

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

|                                 |   |                                        |
|---------------------------------|---|----------------------------------------|
| UNITED STATES SECURITIES AND    | ) |                                        |
| EXCHANGE COMMISSION,            | ) |                                        |
|                                 | ) |                                        |
| Plaintiff,                      | ) |                                        |
|                                 | ) |                                        |
| v.                              | ) |                                        |
|                                 | ) | Civil Action No. 1:15-cv-00758-JMS-MJD |
| ITT EDUCATIONAL SERVICES, INC., | ) |                                        |
| KEVIN M. MODANY, and DANIEL M.  | ) |                                        |
| FITZPATRICK,                    | ) |                                        |
|                                 | ) |                                        |
| Defendants.                     | ) |                                        |
|                                 | ) |                                        |

---

**JOINT STATUS REPORT**

Plaintiff United States Securities and Exchange Commission (“SEC”) and Defendants Kevin M. Modany and Daniel M. Fitzpatrick (“Individual Defendants”), by their respective counsel, submit this Joint Status Report in advance of the August 29, 2017 telephonic status conference.

Following the submission of the SEC’s Notice Regarding Settlement and Motion to Set Status Conference [Doc. # 181], the parties have conferred regarding outstanding discovery issues as well as a proposed schedule for motions to preclude expert testimony and dispositive motions. The primary outstanding discovery issues include the following. First, prior to the May 15, 2017 settlement conference and the Court’s May 16, 2017 order vacating all dates [Doc. # 173], the Court had permitted the parties to take the deposition of an additional witness, Ellen Jean Baptiste, by June 21, 2017. [Doc. # 162.] Ms. Jean-Baptiste’s deposition was not taken prior to the settlement conference. The parties are in the process of conferring with each other and Ms. Jean-Baptiste’s counsel regarding this deposition, which the parties will endeavor to schedule sometime in September. Second, there were certain depositions that occurred before the

settlement conference for which the deponents did not review and sign their transcripts. The parties are currently preparing a proposed stipulation to provide these deponents time to review and sign, which the parties anticipate submitting to the Court for consideration shortly. Third, on May 10, 2017, the SEC objected to certain of Individual Defendants' discovery requests. The parties have met and conferred regarding, but have not been able to resolve, all of these objections, and Individual Defendants intend to file a motion to compel within the next two weeks.<sup>1</sup> The SEC was also in the process of collecting certain documents responsive to these discovery requests at the time of the settlement conference. The SEC expects to produce these documents in the near future. Fourth, following the May 9, 2017 deposition of one of the SEC's expert witnesses, Individual Defendants requested certain additional data that the expert referenced during his deposition. The SEC is now in the process of providing that data to Individual Defendants, and anticipate doing so in the next several days.

The parties have also conferred regarding a schedule for motions to limit or preclude expert testimony at trial and for dispositive motions. Prior to the May 16, 2017 order vacating all dates, motions to limit or preclude expert testimony were due on or before June 21, 2017, and dispositive motions were due on or before June 7, 2017. [See Doc. # 116.] The parties believe it would be efficient to file motions to limit or preclude expert testimony prior to submitting dispositive motions. In light of the outstanding discovery issues detailed above, the parties propose that motions to limit or preclude expert testimony be due in mid-October 2017. The parties further propose that dispositive motions be due in early November 2017. The parties recognize that the Court also needs to reset the deadline for the statement of claims or defenses it

---

<sup>1</sup> The SEC is in the process of reviewing Individual Defendants' responses to its final discovery responses to determine if there are any outstanding issues.

intends to prove at trial, which was initially set for May 22, 2017 [Doc. # 162], and stand ready to discuss the scheduling of this item during the August 29, 2017 telephonic status conference.

Dated: August 29, 2017

Respectfully submitted,

/s/ Nicholas P. Heinke

Nicholas P. Heinke  
Polly A. Atkinson  
Zachary T. Carlyle  
U.S. Securities and Exchange Commission  
Byron G. Rogers Federal Building  
1961 Stout Street, Suite 1700  
Denver, CO 80294-1961  
Phone: (303) 844-1071 (Heinke)  
(303) 844-1046 (Atkinson)  
(303) 844-1084 (Carlyle)  
*HeinkeN@sec.gov*  
*AtkinsonP@sec.gov*  
*CarlyleZ@sec.gov*

*Attorneys for Plaintiff United States  
Securities and Exchange Commission*

/s/ David I. Miller (by consent)

David I. Miller (*pro hac vice*)  
Matthew R. Ladd (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
101 Park Ave.  
New York, NY 10178  
Telephone: (212) 309-6000  
Fax: (212) 309-6001  
*david.miller@morganlewis.com*  
*matthew.ladd@morganlewis.com*

and

Eric W. Sitarchuk (*pro hac vice*)  
Ryan P. McCarthy (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market St.  
Philadelphia, PA 19103  
Telephone: (215) 963-5000  
Fax: (215) 963-5001  
*eric.sitarchuk@morganlewis.com*  
*ryan.mccarthy@morganlewis.com*

and

Steve Korotash (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
171 Main St., Suite 3200  
Dallas, TX 75201-7347  
Telephone: (214) 466-4000  
Fax: (214) 466-4001  
*steve.korotash@morganlewis.com*

Philip A. Whistler (#1205-49)  
Thomas E. Mixdorf (#16812-49)  
ICE MILLER, LLP  
One American Square, Suite 2900  
Indianapolis, IN 46282-0200  
Telephone: (317) 236-5832  
Fax: (317) 592-4708  
*Philip.Whistler@icemiller.com*  
*Thomas.Mixdorf@icemiller.com*

*Attorneys for Defendant Kevin M. Modany*

/s/ Michael A. Ungar (by consent)  
Fredric D. Firestone (*pro hac vice*)  
Michael A. Ungar (*pro hac vice*)  
James M. Commons (*pro hac vice*)  
Alison L. Nadel (*pro hac vice*)  
MCDERMOTT WILL & EMERY LLP  
500 North Capitol St., N.W.  
Washington, DC 20001  
Telephone: (202) 756-8000  
Fax: (202) 756-8087  
*rfirestone@mwe.com*  
*mungar@mwe.com*  
*jcommons@mwe.com*  
*anadel@mwe.com*

Alan S. Brown (#3536-49)  
Bryan S. Strawbridge (#29076-49)  
FROST BROWN TODD LLC  
201 N. Illinois St.  
Suite 1900  
Indianapolis, IN 46204-4236  
Telephone: (317) 237-3841  
Fax: (317) 237-3900  
*abrown@fbtlaw.com*  
*bstrawbridge@fbtlaw.com*

*Attorneys for Defendant Daniel M. Fitzpatrick*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing document to be served upon all counsel of record by operation of the Court's Electronic Notification system this 29th day of August, 2017.

/s/ Nicholas P. Heinke  
Nicholas P. Heinke