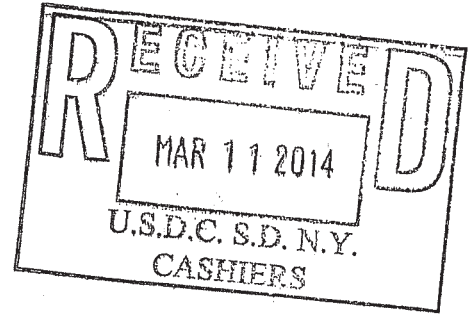


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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
UNITED STATES OF AMERICA,  
:  
Plaintiff, :  
:  
v. :  
:  
THE ACADEMIC ADVANTAGE, :  
EDWIN GUZMAN, LUZ MERCEDES, :  
ARLETTE HERNANDEZ, KRISTIN JOYNER, :  
NILSA DALMASI, RAYVON JONES, :  
ALICIA MCKAY, TERESA OSORIO, and :  
AYESHA YOUNG, :  
:  
Defendants. :  
-----X

Civil Case No. \_\_\_\_\_

**COMPLAINT**

**Jury Trial Demanded**

The United States of America ("United States" or "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, brings this civil fraud action against The Academic Advantage ("Academic Advantage") and nine of its former employees: Edwin Guzman ("Guzman"), Luz Mercedes ("Mercedes"), Arlette Hernandez, ("Hernandez"), Kristin Joyner ("Joyner"), Nilsa Dalmasi ("Dalmasi"), Rayvon Jones ("Jones"), Alicia McKay ("McKay"), Teresa Osorio ("Osorio") and Ayesha Young ("Young") (collectively, and together with Academic Advantage, "Defendants"). The Government alleges as follows:

## INTRODUCTION

1. During the 2010/2011 and 2011/2012 academic years (“Covered Period”), Academic Advantage was paid approximately \$14 million in federal funds for purportedly providing after-school tutoring services to students attending underperforming public schools in New York City. In fact, however, Academic Advantage was repeatedly billing for students who never received these tutoring services. Many of the Academic Advantage employees who were responsible for the day-to-day operations of Academic Advantage’s tutoring program — including Guzman, Mercedes, Hernandez, Joyner, Dalmasi, Jones, McKay and Osorio — routinely falsified and/or caused others to falsify student attendance records to make it appear that more students had attended Academic Advantage’s tutoring classes than had, in fact, attended. Moreover, supervisors at Academic Advantage, including Young, knew, deliberately ignored, or recklessly disregarded that attendance records were being falsified. During the Covered Period, and as a result of these falsified attendance records, Academic Advantage submitted false certifications to the New York City Department of Education (“NYC DOE”) stating that the invoices it was submitting for its tutoring services were “true and accurate” even though they were not. These false certifications misled the NYC DOE into paying Academic Advantage federal funds for thousands of hours of tutoring services that Academic Advantage never provided.

2. During the Covered Period, Academic Advantage was an approved provider of Supplemental Educational Services (“SES”) in New York City. As such, Academic Advantage was authorized to provide after-school tutoring to students attending underperforming public schools in New York City. The NYC DOE paid Academic Advantage a fixed amount of money per hour for each student that it tutored, using funds provided to New York State by the federal

Government pursuant to the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.*

3. Prior to the start of the Covered Period, in September 2010, Academic Advantage entered into a contract with the NYC DOE. That contract governed Academic Advantage's provision of SES tutoring throughout the Covered Period. Pursuant to that contract, Academic Advantage was required to record attendance at each of its SES tutoring classes on a daily basis. Specifically, for each of its SES tutoring classes, Academic Advantage was required to have each student who attended the class sign a standard attendance form. As a condition of getting paid for its tutoring services, Academic Advantage was required to submit certifications to the NYC DOE attesting that its daily attendance records were "true and accurate."

4. However, Academic Advantage routinely submitted false certifications to the NYC DOE that inflated the attendance for its SES tutoring classes. Many of the Academic Advantage employees who were responsible for the day-to-day operations of Academic Advantage's SES program forged student signatures on Academic Advantage's daily student attendance sheets to make it appear that more students had attended Academic Advantage's SES tutoring classes than had, in fact, attended. Some of these employees, called "Site Managers," also directed their subordinates, called "Program Aides," to forge student signatures. For example, Guzman, a Site Manager, forged student signatures and also directed his Program Aides to forge student signatures, and together they forged up to approximately 45 signatures per day. Mercedes, Hernandez, Joyner, Dalmasi, Jones, McKay and Osorio were also Site Managers who forged and/or instructed Program Aides to forge student signatures.

5. To inflate Academic Advantage's daily student attendance figures, Site Managers and Program Aides also instructed students to sign daily student attendance sheets for SES

tutoring classes that the Site Managers and Program Aides knew the students either had not attended or would not be attending.

6. Site Managers engaged in the above-described conduct — falsifying student attendance records and instructing Program Aides to falsify student attendance records — because they were pressured by their supervisors, called “Directors,” to report high attendance. Throughout the Covered Period, Directors routinely threatened to fire Site Managers and/or lower their pay if they reported low attendance.

7. Moreover, multiple Directors — including Young — knew about, deliberately ignored, or recklessly disregarded the fraud. As set forth below, each of these Directors engaged in one or more of the following actions: made statements to a Site Manager that the Director expected the Site Manager to interpret as an instruction to falsify student attendance records; made statements to a Site Manager that the Director should have known would prompt the Site Manager to falsify student attendance records; observed a Site Manager falsifying student attendance records; ignored reports that a Site Manager was falsifying student attendance records; and/or visited a school and observed that there were fewer students present for SES tutoring than the relevant Site Manager had been reporting as present.

8. Academic Advantage’s daily student attendance sheets from the Covered Period are replete with falsifications that are apparent on the face of the documents. For example, there are numerous daily student attendance sheets where the same students’ alleged signatures change significantly in appearance from one tutoring session to another, including instances where sloppy handwriting all of a sudden becomes neat, distinctive ways of writing certain letters are not repeated, and students all of a sudden spell their names incorrectly. Moreover, during the Covered Period, there were more than 5,000 instances where Academic Advantage billed and

was paid by the NYC DOE for providing after-school tutoring services to particular students at their schools on days when those students were absent from school.

9. Academic Advantage used the above-referenced falsified daily student attendance records to prepare invoices that it then submitted to the NYC DOE in billing for its alleged tutoring services. Academic Advantage submitted these invoices to the NYC DOE on a monthly basis. For each such invoice, Academic Advantage certified that the information on the invoice was “true and accurate.” Notwithstanding these certifications, many of the monthly invoices contained false information; the invoices billed the NYC DOE for thousands of hours of SES tutoring that Academic Advantage never provided. As a result of these false invoices, Academic Advantage was paid for tutoring services that it did not provide.

10. Notably, a substantial percentage of Academic Advantage’s New York City SES workforce had engaged in identical fraudulent conduct prior to the Covered Period. Shortly before the start of the Covered Period (*i.e.*, shortly before the start of the 2010/2011 academic year), Academic Advantage significantly expanded its NYC SES program by hiring former employees of The Princeton Review, Inc. (“Princeton Review”), which had provided SES tutoring in New York City from the 2006/2007 academic year through the 2009/2010 academic year. Those former employees of Princeton Review — including Guzman, Mercedes, Jones, Dalmasi, Osorio and Young — comprised a significant portion of Academic Advantage’s SES workforce during the Covered Period. In December 2012, Princeton Review — which in May 2012 had changed its name to Education Holdings 1, Inc. (“Education Holdings”) — entered into a settlement agreement with the Government in which Princeton Review admitted, among other things, that (a) “[m]any of the individuals who were responsible for the day-to-day operations of Princeton Review’s SES tutoring program (‘Site Managers’) routinely falsified entries on daily

student attendance sheets, including by forging student signatures, to make it appear that more students had attended Princeton Review's SES tutoring classes than had actually attended," and (b) "Princeton Review's daily student attendance sheets from the Covered Period [the 2006/2007 academic year through the 2009/2010 academic year] are replete with falsifications, and report that many more students had attended Princeton Review's SES tutoring classes than had actually attended."

11. The United States seeks damages and penalties under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*, and the common law for money paid to Academic Advantage for tutoring services that Academic Advantage did not provide.

#### **JURISDICTION AND VENUE**

12. This Court has jurisdiction pursuant to 31 U.S.C. § 3730(a), 28 U.S.C. §§ 1331 and 1345, and the Court's general equitable jurisdiction.

13. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b) because the fraudulent activities of Defendants that form the basis of this action, and that are alleged in this complaint, took place within this district.

#### **PARTIES**

14. Plaintiff is the United States of America.

15. Defendant Academic Advantage is a California corporation with its principal office located in Los Angeles, California. Throughout the Covered Period, Academic Advantage also maintained an office in New York City ("New York City office"). The New York City office was located at 131 West 33rd Street, New York, New York 10001.



16. Defendant Edwin Guzman is a former employee of Academic Advantage. During the Covered Period, Guzman was employed as a Site Manager within Academic Advantage's New York City SES division. Guzman currently resides in New York County, New York.

17. Defendant Luz Mercedes is a former employee of Academic Advantage. During the Covered Period, Mercedes was employed as a Site Manager within Academic Advantage's New York City SES division. Mercedes currently resides in New York County, New York.

18. Defendant Arlette Hernandez is a former employee of Academic Advantage. During the Covered Period, Hernandez was employed as a Site Manager within Academic Advantage's New York City SES division. Hernandez currently resides in New York County, New York.

19. Defendant Kristin Joyner is a former employee of Academic Advantage. During the Covered Period, Joyner was employed as a Site Manager within Academic Advantage's New York City SES division. Joyner currently resides in New York County, New York.

20. Defendant Nilsa Dalmasi is a former employee of Academic Advantage. During the Covered Period, Dalmasi was employed as both a Site Manager and a Program Aide within Academic Advantage's New York City SES division. Dalmasi currently resides in New York County, New York.

21. Defendant Rayvon Jones is a former employee of Academic Advantage. During the Covered Period, Jones was employed as a Site Manager within Academic Advantage's New York City SES division. Jones currently resides in New York County, New York.

22. Defendant Alicia McKay is a former employee of Academic Advantage. During the Covered Period, McKay was employed as both a Site Manager and a Program Aide within Academic Advantage's New York City SES division. McKay currently resides in New York

County, New York.

23. Defendant Teresa Osorio is a former employee of Academic Advantage. During the Covered Period, Osorio was employed as a Site Manager within Academic Advantage's New York City SES division. Osorio currently resides in New York County, New York.

24. Defendant Ayesha Young is a former employee of Academic Advantage. During the Covered Period, Young was employed as a Director within Academic Advantage's New York City SES division. Young currently resides in New York County, New York.

## FACTS

### **I. BACKGROUND**

#### **A. THE STATUTORY FRAMEWORK GOVERNING THE PROVISION OF SES TUTORING**

25. The No Child Left Behind Act of 2001 ("NCLB Act"), 20 U.S.C. § 6301 *et seq.*, was a comprehensive reform of the Elementary and Secondary Education Act of 1965 ("ESEA"), the federal spending program that provides funds to assist the States and their local educational agencies ("LEAs") in the education of elementary and secondary school children. Title I, Part A of the ESEA, as amended by the NCLB Act, provides federal grants to assist the States and their LEAs in improving the academic achievement of students, and in ensuring that all students meet high academic standards.

26. During the Covered Period, Title I funds were distributed to the States by the United States Department of Education ("US DOE"). State educational agencies, in turn, allocated Title I sub-grants to LEAs. For example, the US DOE allocated Title I funds to the New York State Education Department ("NYSED"), which, in turn, allocated funds to its LEAs, one of which was the NYC DOE. The vast majority of Title I funds received by LEAs were



allocated to individual public schools to be used at the schools for activities designed to improve student achievement.

27. During the Covered Period, LEAs — such as the NYC DOE — were required to use a portion of their Title I allocated funds to pay for SES. SES included after-school tutoring, as well as remediation and other supplemental academic enrichment services.

#### **B. THE PROVISION OF SES TUTORING IN NEW YORK CITY**

28. In accordance with the ESEA, as amended by the NCLB Act, during the Covered Period, the NYC DOE entered into contracts with entities that were approved by the NYSED to provide SES tutoring and were selected by parents of eligible students to provide SES tutoring to their children (collectively, “SES providers”). Students were eligible to receive SES tutoring if they: (a) were from low-income families; and (b) attended a Title I school (*i.e.*, a school that received funds under Title I, Part A of the ESEA) that was in its second year of being identified for improvement, corrective action, or restructuring.

29. Parents of eligible students received from the NYC DOE a list of all of the entities that had been approved by the NYSED to provide SES tutoring, as well as a blank student enrollment form. Each parent was permitted to select from this list one SES provider to provide SES tutoring to his or her child. Once a parent had selected an SES provider for his or her child, the parent filled out the student enrollment form (identifying that provider as the selected provider), and the form was then transmitted to the provider. The provider then submitted the completed student enrollment form to the NYC DOE, which, upon receiving the form, enrolled the child in the provider’s SES classes. An SES provider could not bill the NYC DOE for tutoring a particular student unless the student was enrolled in (and had actually attended) the provider’s classes.

30. To ensure that parents were not improperly pressured to select particular SES providers or otherwise influenced in the selection process, the NYC DOE prohibited providers from possessing blank student enrollment forms. Indeed, the NYC DOE's SES program guide prohibited SES providers from "[p]hotocopy[ing] or otherwise procur[ing] enrollment forms for distribution to parents, or [from] mak[ing] provider selection for parents."

31. SES providers hired teachers to provide SES tutoring to the students enrolled in their SES classes. SES providers were ultimately responsible for overseeing the SES teachers and for ensuring that their SES programs were administered properly.

32. The NYC DOE paid SES providers for each student they tutored with funds provided to the NYSED by the federal Government under Title I, Part A of the ESEA, as amended by the NCLB Act.

33. Each SES provider was paid a fixed hourly rate for each student it tutored. This fixed hourly rate was negotiated between the SES provider and the NYC DOE and was set forth in a contract between the parties. The contract also specified the maximum number of hours for which the SES provider could bill for each student it tutored.

34. SES providers billed the NYC DOE for the tutoring services they provided on a monthly basis.

35. Throughout the Covered Period, the NYC DOE required that SES providers regularly make two distinct certifications in connection with their provision of SES tutoring. First, on a daily basis, SES providers were required to record student attendance at each of their tutoring classes and to certify that each day's attendance records were accurate.<sup>3</sup> Second, when SES providers submitted invoices to the NYC DOE for the tutoring services they had provided,

they were required to certify that the invoices were “true and accurate” (*i.e.*, that the SES providers had, in fact, provided the tutoring services for which they were billing).

### **1. Daily Student Attendance Certifications**

36. For each tutoring class during the Covered Period, SES providers serving students in New York City were required to record student attendance on a standard form approved by the NYC DOE (“Daily Student Attendance Sheet”). A copy of a redacted Daily Student Attendance Sheet is attached to this complaint as Exhibit A. Academic Advantage used the Daily Student Attendance Sheet to record student attendance throughout the Covered Period.

37. Each Daily Student Attendance Sheet contained three sections. The first section — located at the top of each Daily Student Attendance Sheet — was labeled, “Session Details.” This section contained a basic description of the SES class, including the name of the SES provider, the date of the class, the location of the class, the subject matter of the class, and the scheduled start time and end time of the class.

38. The second section of the Daily Student Attendance Sheet — located in the middle of each Sheet — was labeled, “Student Information.” This section contained six columns, titled (from left to right): (1) “Name of Student”; (2) “Student ID”; (3) “Start Time”; (4) “Student Signature (Start of Session)”; (5) “End Time”; and (6) “Student Signature (End of Session).”

39. The “Name of Student” column contained the pre-printed name of each student who was enrolled in the class. Similarly, the “Student ID” column contained the pre-printed identification number that the NYC DOE had assigned to each student.

40. To the right of each student’s pre-printed name and identification number were the columns titled (from left to right): “Start Time”; “Student Signature (Start of Session)”; “End Time”; “Student Signature (End of Session)”; and “Date.”

“End Time”; and “Student Signature (End of Session).” If a student was present for class, at the beginning of the class, the student was required to sign his or her name in the column titled, “Student Signature (Start of Session)”; at the end of the class, the student was required to sign his or her name in the column titled, “Student Signature (End of Session).” This requirement was memorialized in the contract between each SES provider and the NYC DOE. If a student arrived late to class, the student was required to sign in as soon as he or she arrived. Similarly, if a student left class early, the student was required to sign out when he or she left class. In addition, the student or the SES teacher was required to write the time that the student arrived at class and left class, respectively, in the columns titled, “Start Time” and “End Time.”

41. The third and final section of the Daily Student Attendance Sheet — located at the bottom of each Sheet — was labeled, “Instructor & Supervisor Certification.” This section contained the following language:

I hereby certify that I have provided supplemental educational services to the above named students on the date indicated herein. I understand that when completed and filed, this form becomes a record of the Department of Education and that any material misrepresentations may subject me to criminal, civil and/or administrative action.

42. Immediately below the above-quoted language on the Daily Student Attendance Sheet, there were two boxes in which the SES teacher and the teacher’s supervisor — both of whom were employees of the SES provider — were required to sign their names. By signing their names in these boxes, the teacher and the teacher’s supervisor certified that tutoring services had been provided to the students whose signatures appeared in the “Student Signature (Start of Session)” and “Student Signature (End of Session)” columns. The teacher and the teacher’s supervisor also certified to the accuracy of the reported “Start Time” and “End Time” for these students.

43. Each completed Daily Student Attendance Sheet was a record of the NYC DOE and was required to be retained in hard copy by the SES provider for a period of at least six years.

## 2. Billing Certifications

44. During the Covered Period, SES providers serving students in New York City were required to use an internet application maintained by the NYC DOE to submit monthly invoices to the NYC DOE for the tutoring services they provided. The internet application was called "Vendor Portal."

45. For each billing period, SES providers were required to input the total time of each student's attendance into Vendor Portal. The NYC DOE treated this attendance data as an invoice, and made payments to SES providers based on the invoices they submitted using Vendor Portal.

46. Before an SES provider could submit an invoice to the NYC DOE using Vendor Portal, a representative of the SES provider had to click a "certification" icon. After the representative clicked the certification icon, a screen appeared with the following language:

This is to certify:

- (i) The below named individual is a duly authorized representative ("Representative") of [the SES provider] and is authorized to submit information to the (DoE) and to make certifications and representations on the Agency's behalf;
- (ii) the Representative is aware that this invoice, when submitted to the DoE, becomes a business record of the Department of Education (DoE) and that the DoE relies upon the information contained therein to compute payments to the Agency;
- (iii) the Agency and the Representative individually are subject to legal action, including criminal prosecution, if false information is submitted knowingly to the DoE; and [sic]

- (iv) based upon the books and records of the Agency, the information in this invoice submitted to the DoE is true and accurate and may be relied upon by the DoE to the same extent as an invoice submitted via hardcopy document and signed by an authorized representative of the Agency. [sic]
- (v) a hard copy Attendance/Progress report has been or will be sent to the parent of each student for whom payment is sought; that [sic] the provider has on file, and available for inspection by DoE, as [sic] signed Attendance/Progress report; [and]
- (vi) a parent's failure to sign the Attendance/Progress report was not a result of the parent's communication to the provider that the attendance/Progress report is not accurate.

47. Immediately below the above-quoted language on the certification screen, there were four boxes. The first box was labeled, "Title"; the second box was labeled, "Last Name"; the third box was labeled, "First Initial"; and the fourth box was labeled, "I agree to the above terms." The representative was required to type his or her title, last name, and first initial in the first three boxes, and place a check in the last box. An SES provider could not submit an invoice to the NYC DOE using Vendor Portal — and thus could not get paid — unless and until one of its representatives had completed the certification screen. A screenshot of the certification screen from Vendor Portal is attached to this complaint as Exhibit B.

## **II. ACADEMIC ADVANTAGE'S NEW YORK CITY SES PROGRAM**

### **A. Academic Advantage's Provision of SES Tutoring in New York City**

48. Academic Advantage was authorized to provide SES tutoring in New York City throughout the Covered Period (*i.e.*, during the 2010/2011 and 2011/2012 academic years). During the Covered Period, Academic Advantage was authorized to provide group tutoring (*i.e.*, tutoring to multiple students at the same time by one teacher), as well as one-on-one tutoring (*i.e.*, one teacher tutoring one student).



49. Academic Advantage was authorized to provide group tutoring after school at specific New York City public schools. Academic Advantage was authorized to provide one-on-one tutoring after school both at specific New York City public schools and at individual student's homes.

50. On a given day, Academic Advantage purportedly conducted multiple group tutoring classes at each school at which it was authorized to provide SES tutoring.

51. On September 1, 2010, Academic Advantage entered into a contract with the NYC DOE to provide SES tutoring ("September 2010 contract"). This contract was in effect throughout the Covered Period. Pursuant to the September 2010 contract, Academic Advantage was paid approximately \$38 per student per hour for group tutoring, and \$73 per student per hour for one-on-one tutoring.

52. The September 2010 contract contained additional certifications — beyond the above-described daily student attendance and billing certifications — including the following:

By signing the foregoing agreement Contractor [Academic Advantage] certifies that any ensuing program and activity resulting from this Agreement will be conducted in accordance with . . . all applicable federal and state laws and regulations.

\* \* \*

The Contractor further certifies that all documentation submitted pursuant to this Agreement contains truthful and accurate information.

53. The September 2010 contract also required Academic Advantage to have each student who attended its SES classes sign a Daily Student Attendance Sheet at the start and conclusion of each tutoring class, and stated that Academic Advantage was to be paid only for the tutoring services that it actually provided to students. The September 2010 contract provided:

Contractor shall use only NYCDOE attendance sheets for the purposes of recording attendance. . . . In addition, attendance sheets shall . . . indicate the start time and end time of each Student's tutoring session and must be signed by the Student at the start and conclusion of each session . . . .

\* \* \*

Billing for Services shall be in the form of detailed itemized invoices submitted by the Contractor on a monthly basis, using the web-based electronic system. . . . In addition, the Contractor certifies that any provision in this Agreement notwithstanding, the Board shall only make payment for Services actually provided to Students by the Contractor, for the number of hours of Services actually provided to Students by the Contractor, and only upon the submission of substantiated invoices in a form satisfactory to the Board.

**B. Academic Advantage's Organizational Structure**

54. Throughout the Covered Period, Academic Advantage assigned one "Site Manager" and one or more "Program Aides" to each New York City school at which it provided group and/or one-on-one tutoring. All of the Site Managers and Program Aides were employees of Academic Advantage.

55. The Program Aide(s) assigned to a school reported to the Site Manager for that school.

56. Each Site Manager was responsible for managing Academic Advantage's SES program at the school(s) to which he or she was assigned. Among the Site Manager's responsibilities was ensuring that a Daily Student Attendance Sheet was completed for each SES class at his or her school(s). After each day's SES classes, the Site Manager was required to collect the Daily Student Attendance Sheets from the SES teachers and sign the supervisor certification on each Sheet. The next day, the Site Manager was required to deliver the completed hard-copy Daily Student Attendance Sheets to Academic Advantage's New York City office.

57. Each Site Manager reported to an Academic Advantage employee called a "Director." Each Director, in turn, supervised a group of Site Managers, and thus supervised Academic Advantage's SES program at a number of New York City schools.

58. The Directors reported to the Executive Director of Academic Advantage's New York City SES division. This individual was in charge of Academic Advantage's New York City SES program.

**C. Many Employees of Academic Advantage Had Previously Engaged in Fraud While Working for Princeton Review**

59. Prior to the Covered Period, a substantial percentage of Academic Advantage's SES workforce had engaged in fraudulent conduct while working for Princeton Review.

60. From the 2006/2007 academic year through the 2009/2010 academic year, Princeton Review provided SES tutoring in New York City. Princeton Review's organizational structure was identical to that of Academic Advantage. Site Managers and Program Aides oversaw Princeton Review's SES program at particular schools and reported to Directors. Directors, in turn, reported to the Executive Director in charge of Princeton Review's New York City SES program.

61. In April 2012, the Government filed a civil fraud suit against Princeton Review, alleging, among other things, that: (a) from the 2006/2007 academic year through the 2009/2010 academic year, Site Managers at Princeton Review had routinely falsified entries on the company's Daily Student Attendance Sheets to make it appear that more students had attended Princeton Review's SES classes than had, in fact, attended; and, as a result, (b) Princeton Review had obtained federal funds for tutoring services that it never provided.

62. In December 2012, Princeton Review (which in May 2012 had changed its name to Education Holdings) entered into a settlement agreement with the Government in which

Princeton Review admitted that it had “engaged in fraudulent and wrongful conduct in connection with its New York City SES program,” and agreed to pay the Government up to \$10 million in damages. In the settlement agreement, Princeton Review also admitted that:

- “Many of the individuals who were responsible for the day-to-day operations of Princeton Review’s SES tutoring program (‘Site Managers’) routinely falsified entries on daily student attendance sheets, including by forging student signatures, to make it appear that more students had attended Princeton Review’s SES tutoring classes than had actually attended”;
- “Princeton Review’s daily student attendance sheets from the Covered Period are replete with falsifications, and report that many more students had attended Princeton Review’s SES tutoring classes than had actually attended”; and
- “Princeton Review used the above-referenced falsified daily student attendance sheets to prepare invoices that it then submitted in connection with its SES tutoring program. Each of these invoices falsely certified that the information on the invoice was ‘true and accurate.’ These invoices ultimately resulted in the payment to Princeton Review of millions of dollars in federal funds for thousands of hours of SES tutoring that Princeton Review never in fact provided.”

63. After the 2009/2010 academic year, Princeton Review closed its New York City SES division and terminated its New York City SES workforce. Shortly before the 2010/2011 academic year, Academic Advantage hired many of these former Princeton Review employees, including Site Managers, Program Aides and Directors. Many of these former Princeton Review employees had falsified student attendance records, or had prompted others to falsify student attendance records, while at Princeton Review. Guzman, Mercedes, Jones, Dalmasi, Osorio and Young are among the former employees of Princeton Review that were hired by Academic Advantage.

64. In addition to hiring former Site Managers, Program Aides and Directors of Princeton Review, Academic Advantage also hired Princeton Review’s former Executive Director, and immediately made him the Executive Director in charge of its New York City SES program.

65. After absorbing a substantial portion of Princeton Review's former SES workforce, Academic Advantage's billings to the NYC DOE skyrocketed. Prior to the Covered Period, Academic Advantage had provided limited SES tutoring in New York City. For the 2008/2009 and 2009/2010 academic years, Academic Advantage billed and was paid by the NYC DOE approximately \$680,000 and \$1.2 million, respectively. By contrast, for the 2010/2011 and 2011/2012 academic years, Academic Advantage billed and was paid approximately \$4.5 million and \$9.5 million, respectively.

### III. ACADEMIC ADVANTAGE'S FALSE CERTIFICATIONS

66. For each invoice that Academic Advantage submitted to the NYC DOE during the Covered Period, Academic Advantage certified that the invoice was "true and accurate" (*i.e.*, that Academic Advantage had provided tutoring services sufficient to justify the billed amount). Many of these certifications, however, were false. Site Managers and Program Aides at Academic Advantage routinely falsified entries on Daily Student Attendance Sheets to make it appear that more students had attended Academic Advantage's SES classes than had, in fact, attended. These false entries ultimately resulted in Academic Advantage submitting false invoices to the NYC DOE, and the NYC DOE paying Academic Advantage federal money for SES tutoring that Academic Advantage never provided.

#### A. Many Site Managers and Program Aides Routinely Falsified Entries on Daily Student Attendance Sheets

67. During the Covered Period, many Site Managers routinely forged student signatures on Daily Student Attendance Sheets to increase their daily attendance numbers. They did this because they were pressured by Directors to maintain high daily student attendance.

68. During the Covered Period, Directors gave Site Managers daily goals for student attendance, and pressured the Site Managers to meet the goals, including by threatening them

with termination or lower pay if they failed to meet the goals. The Executive Director similarly pressured Site Managers to meet their daily goals, including by threatening them with termination. The daily goals were unreasonable, frequently requiring Site Managers to report that 70% or more of the total number of enrolled students had attended SES tutoring classes.

69. Many Site Managers responded to this pressure by forging student signatures on Daily Student Attendance Sheets to make it appear that more students had been tutored than had, in fact, been tutored. Some Site Managers also directed their Program Aides to forge student signatures.

70. A number of Site Managers forged student signatures on Daily Student Attendance Sheets in Academic Advantage's New York City office, in plain view of other Academic Advantage employees. Guzman, Mercedes, Hernandez, Joyner and McKay were among the Site Managers whom other Academic Advantage employees witnessed forging student signatures in Academic Advantage's New York City office.

71. In addition to forging student signatures on Daily Student Attendance Sheets, some Site Managers and Program Aides directed students to sign Daily Student Attendance Sheets for SES tutoring classes that the Site Managers and Program Aides knew the students either had not attended or would not be attending.

72. Furthermore, some Site Managers falsified and/or were aware that SES teachers were falsifying entries on Daily Student Attendance Sheets to make it appear that students who had been tutored as a group had instead been tutored one-on-one, causing the NYC DOE to pay the higher, one-on-one rate for this tutoring.

73. Academic Advantage based its monthly invoices to the NYC DOE on the information reflected on the Daily Student Attendance Sheets. Academic Advantage submitted



the attendance information from the Daily Student Attendance Sheets to the NYC DOE using Vendor Portal. The NYC DOE, in turn, paid Academic Advantage based on the attendance information reflected on the Daily Student Attendance Sheets. Through the false entries on the Daily Student Attendance Sheets, Academic Advantage overbilled the NYC DOE and obtained federal money for SES tutoring to which it was not entitled.

1. *Edwin Guzman*

74. Throughout the Covered Period, Guzman was employed by Academic Advantage as a Site Manager.

75. During the 2011/2012 academic year, Guzman consistently forged and caused his Program Aides to forge student signatures on Daily Student Attendance Sheets for multiple schools, including Junior High School (“J.H.S.”) 98 in the Bronx, New York.

76. On most days, Guzman reported attendance at J.H.S. 98 of approximately 50 students and at times as many as 78 students. On a handful of days, however, there was a significant drop in Guzman’s reported attendance — he reported attendance of only approximately 30 students. On two of these days, Guzman’s Director, referred to herein as “Director 1,”<sup>1</sup> asked Guzman why his reported attendance had dropped. In response, Guzman stated, in substance, “Sorry, DOE auditors are here.” During the 2011/2012 academic year, the NYC DOE periodically sent auditors to visit some of the schools at which SES tutoring was supposed to be taking place. Such visits occurred after school, during the time when SES tutoring was scheduled to take place. Director 1 interpreted Guzman’s above-referenced

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<sup>1</sup> Director 1 was a Director at Academic Advantage during the 2010/2011 and 2011/2012 academic years. Director 1 has pleaded guilty to charges of federal program fraud and conspiring to defraud a federal program in U.S. District Court in the Southern District of New York. Director 1 has provided information to the Government with the hope of receiving a reduced sentence.

response to mean that he had been forging student signatures, but had not forged any signatures on the days when DOE auditors had visited the school.

77. During the 2011/2012 academic year, Director 1 visited J.H.S. 98 and observed that there were significantly fewer students present for tutoring than Guzman had been reporting as present.

78. In addition, during the 2011/2012 academic year, another employee of Academic Advantage — an individual who performed administrative tasks for the company (“Administrative Officer”) — observed Guzman forging student signatures on a Daily Student Attendance Sheet while the Administrative Officer and Guzman were in Academic Advantage’s New York City office. Shortly thereafter (but also during the 2011/2012 academic year), the Administrative Officer informed Director 1 that the Administrative Officer had observed Guzman forging student signatures.

79. After the 2011/2012 academic year, during a conversation between Guzman and Director 1 that occurred on or around October 18, 2012, Guzman acknowledged that students who had not received SES tutoring at J.H.S. 98 had nevertheless signed Daily Student Attendance Sheets to make it appear that they had, in fact, received SES tutoring.

80. According to NYC DOE records, NYC DOE auditors visited J.H.S. 98 on three dates during the 2011/2012 academic year: December 12, 2011, January 18, 2012, and February 7, 2012. For each of those dates, Academic Advantage billed the NYC DOE for 31 students, 30 students, and 30 students, respectively. For each of the other 23 dates from December 2011 through February 2012 for which Academic Advantage billed the NYC DOE for after-school tutoring at J.H.S. 98, it billed for no fewer than 47 students, and for as many as 51 students.

81. Moreover, according to NYC DOE records, during the 2011/2012 academic year, there were at least 238 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at J.H.S. 98.

82. On or about January 9, 2014, Guzman pleaded guilty to charges of conspiring to make false statements in connection with the misconduct identified herein in U.S. District Court in the Southern District of New York.

2. *Luz Mercedes*

83. Throughout the Covered Period, Mercedes was employed by Academic Advantage as a Site Manager.

84. Prior to the Covered Period, Mercedes was employed by Princeton Review as a Site Manager. While at Princeton Review, Mercedes reported to Director 1 (who was also a Director at Princeton Review). While Mercedes and Director 1 were working at Princeton Review, Mercedes told Director 1 that certain SES teachers at her schools were having students sign Daily Student Attendance Sheets for SES classes that the students either were not going to attend or had not attended. After Mercedes and Director 1 became employed by Academic Advantage, Mercedes told Director 1 that she was giving certain SES teachers at one of her schools (J.H.S. 143 in Manhattan, New York) multiple Daily Student Attendance Sheets at one time so that the SES teachers could have students who attended SES tutoring on a given day sign Sheets both for that day and for future sessions. Mercedes also told Director 1 that students who were supposed to be receiving one-on-one tutoring at J.H.S. 143 were being tutored in groups, but that the tutoring was being reported as one-on-one.

85. While Mercedes and Director 1 were working at Academic Advantage, Director 1 learned that the Government was investigating Princeton Review, and, consequently, Director 1

advised Mercedes to be careful and to stop falsifying student attendance records. Mercedes responded that she needed to keep falsifying to avoid having her hours (and, thus, her pay) cut.

86. Throughout the 2010/2011 and 2011/2012 academic years, Mercedes routinely forged student signatures on Daily Student Attendance Sheets for multiple schools, including J.H.S. 143. On at least two occasions during the 2011/2012 academic year, the Administrative Officer observed Mercedes forging student signatures on Daily Student Attendance Sheets in Academic Advantage's New York City office.

87. According to NYC DOE records, J.H.S. 143 was one of the schools that NYC DOE auditors visited during the 2011/2012 academic year. NYC DOE auditors visited J.H.S. 143 on three dates: December 21, 2011, January 3, 2012, and January 25, 2012. For each of those dates, Academic Advantage billed the NYC DOE for 69 students, 65 students, and 61 students, respectively. For each of the other 12 dates from December 2011 through January 2012 for which Academic Advantage billed the NYCDOE for after-school tutoring at J.H.S. 143, it billed for no fewer than 86 students, and for as many as 91 students.

88. Moreover, according to NYC DOE records, during the 2011/2012 academic year, there were at least 139 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at J.H.S. 143.

89. In addition to engaging in fraud herself, Mercedes advised at least one other Site Manager to participate in the fraudulent scheme. Specifically, Mercedes told Hernandez that it was necessary to forge student signatures on Daily Student Attendance Sheets. Mercedes also told Hernandez to keep copies of old Daily Student Attendance Sheets to use as templates in forging student signatures. As set forth below, Hernandez followed Mercedes' instruction and

routinely forged, and also directed Program Aides to forge, student signatures on Daily Student Attendance Sheets.

90. On or about February 6, 2014, Mercedes pleaded guilty to charges of conspiring to make false statements and making false statements in connection with the misconduct identified herein in U.S. District Court in the Southern District of New York.

3. *Arlette Hernandez*

91. Hernandez was employed by Academic Advantage as a Site Manager during the 2011/2012 academic year.

92. During the 2011/2012 academic year, Hernandez routinely forged, and caused Program Aides to forge, student signatures on Daily Student Attendance Sheets for three schools, J.H.S. 145, Public School ("P.S.") 214, and Intermediate School ("I.S.") 232, all of which are located in the Bronx, New York.

93. During the 2011/2012 academic year, at least two different employees of Academic Advantage observed Hernandez forging student signatures on Daily Student Attendance Sheets in Academic Advantage's New York City office. One of those employees was a Director ("Director 2").<sup>2</sup> Director 2 observed Hernandez forging student signatures while Hernandez was sitting at a table with Mercedes and another Site Manager. On another occasion, Director 2 observed Hernandez with a completed Daily Student Attendance Sheet for a tutoring session that had not yet taken place. Director 2 observed that the completed Daily Student Attendance Sheet was for a future date and had already been signed by students.

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<sup>2</sup> Director 2 was employed by Academic Advantage as a Director during the 2011/2012 academic year. Director 2 has pleaded guilty to charges of federal program fraud, conspiring to defraud a federal program, and making false statements in U.S. District Court in the Southern District of New York. Director 2 has provided information to the Government with the hope of receiving a reduced sentence.

94. On or about April 26, 2013, federal agents conducted a voluntary, non-custodial interview of Hernandez. During that interview, Hernandez admitted that, during the 2011/2012 academic year, she had forged student signatures and instructed Program Aides to forge student signatures on Daily Student Attendance Sheets. Hernandez also admitted that, on several occasions during the 2011/2012 academic year, shortly before the start of tutoring classes, she had reported to her Director that more students had shown up for the tutoring classes than were actually present, knowing that she would forge student signatures, or direct Program Aides to forge student signatures, to make up the difference.<sup>3</sup>

95. According to NYC DOE records, during the 2011/2012 academic year, one of the schools that NYC DOE auditors visited was I.S. 232, which, as set forth above, was managed by Hernandez. NYC DOE auditors visited I.S. 232 on two dates: December 22, 2011, and January 30, 2012. For those dates, Academic Advantage billed the NYC DOE for 76 students and 72 students, respectively. For each of the other 26 dates from December 2011 through January 2012 for which Academic Advantage billed the NYC DOE for after-school tutoring at I.S. 232, it billed for no fewer than 83 students, and for as many as 107 students.

96. Moreover, according to NYC DOE records, during the 2011/2012 academic year, there were at least 207 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at I.S. 232.

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<sup>3</sup> On or about April 27, 2013 (the day after Hernandez's above-referenced interview with federal agents), Hernandez telephoned one of the federal agents and claimed that she had been untruthful when, during the prior day's interview, she admitted to forging student signatures.



4. *Kristin Joyner*

97. Joyner was employed by Academic Advantage as a Site Manager during the 2011/2012 academic year.

98. During the 2011/2012 academic year, Joyner routinely forged student signatures on Daily Student Attendance Sheets for multiple schools, including P.S. 202 in Brooklyn, New York.

99. According to NYC DOE records, during the 2011/2012 academic year, there were at least 49 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at P.S. 202.

100. On at least one occasion during the 2011/2012 academic year, another Site Manager witnessed Joyner forging student signatures on Daily Student Attendance Sheets in Academic Advantage's New York City office.

101. On or about July 25, 2013, federal agents conducted a voluntary, non-custodial interview of Joyner. During that interview, Joyner admitted that, during the 2011/2012 academic year, he forged student signatures on Daily Student Attendance Sheets for two different schools.

5. *Nilsa Dalmasi*

102. Dalmasi was employed by Academic Advantage throughout the Covered Period, and worked as both a Program Aide and a Site Manager.

103. During the 2010/2011 and 2011/2012 academic years, Dalmasi routinely forged student signatures on Daily Student Attendance Sheets for multiple schools, including P.S. 189 in Manhattan, New York (while she was a Site Manager), and J.H.S. 145 in the Bronx, New York (while she was a Program Aide). While Dalmasi was a Program Aide at J.H.S. 145, she forged student signatures at the direction of Hernandez.

104. In addition to forging student signatures, Dalmasi also directed students whom she knew were not going to attend particular SES tutoring classes to sign Daily Student Attendance Sheets for those classes, to make it appear that they had attended the classes. Specifically, at the end of the regular school day, if students were not going to attend SES tutoring, Dalmasi sometimes instructed the students to sign Daily Student Attendance Sheets before they left school or went to other after-school activities. When Dalmasi was a Site Manager, she instructed her Program Aides to do this.

105. On or about June 21, 2013, federal agents conducted a voluntary, non-custodial interview of Dalmasi. During that interview, Dalmasi admitted that, while she was employed by Academic Advantage, she forged student signatures on Daily Student Attendance Sheets. Dalmasi also admitted that she: (a) directed students whom she knew were not going to attend particular SES classes to sign Daily Student Attendance Sheets for those classes; and (b) instructed Program Aides to engage in this same conduct.

106. During the 2011/2012 academic year, while working as a Site Manager at P.S. 189, Dalmasi reported to Director 2. Each day, Dalmasi sent Director 2 a text message reporting the total number of students who had shown up for tutoring classes at P.S. 189. If that number was below Dalmasi's daily attendance goal, Director 2 often sent Dalmasi a text message stating, in substance, such things as "get the additional students" and "find the additional students." Dalmasi responded to the text messages by reporting higher attendance figures — for that day's tutoring classes and/or for future classes. Director 2 attributed the increase in Dalmasi's reported attendance to Dalmasi forging student signatures on Daily Student Attendance Sheets.

107. Prior to working at Academic Advantage, both Dalmasi and Director 2 had worked at Princeton Review (Dalmasi as a Program Aide, and Director 2 as a Site Manager and, later, a Director). It was widely understood at Princeton Review that receiving a text message like “get the additional students” or “find the additional students” in response to a report of student attendance was a tacit instruction to forge student signatures. While working at Princeton Review, Director 2 received similar text messages from his/her Director (when Director 2 was a Site Manager) and interpreted them as an instruction to forge, and sent similar text messages to his/her Site Managers (when Director 2 was a Director) and understood that they interpreted the text messages as an instruction to forge. When Director 2 sent Dalmasi the above-referenced text messages, Director 2 knew that Dalmasi had previously worked at Princeton Review and expected that Dalmasi would interpret the text messages as an instruction to forge.

6. *Rayvon Jones*

108. Jones was employed by Academic Advantage as a Site Manager during the 2010/2011 academic year.

109. During the 2010/2011 academic year, Jones forged student signatures on Daily Student Attendance Sheets for two schools, J.H.S. 166 and Middle School (“M.S.”) 267, both of which are located in Brooklyn, New York.

110. According to NYC DOE records, during the 2010/2011 academic year, there were at least 466 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at J.H.S. 166 and M.S. 267.

111. During the 2010/2011 academic year, Jones discussed forging student signatures with another Site Manager (“Site Manager 1”). Jones advised Site Manager 1 that, to meet

his/her daily attendance goals, Site Manager 1 might need to forge student signatures on Daily Student Attendance Sheets.

112. On or about June 24, 2013, federal agents conducted a voluntary, non-custodial interview of Jones. During that interview, Jones admitted that, during the 2010/2011 academic year, he forged student signatures on Daily Student Attendance Sheets.

7. *Alicia McKay*

113. McKay was employed by Academic Advantage throughout the Covered Period. During the 2010/2011 academic year, McKay was a Program Aide, and during the 2011/2012 academic year, she was a Site Manager.

114. During the 2011/2012 academic year, McKay routinely forged student signatures on Daily Student Attendance Sheets for at least one school, P.S. 328 in Brooklyn, New York.

115. According to NYC DOE records, during the 2011/2012 academic year, there were at least 64 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at P.S. 328.

116. During the 2011/2012 academic year, on multiple occasions, another Site Manager witnessed McKay forging student signatures on Daily Student Attendance Sheets in Academic Advantage's New York City office.

117. On or about January 21, 2014, federal agents conducted a voluntary, non-custodial interview of McKay. During that interview, McKay admitted that, during the 2011/2012 academic year, she forged student signatures on Daily Student Attendance Sheets.

8. *Teresa Osorio*

118. Osorio was employed by Academic Advantage as a Site Manager during the 2010/2011 academic year and a portion of the 2011/2012 academic year (*i.e.*, through January 5, 2012).

119. While employed by Academic Advantage, Osorio forged and/or instructed Program Aides to forge student signatures on Daily Student Attendance Sheets for multiple schools, including P.S. 265 and P.S. 463, both of which are located in Brooklyn, New York.

120. Osorio was the Site Manager for P.S. 265 during the 2010/2011 academic year, and she was the Site Manager for P.S. 463 during the 2010/2011 academic year and a portion of the 2011/2012 academic year (*i.e.*, through January 5, 2012). According to NYC DOE records, during the 2010/2011 academic year, there were at least 157 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at P.S. 265. Similarly, during the time period when Osorio was the Site Manager for P.S. 463, there were at least 53 instances where students were absent from school for the full school day on dates they were reported as having attended after-school tutoring at P.S. 463.

121. Moreover, the Daily Student Attendance Sheets for P.S. 265 and P.S. 463 from the time period when Osorio was the Site Manager for those schools contain student signatures that, on their face, appear to be forged. For example, there are numerous Daily Student Attendance Sheets where the same students' alleged signatures change significantly in appearance from one tutoring session to another. There are also instances where the purported signatures of two or more students on the same Daily Student Attendance Sheet appear to have been written by the same person — the signatures are written in the same handwriting and look

different from the signatures for the same students on other Daily Student Attendance Sheets. In addition, there is at least one instance where a student's name is spelled incorrectly. Specifically, there is a Daily Student Attendance Sheet for P.S. 463 from December 8, 2011, on which the signatures of three different students all appear to have been written by the same person. In one of those signatures, the first name "Matthew" is spelled "Mathew" with one "t." However, in the column with the student's pre-printed name, the first name is spelled "Matthew" with a second "t." On the Daily Student Attendance Sheets for December 7, 2011, and December 15, 2011, the first name is signed "Matthew" with a second "t" (and the signatures look different from how the signature appears on December 8, 2011). Osorio signed the supervisor certifications on all of the above-referenced Daily Student Attendance Sheets.

122. On or about January 15, 2014, federal agents conducted a voluntary, non-custodial interview of Osorio. During that interview, when asked if any falsifications of records had taken place when she was a Site Manager, Osorio shrugged her shoulders and stated, in substance, "it's possible." When asked if she had participated in the falsification of attendance records, Osorio stated that she did not want to get in trouble and refused to answer the question.

9. *Ayesha Young*

123. Young was employed by Academic Advantage as a Director during the 2010/2011 academic year.

124. Prior to becoming employed by Academic Advantage, Young worked at Princeton Review and held a number of positions, including Site Manager.

125. While Young was a Site Manager at Princeton Review, she supervised Princeton Review's SES classes at, among other schools, P.S. 328 in Brooklyn, New York. While managing Princeton Review's SES program at P.S. 328, Young routinely forged and/or caused



others to forge student signatures on Daily Student Attendance Sheets. Indeed, Princeton Review's Daily Student Attendance Sheets for P.S. 328 from the 2007/2008 academic year, when Young was the Site Manager for that school, contain numerous student signatures that appear to have been forged. These Daily Student Attendance Sheets are identical to the ones used by Academic Advantage during the Covered Period, except they contain one additional column: to the left of each student's pre-printed name, there is a column titled, "Present," in which there are two "Scantron" bubbles: one labeled "Y" and the other labeled "N." If a student was present for class, the "Y" bubble was to be filled in; if a student was absent from class, the "N" bubble was to be filled in. A copy of a redacted Daily Student Attendance Sheet for P.S. 328 from the 2007/2008 academic year is attached to this complaint as Exhibit C.

126. During the 2007/2008 academic year, Young signed the supervisor certification on more than 100 Daily Student Attendance Sheets for P.S. 328 where: (a) the "N" Scantron bubble was initially filled in for a student (indicating that the student was absent from the SES class); and (b) the "N" bubble was subsequently erased and the "Y" bubble was then filled in (indicating that the student was present for the SES class). For many of these entries where the "N" bubble was erased and changed to "Y," the students' signatures look very different from the signatures that appear for the same students on other Daily Student Attendance Sheets where the "N" bubbles were not erased and changed to "Y." Moreover, for at least one of these entries, the student's purported signature contains a misspelling on a day when the "N" bubble was erased and changed to "Y."

127. After Young became employed by Academic Advantage, she continued to engage in improper conduct. During the 2010/2011 academic year, Director 1 observed Young sign a parent's name on a student enrollment form in Academic Advantage's New York City office.

Director 1 also observed Young erase something on a Daily Student Attendance Sheet and then, a short time later, sign a student's name either on that same Daily Student Attendance Sheet or a different Daily Student Attendance Sheet.

128. During the 2010/2011 academic year, Young signed the supervisor certifications on Daily Student Attendance Sheets for one school, P.S. 375 in Brooklyn, New York. Several of those Daily Student Attendance Sheets contain student signatures that change significantly in appearance from one tutoring session to another. In addition, there are multiple instances where a student's name is spelled incorrectly. For example, for one particular student, the student's name was spelled incorrectly in the pre-printed section of the Daily Student Attendance Sheets. When this student signed her name, however, the student spelled her name correctly (and differently from how it was pre-printed). Yet, on two Daily Student Attendance Sheets (dated May 31, 2011, and June 1, 2011), the student's signature looks different from how it appears on other Sheets, and on those two Sheets, the last name is spelled incorrectly (*i.e.*, it repeats the misspelling that appears in the pre-printed section of the Daily Student Attendance Sheets).

129. Moreover, during the 2010/2011 academic year, Young knew, deliberately ignored, or recklessly disregarded that at least one of the Site Managers she supervised, Site Manager 1, was forging and/or instructing others to forge student signatures on Daily Student Attendance Sheets. During the 2010/2011 academic year, Site Manager 1 was assigned to oversee Academic Advantage's SES program at multiple schools, including a school in Brooklyn, New York ("School 1"). Site Manager 1 initially was not meeting his/her daily attendance goals for School 1. In response, Young yelled at Site Manager 1 and threatened to terminate him/her. After a number of tutoring dates, Young met with Site Manager 1 and told Site Manager 1 that he/she had to start meeting his/her goals and that reporting anything less

would be unacceptable. Young stated that she did not care how Site Manager 1 met his/her goals, but that he/she had to meet the goals and there were to be no excuses. Young further stated that when Site Manager 1 reported student attendance each day, it had to meet Site Manager 1's goal for that day. After this conversation, Site Manager 1: (a) regularly forged student signatures on Daily Student Attendance Sheets for School 1; (b) regularly instructed Program Aides to forge student signatures on Daily Student Attendance Sheets for School 1; and (c) began reporting consistently higher attendance for tutoring sessions at School 1. Each day, Site Manager 1 texted Young his/her reported attendance figure for that day, and, therefore, Young was aware of the increase in Site Manager 1's reported attendance. Indeed, Young praised Site Manager 1 after Site Manager 1 began reporting higher attendance.

130. According to NYC DOE records, for the first 11 tutoring dates at School 1 during the 2010/2011 academic year, Site Manager 1 reported an average of 36 students per day. Thereafter, starting on March 7, 2011, there was a significant increase in Site Manager 1's reported daily student attendance figures. For the remaining 25 tutoring dates, Site Manager 1 reported an average of 56.6 students per day.

131. During the 2010/2011 academic year, Site Manager 1 also supervised one-on-one tutoring at School 1. Part way through the year, it became clear that many of the one-on-one students were not on track to receive their maximum number of hours of tutoring. Accordingly, Young instructed Site Manager 1 to give the one-on-one SES teachers multiple Daily Student Attendance Sheets at one time so the SES teachers could have the students who attended tutoring on a given day sign Sheets both for that day and for future sessions. Site Manager 1 followed this instruction. As a result of this practice, Site Manager 1 submitted completed Daily Student

Attendance Sheets to Academic Advantage for certain one-on-one tutoring sessions that Site Manager 1 knew had not occurred.

**B. Academic Advantage's Daily Student Attendance Sheets Confirm the Fraud**

132. In addition to the above-referenced Daily Student Attendance Sheets for P.S. 265 and P.S. 463, numerous other Daily Student Attendance Sheets from the Covered Period contain falsifications that are apparent on the face of the documents.

133. For example, there are numerous Daily Student Attendance Sheets for J.H.S. 98, I.S. 232 and P.S. 45 (in Manhattan, New York) where the same students' alleged signatures change significantly in appearance from one tutoring session to another. The signatures that appear for these students on one day look very different from the signatures that appear for these same students on other days, including instances where sloppy handwriting all of a sudden becomes neat and distinctive ways of writing certain letters are not repeated.

134. There are also Daily Student Attendance Sheets where the purported signatures of two or more students on the same Sheet appear to have been written by the same person. For example, there are instances where the purported signatures of two or more students on the same Daily Student Attendance Sheet include the same distinctively-written letter(s).

135. Finally, there are Daily Student Attendance Sheets where students' purported signatures contain misspellings. For example, the same eighth-grade student purportedly signed his name on Daily Student Attendance Sheets for P.S. 45 on December 1, 2011, and December 8, 2011, yet spelled his name differently on both dates.

**C. The NYC DOE's Billing and Payment Records Further Confirm the Fraud**

136. As demonstrated by the chart below, during the 2010/2011 and 2011/2012 academic years, there were thousands of instances each year where Academic Advantage billed

and was paid by the NYC DOE for providing after-school tutoring to students at their schools on days when the students were absent from school for the entire school day.

<b>Academic Year</b>	<b>Number of Times Students Were Reported as Having Attended Academic Advantage's SES Classes on Days When the Students Were Absent From School</b>
2010/2011	2,863
2011/2012	2,946

**D. Managers Within Academic Advantage's New York City SES Division Knew About, Deliberately Ignored, or Recklessly Disregarded the Fraud**

1. *Directors Knew About, Deliberately Ignored, or Recklessly Disregarded the Fraud*

137. During the Covered Period, numerous Directors knew, deliberately ignored, or recklessly disregarded that Site Managers were falsifying student attendance records.

138. As set forth above, Director 1 knew and/or was presented with evidence that would have led a reasonable person to conclude that Guzman and Mercedes were falsifying and/or causing others to falsify student attendance records. For example, Guzman told Director 1 that his reported attendance had dropped significantly on two occasions because DOE auditors had visited his school, and Director 1 visited this school and observed that there were significantly fewer students present for tutoring than Guzman had been reporting. Mercedes, moreover, told Director 1 that SES teachers at her schools were engaging in improper conduct, including having students sign Daily Student Attendance Sheets for future sessions.

139. Similarly, Director 2 knew and/or suspected that Hernandez and Dalmasi were forging student signatures on Daily Student Attendance Sheets. With respect to Hernandez, Director 2 witnessed Hernandez forge student signatures, and also observed Hernandez with a completed Daily Student Attendance Sheet for a tutoring session that had not yet taken place. With respect to Dalmasi, Director 2 sent Dalmasi text messages that Director 2 expected Dalmasi



to interpret as an instruction to forge student signatures, and Director 2 attributed the subsequent increase in Dalmasi's reported attendance to Dalmasi forging student signatures.

140. As set forth above, Young — a Director during the 2010/2011 academic year — was seen signing a parent's name on a student enrollment form, and a student's name on a Daily Student Attendance Sheet. Moreover, Young knew, deliberately ignored, or recklessly disregarded that at least one of her Site Managers, Site Manager 1, was forging and/or causing others to forge student signatures on Daily Student Attendance Sheets. As discussed above, after Site Manager 1 had been failing to meet his/her attendance goals, Young met with Site Manager 1 and stated, among other things, that Young did not care how Site Manager 1 met his/her goals, but that he/she needed to meet them and there were to be no excuses. Young further stated that when Site Manager 1 reported student attendance each day, the number had to meet Site Manager 1's goal for that day. Thereafter, Site Manager 1 regularly forged and instructed Program Aides to forge student signatures, and began reporting consistently higher student attendance. Site Manager 1 also sent texts to Young each day reporting his/her attendance figures, so Young was aware of the increase in Site Manager 1's reported attendance.

141. Another individual who was employed as a Director during the 2010/2011 academic year ("Director 3") observed tutoring classes at P.S. 18 in the Bronx, New York, where a single SES teacher was tutoring multiple students at once, even though the students were supposed to be receiving one-on-one tutoring. Director 3 witnessed this occur on multiple occasions, and was aware that, each time, the Site Manager responsible for this school, Guzman, submitted attendance sheets reflecting that the students had received one-on-one tutoring.<sup>4</sup> As a

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<sup>4</sup> Guzman was supervised by Director 1 during the 2011/2012 academic year, but by Director 3 during the 2010/2011 academic year.



result, Academic Advantage billed and was paid by the NYC DOE the higher one-on-one tutoring rate for these students, even though the students had not received one-on-one tutoring.

2. *The Executive Director Knew About, Deliberately Ignored, or Recklessly Disregarded the Fraud*

142. During the Covered Period, the Executive Director also knew, deliberately ignored, or recklessly disregarded that Academic Advantage employees were falsifying student attendance records.

143. As an initial matter, the Executive Director threatened to terminate Site Managers if they did not report high attendance, and was aware that Directors were reinforcing this threat. On February 17, 2011, Director 1 sent an email to his/her Site Managers in which Director 1 wrote:

Before we go on the [winter] brake [sic] I want you all to take a close look at your attendance percentage and see where you are at!! You need to reflect on this and find a way coming back from the recess to improve. If your attendance percentage is below 70% [of your total enrolled students that] means that you have a lot of work to do. You should all be at 85% and no lees [sic]!! *I'm telling you this ahead of time because in the Spring per [the Executive Director] if you don't have a minimum of 70% attendance it wouldint [sic] make sense to have you run a program when we can have [a] lead aide do it!!* So with that being said I'm telling you use the break to reach out to parents and get those kids into program! *to ensure that you not only have a Spring program but also a 70% attendance average to keep your job.*

(Emphasis added.) Director 1 forwarded this email to the Executive Director on February 17, 2011.

144. The Executive Director was also aware that Directors were giving Site Managers daily attendance goals and requiring the Site Managers to report attendance figures that matched those goals. On May 1, 2011 (less than three months after Director 1 had sent the email referenced in the prior paragraph), Director 1 sent another email to his/her Site Managers in which Director 1 wrote:

There [sic] not much I can say about this! [Y]ou all know where your [sic] at. Since your attendance has not improve [sic] the least you can do is not allow it to drop!! With this said here are you goals for the week. Keep in mind that as students finish their hours you need to let go of teachers. *Here are your goals[,] make sure when you text me tomorrow the numbers below is what your [sic] giving me!!* [Y]ou have 24 hours to make this happen aside from having all the resources given from us to hit your goals!!

(Emphasis added.) Director 1 copied the Executive Director on this email.

145. The Executive Director also received reports suggesting that Site Managers and/or Program Aides were falsifying student attendance records. On March 21, 2011, the Executive Director sent an email to multiple Directors, including Director 3, in which the Executive Director asked for, among other things, “an update on if your schools have been hitting their attendance goals you have and if NO why not?” By email dated March 21, 2011, Director 3 responded as follows:

206x, 328k, 166k, 2k, 50k has [sic] not been hitting the attendance goals.  
206x – goes up and down.  
328k – *is good as long as their [sic] is no audit.*  
166k – hit the goal sometimes the percentage there is above 85 2k and 50k . . . .

(Emphasis added.) Director 3’s response that P.S. 328 “has not been hitting the attendance goals” but “is good as long as their [sic] is no audit” was an obvious red flag.

146. In addition, towards the end of the 2011/2012 academic year — shortly after the Government had sued Princeton Review — the Executive Director met with Director 1 and Director 2 to discuss the lawsuit. During that meeting, Director 1 commented to the Executive Director that he/she needed to be careful because everything that happened at Princeton Review was also happening at Academic Advantage, including the falsification of student attendance records. In response, the Executive Director stated, in substance, “The only person I’d be worried about is Luz [Mercedes].” Throughout her employment at Academic Advantage, neither the Executive Director nor any other manager ever asked Mercedes whether she was falsifying

student attendance records. An adequate investigation of Mercedes would have revealed that she was, in fact, falsifying student attendance records.

147. Moreover, the Executive Director violated the SES program rule prohibiting providers from possessing blank student enrollment forms. As set forth above, the NYC DOE's SES program guide prohibited providers from "[p]hotocopy[ing] or otherwise procur[ing] enrollment forms for distribution to parents, or [from] mak[ing] provider selection for parents." Notwithstanding this rule, the Executive Director improperly procured blank student enrollment forms and personally distributed them to Directors and Site Managers to use in enrolling students. At one point, the Executive Director commented to Director 1 that the forms had cost a lot of money.

148. An email exchange involving the Executive Director and other Academic Advantage managers, dated March 3, 2011, confirms that Academic Advantage had improperly procured and distributed blank student enrollment forms. The email exchange began with one manager reporting that he had received a call from the NYC DOE's SES Director stating that "she had received a complaint from one of the schools that [Academic Advantage] w[as] sending out NYC DOE enrollment forms to parents." In response, another manager confirmed that her staff had mailed out blank enrollment forms to parents. A third manager then asked the Executive Director whether "we should say [we] havnt [sic] done it for a while, or just let it die out?" The Executive Director responded, "Just let it die out. But we must refrain from this practice next year because *they are on to us now*. If it comes up again, our formal response should be that *we were unaware* and have taken corrective action to ensure it cannot happen." (Emphasis added.)

#### **IV. DEFENDANTS' ACTIONS CAUSED THE UNITED STATES SUBSTANTIAL LOSSES**

149. For the academic years 2010/2011 and 2011/2012, the NYC DOE paid Academic Advantage approximately \$14 million in federal funds to provide SES tutoring to students at underperforming New York City public schools.

150. The NYC DOE paid Academic Advantage approximately \$14 million based on invoices that Academic Advantage had submitted to the NYC DOE for that amount. In connection with each of those invoices, Academic Advantage certified that the information reflected on the invoice was "true and accurate."

151. Notwithstanding the above-referenced certifications, Academic Advantage did not provide tutoring services sufficient to justify the billed amounts. Rather, Academic Advantage's invoices incorrectly reported the number of hours of tutoring services that Academic Advantage had provided. As set forth above, many Site Managers and Program Aides routinely falsified entries on Daily Student Attendance Sheets to make it appear that students had attended Academic Advantage's SES classes when they had not. Academic Advantage based the invoices that it submitted to the NYC DOE on the attendance information reflected on its Daily Student Attendance Sheets. Accordingly, Academic Advantage routinely submitted false billing certifications to the NYC DOE.

152. Absent the above-referenced false billing certifications, Academic Advantage would not have been able to submit the false invoices to the NYC DOE, and the NYC DOE would not have paid Academic Advantage for tutoring services that Academic Advantage never provided.

**FIRST CLAIM**

**(Against All Defendants)**

**Violation of the False Claims Act**

**(31 U.S.C. § 3729(a)(1)(A))**

**The Submission of, or Causing the Submission of, False Claims**

153. The Government incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

154. The Government seeks relief against Defendants under Section 3729(a)(1)(A) of the FCA, 31 U.S.C. § 3729(a)(1)(A).

155. As set forth above, Defendants knowingly, or acting with deliberate ignorance and/or reckless disregard of the truth, presented and/or caused to be presented to the NYC DOE (*i.e.*, a sub-grantee receiving federal funds) false and fraudulent claims for payment or approval in connection with Academic Advantage's provision of SES tutoring. Specifically, Defendants presented, or caused Academic Advantage to present, false invoices to the NYC DOE for tutoring services that Academic Advantage never provided.

156. The NYC DOE paid Academic Advantage for providing tutoring services that Academic Advantage had not, in fact, provided because of Defendants' false claims.

157. By reason of Defendants' false claims, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

**SECOND CLAIM**

**(Against All Defendants)**

**Violation of the False Claims Act  
(31 U.S.C. § 3729(a)(1)(B))  
Use of False Statements**

158. The Government incorporates by reference paragraphs 1 through 152 as if fully set forth in this paragraph.

159. The Government seeks relief against Defendants under Section 3729(a)(1)(B) of the FCA, 31 U.S.C. § 3729(a)(1)(B).

160. As set forth above, Defendants knowingly, or acting with deliberate ignorance and/or reckless disregard of the truth, made, used or caused to be made or used false records and/or statements material to false or fraudulent claims in connection with Academic Advantage's provision of SES tutoring. Specifically, Defendants made, or caused Academic Advantage to make, false records and/or statements — in the form of false daily student attendance records, false billing invoices, and false certifications — that were material to Academic Advantage's claims for payment for SES tutoring services.

161. The NYC DOE paid Academic Advantage for providing tutoring services that Academic Advantage had not, in fact, provided because of Defendants' false records and/or statements.

162. By reason of Defendants' false records and/or statements, the Government has been damaged in a substantial amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.



**THIRD CLAIM**

**(Against Academic Advantage)**

**Unjust Enrichment**

163. The Government incorporates by reference paragraphs 1 through 152 as if fully set forth in this paragraph.

164. Academic Advantage submitted invoices to the NYC DOE, and in response was paid federal funds, for tutoring services that Academic Advantage never provided.

165. By reason of such payments, Academic Advantage was unjustly enriched. The circumstances of Academic Advantage's receipt of the above-referenced payments are such that in equity and good conscience Academic Advantage should not retain the payments, in an amount to be determined at trial.

**FOURTH CLAIM**

**(Against Academic Advantage)**

**Payment Under Mistake of Fact**

166. The Government incorporates by reference paragraphs 1 through 152 as if fully set forth in this paragraph.

167. The Government seeks relief against Academic Advantage to recover payments made under mistake of fact.

168. Academic Advantage submitted invoices to the NYC DOE, and in response was paid federal funds, for tutoring services that Academic Advantage never provided.

169. The NYC DOE made payments to Academic Advantage, using federal funds, under the mistaken belief that Academic Advantage had provided tutoring services sufficient to justify the payments.

170. By reason of these payments, the Government has been damaged in a substantial amount to be determined at trial.

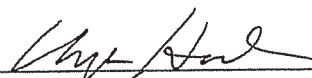
WHEREFORE, the Government respectfully requests that judgment be entered in its favor and against Defendants as follows:

- a. For treble the Government's damages for payments made to Academic Advantage for tutoring services that Academic Advantage did not, in fact, provide, in an amount to be determined at trial;
- b. For such civil penalties as are required by law;
- c. For costs, pursuant to 31 U.S.C. § 3729(a); and
- d. For such further relief as the Court deems proper.

Dated: New York, New York  
March 11, 2014

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
Attorney for the United States

BY:

  
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# Exhibit A



# Exhibit B

# Invoice Certification

BATCH ID: 22 | STATUS: SUBMITTED

### Invoice Details

NOTE: Only accepted maximum service hours will be paid for.

Provider ID : 60	Famis Vendor ID : 113316253	Provider Name: TEST VENDOR
Invoice Number : NCLB12JAN0600001	Total Students : 1	Total Hours : 16.00
Cost before facility charge : \$704.00	Facility charge : \$63.36	Total payment due : \$640.64

### Certify

This is to certify

- (i) The below named individual is a duly authorized representative of "Representative" of " " and is authorized to submit information to the (DoE) and to make certifications and representations on the Agency's behalf;
- (ii) the Representative is aware that this invoice when submitted to the DoE becomes a business record of the Department of Education (DoE) and that the DoE relies upon the information contained therein to compute payments to the Agency;
- (iii) the Agency and the Representative individually are subject to legal action, including criminal prosecution, if false information is submitted knowingly to the DOE; and
- (iv) based upon the books and records of the Agency, the information in this invoice submitted to the DoE is true and accurate and may be relied upon by the DoE to the same extent as an invoice submitted via hardcopy document and signed by an authorized representative of the Agency.
- (v) a hard copy Attendance/Progress report has been or will be sent to the parent of each student for whom payment is sought that the provider has on file, and available for inspection by DOE, as signed Attendance/Progress report.

(vi) a parent's failure to sign the Attendance/Progress report was not a result of the parent's communication to the provider that the attendance/progress report is not accurate.

The DOE will not approve any invoice for hours that exceed the maximum allowable as per the Agency's contract.

Title:	<input type="text"/>
Last Name:	<input type="text"/>
First Initial:	<input type="text"/>

I agree to the above terms



# Exhibit C

Session Information		Provider Name		Prov ID	
Date of Session	Location of Instruction	The Princeton Review		019	
05/03/2008	SUNSHINE E.S.				
Attendance Group Name		Program Service Name	Serv ID	Session Start Time	Session End Time
SES PS328KS-FA07 4		Reading/math/Spoken	09	9:15AM	12:15PM
Supervisor Information		Student Signature (Start of Session)		Student Signature (End of Session)	
Present	Name of Student	Student ID	Start Time	End Time	
<input type="checkbox"/>			9:15	12:15	
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>			9:15	12:15	
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<input type="checkbox"/>					
<p>Instructor &amp; Supervisor Certification                      I hereby certify that I have provided supplemental educational services to the above student on the date indicated herein. I understand that when completed and filed, this form requires a portion of the Department of Education and that appropriate steps or action may subsequently be required for administrative purposes.</p>					
Instructor Name		Instructor Signature			
Supervisor Name		Supervisor Signature			

Session Number: 23      Class Number: 4      Course ID: 070801004