$61.1 million, or \$2.38 diluted EPS, and revenue of \$341.8 million for the first quarter of 2012.

44. On April 26, 2012, ITT filed with the SEC its Form 10-Q for the quarter ended March 31, 2012, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany.

The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three months ended March 31, 2012 or 2011 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of March 31, 2012 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three

months ended March 31, 2012. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

45. On July 26, 2012, ITT issued a press release reporting its second quarter 2012 financial results. The Company reported net income of \$46.0 million, or \$1.96 diluted EPS, and revenue of \$329.8 million for the second quarter of 2012.

46. On July 27, 2012, ITT filed with the SEC its Form 10-Q for the quarter ended June 30, 2012, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany.

The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three or six months ended June 30, 2012 or 2011 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of June 30, 2012 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three or six months ended June 30, 2012. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

47. On October 25, 2012, ITT issued a press release reporting its third quarter 2012 financial results. The Company reported net income of \$42.9 million, or \$1.83 diluted EPS, and revenue of \$314.7 million for the third quarter of 2012.

48. On October 29, 2012, ITT filed with the SEC its Form 10-Q for the quarter ended September 30, 2012, signed by Kirkpatrick, with a certification of ITT's internal controls signed by Modany. The Form 10-Q stated in part:

We did not explicitly or implicitly provide any financial or other support to the PEAKS Trust during the three or nine months ended September 30, 2012 or 2011 that we were not contractually required to provide, and we do not intend to provide any such support to the PEAKS Trust in the foreseeable future, other than what we are contractually required to provide.

The PEAKS Trust is a variable interest entity as defined under ASC 810. We held variable interests in the PEAKS Trust as of September 30, 2012 as a result of the Subordinated Note and PEAKS Guarantee.

* * *

Based on our analysis, we concluded that we are not the primary beneficiary of the PEAKS Trust, because we do not have the power to direct the activities that most significantly impact the economic performance of the PEAKS Trust. As a result, we are not required under ASC 810 to include the financial results of the PEAKS Trust in our condensed consolidated financial statements for the three or nine months ended September 30, 2012. Our conclusion that we are not the primary beneficiary of the PEAKS Trust did not change from the prior reporting period. Therefore, there was no effect on our condensed consolidated financial statements.

49. On January 24, 2013, ITT issued a press release reporting its fourth quarter and full-year 2012 financial results. The Company reported a net loss of \$9.5 million, or (\$0.41) diluted EPS, and revenue of \$300.8 million for the fourth quarter of 2012. Further, the Company reported net income of \$140.5 million, or \$5.85 diluted EPS, and revenue of \$1.3 billion for the full-year 2012. The release further disclosed a settlement to pay \$46 million to Sallie Mae, Inc. ("SMI"), the country's biggest student lender, to settle a lawsuit stemming from a risk-sharing agreement on loans:

On December 28, 2012, the company entered into a Settlement Agreement and Release (the "Settlement Agreement") with SMI to settle the previously disclosed litigation matter between SMI and the company relating to the 2007 RSA. Under the terms of the Settlement Agreement, the company agreed to pay a one-time payment of \$46 to SMI on or before January 29, 2013. SMI and the company each also agreed to release the other (and their respective affiliates) from any and all

current and future claims arising out of, or directly or indirectly related to, the 2007 RSA, other than claims related to certain provisions of the 2007 RSA governing cooperation, confidentiality, the treatment of intellectual property and certain indemnification claims related to the FTC Holder Rule. SMI specifically agreed to release the company from any and all of its guarantee obligations arising under the 2007 RSA, and the company agreed to release all right, title and interest in and to the loans made pursuant to the 2007 RSA, including any right to receive any payments related to any of those loans.

50. After releasing its fourth quarter and full-year 2012 results on January 24, 2013, ITT hosted a conference call for analysts, media representatives and investors during which defendant Modany represented the following:

We are also directing our efforts towards another key objective, which is to manage our obligations under the 2007, 2009 and PEAKS risk share agreements that we entered into in connection with the private student loan programs made available to our students. As was previously reported on December 28, 2012, we agreed to pay Sallie Mae \$46 million to resolve all of our guaranteed obligations under the related RSA that we entered into in 2007. The total principal amount of the private education loans made under the 2007 RSA, net of refunds, was approximately \$180 million. As such, the \$46 million settlement amount represents approximately 25.6% of the net amount of the private education loans made under the 2007 RSA. To be clear, we did not make any other payments to Sallie Mae or take any discounts on the loan proceeds with respect to the 2007 RSA. As a result of the settlement, all of the Company's guarantee obligations associated with the 2007 RSA have been eliminated. We are pleased to have the litigation and contingent liability related to the 2007 RSA results.

We will now focus our energies towards managing the contingent liabilities associated with our two remaining risk share agreements, the one we entered into in 2009 and the PEAKS Program. As reminder, let's talk briefly about each of these two remaining RSAs. Under the 2009 RSA, we guarantee the repayment of principal amounts including capitalized origination fees and accrued interest payable on any private education loans originated under the program that are charged off above a certain percentage based on the annual dollar volume. The total initial principle amount of loans made under that private student loan program was approximately \$141 million. The current agreement stipulates that our obligations under the 2009 RSA will remain in effect until all private student loans made under that loan program are paid in full or charged off. Under the PEAKS Program, we guarantee payment of the principal and interest owed on the PEAKS Senior Debt, the administrative fees and expenses of the PEAKS Trust, and the required ratio of assets of the PEAKS Trust to outstanding PEAKS Senior Debt. Our guaranty obligations under the PEAKS Program remain in effect until the PEAKS Senior Debt and the PEAKS Trust fees and expenses are paid in full. The outstanding principal balance of the PEAKS Senior Debt is approximately \$260 million.

51. Then, on February 22, 2013, after the market closed, ITT filed its Form 10-K with the SEC for its fiscal year ended December 31, 2012. The Form 10-K disclosed that the SEC was investigating ITT's involvement in some private student-loan agreements. ITT revealed that it had received a subpoena from the SEC on February 8, 2013, along with a letter informing the Company of the investigation. The subpoena issued by the SEC requested documents related to a 2009 loan risk-sharing agreement and ITT's PEAKS Program. The Form 10-K stated in part:

There can be no assurance . . . that the ultimate outcome of the SEC investigation will not have a material adverse effect on our financial conditions or results of operations.

52. As a result of this news, ITT's stock plunged \$3.10 per share to close at \$15.53 per share on February 25, 2013, a one-day decline of nearly 17% on volume of over 1.7 million shares.

53. On February 25, 2013, PAA Research LLC commented on the SEC letter:

If ESI is deemed the sole economic beneficiary, PEAKS would lose its off-balance sheet treatment. The company has always argued that the equity holder in the PEAKS trust (originally the Access Group) was an economic beneficiary of the trust. Unfortunately for ESI, the Access Group wrote down the value of its equity stake in the PEAKS trust to zero last year and the company has already written down the carrying value of the Subordinated Notes purchased from the trust. At this stage, we're hard pressed to identify another economic beneficiary to the PEAKS trust aside from ESI. For now, the company's auditors have formed a different opinion. We are stunned that the PEAKS trust was not consolidated onto ESI's balance sheet. Based on the decision to issue a subpoena related to PEAKS and the 2009 RSA, perhaps the SEC is too.

As we will outline, the actual consolidation of the liabilities associated with PEAKS and the 2009 RSA on balance sheet could worsen ESI's already troublesome leverage levels even though there would be no change to the company's obligations from a cash perspective.

54. The true facts, which were known by the defendants but concealed from the investing public during the Class Period, were as follows:

(a) The Company failed to properly account for the 2009 loan risk-sharing agreement and its PEAKS Program.

(b) The Company failed to maintain proper internal controls to ensure that risk-sharing agreements were properly recorded

55. As a result of defendants' false statements and omissions, ITT common stock traded at artificially inflated prices during the Class Period. However, after the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 86% from their Class Period high.

LOSS CAUSATION/ECONOMIC LOSS

56. During the Class Period, as detailed herein, defendants made false and misleading statements and engaged in a scheme and course of conduct that artificially inflated the price of ITT common stock and operated as a fraud or deceit on Class Period purchasers of ITT stock by misrepresenting the Company's business and prospects. Later, when the defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the price of ITT common stock fell precipitously, as the prior artificial inflation came out of the price over time. As a result of their purchases of ITT common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

SAFE HARBOR

57. ITT's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

58. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of ITT who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated

to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

CLASS ACTION ALLEGATIONS

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

60. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. ITT has 23.3 million shares of stock outstanding, owned by hundreds if not thousands of persons.

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

- (a) whether the 1934 Act was violated by defendants;
- (b) whether defendants omitted and/or misrepresented material facts;
- (c) whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) whether the price of ITT common stock was artificially inflated; and

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

62. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

63. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

64. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

65. Plaintiff incorporates ¶¶1-64 by reference.

66. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

67. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- (a) employed devices, schemes and artifices to defraud;
- (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of ITT common stock during the Class Period.

68. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for ITT common stock. Plaintiff and the Class would not have purchased ITT common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

COUNT II

For Violation of §20(a) of the 1934 Act Against All Defendants

69. Plaintiff incorporates ¶¶1-68 by reference.

70. The Individual Defendants acted as controlling persons of ITT within the meaning of §20(a) of the 1934 Act. By reason of their positions with the Company, and their ownership of ITT common stock, the Individual Defendants had the power and authority to cause ITT to engage in the wrongful conduct complained of herein. ITT controlled the Individual Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the 1934 Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;
- B. Awarding plaintiff and the members of the Class damages, including interest;
- C. Awarding plaintiff's reasonable costs and attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED:
