

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

**STATE OF NEW MEXICO, *ex rel.*  
GARY K. KING, Attorney General,**

**Plaintiff,**

v.

**No. D-202-CV-2014-\_\_\_\_\_**

**ITT EDUCATIONAL SERVICES, INC.  
d/b/a/ ITT TECHNICAL INSTITUTE,  
XYZ CORPORATIONS 1 through 10, and  
JOHN/JANE DOES 1 through 99,**

**Defendants.**

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES  
ACT, NEW MEXICO COMMON LAW, AND THE NEW MEXICO POST-  
SECONDARY EDUCATIONAL INSTITUTION ACT FOR RESTITUTION AND  
CIVIL PENALTIES AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW, the State of New Mexico ex rel. Gary K. King, Attorney General, by Assistant Attorneys General Tonya Noonan Herring and Jonathan H. Reischl, and alleges that:

**I. INTRODUCTION**

1. This lawsuit seeks injunctive, declaratory, and equitable relief, and restitution and civil penalties pursuant to New Mexico common law, the New Mexico Post-Secondary Educational Institution Act, NMSA 1978, Sections 21-23-1 to -15 (1994, as amended through 2013), and the New Mexico Unfair Practices Act, NMSA 1978, Sections 57-12-1 to -26 (1967, as amended through 2009). This action seeks to redress on behalf of the public in New Mexico unlawful business practices by Defendant ITT Educational Services, Inc. d/b/a ITT Technical Institute. Defendant, in the course of operating a for-profit education

business made misrepresentations, violated New Mexico law, and engaged in unfair, deceptive, and unconscionable acts and practices in violation of New Mexico's Unfair Practices Act ("UPA") in connection with the advertising, marketing, and selling of educational services to New Mexico consumers.

## **II. PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Gary K. King is the duly elected Attorney General of the State of New Mexico. The Attorney General has the statutory authority to enforce laws for the protection of the public, including the UPA and the New Mexico Post-Secondary Education Institution Act. The Attorney General can act on behalf of the state in all actions when the interests of the State require action in his judgment. NMSA 1978, § 8-5-2(B) (1975).

3. Defendant, ITT Educational Services, Inc. ("ITT"), is a publically traded institution of higher learning whose corporate headquarters are located in Carmel, Indiana. ITT does business in New Mexico through the actions of its agents, employees, staff, faculty, and others under the trade name ITT Technical Institute.

4. At all times relevant, ITT has engaged in trade or commerce in New Mexico within the meaning of Section 57-12-2(C).

5. Students attending programs at ITT Technical Institute, Albuquerque campus and through ITT online programs, are residents of New Mexico.

6. As a court of general jurisdiction, this Court has jurisdiction over this matter and the parties.

7. Venue is proper in Bernalillo County pursuant to NMSA 1978, Section 38-3-1(A), (F), and Section 57-12-8(A), because all or some of the alleged conduct took place in this County.

8. Defendants XYZ CORPORATIONS 1-10 are various corporations that hold the student loans issued to finance students' education at ITT and that may be liable under the FTC Holder Rule, 16 C.F.R. Part 433, or who are necessary parties for purposes of the relief sought in this case. Plaintiff will seek leave of the court to amend this complaint to reflect their true names when they have been ascertained.

9. Whenever in this Complaint reference is made to any act of any corporate Defendant, said reference shall be deemed to mean the act of said Defendant's officers, directors, shareholders, employees, and agents or other representatives or within their scope of employment or authority.

### **III. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10. ITT is a leading proprietary provider of post-secondary degree programs in the United States based on revenue and student enrollment. As of December 31, 2013, ITT was offering master, bachelor, and associate degree programs to approximately 58,000 students nationwide. In 2013, ITT's revenue exceeded \$1 billion, and its CEO received compensation in excess of \$8.7 million.

11. As of December 31, 2013, ITT operates 149 locations (including 147 campuses and two learning sites) in 39 states, including New Mexico. In addition, ITT offers one or more of its online programs to students who are located in 48 states, including New Mexico.

12. ITT has provided career-oriented education programs since 1969 under the “ITT Technical Institute” name, and has operated in New Mexico since approximately 1989.

13. At all times relevant, Michael Roane has held the position of Director of ITT’s Albuquerque campus.

**A. FALSE ACCREDITATION CLAIMS RELATED TO THE NURSING PROGRAM**

14. ITT is licensed to operate in New Mexico by the New Mexico Higher Education Department (“HED”) under Section 21-23-6.1 of the Post-Secondary Educational Institutions Act. A “license” from the HED gives an institution permission to operate in New Mexico. It does not validate or endorse a school’s programs or curriculum. Licensure is required for all career-oriented institutions or colleges and universities without regional accreditation operating in New Mexico. The issuance of a license by HED is not the same as and does not constitute accreditation by the New Mexico Higher Education Department

15. “Accreditation” is the evaluation and approval of an institution or its specific programs for quality and legitimacy. In the United States, accreditation is performed by non-governmental private educational associations that have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether they are operating at basic levels of quality.

16. There are two basic types of accreditation, “institutional” and “programmatic.” Institutional accreditation applies to an entire institution, indicating that each of the institution’s parts is contributing to the achievement of the institution’s objectives. Programmatic accreditation applies to programs, departments, or schools within a larger institution.

17. “Institutional accreditation” is necessary for institutions to be eligible to receive federal financial aid. However, programmatic accreditation is generally a voluntary process that schools undergo in order to validate the quality of their programs and the value of their degrees.

18. ITT’s corporate entity holds institutional accreditation for all of its campuses across the country from the Accrediting Council for Independent Colleges and Schools (“ACICS”).

19. In June 2009, ITT Albuquerque campus initiated a nursing program.

20. ITT’s nursing program, now operating as the Breckinridge School of Nursing and Health Sciences, offers a two-year associate degree.

21. On information and belief, from its opening in 2009 to the present, hundreds of New Mexico consumers have enrolled in ITT’s nursing program.

22. The nursing program is headed by a program chair.

23. Nursing programs in New Mexico must be licensed by the New Mexico Board of Nursing (“BON”) prior to enrolling students and beginning operation in order to grant degrees and for their graduates to be eligible to receive Registered Nurse (“RN”) licenses from the state.

24. ITT’s Albuquerque nursing program is not now and has never been accredited by the Accreditation Commission for Education in Nursing (“ACEN”), formerly the National League of Nursing Accrediting Commission (“NLNAC”), the entity that accredits associate degree nursing programs.

25. Because the ITT nursing program is not, nor has it ever been, accredited, other colleges and universities, public or private, are unlikely to accept ITT students' transfer credits or allow an associate degree from ITT to serve as the basis for a Bachelor of Science in Nursing or other advanced degree.

26. Despite never holding a programmatic accreditation status, ITT representatives represented to prospective and enrolled nursing students, prior to the initiation of the program and continuing for some time thereafter, that the nursing program held programmatic accreditation or was in the process of acquiring programmatic accreditation. Other students were told that the program would receive programmatic accreditation when the first class of students graduated from the program.

27. ITT representatives distributed documents at nursing program information sessions and/or program orientations that deceived or tended to deceive students as to the accreditation status of the nursing program.

28. ITT, through, or in the presence of administrators from ITT Albuquerque campus, including Michael Roane, the director of the Albuquerque campus, used the false claims of programmatic accreditation of the nursing program as a recruiting tool.

29. Course credits earned from the ITT nursing program do not have all of the attributes of credits earned from a nursing program holding programmatic accreditation, in particular, an associate's degree from ITT could not be used as the basis for a Bachelor of Science in Nursing degree from an advanced nursing program in New Mexico.

30. ITT represented to nursing students that the credits earned at ITT have all of the attributes of credits earned at a nationally accredited nursing program, in particular, that

the credits would transfer to other institutions and that an associate's degree from ITT could be used as the basis for a Bachelor of Science in Nursing or other advanced degrees.

**B. UNFAIR, DECEPTIVE, AND UNCONSCIONABLE TERMS OF ITT'S ENROLLMENT AGREEMENT**

31. Students who enroll in any ITT program are required to sign a document entitled "Enrollment Agreement."

32. The ITT Enrollment Agreement is a standardized contract prepared by ITT for acceptance by any student who enrolls in ITT's programs in New Mexico.

33. Students have no input as to the language of the Enrollment Agreement and no opportunity to bargain or negotiate any terms of the Enrollment Agreement.

34. The "ACKNOWLEDGEMENT" section of the Enrollment Agreement provides that "student acknowledges that he or she has received a copy of the current school catalog and a true executed copy of this agreement." ITT failed to provide copies of the school catalog to enrolled students prior to the time they signed the Enrollment Agreement.

35. The "LIMITATION OF LIABILITY," "RESOLUTION OF DISPUTES," and "LIMITATION OF ACTION" provisions of the Enrollment Agreement limit, curtail, and restrict students' rights to resolve disputes that might arise in the course of their association with ITT.

36. The "RESOLUTION OF DISPUTES" section of the Enrollment Agreement contains an arbitration agreement that requires students to arbitrate all disputes, including any contract, tort, or statutory claims that arise out of the Enrollment Agreement.

37. The “LIMITATION OF ACTION” provision of the Enrollment Agreement sets a contractual limitation requiring all arbitration claims to be filed within two years of the date on which the incident giving rise to a dispute occurred.

38. The Enrollment Agreement grants ITT the right to unilaterally change the terms, provisions, procedures, policies, and requirements of the enrollment contract without notice and at any time. The Enrollment Agreement states that such changes are binding on the students.

39. Under the Enrollment Agreement, ITT retains the right to seek remedies outside of arbitration or conduct arbitration under different terms than those contained in the Enrollment Agreement when it seeks to enforce the Enrollment Agreement or seek redress for breach of the Enrollment Agreement by a student.

40. The “LIMITATION OF LIABILITY” section of the Enrollment Agreement provides that neither the student nor the school will be liable to the other party for, among other things, indirect, incidental, or consequential damages. This section further states that the amount of tuition, fees, and cost of any tools for the program constitute the extent of risk and the limitation of liability between the student and the school.

41. Despite the assurances of the Limitation of Liability section of the Enrollment Agreement, other documents incorporated as addendum to the Enrollment Agreement put students at risk of incurring liabilities to ITT beyond the amount of tuition, fees, and costs of any tools. The documents state that in the event of student default, the student will be liable to ITT for all costs and expenses, without limitation, incurred by ITT to collect amounts



owed. The document specifically states that the student will be liable for attorney's fees, arbitrator's fees, arbitration costs, collection agency fees, and collection costs, without limit.

**C. UNFAIR OR DECEPTIVE GRADE, CURRICULAR, AND OTHER POLICY CHANGES**

42. ITT regularly implements program curriculum, grading policy, and graduation requirement changes that adversely affects enrolled students in the nursing program, without notice to students.

43. ITT regularly changes course requirements and testing regimes mid-term without prior notice to students.

**Changes to Minimum Course Passing Grade and Graduation Requirements**

44. From June 2009 through approximately September 2011, ITT informed nursing students, as memorialized in the Academic Progress Policy in its Student Handbook, that failure to achieve the "passing rate"—a grade of a "C" or 70%—in any two courses would lead to automatic dismissal from the nursing program.

45. In September 2011, ITT told nursing students that the "passing rate" had been increased to 80% or no less than a "B" for each course. Going forward, students were required to repeat any course for which they failed to achieve a passing grade. Students that failed to achieve a "B" or 80% in two or more classes would be dismissed from the program.

46. ITT gave no notice to students of grading policy changes.

47. ITT told students that if they refused to sign a document acknowledging the policy changes and their assent thereto they would be dismissed from the nursing program.

### **ITT misrepresents its grading policy to the Board of Nursing**

48. In a report sent to the New Mexico Board of Nursing (“BON”) in November, 2011, ITT informed the BON of the grading policy change, but stated that the changes to the minimum passing grade would not affect those nursing students who were already enrolled and had taken courses prior to the September 2011 quarter. ITT reported to the BON that if those students earned final course grades of less than 80% but higher than or equal to 70%, they would progress accordingly.

49. Contrary to ITT’s report to the BON, the new policy was applied to those students previously enrolled under the more lenient passing requirements. Students that did not achieve the minimum passing grade of 80% in two or more classes were dismissed from the nursing program.

50. After the change in the grading policy, any nursing student that fell below the new minimum passing grade of 80% in two or more classes was required to go through “remediation”—to retake a previously passed class—to be eligible for graduation. These students were also required to pay for these classes again, incurring additional costs.

### **Changes to Graduation and Course Requirements**

51. ITT represented to enrolled nursing students and potential nursing students during recruitment and at the time of their initial enrollment, that if they completed ITT’s course of study for an associate degree in nursing they would be awarded a diploma and the opportunity to sit for the National Counsel Licensing Exam for Registered Nurses (“NCLEX”) and be eligible to become RNs.

52. Nursing students were originally informed that the Health Education Systems, Inc. (“HESI”) practice tests taken after each course were solely a diagnostic tool to determine a student’s remediation needs and prepare them for the NCLEX exam. After the “passing rate” policy change in September 2011, the policy concerning HESI exams changed. Students were then required to take a HESI exam at the end of every course, and the student’s score on the exam was factored into their course grade. The percentage weight of the HESI exam varied for each course and each quarter from 5% to 15% of the grade.

53. Prior to September 2011, nursing students were not required to pass a HESI exam in order to graduate and receive a diploma. After September 2011, ITT’s changed its graduation requirements such that all ITT nursing students were now required to pass a HESI exit exam to receive a diploma.

#### **Admissions and Retention Policies**

54. ITT failed to create, maintain, evaluate, and implement an adequate system, including appropriate entrance examinations, for assessing the ability of potential students to successfully complete and benefit from the programs offered by ITT as required by the HED.

55. ITT’s admissions policies for the nursing program did not adequately screen or exclude those students that were unlikely to benefit from the program or those students unlikely to pass the NCLEX exam or otherwise meet the requirements to become licensed RNs in New Mexico.

56. ITT, as a regular business practice, implemented various curricular and programmatic changes designed to prevent those students unlikely to perform well on state

monitored examinations from graduating in order to preserve graduate achievement thresholds necessary for ITT's licensure.

#### **Course Flexibility Claims**

57. ITT represented to prospective nursing students that an advantage of the ITT nursing program as compared to other nursing programs was that the program and schedule of classes were flexible and could accommodate individuals who needed to work full-time or had family responsibilities.

58. ITT did not provide a flexible course schedule as represented. Classes were only offered at one time each quarter and in a set sequence for each cohort of students. Clinical instruction was scheduled based on the availability of hosting facilities, and on at least one occasion, clinical instruction took place in a hospital over 2 hours from the Albuquerque campus.

59. ITT considered the nursing program a "full-time" course requiring numerous hours of classroom education, clinical work, and independent study.

60. Numerous students were unable to maintain full-time jobs while in the nursing program, despite ITT's assurances the program was compatible with maintaining full-time employment.

#### **D. DECEPTIVE AND UNFAIR PRACTICES RELATED TO TUITION, COSTS, FINANCIAL AID, AND STUDENT LOANS**

61. On information and belief, ITT's financial aid and tuition policies and practices are authored, directed, and implemented by ITT's corporate office and are uniform across all programs offered to New Mexico consumers.

### **Placing Students into High-Cost Private Student Loans**

62. Most students finance the majority of tuition and other costs related to attending ITT's programs through federal financial aid in the form of grants and loans.

63. ITT regularly represented to students and prospective students that financial aid would cover all of a student's cost of attendance for an ITT program.

64. Soon after enrolling in a program, students meet with an ITT financial aid advisor ("FAA"). The FAA details a program's cost, often for the first time, and assists the student in applying for financial aid. During these meetings, the FAA presents the students with a document entitled, "Cost Summary and Payment Addendum to Enrollment Agreement" ("Cost Summary"), which details the enrollment cost for a given period, usually three quarters, and provides an estimate of the financial aid and other revenue that ITT expects to receive to cover the enrollment cost.

65. The Cost Summary binds the student to pay the detailed costs and abide by the payment and collection terms enumerated therein.

66. Students continue to meet with FAAs over the course of their enrollment, at least once every year, to apply for financial aid and receive Cost Summaries for future enrollment periods.

67. FAAs routinely complete much of the paperwork necessary for students to apply for financial aid from the federal government prior to meeting with a student. At the financial aid meetings, students are given little time to read, review, and understand documents before being asked to sign them. The FAA then submits the documents, including the Free Application for Federal Student Aid ("FAFSA"), on behalf of the student.

68. When a Cost Summary indicates that grants, loans, GI Bill benefits, and payments from government agencies will not cover enrollment costs for a given period, ITT regularly issues “Temporary Credit” to students for the amount of the deficiency.

69. On information and belief, “Temporary Credit” is a non-interest-bearing loan extended to students by ITT to cover unmet education costs.

70. ITT provided students with Temporary Credit most often during a student’s first enrollment period in a program.

71. When students are issued Temporary Credit they are not told to seek outside funding to pay ITT for the cost of the “Temporary Credit.”

72. The Cost Summary represents that Temporary Credit does not carry a finance charge or any other costs for the extension of credit to the student.

73. The Cost Summary includes a Truth In Lending Act (“TILA”) disclosure box, specifying the finance charge, APR, and total cost of the Temporary Credit. The TILA indicates that the Temporary Credit carries no finance charge with an APR of 0%.

74. ITT provided numerous inaccurate TILA disclosures that failed to provide the actual total amount financed and the total of payments.

75. The Cost Summary indicates that the Temporary Credit will come due at the end of the period covered by the Cost Summary.

76. ITT regularly told students that they would not have to pay the Temporary Credit on the set date stated in the Cost Summary.

77. Some students were told that their Temporary Credit would roll over to the next Cost Summary.

78. ITT represented to some students that if a Temporary Credit was not paid or funded by future financial aid, then repayment arrangements would be made after the students graduated from the program.

79. The balance covered by a Temporary Credit remained on a student's account as a deficiency after the student completed the term covered by the Cost Summary.

80. ITT's regular business practices included paying-off a student's Temporary Credit with the proceeds of private student loans issued through exclusive private loan offerings, including, but not limited to, the Peaks Loan program.

81. The Peaks Loan program is an exclusive private loan offering only made available to ITT students.

82. Through the Peaks Loan program, ITT bound students to additional loan amounts without full disclosure of the loan terms or informing students that the loans were not federal student loans.

83. Students were not informed that the loans from the Peaks Loan program were issued to cover deficiencies in their student accounts previously presented to the students as a Temporary Credit.

84. ITT rolled students' Temporary Credit into private student loans, such as Peak Loans and similar loans, after students were deeply invested in their degree programs, both financially through other student loans and the use of GI Bill benefits, and through the time invested in completing courses, usually after the student attended the program for three quarters.

85. Most students were unable to pay account deficiencies covered by a Temporary Credit out-of-pocket. Thus, the private loans offered through ITT were the only means available for students to continue with the degree program in which they had already heavily invested.

86. The loans issued through the Peaks Loan program had variable interest rates based on a student's credit history. As part of the loan application, the bank initially issuing the loan through the Peaks Loan program obtained a student's credit score. The credit score was used in part to set the initial interest rate of the loan. Due to students' low credit scores, some of the private student loans carried interest rates in excess of 14.5% APR.

87. Many students were unaware that their credit scores or an examination of their credit histories would be used to set the interest rate on the loan.

88. ITT was aware that many of its students had poor credit histories. The variable interest rate feature of the Peaks Loan program therefore made loans very expensive for those students with impaired credit.

89. ITT, in placing students into loans through the Peaks Loan program and other similar programs, failed to consider whether students would benefit from the loans given the terms and circumstances under which they were issued.

90. ITT failed to offer many students the opportunity to fund deficiencies through other means.

91. ITT failed to consider the fact that students' poor credit history would make the loans expensive.



92. Because of the high attrition rate of its programs and due to the fact that ITT credits were not transferrable to other institutions, students were unlikely to benefit from the high-cost loans issued through the Peaks Loan program.

93. According to disclosures in ITT's Securities and Exchange Commission ("SEC") filings, loans issued through the Peaks Loan program have a high default rate, indicating that these high-cost loans were issued to consumers unlikely and unable to benefit from them.

94. Despite representations in the Cost Summary that a Temporary Credit would not cost the student any amount in finance charges, ITT's business practices rolled students into high cost student loans in order to extract the maximum cost of attendance from each student.

#### **Students Placed into Loans without Authorization or Consent**

95. ITT placed students into loans without their knowledge. FAAs e-signed student loan documents without fully-informed consent and authorization from the student.

#### **Misstatements of Actual Cost of Attendance**

96. ITT enrolls students that have earned course credits at other institutions. ITT allows students to transfer certain credits earned at other institutions and apply them to ITT programs. Transfer credits reduce the number of classes student are required to take in order to earn a degree. The school ascertains the number of transfer credits that will be applied to a student's degree program by examining a student's transcripts from other institutions prior to enrollment.

97. Most programs at ITT have a set class sequence, meaning that classes are offered at a predetermined time during the degree program. As a result, when a student's transfer credits are applied to a particular course, the number of credits a student attempts during a given term is reduced.

98. ITT's business practices regularly calculate the enrollment cost for students, as reflected in the Cost Summaries, without factoring in the transfer credits that reduce the number of courses a student actually attempts. These inflated enrollment costs are then regularly reported to federal financial aid agencies.

99. Students are placed into loans, charged additional amounts, or use GI Bill benefits and other grants to cover education expenses that students would not have incurred if the transfer credits had been properly applied by ITT.

#### **Failure to Properly Issue Refunds**

100. In some instances, students withdrew or were dismissed from ITT programs, and ITT failed to issue tuition and fee refunds as required by New Mexico and federal law.

#### **Requiring Students to Purchase Worthless Tools**

101. ITT charged students for worthless tools. Although the Enrollment Agreement states that "[n]o student is obligated to purchase any tools from the school," nursing students were charged, without the option to opt out of the expense, for "tool bags" before their first quarter of classes.

102. The nursing students were unable to use the tools contained in the "tool bags" issued by ITT because the items, including glass thermometers, were unusable, outdated, or

unnecessary. As a result, students had to purchase functional tools for their labs and clinical assignments at their own expense.

#### **IV. VIOLATIONS OF NEW MEXICO LAW VIOLATIONS OF THE UNFAIR PRACTICES ACT**

103. The UPA prohibits unfair or deceptive and unconscionable trade practices in the conduct of any trade or commerce. Section 57-12-2.

104. The UPA defines an “unfair or deceptive trade practice” as an “act specifically declared unlawful pursuant to the UPA, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts . . . that may, tends to or does deceive or mislead any person.” Section 57-12-2(D).

105. The UPA further defines an “unfair or deceptive trade practice” as:

- a. “causing confusion or misunderstanding as to the . . . sponsorship, approval or certification of goods or services” Section 57-12-2(D)(2);
- b. “causing confusion or misunderstanding as to affiliation, connection or association with or certification by another” Section 57-12-2(D)(3);
- c. “representing that goods or services have sponsorship, approval, characteristics, . . . benefits, or quantities that they do not have” Section 57-12-2(D)(5);
- d. “representing that goods or services are of a particular standard, quality or grade” Section 57-12-2(D)(7);
- e. “making false or misleading statements of fact concerning the price of goods or services” Section 57-12-2(D)(11);

- f. “using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive” Section 57-12-2(D)(14);
- g. “stating that a transaction involves rights, remedies or obligations that it does not involve” Section 57-12-2(D)(15); and
- h. “failing to deliver the quality or quantity of goods or services contracted for” Section 57-12-2(D)(17).

106. The UPA prohibits the use of unconscionable trade practices in the conduct of any trade or commerce. Section 57-12-3.

107. The UPA defines an “unconscionable trade practice” as an act or practice in connection with the sale, lease, rental or loan, or the offering thereof, any goods or services or in the extension of credit or the collection of any debts that to a person’s detriment: “(1) takes advantage of a lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.” Section 57-12-2(E).

#### **COUNT ONE**

108. The allegations set forth above are incorporated herein by reference.

109. ITT represented to students and the public that its nursing program held programmatic accreditation when it held no such accreditation.

110. Misrepresenting the nursing program’s accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D), in that ITT made oral and written statements and representations that were false or misleading, and knowingly made in

connection with the sale of services in the regular course of commerce that may, tends to or does deceive or mislead any person.

111. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(2), in that the business practices caused confusion or misunderstanding as to the certification of ITT's services.

112. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(3), in that ITT's business practices caused confusion or misunderstanding as to the certification of the nursing program by another entity.

113. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(5), in that ITT's business practices represented that the nursing program had approval, characteristics, affiliations, and status that it did not have.

114. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(7), in that ITT's represented that the nursing program had been evaluated and found to conform to the rigorous requirements of the national accreditation body when in fact ITT's services were not of such a standard or quality.

115. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(14), in that

ITT's business practices employed exaggeration as to a material fact: the accreditation status of the nursing program, which deceived or tended to deceive New Mexico consumers.

116. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(17), in that ITT failed to deliver the quality of services contracted for by New Mexico nursing students, enrollment in a nursing program holding national programmatic accreditation.

### **COUNT TWO**

117. The allegations set forth above are incorporated herein by reference.

118. ITT represented to students that the degree earned from the nursing program could be used as the basis for a Bachelor's Degree in Nursing or other advanced nursing degree, when in fact the associate degree offered by ITT was not accepted at other institutions for that purpose.

119. Misrepresenting the attributes of the associate degree offered by ITT constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D), in that ITT made oral and written statements and representations that were false or misleading and knowingly made in connection with the sale of services in the regular course of commerce that may, tends to or does deceive or mislead any person.

120. ITT's misrepresentation of the transfer benefits of its associate degree in nursing constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(5), in that ITT's business practices represented that the nursing program had characteristics and status that it did not have.

121. ITT's misrepresentation of the transfer benefits of its associate degree in nursing constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(14), in that ITT's business practices employed exaggeration as to a material fact that deceived or tended to deceive New Mexico consumers.

122. ITT's misrepresentation of the nursing program's accreditation status constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D)(17), in that ITT failed to deliver the quality of services, an associate degree that would transfer to a bachelor's degree program, as contracted for.

### **COUNT THREE**

123. The allegations set forth above are incorporated herein by reference.

124. ITT represented to the BON that students presently enrolled its nursing program at the time that it changed its minimum passage rate from 70% to 80% would not be required to meet the new grading requirement. In fact, ITT required all presently enrolled students to agree to the new grading policy or leave the nursing program.

125. ITT's false statement to the BON constitutes an unfair or deceptive trade practice pursuant to Section 57-12-2(D), in that ITT's false statement was knowingly made in connection with the sale of services in the regular course of trade or commerce, and the statement did, or had the tendency to, deceive or mislead.

#### **COUNT FOUR**

126. The allegations set forth above are incorporated herein by reference.

127. ITT engaged in business practices that placed consumers into loans without consumers' knowledge, or without fully informing them of, or without their understanding of, the terms and the source of the loans and financial obligations.

128. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(2), in that ITT's practice of failing to fully inform consumers about the terms and nature of student loans caused confusion and misunderstanding as to the source of the loans and students' obligations and liabilities under the loans.

129. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(14), in that ITT's business practice of failing to state material facts about loans provided to students, and the obligations placed on students deceived or tended to deceive students.

130. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(15), in that in the course of business, ITT made representations concerning loans and financial obligations that involved rights, remedies or obligations that the loans and financial obligations did not involve.

#### **COUNT FIVE**

131. The allegations set forth above are incorporated herein by reference.

132. ITT failed to provide students with necessary material information or made ambiguous statements with respect to material information, regarding the Temporary Credit issued to students. ITT misrepresented the true nature and consequences of Temporary Credit



and failed to disclose to students that what was originally a “no interest loan” would be transferred into a private, high interest bearing loan product.

133. ITT’s business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(14), in that ITT failed to state material facts or used ambiguity as to material facts regarding Temporary Credit and related financial aid practices, which deceived or tended to deceive New Mexico consumers as to the nature, cost, and extent of their financial obligations.

### COUNT SIX

134. The allegations set forth above are incorporated herein by reference.

135. ITT failed to inform consumers upon initiating degree programs at ITT Technical Institute that federal student aid would not cover the full cost of their attendance, and that students would likely have to cover their unmet educational costs, through private credit sources.

136. ITT failed to inform students and failed to consider that due to the high attrition rate of ITT degree programs, and due to the fact that ITT credits were not transferable to other institutions, most students were unlikely to benefit from the additional debt burden of private student loans issued through the Peaks Loan program and similar loan programs.

137. ITT, after becoming aware that loans issued through the Peaks Loan program had a high incidence of default, continued its financial aid practice of issuing Temporary Credit or otherwise obscuring the true cost to the student of its degree programs, to new ITT Technical Institute Students.

138. ITT's business practices constitute unfair and deceptive business practices pursuant to Section 57-12-2(D)(14), in that ITT's financial aid practices employed ambiguity and the omission of material facts in the course of recruiting, retaining, and providing services to consumers, which deceived or tended to deceive consumers.

#### **COUNT SEVEN**

139. The allegations set forth above are incorporated herein by reference.

140. ITT initially presented the unmet costs of a student's education, the amount not met by federal financial aid, as covered by a no interest and no finance charge Temporary Credit. ITT proceeded to rollover and increase the amount of a student's Temporary Credit and the corresponding deficiency in a student's account each quarter the student was enrolled in their degree program.

141. Once a student had substantially progressed in their program, incurring other debt and expending much effort, ITT would use the proceeds from private student loans such as a Peaks Loan or similar product, to pay off students' Temporary Credit without providing students the opportunity to pay off their student account deficiencies through other means. Many students, faced with the prospect of having to pay the now accumulated deficiencies, previously covered by Temporary Credit, had no other option but to take on a high-cost private student loan, such as a Peaks Loan or similar product, in order to complete the degree program into which they had already invested time, money, and indebtedness.

142. ITT's business practices constitute unconscionable trade practices pursuant to Section 57-12-2(E)(1), in that ITT took advantage of students' lack of knowledge, ability, and experience to a grossly unfair degree by framing the financing price of the unmet cost of

students' attendance as something nominal or very low through the use of Temporary Credit, thereby anchoring the students' expectations in that perception, making it difficult for students to reassess the true costs and risks of the various ITT degree programs once subsequent price information, in particular the financing costs of various private loans used to pay off Temporary Credit, is divulged.

#### **COUNT EIGHT**

143. The allegations set forth above are incorporated herein by reference.

144. ITT represented to students that its nursing program was flexible and compatible with maintaining full-time employment when in fact class schedules were fixed and the curriculum was incompatible with maintaining full time employment.

145. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(5), in that ITT represented that the program had characteristics, flexibility and compatibility with full-time employment, that it did not have.

146. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(14), in that ITT's representation that the program was flexible and compatible with full-time employment was a use of exaggeration and ambiguity with respect to a material fact.

#### **COUNT NINE**

147. The allegations set forth above are incorporated herein by reference.

148. ITT, despite assurances to the contrary within the Enrollment Agreement, required all students to purchase worthless tools provided by ITT.

149. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(15), in that ITT stated that students would not be obligated to purchase tools from ITT as a requirement of enrollment, when in fact ITT charged each student for tools upon enrollment in the nursing program.

150. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(17) in that ITT required students, at great cost, to purchase worthless and unusable tools.

#### **COUNT TEN**

151. The allegations set forth above are incorporated herein by reference.

152. ITT falsely stated the number of credits a student will take in a given term causing consumers to incur more debt than is required to meet the actual costs of their education.

153. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D) and Section 57-12-2(D)(15), in that ITT represents that a consumer has incurred costs and obligations related to their enrollment in ITT's education programs that the consumers have not in fact incurred.

#### **COUNT ELEVEN**

154. The allegations set forth above are incorporated herein by reference.

155. ITT failed to issue refunds of tuition and fees as outlined in the Enrollment Agreement and in compliance with New Mexico and federal law.

156. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(15), in that ITT represents that students are entitled to a refund as specified in the Enrollment Agreement and fails to provide a refund when required to do so.

**COUNT TWELVE**

157. The allegations set forth above are incorporated herein by reference.

158. ITT promises to, and purports to contract to, limiting liability between the parties in the event of a dispute while simultaneously reserving the right to hold a consumer unlimitedly liable for costs related to collecting unpaid tuition and fees.

159. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-2(D)(15), in that ITT represents that the agreement between itself and consumers is governed by a limitation of liability when in fact ITT retains the right to seek redress against consumers without limitation.

**COUNT THIRTEEN**

160. The allegations set forth above are incorporated herein by reference.

161. ITT's Enrollment Agreement contains an illusory promise, a promise that does not constitute sufficient consideration, to arbitrate all disputes that may arise out of a student's enrollment at ITT.

162. ITT's business practices constitute unfair or deceptive trade practices pursuant to Section 57-12-12(D)(15), in that ITT represents that the Enrollment Agreement binds students and ITT to arbitrate disputes when in fact ITT's promise to arbitrate is illusory and binds only the students to arbitration.

**COUNT FOURTEEN**

163. The allegations set forth above are incorporated herein by reference.

164. ITT's Enrollment Agreement contains a contractual limitation that requires students to file all arbitration actions within two years of the event giving rise to the claim.

165. ITT's business practices constitute unfair or deceptive and unconscionable trade practices pursuant to Section 57-12-2(E)(1). ITT's two-year contractual limitation takes advantage of a consumer's lack of knowledge, to the consumer's detriment and to a grossly unfair degree, as to ITT's fulfillment of the terms of the Enrollment Agreement and other promises made in connection with recruiting and enrolling students into its 27-month nursing program.

**COUNT FIFTEEN**

166. The allegations set forth above are incorporated herein by reference.

167. ITT's Enrollment Agreement contains an illusory promise to arbitrate disputes that bind students but, through ITT's reservation of the right to unilaterally modify the Enrollment Agreement, does not similarly bind ITT.

168. ITT's business practices constitute unfair or deceptive and unconscionable trade practices pursuant to Section 57-12-2(E)(2). The inclusion of the arbitration agreement in ITT's Enrollment Agreement results in a gross disparity between the value received by students, an illusory promise to arbitrate disputes, and the price that they pay, the waiving of the right to a state or federal court action, a jury trial, or membership in a class action.

**COUNT SIXTEEN**

169. The allegations set forth above are incorporated herein by reference.

170. ITT's Enrollment Agreement contains a limitation of liability provision that prevents students from recovering, in any action, an amount greater than tuition, fees, and other costs paid by the student or on the student's behalf, while ITT reserves for itself the right to recover, without limitation, the full extent of its claims against students.

171. ITT's business practices constitute unfair or deceptive and unconscionable trade practices pursuant to Section 57-12-2(E)(2). The limitation of liability clause in ITT's Enrollment Agreement results in a gross disparity between the value received by students, no limitation on the recovery available to ITT, and the price paid, a cap on the recovery they can receive from ITT.

**COUNT SEVENTEEN**

**DEFENDANTS ARE WILFULLY USING OR HAVE WILFULLY USED A METHOD, ACT, OR PRACTICE IN VIOLATION OF THE UNFAIR PRACTICES ACT**

172. The allegations set forth above are incorporated herein by reference.

173. The UPA empowers the Court to impose a civil penalty not exceeding \$5,000 for each willful violation of the Act. Section 57-12-11.

174. ITT made representations to the public and government agencies regarding the accreditation status of the nursing program, the transferability of credits earned in the nursing program, and the curriculum of the nursing program that it knew to be false.

175. ITT's violations of the UPA were deliberate and willful and the Court should therefore assess a civil penalty for each violation of the Act.

**COUNT EIGHTEEN**

**VIOLATIONS OF THE NEW MEXICO POST-SECONDARY  
EDUCATIONAL INSTITUTION ACT**

176. The allegations set forth above are incorporated herein by reference.

177. The Attorney General is empowered to enforce the New Mexico Post-Secondary Educational Institution Act. Section 21-23-10.1.

178. The New Mexico Post-Secondary Educational Institution Act prohibits the solicitation of enrollment of any person by the use of fraud or misrepresentation. Section 21-23-10(A)(4).

179. ITT engaged in business practices that solicited the enrollment of New Mexico consumers through misrepresentation. In particular, ITT misrepresented the accreditation status of the nursing program, the ability of students to transfer credits to Bachelor of Nursing Programs, and the flexibility of the nursing program. These business practices constitute a violation of the New Mexico Post-Secondary Educational Institution Act.

**COUNT NINETEEN**

**VIOLATIONS OF NEW MEXICO COMMON LAW**

180. The allegations set forth above are incorporated herein by reference.

181. Contract provisions that unreasonably benefit one party over another are substantively unconscionable. *Cordova v. World Fin. Corp. of N.M.*, 2009-NMSC-021, ¶ 25, 146 N.M. 256.

182. Arbitration agreements that retain for the drafter the ability to unilaterally modify the agreement are unreasonably one-sided and substantively unconscionable under



New Mexico law. *Flemma v. Haliburton Energy Servs., Inc.*, 2013-NMSC-022, ¶¶ 23-25, 303 P.3d 814.

183. Arbitration agreements that permit the drafter to seek judicial redress of its claims while forcing the other party to arbitrate any claim it might have are substantively unconscionable under New Mexico law. *Rivera v. Am. Gen. Fin. Servs. Inc.*, 2011-NMSC-033, ¶¶ 53-54, 150 N.M. 398.

184. The arbitration agreements contained in ITT's Enrollment Agreements and documents annexed thereto are unreasonably one-sided and unconscionable under New Mexico law in that ITT retains the right to unilaterally modify the agreements at any time.

185. The arbitration agreements contained in ITT's Enrollment Agreements and documents annexed thereto are unconscionable under New Mexico law in that ITT retains the right to seek redress of its claims against students outside of arbitration, while forcing students to bring any claim in arbitration,

186. The arbitration agreements contained in ITT's Enrollment Agreements and documents annexed thereto are unconscionable under New Mexico law in that the agreements structure the costs of arbitration differently. In claims brought by the student each side is responsible for attorney's fees and costs, whereas claims most likely to be brought by ITT, collection actions, require the students to pay ITT's attorney's fees and all costs.

187. The limitation of liability clause in ITT's Enrollment Agreements, as supplemented by documents annexed thereto, unreasonably benefits ITT and are unconscionable under New Mexico law because the Enrollment Agreement allows ITT to recover without limitation while limiting a student's potential recovery against ITT.

**COUNT TWENTY**

**REQUEST FOR DECLARATORY RELIEF**

188. The allegations set forth above are incorporated herein by reference.

189. A party's promise to arbitrate is illusory where it retains the ability to unilaterally change the arbitration agreement. *Flemma*, 2013-NMSC-022, ¶ 29. ITT's Enrollment Agreement contains an illusory promise to arbitrate.

190. A party's retention of the right to unilaterally modify an arbitration agreement is unconscionable under New Mexico law. *Id.* ¶¶ 24-25. ITT's retention of the right to unilaterally modify the dispute resolution procedure renders the arbitration agreement unconscionable.

191. Plaintiff requests that this Court declare the arbitration agreement contained in ITT's Enrollment Agreement and all integrated documents illusory, unconscionable, and unenforceable as a matter of New Mexico law.

192. A contract is ambiguous if separate sections appear to conflict with one another. *Heye v. Amer. Golf Corp., Inc.*, 2003-NMCA-138, ¶ 14, 135 N.M. 558. Ambiguities in contracts are construed against the drafter to protect the rights of the party who did not draft it. *Id.* The limitation of liability clause in ITT's Enrollment Agreement is in direct conflict with other provisions of the Enrollment Agreement and is therefore ambiguous and unenforceable.

193. Plaintiff requests that this Court declare the limitation of liability clause contained in ITT's Enrollment Agreement and all integrated documents ambiguous and unenforceable as a matter of New Mexico law.

**COUNT TWENTY-ONE**

**APPLICATION FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF**

194. The allegations set forth above are incorporated herein by reference.

195. ITT has engaged in a pattern and practice of exploiting New Mexico consumers by using deceptive, unfair, unconscionable, and unlawful business practices in the marketing, sale, provision, and financing of education goods and services in violation of the UPA. The New Mexico Attorney General is specifically authorized by statute under Section 57-12-8(B), to petition for temporary or permanent injunctive relief as a remedy for violations of the UPA.

196. When injunction is authorized as a remedy for a statutory violation, the traditional common law grounds for injunctive relief need not be established. The New Mexico Attorney General in seeking injunctive relief pursuant to the UPA need only show a violation of the statute. *See Mercury Mktg. Tech. of Del., Inc. v. State ex rel. Beebe*, 189 S.W.3d 414, 420 (Ark. 2004); *People ex rel. Neil Hartigan v. Dynasty Sys. Corp.*, 471 N.E.2d 236, 243 (Ill. Ct. App. 1984); *State ex rel. Edminsten v. Challenge, Inc.*, 284 S.E.2d 333, 339 (N.C. Ct. App. 1981) and cases cited therein.

197. Furthermore, the New Mexico Attorney General is not required to post bond when seeking injunctive relief under Section 57-12-8(A) of the UPA.

**COUNT TWENTY-TWO**

**EQUITABLE RECOVERY UNDER PRINCIPLES OF  
RESTITUTION AND UNJUST ENRICHMENT**

198. The allegations set forth above are incorporated herein by reference.

199. As a direct result of ITT's misrepresentations, violations of the UPA and New Mexico common law, ITT has been unjustly enriched inasmuch as they have received payment as a result of unlawful business practices and for services and products that do not have the represented attributes, characteristics, qualities, or affiliations.

200. This Court should find that ITT has been unjustifiably enriched and order ITT to disgorge all monies received as a result of its unlawful business practices.

**WHEREFORE**, Plaintiff respectfully requests that:

- A. The Court issue an order declaring the arbitration agreement and the limitation of liability agreement in ITT's Enrollment Agreement illusory, unconscionable, and unenforceable as a matter of New Mexico law.
- B. The Court enter an order granting preliminary and permanent injunctive relief as follows:
  - 1. Prohibiting ITT from enforcing the illusory or unconscionable terms of any agreement with New Mexico consumers, including but not limited to the Enrollment Agreement and its addenda;
  - 2. Prohibiting ITT from entering into agreements with New Mexico consumers that share the same or similar illusory, unlawful, or unconscionable terms as the Enrollment Agreement and its addenda;

3. Prohibiting ITT from engaging in conduct found to be unlawful pursuant to New Mexico's Unfair Practices Act;
  4. Prohibiting ITT from engaging in conduct, in the course of trade or commerce, determined during this litigation to have been in violation of New Mexico law or the law of any other jurisdiction; and
  5. Any other injunctive relief reasonably calculated to prevent ITT from repeating the unlawful trade practices alleged herein.
- C. The Court issue an order requiring ITT to disgorge the amount of unjust enrichment derived from ITT's unlawful and unconscionable trade practices.
- D. The Court order ITT to pay to the State of New Mexico a civil penalty of FIVE THOUSAND DOLLARS (\$5,000.00) per violation, pursuant to Section 57-12-11.
- E. The Court order ITT to pay restitution to the State of New Mexico to the extent of ITT's enrichment derived from its unlawful business practices, pursuant to Section 57-12-8.
- F. The Court order ITT to pay to the Current School Fund of the State of New Mexico, as provided in Article 12, Section 4 of the Constitution of New Mexico, a civil penalty of FIVE HUNDRED DOLLARS (\$500.00) per day per violation of the New Mexico Post-Secondary Educational Institution Act, pursuant to Section 21-23-10(B).
- G. The Court order ITT to reimburse the plaintiff for its reasonable costs, including investigative costs.
- H. For such other relief as the Court deems just and proper.

Respectfully Submitted,

**GARY K. KING,  
NEW MEXICO ATTORNEY GENERAL**

*/s/ Tonya Noonan Herring*

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