

PREET BHARARA
United States Attorney for the
Southern District of New York
By: CHRISTOPHER B. HARWOOD
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2728
Facsimile: (212) 637-2786
Email: christopher.harwood@usdoj.gov

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

-----X
THE UNITED STATES OF AMERICA, ex rel. :
STEVEN CABALLERO AND :
CARMEN SKRINE, :
:

Plaintiffs/Relators, :

v. :

TESTQUEST, INC., THE CITY OF NEW YORK, :
NEW YORK CITY DEPARTMENT OF :
EDUCATION, MTL CONSULTANTS, :
TIFFANY HOTT, in her individual and official :
capacity, and MICHAEL LOGAN, in his :
individual and official capacity, :
:

Defendants. :
-----X

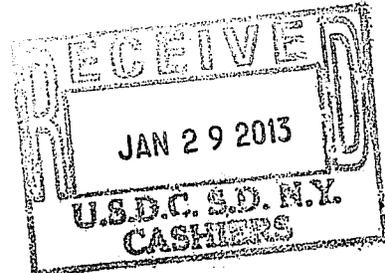
UNITED STATES OF AMERICA, :
:

Plaintiff, :
:

v. :
:

TESTQUEST, INC. and MICHAEL LOGAN, :
:

Defendants. :
-----X



12 Civ. 4626 (LLS)

**COMPLAINT-IN-INTERVENTION
OF THE UNITED STATES
OF AMERICA**

Jury Trial Demanded

The United States of America (the "United States" or the "Government"), by its attorney,
Preet Bharara, United States Attorney for the Southern District of New York, brings this action

against TestQuest, Inc. (“TestQuest”) and Michael Logan (“Logan”), a former employee of TestQuest (collectively with TestQuest, “Defendants”), alleging upon information and belief as follows:

INTRODUCTION

1. From the 2005/2006 academic year through the 2011/2012 academic year (the “Covered Period”), TestQuest was paid tens of millions of dollars in federal funds for providing after-school tutoring to students attending underperforming public schools in New York City. For two schools in particular — the Monroe Academy of Business and Law/High School of World Cultures located at 1300 Boynton Avenue in the Bronx, New York (“Monroe”), and the Global Enterprise Academy/Christopher Columbus High School located at 925 Astor Avenue in the Bronx, New York (“GEA”) — TestQuest was paid more than \$2.3 million during the Covered Period. But for these two schools, TestQuest repeatedly billed for students who never received tutoring services. Indeed, many of the TestQuest employees who were responsible for the day-to-day operations of TestQuest’s tutoring program at Monroe and GEA routinely falsified — or caused others to falsify — student attendance records to make it appear that more students had attended the program than had actually attended. The employees did this at the direction of Logan, who was responsible for managing TestQuest’s tutoring program at Monroe and GEA throughout the Covered Period. As a result of these falsified attendance records, TestQuest submitted false certifications to the New York City Department of Education (the “NYC DOE”) stating that the invoices it was submitting for its tutoring services at Monroe and GEA were “true and accurate” even though they were not. These false certifications misled the NYC DOE into paying TestQuest for tutoring services that TestQuest had not in fact provided.

2. During the Covered Period, TestQuest was a provider of Supplemental Educational Services (“SES”) in New York City. As such, TestQuest provided after-school tutoring to students attending underperforming public schools in New York City. In exchange for providing these tutoring services, the NYC DOE paid TestQuest a fixed amount of money per hour for each student that TestQuest tutored. This money consisted entirely of funds provided to New York State by the federal Government under 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. During the Covered Period, TestQuest entered into contracts with the NYC DOE. Pursuant to these contracts, TestQuest was required to record attendance at each of its SES tutoring classes on a daily basis. TestQuest was required to have each student who attended sign a standard attendance form. TestQuest was also required to have the tutor for each class sign this form, attesting that he or she had provided SES tutoring to the students whose signatures appeared on the form. As a condition of getting paid for its tutoring services, TestQuest was required to certify to the NYC DOE that its attendance records were “true and accurate.”

4. However, many of these certifications were false with respect to tutoring at Monroe and GEA. At Logan’s direction, many of the TestQuest employees who were responsible for the day-to-day operations of TestQuest’s SES program at Monroe and GEA routinely falsified — or caused students to falsify — TestQuest’s daily student attendance forms to make it appear that more students had attended the program than had actually attended.

5. Logan recruited teachers and substitute teachers from Monroe and GEA to serve as the tutors for TestQuest’s SES program (the “tutors”), and recent graduates of these schools to help him run the program (the “aides”). Yet, rather than having these tutors and aides run a legitimate tutoring program, Logan directed them to assist him in carrying out a scheme to

fraudulently inflate the daily student attendance numbers for TestQuest's SES classes at Monroe and GEA. For example, Logan instructed the aides to find students who were not receiving SES tutoring and to have those students sign the daily student attendance forms, thus making it appear that the students had received SES tutoring when they had not. In addition, Logan told the aides that if they could not find students to sign the daily student attendance forms, the aides should forge student signatures on the forms. Logan threatened to fire or to withhold pay from the aides if they did not follow his instructions.

6. In response to Logan's instructions, aides routinely had students sign the daily student attendance forms for classes the students did not attend. In addition, some aides forged student signatures on the daily student attendance forms. For example, on one occasion during the 2008/2009 academic year, while Logan and two aides were in the Monroe cafeteria, Logan instructed one of the aides to forge student signatures on a daily student attendance form, and then watched as the aide did so. On various other occasions during the Covered Period, this same aide brought daily student attendance forms to Logan while Logan was running practices for the Monroe junior varsity baseball team. These practices took place at the same time that TestQuest's SES tutoring classes were supposed to be taking place. On these occasions, Logan had members of the baseball team sign the daily student attendance forms, even though they were not receiving SES tutoring and, instead, were playing baseball.

7. At Logan's direction, tutors also assisted in carrying out this scheme. For example, throughout the 2008/2009 academic year, tutors routinely went with aides to the Monroe cafeteria and helped the aides get students who were not receiving SES tutoring to sign the daily student attendance forms. During the 2008/2009 academic year, at least four tutors did not provide any SES tutoring at Monroe. Nevertheless, during this year, TestQuest billed and

was paid more than \$190,000 for tutoring sessions at Monroe that it represented were taught by these four tutors.

8. In addition to having tutors assist in obtaining student signatures on the daily student attendance forms, Logan had tutors sign the forms for SES classes they did not teach. For example, during the 2008/2009 academic year, the four tutors referenced above in paragraph 7 did not tutor any students at Monroe. But, at Logan's direction, these tutors routinely signed daily student attendance forms to make it appear that they had.

9. TestQuest used these falsified daily student attendance forms to prepare invoices that it then submitted to the NYC DOE in billing for its alleged tutoring services. TestQuest submitted these invoices to the NYC DOE on a periodic basis, usually every month. For each such invoice, TestQuest certified that the information on the invoice was "true and accurate." Notwithstanding these certifications, many of the invoices for Monroe and GEA contained false information; the invoices billed the NYC DOE for thousands of hours of SES tutoring that TestQuest never actually provided. As a result of these false invoices, TestQuest was paid for tutoring services that it did not provide.

10. TestQuest's management knew about, deliberately ignored or recklessly disregarded the above-described fraud. For example, in or about 2010, TestQuest's President and Chief Executive Officer ("CEO") saw student signatures on a daily student attendance form from GEA that the President and CEO expressly stated looked forged. An adequate investigation of this matter would have revealed that aides and tutors at Logan's schools were routinely falsifying student attendance records.

11. The United States seeks treble damages and penalties under the False Claims Act (“FCA”), 31 U.S.C. §§ 3729, *et seq.*, for money paid to TestQuest for tutoring services that it 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 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and (c), because one or both Defendants transact business within this district and therefore are subject to personal jurisdiction in this district. In addition, 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 TestQuest is a New York corporation. During the Covered Period, TestQuest’s principal offices were located at 336 West 37th Street, New York, New York 10018, and 226 West 37th Street, New York, New York 10018. During the Covered Period, TestQuest was authorized to provide SES tutoring at Monroe and GEA, and routinely billed the NYC DOE as though it had provided SES tutoring at these schools.

16. Defendant Michael Logan is a former employee of TestQuest. Throughout the Covered Period, Logan managed TestQuest’s SES tutoring program at Monroe and GEA, and had day-to-day authority over the program at these schools. Logan currently resides in New York County, New York.

FACTS

I. BACKGROUND

A. THE STATUTORY FRAMEWORK GOVERNING THE PROVISION OF SES DURING THE COVERED PERIOD

17. The No Child Left Behind Act of 2001 (the “NCLB Act”), 20 U.S.C. §§ 6301, *et seq.*, was a comprehensive reform of the Elementary and Secondary Education Act of 1965 (the “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.

18. Throughout 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 (the “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 Title I schools to be used at the schools for activities designed to improve student achievement.

19. LEAs — such as the NYC DOE — were permitted to use a portion of their Title I allocation 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 DURING THE COVERED PERIOD

20. Throughout the Covered Period, in accordance with the ESEA, as amended by the NCLB Act, 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: (1) were from low-income families; and (2) 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.

21. Parents of eligible students received a list of all of the entities that had been approved by the NYSED to provide SES tutoring. Each parent was allowed to select from this list one SES provider to provide SES tutoring to his or her child. Once a parent selected an SES provider for his or her child, the parent filled out a student enrollment form for that particular 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.

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

23. 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.

24. 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.

25. SES providers billed the NYC DOE for the tutoring services they provided on a periodic basis. During most of the Covered Period, billing was on a monthly basis.

26. During 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. 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 in fact provided the tutoring services for which they were billing).

1. Daily Student Attendance Certifications

27. For each tutoring class during the Covered Period, SES providers serving students in New York City were required to record student attendance. Starting with the 2006/2007 academic year, providers were required to record attendance on a standard form approved by the NYC DOE (the "Daily Student Attendance Sheet"). A copy of a redacted Daily Student Attendance Sheet is attached to this complaint as Exhibit A. From the 2006/2007 academic year through the 2011/2012 academic year, TestQuest used Daily Student Attendance Sheets to record student attendance. On information and belief, during the 2005/2006 academic year, TestQuest used forms that were substantively identical to the Daily Student Attendance Sheets to record student attendance.

28. 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.

29. 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).”

30. 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.

31. 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”; 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).” Starting with the 2006/2007 academic year, 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 tutor 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.”

32. 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.

33. Immediately below the above-quoted language on the Daily Student Attendance Sheet, there were two boxes in which the SES tutor and the tutor’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 tutor and the tutor’s supervisor certified that tutoring services were provided to the students whose signatures appeared in the “Student Signature (Start of Session)” and “Student Signature (End of Session)” columns. The tutor and the tutor’s supervisor also certified to the accuracy of the reported “Start Time” and “End Time” for these students.

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

2. Billing Certifications

35. Throughout 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 periodic invoices to the NYC DOE for the tutoring services they provided. The internet application that was in use beginning with the 2008/2009 academic year was called “Vendor Portal”; the internet application that was in use prior to the 2008/2009 academic year was called “NCLB/SES Attendance.” For purposes of this complaint, there are no material differences between Vendor Portal and NCLB/SES Attendance.

36. For each billing period beginning with the 2008/2009 academic year, 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. Prior to the 2008/2009 academic year, SES providers were required to input the same data into NCLB/SES Attendance, and the NYC DOE treated that data as an invoice.

37. Beginning with the 2008/2009 academic year, the NYC DOE made payments to SES providers based on the invoices they submitted using Vendor Portal. Prior to 2008/2009 academic year, the NYC DOE made payments to SES providers based on the invoices they submitted using NCLB/SES Attendance.

38. 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
- (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 [sic] the provider has on file, and available for inspection by DoE, as [sic] 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.

39. 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.

40. Prior to the 2008/2009 academic year, before an SES provider could submit an invoice using NCLB/SES Attendance, a representative of the SES provider was routed to a screen with the following language:

The Provider is advised that this electronic attendance report, when completed and submitted, 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 Provider's agency. It is further advised that knowingly submitting false information to the DoE may subject the Provider's agency and individuals within the agency to legal action, including criminal prosecution. In submitting this electronic attendance report for payment, the Provider is certifying that, based on the books and records of the Provider's agency: (i) the information contained in the electronic attendance report is true and accurate; (ii) a hardcopy Attendance/Progress (A/P) report has been or will be sent to the parent of each student for whom payment is sought; (iii) that the Provider has on file, and available for inspection by the DoE, a signed A/P report or has documented that Provider made diligent efforts to obtain the parent's signature on the A/P report; and (iv) a parent's failure to sign the A/P report was not a result of the parent's communication to the Provider that the A/P report is inaccurate.

Immediately below this language, there were two buttons — one labeled “I accept” and the other labeled “I decline.” Prior to the 2008/2009 academic year, an SES provider could not submit an invoice to the NYC DOE using NCLB/SES Attendance — and thus could not get paid — unless and until one of its representatives had clicked the “I accept” button. A screenshot of the certification screen from NCLB/SES Attendance is attached to this complaint as Exhibit C.

II. TESTQUEST’S NEW YORK CITY SES PROGRAM

A. TestQuest’s Provision of SES Tutoring in New York City

41. TestQuest provided SES tutoring in New York City throughout the Covered Period. TestQuest was authorized to provide group tutoring (including at Monroe and GEA), as well as one-on-one tutoring.

42. TestQuest entered into contracts with the NYC DOE in 2003, 2006 and 2009, which were periodically amended to reflect, among other things, updated pricing information. Pursuant to these contracts, during the Covered Period, TestQuest was paid between \$30 and \$35 per hour per student for group tutoring. TestQuest was paid between \$44 and \$50 per hour per student for one-on-one tutoring.

43. TestQuest’s contracts with the NYC DOE in effect during the Covered Period contained additional certifications beyond the above-described daily student attendance and billing certifications. For example, the contracts in effect as of September 2006 and September 2009 contained the following certification:

By signing the foregoing agreement Contractor [TestQuest] 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.

44. Moreover, all of the contracts in effect during the Covered Period required TestQuest to record student attendance on a daily basis. In addition, each of these contracts expressly stated that TestQuest would be paid only for the tutoring services that it actually provided to students. For example, the contract in effect as of September 2003 provided that “[f]or each student who registers for the Contractor’s services, the Contractor shall provide . . . a method for tracking the attendance of each Student in the Contractor’s program.” In an addendum to this contract, TestQuest represented that “[s]tudents’ attendance will be reported and documented with the ‘Supplemental Attendance Sheet.’” The 2003 contract further stated:

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.

45. Similarly, the contract in effect as of September 2006 provided:

Contractor shall use NYCDOE attendance sheets[.] . . . Attendance sheets must be signed by students at the start and conclusion of each session

* * *

[T]he 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.

46. The contract in effect as of September 2009 contained nearly identical language:

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

* * *

[T]he 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. TestQuest's Provision of SES Tutoring at Monroe and GEA

47. TestQuest billed the NYC DOE — and was paid by the NYC DOE — for providing group SES tutoring at Monroe from the 2005/2006 academic year through the 2008/2009 academic year, as well as the 2010/2011 academic year. In addition, TestQuest billed the NYC DOE — and was paid by the NYC DOE — for providing group tutoring at GEA from the 2009/2010 academic year through the 2011/2012 academic year.

48. TestQuest's group tutoring classes at Monroe and GEA were scheduled to take place from 3:00-5:00 p.m. or 3:30-5:30 p.m. on weekdays, and from 9:00 a.m. to 12:00 p.m. on Saturdays.

49. Throughout the Covered Period, TestQuest employed Logan to manage its tutoring program at Monroe and GEA. TestQuest gave Logan authority over the day-to-day operations of the program. Logan reported directly to the President and CEO of TestQuest.

50. Acting on behalf of TestQuest, Logan hired teachers and substitute teachers from Monroe and GEA to provide group tutoring at these schools.

51. Acting on behalf of TestQuest, Logan also hired recent graduates from Monroe and GEA to assist him in running TestQuest's SES group tutoring program at these schools.

52. In addition to providing group tutoring at Monroe and GEA, during the Covered Period TestQuest provided one-on-one tutoring to students attending numerous public schools throughout New York City. During the 2007/2008 academic year, TestQuest billed the NYC

DOE — and the NYC DOE paid TestQuest — more than \$18,000 for one-on-one tutoring that it represented was either taught by or supervised by Logan.

III. TESTQUEST'S FALSE CERTIFICATIONS

53. For each invoice that TestQuest submitted to the NYC DOE during the Covered Period for group SES tutoring at Monroe and GEA — and for one-on-one tutoring taught by or supervised by Logan — TestQuest certified that the invoice was “true and accurate” (*i.e.*, that TestQuest had provided tutoring services to support the billed amount). Many of these certifications, however, were false. At Logan’s direction, tutors and aides routinely entered — or caused students to enter — false information on the Daily Student Attendance Sheets to make it appear that more students had attended TestQuest’s SES classes than had in fact attended. This false information ultimately resulted in: (1) TestQuest submitting false invoices to the NYC DOE; and (2) the NYC DOE paying TestQuest federal money for SES tutoring that TestQuest had not in fact provided.

A. Prompted by Logan, Tutors and Aides Routinely Falsified Attendance Records

54. Throughout the Covered Period, tutors and aides routinely entered — or caused students to enter — false information on the Daily Student Attendance Sheets for Monroe and GEA. They did this to make it appear that more students had attended TestQuest’s SES classes at Monroe and GEA than had actually attended. These tutors and aides acted at the direction of Logan, who, in turn, acted on behalf of TestQuest.

55. Logan routinely directed aides to find students who were not receiving SES tutoring and to have them sign the Daily Student Attendance Sheets. Logan told the aides that if they could not find students to sign the Daily Student Attendance Sheets, they should sign the students’ names themselves. Logan threatened to fire or to withhold pay from the aides if they

did not follow his instructions. In response, aides routinely had students sign the Daily Student Attendance Sheets for classes they did not attend. In addition, some aides forged student signatures on the Daily Student Attendance Sheets.

56. At Logan's direction, tutors helped the aides get students to sign the Daily Student Attendance Sheets for classes they did not attend.

57. Moreover, tutors signed the instructor certifications on the Daily Student Attendance Sheets for students/classes they did not teach. By doing so, the tutors falsely certified that they had provided SES tutoring to each of the students whose signatures appeared on the Sheets.

58. At least one tutor routinely signed the instructor certifications on blank Daily Student Attendance Sheets. That is, the tutor signed the instructor certifications on Daily Student Attendance Sheets for classes the tutor did not teach before any student signatures had even been entered on the Sheets.

59. TestQuest based its periodic invoices to the NYC DOE on the information reflected on the Daily Student Attendance Sheets. TestQuest submitted the attendance information from the Daily Student Attendance Sheets to the NYC DOE using Vendor Portal or NCLB/SES Attendance. The NYC DOE, in turn, paid TestQuest based on the attendance information reflected on the Daily Student Attendance Sheets. Through the false entries on the Daily Student Attendance Sheets, TestQuest overbilled the NYC DOE and obtained federal money for SES tutoring that it did not provide.

60. The attendance information that TestQuest submitted to the NYC DOE using Vendor Portal and NCLB/SES Attendance was broken down by date and by student. For each date, there was a separate line entry for each student who had allegedly received tutoring. The

line entry included, among other things, the name of the student, the date on which the tutoring had allegedly taken place, and the length of the alleged tutoring session. Moreover, for most of the years during the Covered Period, the line entry also included the name of the tutor(s) who had allegedly provided the tutoring.

B. Aides Confirm the Fraud

61. Two of the aides who reported to Logan are referred to below as Aide 1 and Aide 2. These aides have confirmed that, during the Covered Period, they assisted Logan in falsifying TestQuest's Daily Student Attendance Sheets for Monroe and/or GEA.

62. **According to Aide 1:** Aide 1 graduated from Monroe after the 2004/2005 academic year, and was hired by Logan to work for TestQuest at the beginning of the 2005/2006 academic year. Aide 1 was employed by TestQuest from the 2005/2006 academic year until around December 2010. From the 2005/2006 academic year through the 2008/2009 academic year, Aide 1 worked at Monroe. For the first few months of the 2009/2010 academic year, Aide 1 worked at GEA. Thereafter, Aide 1 was transferred back to Monroe, where Aide 1 worked until around December 2010.

63. Throughout the 2005/2006, 2006/2007 and 2007/2008 academic years, Aide 1 would go to classrooms at Monroe where SES tutoring was taking place, pick up the Daily Student Attendance Sheets from the tutors, and then find additional students who were not in the classes to sign the Sheets. Aide 1 frequently approached students while they were at other after-school activities, such as baseball practice or basketball practice, to get them to sign the Sheets. When Aide 1 approached a student, Aide 1 would say (in substance) such things as, "Logan said to sign this," and the student would generally sign. When Aide 1 could not find enough students

to sign the Daily Student Attendance Sheets, Aide 1 would forge student signatures on the Sheets.

64. Aide 1 observed no SES tutoring classes at Monroe during the 2008/2009 academic year. During this academic year, Aide 1 would go to the Monroe cafeteria after school — during the time when SES classes were supposed to be taking place — and get students who were not receiving SES tutoring to sign the Daily Student Attendance Sheets. Several other aides and tutors also went to the cafeteria at this time for this purpose. These aides and tutors would get students to sign multiple Daily Student Attendance Sheets at one time, including for future dates. In addition, Logan was sometimes present in the Monroe cafeteria while the aides and tutors were getting students to sign the Daily Student Attendance Sheets, and assisted in this endeavor. Moreover, on at least one occasion during the 2008/2009 academic year, while Logan and Aide 1 were in the Monroe cafeteria, Logan instructed Aide 1 to forge student signatures on a Daily Student Attendance Sheet, and then watched as Aide 1 did so.

65. During the first few months of the 2009/2010 academic year, when Aide 1 worked at GEA, Aide 1 forged student signatures on the Daily Student Attendance Sheets. During this time, another aide who also worked at GEA told Aide 1 that he/she also forged student signatures on the Daily Student Attendance Sheets. After Aide 1 was transferred back to Monroe, Aide 1 continued to forge student signatures on the Daily Student Attendance Sheets. Aide 1 also got students who did not attend TestQuest's SES classes to sign the Daily Student Attendance Sheets. Aide 1 engaged in this conduct throughout the remainder of Aide 1's employment at TestQuest.

66. Aide 1 engaged in the above-described conduct at the direction of Logan. While SES classes were taking place, Logan would say to Aide 1 (in substance) such things as, "We

need more students, go find them.” In response, Aide 1 would roam the school (and school grounds) looking for students to sign the Daily Student Attendance Sheets. Logan repeatedly told Aide 1 that if Aide 1 could not find students to sign the Daily Student Attendance Sheets, Aide 1 should sign students’ names him/herself, which Aide 1 did. On several occasions when Aide 1 said that he/she did not want to find students or forge signatures, Logan responded by threatening to fire Aide 1, and saying (in substance) such things as, “Who’s paying you,” and “Who’s giving you your checks.” In addition, Logan held group meetings with the aides, including Aide 1, during which he told them (in substance) to find students to sign the Daily Student Attendance Sheets and, if they could not find students to sign, to sign the Sheets themselves.

67. On several occasions during the Covered Period, Aide 1 brought Daily Student Attendance Sheets to Logan while Logan was running practices for the Monroe junior varsity baseball team. On these occasions, Logan had members of the baseball team sign the Daily Student Attendance Sheets. Yet, the members of the baseball team could not have attended the relevant SES classes because the purported classes occurred while the members of the baseball team were at baseball practice.

68. In addition, during the 2008/2009 academic year, Aide 1 witnessed multiple tutors sign the instructor certifications on the Daily Student Attendance Sheets for classes they did not teach. There were also several tutors who were hardly ever present when SES tutoring was supposed to be taking place. These tutors would show up periodically merely to sign the instructor certifications on the Daily Student Attendance Sheets and to pick up their paychecks.

69. Aide 1 was responsible for bringing the completed Daily Student Attendance Sheets to TestQuest’s main offices. On one occasion in or about 2010 when Aide 1 was at

TestQuest's main offices, TestQuest's President and CEO pulled Aide 1 aside and showed Aide 1 at least one Daily Student Attendance Sheet from GEA and said (in substance) that the students all had similar handwriting and the signatures looked forged. Aide 1 responded, "That's not my school," and the President and CEO did not ask Aide 1 any further questions about this issue, or falsifications in general.

70. **According to Aide 2:** Aide 2 graduated from Monroe after the 2004/2005 academic year, and was hired by Logan to work at TestQuest at the beginning of the 2005/2006 academic year. Aide 2 was employed by TestQuest from the 2005/2006 academic year through the 2008/2009 academic year, during which time Aide 2 worked at Monroe.

71. Like Aide 1, Aide 2 observed no SES tutoring classes at Monroe during the 2008/2009 academic year. During this academic year, Aide 2 would periodically go to the Monroe cafeteria after school with other aides and tutors, and get students who were not receiving any SES tutoring to sign the Daily Student Attendance Sheets. Students would sign up to one month's worth of Daily Student Attendance Sheets at one time. There were times when Logan was present in the cafeteria while Aide 2 and others were gathering student signatures. On these occasions, Logan would oversee the process, making such statements as (in substance), "Tell them to sign for the whole month."

72. On at least two occasions during the 2008/2009 academic year, Aide 2 witnessed Aide 1 forge student signatures on the Daily Student Attendance Sheets. On the first of these occasions, Logan was present and instructed Aide 1 to forge the signatures. Logan then watched while Aide 1 forged the signatures.

73. Logan frequently held meetings with the aides during which he instructed the aides to find students to sign the Daily Student Attendance Sheets and, if they could not find

students to sign, to sign the Sheets themselves. Logan said (in substance) such things as: "Go find students to sign"; "If you can't find the students, sign them in"; "Make them sign or you won't get paid"; and "I already got paid, this is how you get paid."

74. Like Aide 1, Aide 2 confirmed that there were several tutors who were rarely present when SES tutoring was supposed to be taking place. Instead, these tutors would show up periodically merely to sign the instructor certifications on the Daily Student Attendance Sheets and to pick up their paychecks.

C. Tutors Also Confirm the Fraud

75. Two of the tutors who reported to Logan are referred to below as Tutor 1 and Tutor 2. These tutors have confirmed that, during the Covered Period, they assisted Logan in falsifying TestQuest's Daily Student Attendance Sheets for Monroe and/or GEA.

76. **According to Tutor 1:** Tutor 1 has been a teacher at Monroe since 2002. Tutor 1 is primarily a physical education teacher, but has also taught health and keyboarding. Logan hired Tutor 1 to work for TestQuest in the spring of 2005 or 2006. Tutor 1 was a TestQuest employee from the spring of 2005 or 2006 through the 2010/2011 academic year.

77. When Tutor 1 first began working for TestQuest, Logan told Tutor 1 that Tutor 1 would be tutoring English. Tutor 1 responded (in substance), "I don't teach English," to which Logan replied (in substance), "If anybody asks, you teach English." In all of the years that Tutor 1 was employed by TestQuest, Tutor 1 never tutored a single student for TestQuest — in English or anything else. TestQuest, however, billed the NYC DOE — and the NYC DOE paid TestQuest — tens of thousands of dollars for tutoring sessions that it represented were taught by Tutor 1. The NYC DOE paid TestQuest more than \$21,000 for tutoring sessions that TestQuest represented were taught by Tutor 1 at GEA during the 2009/2010 academic year. Similarly, the

NYC DOE paid TestQuest more than \$26,000 for tutoring sessions that TestQuest represented were taught by Tutor 1 at GEA during the 2010/2011 academic year. In addition, during the 2011/2012 academic year — after Tutor 1 had stopped working for TestQuest — TestQuest billed the NYC DOE, and the NYC DOE paid TestQuest, more than \$580 for group tutoring sessions that it represented were taught by Tutor 1 at GEA, and \$88 for a one-on-one tutoring session that it represented was taught by Tutor 1.

78. During the times when TestQuest's SES classes were supposed to be taking place (3:00-5:00 p.m. or 3:30-5:30 p.m. on weekdays, and 9:00 a.m. to 12:00 p.m. on Saturdays), Tutor 1 was usually coaching baseball or basketball at Monroe. For example, throughout the Covered Period, from late October through late February, Tutor 1 coached basketball at Monroe from 3:30-5:30 p.m. on weekdays and 9:00-11:00 a.m. on Saturdays. TestQuest, however, frequently billed the NYC DOE — and was paid by the NYC DOE — for tutoring sessions that it represented were taught by Tutor 1 during these times. For instance, during the 2010/2011 academic year, TestQuest was paid more than \$4,100 for tutoring sessions that it represented were taught by Tutor 1 at GEA from 9:00 a.m. to 12:00 p.m. on the following Saturdays: November 20, 2010, December 4, 2010, December 11, 2010, January 8, 2011, January 15, 2011, January 22, 2011, January 29, 2011, February 5, 2011, and February 12, 2011.

79. Despite the fact that Tutor 1 never tutored a single student for TestQuest, Tutor 1 regularly signed the instructor certifications on the Daily Student Attendance Sheets. Aides would bring Tutor 1 blank Daily Student Attendance Sheets (*i.e.*, Sheets without any student signatures), and Tutor 1 would sign the instructor certifications on the Sheets. Signing the instructor certifications on blank Daily Student Attendance Sheets is the only service Tutor 1 ever provided for TestQuest.

80. Tutor 1 periodically had conversations with Logan during which Tutor 1 asked Logan (in substance), "What am I supposed to be doing?" Logan's response was always (in substance), "Tell anyone who asks you are teaching English."

81. **According to Tutor 2:** Tutor 2 has been a science teacher at Monroe since 1998. Logan hired Tutor 2 to work for TestQuest in or about January 2005. Tutor 2 was employed by TestQuest from in or about January 2005 through the 2010/2011 academic year.

82. During the 2005/2006 academic year, Tutor 2 tutored no more than one student per day, and during the 2007/2008 academic year, Tutor 2 tutored no more than three or four students per day. Yet, for some days, TestQuest's billing submissions to the NYC DOE represented that Tutor 2 tutored many times these amounts. For example, TestQuest represented that Tutor 2 tutored 35 students at Monroe on November 18, 2005. TestQuest billed and was paid more than \$2,100 for this alleged tutoring. Similarly, TestQuest represented that Tutor 2 tutored 28 students at Monroe on June 8, 2006. TestQuest billed and was paid more than \$1,700 for this alleged tutoring.

83. Tutor 2 did not tutor any students during the 2006/2007 academic year. But, in its billing submissions to the NYC DOE, TestQuest represented that Tutor 2 did so. For example, TestQuest represented that Tutor 2 was among three individuals who allegedly tutored 39 students at Monroe on March 15, 2007. The NYC DOE paid TestQuest more than \$2,400 for this alleged tutoring. Similarly, TestQuest represented that Tutor 2 was among four individuals who allegedly tutored 76 students at Monroe on January 18, 2007. The NYC DOE paid TestQuest more than \$4,800 for this alleged tutoring. At the end of the 2006/2007 academic year, at Logan's request, Tutor 2 signed forms indicating that Tutor 2 had in fact provided tutoring during this year.

84. During the 2008/2009 academic year, Tutor 2 also did not tutor any students. Instead, during Tutor 2's free periods — as well as after-school when SES tutoring was supposed to have been taking place — Tutor 2 went to the Monroe cafeteria and helped get students who were not receiving any SES tutoring to sign Daily Student Attendance Sheets. Tutor 2 then signed the instructor certifications on some of these Daily Student Attendance Sheets, thus certifying that Tutor 2 had provided tutoring to the students even though Tutor 2 had not. Tutor 2 engaged in the above-described conduct at Logan's direction. Logan would make statements such as (in substance), "Go collect the [expletive] signatures, this is how we get paid."

85. In addition, during the 2008/2009 academic year, Tutor 2 had students sign Daily Student Attendance Sheets for multiple sessions at a time, including for future dates. At Logan's direction, Tutor 2 made copies of old Daily Student Attendance Sheets so that, throughout the year, Tutor 2 and others could track which students went with which tutors. On occasions where Tutor 2 could not find a sufficient number of students to sign the Daily Student Attendance Sheets in the cafeteria, Tutor 2 would take the Sheets to classrooms while school was in session and get students to sign there. At least one other tutor also did this.

86. Although Tutor 2 did not tutor a single student during the 2008/2009 academic year, TestQuest billed the NYC DOE — and the NYC DOE paid TestQuest — more than \$83,000 for tutoring sessions that it represented were taught by Tutor 2 at Monroe during this year.

87. Other tutors also did not tutor any students during the 2008/2009 academic year. For one such tutor, TestQuest billed the NYC DOE — and the NYC DOE paid TestQuest — more than \$80,000 for tutoring sessions that it represented were taught by this tutor at Monroe

during this year. For another such tutor, TestQuest billed the NYC — and the NYC DOE paid TestQuest — more than \$20,000 for tutoring sessions that it represented were taught by this tutor at Monroe during this year. For a third such tutor, TestQuest billed the NYC — and the NYC DOE paid TestQuest — more than \$11,000 for tutoring sessions that it represented were taught by this tutor at Monroe during this year.

88. Throughout the 2009/2010 and 2010/2011 academic years, Tutor 2 taught a group of approximately five students at GEA. During the 2009/2010 academic year, Tutor 2 had the students that Tutor 2 tutored sign Daily Student Attendance Sheets at each session; during the 2010/2011 academic year, Tutor 2 did not have the students sign Daily Student Attendance Sheets — or otherwise keep track of attendance. Nevertheless, throughout both years, Logan periodically provided Tutor 2 with completed Daily Student Attendance Sheets to sign, which Tutor 2 signed. On various occasions during both years, TestQuest billed the NYC DOE — and was paid by the NYC DOE — as though Tutor 2 had tutored more than five students per day. For example, on each of the following days, TestQuest represented that Tutor 2 had tutored 13 students at GEA: December 1, 2010, December 2, 2010, December 4, 2010, December 7, 2010, December 8, 2010, December 9, 2010, December 11, 2010, December 13, 2010, December 14, 2010, and December 15, 2010. For each of these days, TestQuest was paid over \$700 for this alleged tutoring.

89. In addition, throughout the 2009/2010 and 2010/2011 academic years, Tutor 2 and another tutor, combined, tutored approximately ten students per day at GEA. On various occasions, however, TestQuest billed the NYC DOE — and was paid by the NYC DOE — as though Tutor 2 and this other tutor had tutored more than that amount. For example, for each of the days identified above in paragraph 88 — December 1, 2010, December 2, 2010, December 4,

2010, December 7, 2010, December 8, 2010, December 9, 2010, December 11, 2010, December 13, 2010, December 14, 2010, and December 15, 2010 — TestQuest represented that, combined, Tutor 2 and this other tutor tutored 25 students. For each of these days, TestQuest was paid over \$1,300 for this alleged tutoring.

D. A Recorded Telephone Conversation Between Logan and Tutor 1 Further Confirms the Fraud

90. A recorded telephone conversation between Logan and Tutor 1 on October 10, 2012, not only reflects Logan's knowledge of the fraud, but also shows that Logan has been attempting to cover up the fraud.

91. During the call, Tutor 1 informed Logan that Tutor 1 had been visited by law enforcement agents investigating fraud at TestQuest, and asked Logan for advice. For example, Tutor 1 and Logan had the following exchange:

Tutor 1: So — all right so — so what you want me to do? What do I tell the cops when they come again? 'Cause they say they gonna come again and I — trust me —

Logan: Okay.

Tutor 1: — if you know — you know and I know that not very many people know where I am. So if they can find me once, they can find me again. So when they come again, I wanna know exactly what to tell them.

Logan: But I'm just sayin', I tell you, tell 'em that you taught the class.

Tutor 1: And — but you know I didn't taught — teach those classes though.

Logan: Okay me and you know that [the name of Tutor 1].

Tutor 1: Okay.

Logan: Me and you know that.

92. Later in the call, Tutor 1 referred to how Tutor 1 was reported as having tutored for TestQuest at the same time that he was actually coaching Monroe's junior varsity baseball

team with Logan. Tutor 1 stated, "I was on the baseball field for a lotta — a lotta that time, you remember? Not in the classroom." Tutor 1 later added, "We started practice — we started practice in — in February/March and were all — games were all April and all May," to which Logan responded, "Yes. Sorry 'bout that, um, yes, we just gotta stick to we taught the classes."

93. Logan also reassured Tutor 1, "listen, the people who are — can go down for this is [TestQuest's President and CEO] and [his/her] company."

94. In addition, Logan informed Tutor 1 that Logan had discussed the investigation with another tutor:

Logan: [M]e and [the tutor] sat down and I said, if they ask you anything about did you teach or whatever, just tell 'em yes you taught and this is what you taught, that's all. And [the tutor] said well they had some papers and I said look at the papers [the name of the tutor]. If they — your signature, just say you signed 'em.

Tutor 1: Okay.

Logan: [The tutor] was like — [the tutor] was like okay, that's not a problem.

* * *

Tutor 1: So you told [the tutor] to tell [them] that [the tutor] taught English, right?

Logan: I told [the tutor] to tell 'em that [the tutor] taught English, the ESL students.

Tutor 1: Okay. So you told — so basically — so you told [the tutor] — you told [the tutor] the same thing you told me, to tell 'em to lie.

Logan: Yeah, I told — every — I'm tellin' everybody the same thing.

95. At the end of the call, Tutor 1 stated, "Okay, I just wanna make sure everybody on the same page, 'cause somebody mess up . . . somebody mess up and say somethin' different, we in trouble," to which Logan responded, "Yeah I know that."

E. TestQuest's Management Knew About, Deliberately Ignored or Recklessly Disregarded the Fraud

96. TestQuest's management knew about, deliberately ignored or recklessly disregarded the fraud. For example, a visit to Monroe during the 2008/2009 academic year would have revealed that little or no tutoring was taking place, and that tutors and aides were instead in the Monroe cafeteria collecting student signatures on Daily Student Attendance Sheets. Similarly, a visit to Monroe or GEA during the other years would have revealed that the reported attendance was greater than the number of students actually receiving tutoring.

97. TestQuest's management also knew about, deliberately ignored or recklessly disregarded the fraud based on clear warning signs of the fraud to which they were exposed in connection with the Daily Student Attendance Sheets. For example, in or about 2010, TestQuest's President and CEO saw student signatures on a Daily Student Attendance Sheet from GEA that the President and CEO expressly stated looked forged. An adequate investigation of this matter would have revealed that tutors and aides at Logan's schools were routinely falsifying student attendance records.

98. In addition, TestQuest's management knew about, deliberately ignored or recklessly disregarded the fraud based on clear warning signs of the fraud to which they were exposed in connection with TestQuest's billing submissions to the NYC DOE. For example, as set forth above, TestQuest billed for tutoring sessions that it represented were taught by Tutor 1 during the 2011/2012 academic year — after Tutor 1 had stopped working for TestQuest. An adequate investigation of this billing would have revealed that Tutor 1 never tutored any students — during the 2011/2012 academic year or otherwise.

99. Moreover, according to its contracts with the NYC DOE, TestQuest's student-to-tutor ratio for its group tutoring sessions was not permitted to exceed ten-to-one. However,

TestQuest's billing submissions for Logan's schools frequently exceeded this maximum ratio. For example, as set forth above, TestQuest represented that Tutor 2 was among four individuals who allegedly tutored 76 students at Monroe on January 18, 2007. An adequate investigation of this billing would have revealed that Tutor 2 did not tutor any students during the 2006/2007 academic year.

IV. TESTQUEST'S FALSE CERTIFICATIONS HAVE RESULTED IN LOSSES TO THE UNITED STATES

100. For the academic years 2005/2006 through 2011/2012, the NYC DOE paid TestQuest more than \$2.3 million in federal funds to provide tutoring to students at Monroe and GEA.

101. The NYC DOE paid TestQuest more than \$2.3 million based on invoices that TestQuest had submitted to the NYC DOE. In connection with each of these invoices, TestQuest certified that the information reflected on the invoice was "true and accurate" — that it had provided tutoring services to support the billed amount.

102. Notwithstanding its certifications to the contrary, TestQuest did not provide tutoring services to support the billed amounts. Rather, TestQuest's invoices incorrectly reported the number of hours of tutoring services that TestQuest had provided. As set forth above, aides and tutors routinely falsified, or caused students to falsify, entries on the Daily Student Attendance Sheets to make it appear that students had attended TestQuest's SES classes when in fact they had not. And TestQuest based the invoices that it submitted to the NYC DOE on the attendance information reflected on the Daily Student Attendance Sheets. Accordingly, TestQuest routinely submitted false billing certifications to the NYC DOE.

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

FIRST CLAIM

**Violations of the False Claims Act
(31 U.S.C. § 3729(a)(1) (2006), and as amended, 31 U.S.C. § 3729(a)(1)(A))
The Submission of, or Causing the Submission of, False Claims**

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

105. The Government seeks relief against Defendants under Section 3729(a)(1) of the FCA, 31 U.S.C. § 3729(a)(1) (2006), and as amended, Section 3729(a)(1)(A) of the FCA, 31 U.S.C. § 3729(a)(1)(A).

106. As set forth above, Defendants knowingly, or acting with deliberate ignorance and/or with 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 TestQuest's provision of SES tutoring. Specifically, Defendants presented, or caused TestQuest to present, false invoices to the NYC DOE for tutoring services that TestQuest did not actually provide.

107. Because of Defendants' false claims, the NYC DOE paid TestQuest for providing tutoring services that TestQuest did not in fact provide.

108. 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

Violations of the False Claims Act (31 U.S.C. § 3729(a)(2) (2006), and as amended, 31 U.S.C. § 3729(a)(1)(B)) Use of False Statements

109. The Government incorporates by reference each of the preceding paragraphs up through paragraph 102 as if fully set forth in this paragraph.

110. The Government seeks relief against Defendants under Section 3729(a)(1)(B) of the FCA, 31 U.S.C. § 3729(a)(1)(B), or in the alternative, under Section 3729(a)(2) of the FCA, 31 U.S.C. § 3729(a)(2) (2006).

111. As set forth above, Defendants knowingly, or acting with deliberate ignorance and/or with 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 TestQuest's provision of SES tutoring. Specifically, Defendants made, or caused TestQuest 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 TestQuest's claims for payment for the tutoring services.

112. Because of Defendants' false records and/or statements, the NYC DOE paid TestQuest for providing tutoring services that TestQuest did not in fact provide.

113. 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.

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 TestQuest for tutoring services that TestQuest 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
January 29, 2013

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

BY:

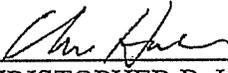

CHRISTOPHER B. HARWOOD
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2728
Facsimile: (212) 637-2786
Email: christopher.harwood@usdoj.gov

Exhibit A



Department of Education

2008-2009

Supplemental Educational Services - Student Sign-In

Session Details

Date of Session:	11/08/08	Location of Instruction:	World Cultures	Provider Name:	Test/Quest:	Serv ID:	Session Start Time:	9am	Session End Time:	12pm	Prov ID:	60
Attendance Group Name												

Student Information		Student Signature (Start of Session)		Student Signature (End of Session)	
Name of Student	Student ID	Start Time	End Time	Student Signature (Start of Session)	Student Signature (End of Session)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Instructor & Supervisor Certification

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 misrepresentation may subject me to criminal, civil, and/or administrative action.

Instructor Name	Instructor Signature	Date
Supervisor Name	Supervisor Signature	Date

Exhibit B

Invoice Certification

BATCH ID: 22 | STATUS: SUBMITTED

Invoice Details

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

Provider ID: 60 Provider Name: TEST VENDOR

Famis Vendor ID: 113316253

Total Hours: 16.00

Invoice Number: NCLB12JAN0600001 Total Students: 1

Total payment due: \$640.64

Facility charge: \$63.36

Cost before facility charge: \$704.00

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 this Agency's contract.

Title:

Last Name:

First Initial:

I agree to the above terms

Continue Cancel

Exhibit C

4. Read the terms and conditions below the 'Attendance Report'. If you agree, click on 'I Accept' and submit your certification by clicking on the 'Submit' button.

The screenshot shows a web browser window with the address bar displaying <https://10.2.56.18/nab/attendance/CertifyAttendance.aspx>. The page contains a table with the following data:

Line Item NO.-01	Item Description	Amount
203393023	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203393079	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203394200	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203394614	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203495221	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203499694	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203506068	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203553433	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203617212	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90
203785594	Reading/ELA for K-8 (Line Item NO.-01)	\$11.90

Below the table, there is a text box containing the following disclaimer:

The Provider is advised that this electronic attendance report, when completed and submitted, 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 Provider's agency. It is further advised that knowingly submitting false information to the DOE may subject the Provider's agency and individuals within the agency to legal action, including criminal prosecution. In submitting this electronic attendance report for payment, the Provider is certifying that, based on the books and records of the Provider's agency: (i) the information contained in the electronic attendance report is true and accurate; (ii) a hardcopy Attendance /Progress (A/P) report has been or will be sent to the parent of each student for whom payment is sought; (iii) that the Provider has on file, and available for inspection by the DOE, a signed A/P report or has documented that Provider made diligent efforts to obtain the parent's signature on the A/P report; and (iv) a parent's failure to sign the A/P report was not a result of the parent's communication to the Provider that the A/P report is inaccurate.

At the bottom of the page, there are two radio buttons: I Accept and I Decline. Below them is a 'Submit' button.