

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 : NO. 08-678  
v. :  
 :  
THOMAS MATHEW :

FINDINGS OF FACT AND CONCLUSIONS OF LAW

EDUARDO C. ROBRENO, J.

April 15, 2010

TABLE OF CONTENTS

I.	LEGAL STANDARD .....	5
II.	FINDINGS OF FACT .....	6
	A. Title IV Federal Funds Case - Counts 1-13 .....	6
	a. Title IV Federal Funds Program .....	6
	b. History of ACTAS' Ownership .....	9
	c. ACTAS' Program Review .....	13
	d. Events Following ED's Program Review .....	19
	e. PHEAA Checks .....	21
	f. Defendant's Knowledge Refunds Were Owed .....	24
	B. Unemployment Compensation Case - Counts 14-20 .....	25
III.	APPLICABLE LAW .....	27
	A. Wire and Mail Frauds .....	27
	B. Aiding and Abetting .....	29
	C. Theft Concerning Programs On Federal Funds .....	30
	D. False Statements .....	31
	E. Specific Intent .....	32
IV.	CONCLUSIONS OF LAW AND DISCUSSION .....	33
	A. Title IV Federal Funds Case - Counts 1-13 .....	33
	a. Wire Fraud .....	33
	1. Knowing and Willful Participation .....	35
	i. Defendant's Understanding of the Necessary Payment Regulations .....	36
	ii. Confusion by Reimbursement .....	38
	iii. Defendant's Conduct During the Reimbursement Period .....	42
	2. Specific Intent .....	47
	3. Use of Mails in Furtherance of Fraud .....	49
	b. Theft Concerning Programs on Federal Funds .....	49
	c. False Statements .....	50
	B. Unemployment Compensation Case - Counts 14-20 .....	51
	a. Mail Fraud .....	52
V.	CONCLUSION .....	57

Defendant Thomas Mathew (a/k/a "Thomaskutty Mathew") is charged in the Indictment, dated November 6, 2008, with the following:

- Six (6) counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2;<sup>1</sup>
- One (1) count of theft concerning programs

---

<sup>1</sup> Counts 1-6 of wire fraud and aiding and abetting, in violation of 18 U.S.C. §§ 1343 and 2, are as follows:

<u>COUNT</u>	<u>DATE (on or about)</u>	<u>DESCRIPTION</u>
1	November 12, 2003	Wiring of \$89,823 from ED, in Richmond, Virginia, to Wachovia Bank Account No. (ending in) 8215, in Philadelphia, Pennsylvania.
2	December 12, 2003	Wiring of \$94,524 from ED, in Richmond, Virginia, to Citizens Bank Account No. (ending in) 0093, in Philadelphia, Pennsylvania.
3	January 29, 2004	Wiring of \$85,135 from ED, in Richmond, Virginia, to Citizens Bank Account No. (ending in) 0093, in Philadelphia, Pennsylvania.
4	March 15, 2004	Wiring of \$84,418 from ED, in Richmond, Virginia, to Citizens Bank Account No. (ending in) 0093, in Philadelphia, Pennsylvania.
5	July 13, 2004	Wiring of \$34,564 from ED, in Richmond, Virginia, to Citizens Bank Account No. (ending in) 0093, in Philadelphia, Pennsylvania.
6	July 30, 2003	Wiring of \$4,520 from ED, in Richmond, Virginia, to Citizens Bank Account No. (ending in) 0093, in Philadelphia, Pennsylvania.

See Indictment 6.

receiving federal funds, in violation of 18 U.S.C. §§ 666(a)(1)(A) and (b);<sup>2</sup>

- Six (6) counts of false statements, in violation of 18 U.S.C. § 1001;<sup>3</sup>
- Seven (7) counts of mail fraud, in violation of 18

---

<sup>2</sup> Count 7, in violation of 18 U.S.C. §§ 666(a)(1)(A) and (b), charges Defendant, as agent and owner of a school receiving federal funds, of obtaining approximately \$1,196,831 in federal loans and grants due to a fraudulent scheme. See Indictment 7.

<sup>3</sup> Counts 8-13, in violation of 18 U.S.C. § 1001, are as follows:

<u>COUNT</u>	<u>DATE (on or about)</u>	<u>DESCRIPTION</u>
8	November 7, 2003	Date of false Chief Executive Officer Certification submission
9	December 18, 2003	Date of false Chief Executive Officer Certification submission
10	February 2, 2004	Date of false Chief Executive Officer Certification submission
11	March 26, 2004	Date of false Chief Executive Officer Certification submission
12	July 27, 2004	Date of false Chief Executive Officer Certification submission
13	August 5, 2004	Date of false Chief Executive Officer Certification submission

See Indictment 8-9.

U.S.C. § 1341;<sup>4</sup> and

- Aiding and abetting, in violation of 18 U.S.C. § 2.

In the Indictment, Defendant is identified as the principal owner and Chief Executive Officer of the American Center for Technical Arts and Sciences ("ACTAS"), a vocational technical school that trained adult students in the business,

---

<sup>4</sup> Counts 14-20, of mail fraud, in violation of 18 U.S.C. § 1341, are as follows:

<u>COUNT</u>	<u>DATE</u>	<u>Check No.</u>	<u>Amt.</u>	<u>DESCRIPTION</u>
14	July 7, 2004	07819937	\$331	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.
15	July 21, 2004	08104742	\$662	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.
16	August 3, 2004	00245055	\$662	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.
17	August 18, 2004	00536063	\$662	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.
18	September 1, 2004	00801884	\$662	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.
19	September 14, 2004	01022424	\$662	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.
20	September 30, 2004	01276864	\$331	Unemployment Compensation Check from Pa. DOL to Ms. Nanette Sasak, at her home address.

See Indictment 13.

medical, and computer fields. ACTAS was also a private for-profit organization, which obtained most of its funding from the U.S. Department of Education, in the forms of loans and grants.

For Counts 1-13, the Indictment charges that from June 6, 2003 through August 5, 2004, Defendant "devised and intended to devise a scheme to defraud" the U.S. Department of Education (hereinafter "ED") of approximately \$1.2 million of federal financial aid "by means of false and fraudulent pretenses, representations, and promises". Therein, Defendant is alleged to have falsely documented student attendance at ACTAS and failed to refund monies due to the Government for students that had unenrolled. See Indictment ¶ 12.

For Counts 14-20, the Indictment charges that from June 2004 through March 2007, Defendant "devised and intended to devise a scheme to defraud" the Pennsylvania Department of Labor and Industry (hereinafter "DOL") of approximately \$3,972 of unemployment compensation and "knowingly caused" false answers to be mailed by "aiding and abetting [the fraud's] execution." See Indictment ¶¶ 13-14.

Following Defendant's criminal bench trial,<sup>5</sup> the Court will now issue the findings of fact and conclusions of law upon

---

<sup>5</sup> The trial took place from November 9, 2009 to November 19, 2009. After trial, the parties submitted proposed findings of fact and conclusions of law, and were afforded the opportunity to make closing arguments.

which to predicate Defendant's criminal sentence. This case may be analytically bifurcated into: (A) the "Title IV Federal Funds Case," which encompasses Counts 1-13 (wire fraud, theft, false statements); and (B) the "Unemployment Compensation Case," which encompasses Counts 14-20 (mail fraud, aiding and abetting).

#### **I. LEGAL STANDARD**

Following a bench trial in a criminal case, pursuant to Fed. R. Crim. P. 23(c), "the court must find the defendant guilty or not guilty. If a party requests before the [decision], the court must state its specific findings of fact in open court or in a written decision or opinion." Fed. R. Crim. P. 23(c).

The Third Circuit has held that a trial court cannot avoid making findings of fact conditioned on the defendant's waiver of such findings after requesting a non-jury trial. See United States v. Livingston, 459 F.2d 797, 789 (3d Cir. 1972) (en banc); but see United States v. Brown, 716 F.2d 457, 462 (7th Cir. 1983) (although findings of fact are not required, under Rule 23(c) when not requested by defendant, an appellate court may nonetheless require the trial court to make such findings on remand).

As for legal conclusions, the Third Circuit in Livingston noted that "[d]etailed legal conclusions are . . . appropriate in non-jury criminal proceedings, particularly when

the facts of a case suggest several legal principles which the trial judge might have invoked." 459 F.2d at 798. However, Rule 23(c) itself does not expressly require conclusions of law.

## **II. FINDINGS OF FACT**

After consideration of the testimony and exhibits offered at trial, the Government's proposed findings of facts (doc. no. 90 at 2-22), and the Defendant's proposed findings of facts (doc. no. 91 at 3-11), and closing arguments by counsel, the Court finds as follows:

### **A. "TITLE IV FEDERAL FUNDS CASE" - COUNTS 1-13**

#### **a. Title IV Federal Funds Program**

1. Under Title IV of the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219, Congress established a number of different student loan and grant programs, including the Federal Pell Grant Program ("Pell") and the Federal Family Education Loan Program ("FFELP"). Trial Tr. 67-68, dated 11-9-09.<sup>6</sup>

2. Many different types of schools receive Title IV funding, including universities, private schools, beauty schools, and trade schools. ED pays this aid on behalf of students to assist them when attending school. Trial Tr. 66, dated 11-9-09.

3. ED provides the funding in the form of loans and

---

<sup>6</sup> This was the status of the program at all relevant times.

grants, commonly referred to as Pell grants. Trial Tr. 67, dated 11-9-09.

4. Under FFELP, funds originate from private lenders and are sent to the schools. These loans are guaranteed by the federal government and come directly from the government. Trial Tr. 68, 83, dated 11-9-09.

5. ED pays Pell grants directly to a school's bank account on behalf of a student. Trial Tr. 69, dated 11-9-09.

6. To qualify for Title IV funding, ED requires that a school be licensed by the state in which they are operating; that the school be accredited by an accrediting body recognized by the Secretary of Education; and that the school is in operation for two years before starting the program. Trial Tr. 67, dated 11-9-09.

7. To become eligible to receive Title IV funds under these programs, a school meeting these requirements must also enter into a program participation agreement ("PPA") with ED, which "shall condition the initial and continuing eligibility of the school to participate in a program upon compliance with" specific requirements." Trial Tr. 96-97, dated 11-9-09.

8. After a school becomes eligible to receive Title IV funds by entering into a PPA, claims for payment of those funds can be made in various ways. Under the Pell Grant program, students submit requests for funding to ED, either on their own or with the assistance of schools. Under FFELP, students and schools jointly submit requests for loans to private lenders that

are guaranteed by state guaranty agencies, which are, in turn, insured by ED and paid only in the event of a default. Trial Tr. 69-70, dated 11-9-09.

9. Students apply directly to ED by completing a form called the Free Application for Federal Student Aid ("FASFA"). The student provides information about his or her own income and assets on the application, and then sends the form directly to ED. Trial Tr. 70, dated 11-9-09.

10. The Pennsylvania Higher Education Assistance Agency ("PHEAA") is a guarantee agency that functions as a clearinghouse or middleman between the schools and the lenders. Students apply for a private loan from a lender, and the lender sends the funds to PHEAA, which processes the loan and delivers the funds to the school. Trial Tr. 71, dated 11-9-09.

11. In some cases, the school pays loan money directly to the student to cover the student's living expenses. Trial Tr. 72, dated 11-9-09.

12. If the monies were a grant, the school must refund the monies to the government. If the monies were a loan, the school must refund the monies to the student's outstanding loan debt. Trial Tr. 72-73, dated 11-9-09.

13. If the student withdraws before the 60% point in the period for which the school received funding, then the school is required to issue the refund. Trial Tr. 73, dated 11-9-09.

14. If a student withdraws after that 60% point, then the school is not required to issue the refund. Trial Tr. 74,

dated 11-9-09.

15. For loans, the school will return the money to the Student Loan Servicing Center ("SLSC"), a division of PHEAA. PHEAA will then return the money to the individual lenders. Trial Tr. 83, dated 11-9-09.

16. When a student withdraws from a school, the school is required to return any refunds due to ED and lenders within 30 days from the date school personnel became aware of the fact that the student had withdrawn (i.e., drop date), known as the "DOD", date of determination, or the "LDA", last date of attendance. Trial Tr. 84, dated 11-9-09; Trial Tr. 110, dated 11-12-09.

17. ED refunds were calculated as owing from LDA. Trial Tr. 112, dated 11-12-09.

b. History of ACTAS' Ownership

18. ACTAS was a proprietary institution (a for-profit school) from 1986, licensed by the Commonwealth of Pennsylvania and accredited by the Accrediting Council for Continuing Education and Training ("ACCET"). Indictment 2; Trial Tr. 69, dated 11-9-09; Trial Tr. 26, dated 11-12-09.

19. ACTAS had three different campus locations: a Center City Philadelphia location, a suburban Philadelphia location, and the main campus in Northeast Philadelphia. Trial Tr. 27, dated 11-12-09.

20. ACTAS offered multiple educational programs for its students, including a paralegal program, a medical assistance

and EKG program, and a surgical technology program. Prospective students were required to have a high school diploma or a GED in order to enroll at ACTAS. Trial Tr. 27, dated 11-12-09.

21. In 2001, the City of Philadelphia's Department of Licenses and Inspections notified then-owner Robert Bubb ("Bubb") that ACTAS had to immediately vacate the building at 1930 Chestnut Street, where ACTAS's Center City campus was located. Trial Tr. 29, dated 11-12-09.

22. Bubb informed a supervisor at the State Education Department that ACTAS had to immediately vacate the premises of ACTAS's center city campus, and inquired if there was any building space available for the ACTAS Center City campus. The supervisor referred Bubb to Defendant Thomas Mathew ("Mathew"). Trial Tr. 27, dated 11-12-09.

23. In April 2001, Bubb met with Mathew at the site of Mathew's computer school, the Neumann Institute of Technology at 1515 Market Street, Philadelphia ("Neumann"). Mathew offered computer educational programs at Neumann, a licensed but not accredited school, that did not use Title IV funding. Trial Tr. 32, dated 11-12-09.

24. Mathew had no prior experience with Title IV funding, policies and/or practices prior to purchasing ACTAS. Trial Tr. 125-26, dated 11-10-09; Trial Tr. 156, dated 11-17-09.

25. In April 2001, Bubb and Mathew signed an agreement permitting ACTAS to lease space from Mathew at the 1515 Market Street location to enable ACTAS to relocate their Center City

campus there. Trial Tr. 31-32, 37, dated 11-12-09.

26. After ACTAS moved into the 1515 Market Street location, Bubb and Mathew began discussions about creating a partnership and a possible sale of ACTAS to Mathew. Trial Tr. 35-36, dated 11-12-09.

27. In October 2001, Bubb entered into an agreement of sale with Mathew to sell ACTAS to the Neumann Institute of Technology, a corporation owned by Mathew. Trial Tr. 26, 38, dated 11-12-09.

28. On May 1, 2002, Bubb and Mathew closed on the sale of ACTAS to Neumann and Mathew, with Bubb staying on, under an employment agreement, to assist in running the school. Trial Tr. 26, 46, dated 11-12-09.

29. At the closing, no money changed hands. Bubb sold Mathew the ACTAS stock and, in turn, Mathew assumed a number of ACTAS' liabilities and debts that were outstanding. Id.

30. The sale agreement required Bubb to list all outstanding liabilities. However, outstanding liabilities owed to ED for Pell Grants were not listed by Bubb in the schedule of liabilities attached to the agreement. Trial Tr. 162-164, dated 11-17-09; Trial Tr. 103, dated 11-12-09.

31. Within the listing of liabilities, there was a breakdown of refunds owed to the SLSC, part of PHEAA, and PHEAA itself. In June 2002, the Philadelphia Commercial Management Corporation paid approximately \$49,000 for satisfaction of the liabilities listed in the sale agreement to SLSC. Trial Tr. 56-

57, dated 11-12-09.

32. On May 1, 2002, the closing date, the agreement of sale (as between Bubb and Newmann, owned by Mathew) provided that Bubb would stay on as Mathew's employee to help run ACTAS, during which Bubb would serve as the school's director. Trial Tr. 47, 48, dated 11-12-09.

33. Bubb was charged with running ACTAS' daily operations, including but not limited to: student enrollment, hiring employees, setting work schedules, the eligibility certification and approval report, and financial matters. Trial Tr. 120-37, dated 11-12-09.

34. From June 11, 2002 through April 22, 2004 (date of Bubb's end of employment at ACTAS), Bubb continued to assist with student financial matters (i.e., enrollment contracts, PHEAA audit, student probation, student drop decision, determination of student termination, student's payment of medical bills, signing checks). Trial Tr. 141-44, dated 11-12-2009; Trial Tr. 229, dated 11-10-09.

35. After the closing date, Mathew was legally charged with ACTAS' finances. Trial Tr. 54, 150, dated 11-12-09; Trial Tr. 144, dated 11-13-09. Along with Bubb, Gloria Stanley stayed on and was one of the administrative staff responsible for calculating student's withdrawals ("drop dates") as calculated from the last date of attendance ("LDA"). Trial Tr. 109, dated 11-12-09.

36. In September 2002, Mathew signed a program

participation agreement (PPA) with ED. A PPA is a contract between a school and ED, typically signed by the school's CEO, President, or owner, and an ED representative. The PPA details all of the school's obligations and the requirements it must satisfy in administering Title IV programs, including the responsibility to return student refunds. Trial Tr. 95-99, dated 11-09-09.

c. ACTAS' Program Review

37. In January 2002, as a result of unsubmitted documentation due to the change in ownership at ACTAS, ED sent two institutional review specialists to retrieve documents and do an initial onsite assessment of the ownership change. Trial Tr. 75, dated 11-9-09.

38. After that visit, a program review was recommended because ACTAS' documentation was in disarray and the requested documents could not be found. Trial Tr. 75, 90, dated 11-09-09.

39. Once a school is eligible and receiving Title IV federal funding, in order to ensure compliance with the rules accompanying federal funds, ED may initiate a program review. In a program review, ED specialists visit a school for the purpose of assessing the school's administration of Title IV funding. In doing so, the specialists interview staff, and review the school's student and fiscal records during the assessment. Trial Tr. 76, dated 11-09-09.

40. During a program review, ED specialists typically request a list of all students who are attending during a

particular time frame, and then rely on statistical sampling software which will select, at random, a sample of 15 files from each year to determine whether last date of attendances (i.e., drop dates) and refunds are being properly calculated. Generally, the specialists look at two years, which involves reviewing 30 randomly selected files. Trial Tr. 93-94, dated 11-09-09.

41. Student files typically contain a student enrollment contract, a student account card, which consists of a lists tuition charges, and accumulated credits toward tuition in the form of either Pell grants or student loans. Trial Tr. 93, dated 11-09-09.

42. In April 2003, ED specialists Nancy DellaVecchia and Diane Mangan began ACTAS' program review. In the initial meeting, Dellavecchia and Mangan first met with Mathew, Bubb and Gloria Stanley, ACTAS' financial director. At that time, an overview of the program review process was stated. Trial Tr. 90-92, dated 11-09-09.

43. During the early stages of the program review, the ED specialists encountered a number of problems with requested student records. ACTAS personnel could not locate multiple student files or bank statements. Trial Tr. 92-93, dated 11-09-09.

44. At this time, ACTAS was receiving Title IV funding through the advance pay system. Under this system, the school logs onto an ED website and reports the amount of the funds that

it is requesting on behalf of the eligible students. Within a few days, the government and lenders wire the money to the school. Trial Tr. 102-03, dated 11-09-09.

45. When a school, however, does not properly comply with the rules accompanying receipt of federal funds under the Title IV program, it may be subject to stricter payment plans such as reimbursement. Trial Tr. 107-10, dated 11-10-09.

46. The reimbursement method of payment is authorized by federal regulation, 34 CFR § 668.162(d), which describes the requirements and procedure. Section 668.162, entitled "Requesting Funds", does not include any mention of a chief executive officer certification statements ("CEOCS"). Trial Tr. 107-10, dated 11-10-09.

47. Section 668.162(d) does not mention that an institution must satisfy ED's requirements that all refunds due, prior to the request date, were paid in order to receive the requested funds. Trial Tr. 110, dated 11-10-09.

48. Under the reimbursement system of payment, a school is required by ED to submit a request to ED that consists of three parts: (1) a completed form indicating there are students eligible for certain amounts of funding, the PMS-270; (2) student records that would support the requested funding; and (3) CEOCSs, signed by the owner or president of the school. Trial Tr. 103-04, dated 11-09-09.

49. A CEOCS is a document that the CEO, president, or

owner of a school is required to sign in conjunction with every reimbursement request made to ED. A CEOCS is a "in-house" form developed by ED; not a document created or reviewed by the U.S. Office of Management and Budget. No instructions are attached to the CEOCS. Trial Tr. 102, 108-12, dated 11-10-09.

50. Neither the 2003-2004 Federal Student Aid Handbook nor the 2003-2004 Student Financial Aid Bluebook, both ED publications providing guidance to Title IV professionals about fiscal issues such as accounts and record-keeping, provide any information regarding the CEOCS or its purpose, meaning or intent. Trial Tr. 130-32, dated 11-10-09.

51. Paragraph 2 of the CEOCS forms states that "[a]ll Title IV Return of Title IV Fund payments, including Federal Family Education Loan and Direct Loan payments, have been made as required by Federal regulations and all credit balances have been refunded to the appropriate Title IV programs or students for all students." Trial Tr. 128, dated 11-10-09 (emphasis added).

52. The only explanation of the CEOCS provided by ED is on pages 6 and 7 of the instructions for obtaining funds under the reimbursement system of payment which states in relevant part:

To initiate payment, the institution . . . must submit the following: . . . A statement by the Chief Executive Officer (Appendix I-3) certifying to the accuracy of the data submitted on the student list and the form PMS-270 [a form used to request funds] . . . .

See Trial Tr. 108-111, dated 11-10-09.

53. No additional explanations, provided by ED or elsewhere, existed to indicate that the ¶ 2 of the CEOCS extended beyond the student claims listed in the attached PMS-270 form and the Reimbursement Roster of Students. Trial Tr. 108-111, dated 11-10-09.

54. A delay between a school's reimbursement request and actual disbursement of the funds by ED lasts at least thirty days and with no definite end date. Trial Tr. 105, dated 11-09-09.

55. ED had a policy to reject reimbursement requests if the submitted forms (the PMF-270, the Reimbursement Roster of Students, and the CEOCS) were incomplete or inaccurate. Trial Tr. 41-43, 111-12 dated 11-10-09; Trial Tr. 220, 13-19, dated 11-10-09.

56. During the relevant time period, Mathew had been communicating with ED, either directly or through ACTAS' attorney, Mr. Jonathan Glass, with the Dow Lohnes law firm in Washington D.C. Trial Tr. 109, 11-19-09.

57. The program review of ACTAS covered the period from July 1, 2000 to June 30, 2003. Trial Tr. 192, 11-10-09.

58. On May 8, 2003, ED notified ACTAS by letter that it was placing ACTAS on the reimbursement method of Title IV funding. Trial Tr. 110, dated 11-09-09. This decision was based on: (1) ACTAS's failure to provide requested records while ED specialists were on-site at ACTAS; and (2) an action taken by ACTAS' accrediting body, who had previously issued a show cause

letter to ACTAS indicating that they were considering the removal of the school's accreditation, which would have ended their Title IV eligibility. Trial Tr. 101-02, dated 11-09-09.

59. From June 6, 2003 until August 5, 2004, Mathew signed twelve (12) CEOCS requests along with the twelve (12) reimbursement requests he submitted to ED for Title IV funding on behalf of students attending ACTAS. Trial Tr. 113-20, dated 11-09-09.<sup>7</sup>

60. The twelve (12) CEOCS documents signed by Mathew were reviewed by an ED reimbursement analyst, Mr. Robert Gelfand, whose job included approving reimbursement requests. Trial Tr. 157, dated 11-10-09.

61. From June 5, 2003 until on or about July 30, 2004, ED authorized the release of \$1,211,322 in Pell Grants and federally backed loans to ACTAS. Trial Tr. 32-39, dated 11-10-09.

d. Events Following ED's Program Review Report

62. Following the program review, ED completed a closeout audit of ACTAS covering the period from January 1, 2003

---

<sup>7</sup> The CEOCS submissions, comprising Counts 8-13 of the Indictment, are dated as follows:

- November 7, 2003 (11-7-03)
- December 18, 2003 (12-18-03)
- February 2, 2004 (2-2-04)
- March 26, 2004 (3-26-04)
- July 27, 2004 (7-27-04)
- August 5, 2004 (8-5-04)

See Indictment 8-9.

to September 30, 2004. That period completely covered the reimbursement period. Trial Tr. 195, dated 11-10-09.

63. On September 16, 2003, as part of ED's program review of ACTAS' administration of Title IV funding, ED issued a preliminary report known as a program review report ("PRR"). ED then sent ACTAS the PRR, concerning the status of its Title IV funding and ACTAS' continued eligibility. Trial Tr. 121, dated 11-09-09.

64. The PRR contained several findings of noncompliance of federal regulations on ACTAS' part, including the late and inaccurate return of Title IV refunds for the school years 2000-01, 2001-02, and 2003. Trial Tr. 123, 125, dated 11-09-09.

65. The PRR formally charged ACTAS with the regulatory violation of failing to make refund payments. Trial Tr. 95, dated 11-10-09.

66. The PRR requested that ACTAS perform a file review requiring that the school review its files and determine: (1) which students withdrew and the dates on which they withdrew; (2) amounts of refunds that were owed, if any; (3) dates refunds were paid; and (4) front and back sides of the refund checks to confirm that refunds were actually paid. Finally, ACTAS was required to have the information attested to by a certified public accountant. Trial Tr. 130, dated 11-09-09.

67. The PRR also stated that, due to failure to make refund payments, determination of liability for unmade refunds

would take place in the Final Program Review Determination ("FPRD") and "instructions for the repayment of any liability will be issued in the Final Program Review Determination" letter. Trial Tr. 99, dated 11-10-09.

68. Mathew hired an outside accountant, Mr. Hartman, who prepared a spreadsheet reflecting outstanding balances for students who received funds, but later dropped out for purposes of calculating Title IV refunds that were owed to ED. Trial Tr. 58-60, dated 11-13-09; Trial Tr. 108, 118-35, dated 11-19-09.

69. On or about January 15, 2004, Mr. Glass, on behalf of Mathew and ACTAS, responded to the PRR by submitting a set of documents to ED under a cover letter signed by Mathew that included spreadsheets, entitled "drop reports", to show that ACTAS had been in compliance with ED regulations regarding the return of Title IV refunds. Trial Tr. 129-33, dated 11-09-09.

70. The drop reports contained columns for check numbers and the corresponding amounts paid by check for individual students out of the ACTAS operating account. Trial Tr. 129-33, dated 11-09-09.

71. Mathew listed check numbers 1176, 1177, 1182, 1183, 1184, 1185, and 1187 on the Drop Report to indicate withdrawn students for whom refunds were owed. Refunds for those students (i.e., the checks for those students) were not immediately negotiated and, instead, were paid at later dates. Trial Tr. 129-33, dated 11-09-09; Trial Tr. 108, 118, dated 11-19-09.

e. PHEAA Checks

72. In April 2004, ED reimbursement analyst, Mr. Gelfand, observed that ACTAS had not reported any dropped students since being placed on reimbursement in May 2003. Since it was unusual for schools to report no dropped students over the course of a year, Mr. Gelfand suspended approval of additional Title IV disbursements until he could resolve the issue. Trial Tr. 165, dated 11-10-09.

73. On April 16, 2004, Kathy Penrose, a member of the financial staff at ACTAS, called Mr. Gelfand to say that a mistake was being made in regards to the calculation of a student's drop date and Ms. Gloria Stanley was using the date of determination as the last date of attendance, as opposed to the last day the student actually attended ACTAS. Trial Tr. 210-11, dated 11-10-09.

74. During a telephone conversation with ACTAS personnel, Mr. Gelfand requested information for any students who had been dropped since May 2003. In a letter dated April 19, 2004, Mr. Gelfand reiterated the request and added that ED needed to send proof of payment in the form of copies of the front and back sides of the checks sent to pay for refunds. Trial Tr. 165-169, dated 11-10-09.

75. On May 5, 2004, Mr. Glass, on behalf of ACTAS responded to Mr. Gelfand's request by sending the front-sided copies of 17 checks to both ED and students and 2 checks to PHEAA (despite ED instructions to send the copies of both sides of the

returned and endorsed checks as proof of payment). Mathew was not copied on the correspondence and had no knowledge of the correspondence. Trial Tr. 169-70, 186, dated 11-10-09; Govt Exs. 22-23.

76. According to Mr. Glass's letter, the front-copied checks represented payments for Title IV student refunds. Two of the checks numbered 1375 (\$ 6,667) and 1376 (written for \$11,993) that were drawn against an ACTAS bank account were dated April 30, 2004 and were made payable to PHEAA. The two checks to PHEAA totaled \$18,660.21 in the aggregate. Trial Tr. 170-72, 175-76, dated 11-10-09.

77. On May 10, 2004, Mr. Gelfand spoke with Mathew and stated that there were problems with the checks as no backs had been copied and sent to ED. Trial Tr. 9, dated 11-19-09.

78. On June 14, 2004, Gloria Staley, the financial aid officer, called ED to report that mistakes had been made in the reimbursement refund calculations as the school had been charging an extra \$100 administrative fee. Trial Tr. 187, dated 11-10-09; Trial Tr. 8, dated 11-19-09.

79. On June 17, 2004, Mr. Gelfand again called ACTAS, advising that disbursement of funds was still being held up because ACTAS had failed to send both sides of the refund checks, as requested. Trial Tr. 178-79, dated 11-10-09. Mathew had never negotiated the checks, numbered 1375 and 1376, to PHEAA. Trial Tr. 103, dated 11-19-09.

80. Later that day, PHEAA received a wire funds

transfer into its bank account for the exact same amount of money reflected on the two checks, 1375 and 1376. Trial Tr. 17, 180 dated 11-10-09. As such, ED approved and paid the reimbursement request in July 2004. Trial Tr. 184, dated 11-10-09.

81. The Pell grant funds cited in Counts One through Six of the Indictment were paid from the U.S. Treasury account in Richmond, Virginia, and wired to the ACTAS operating account in Pennsylvania. Trial Tr. 41, dated 11-10-09.

82. Approximately \$320,000 was paid out of ACTAS operating accounts to persons with the name of "Thomas" from June 2003 through August 2004. Trial Tr. 98, dated 11-16-09.

83. Checks from the ACTAS operating accounts made payable to Elizabeth Thomas, Mathew's wife, were made out as cashier's check money orders and to vendors. Trial Tr. 8-9, dated 11-17-09.

f. Defendant's Knowledge That Refunds Were Owed

84. Harshad Patel was hired in May, 2003 to work as ACTAS' bookkeeper and worked at ACTSA for approximately two years. Trial Tr. 223:23-24, dated 11-10-09. Patel had received prior training during a week in Seattle, Washington on Title IV federal funding. Trial Tr. 227:1-6, dated 11-10-09.

85. During his time at ACTAS, Patel advised Thomas Mathew and other employees about their responsibilities concerning Title IV funding, including the need to return refunds. Trial Tr. 227-29, dated 11-10-09.

86. Between June 2003 and August 2004, Patel had

experienced problems balancing the accounting books at ACTAS. One contributing factor was that checks that he had presented to Mathew for his signature were not being returned with the bank's monthly statements. Some of these checks had been drafted for Title IV refunds. Trial Tr. 231, dated 11-10-09.

87. Gloria Stanley worked in Financial Aid at ACTAS from 2001 until 2005. Trial Tr. 136, dated 11-13-09.

**B. "UNEMPLOYMENT COMPENSATION CASE" - COUNTS 14-20**

88. Nanette Sasak, identified as Person #1 in Counts 14 through 20 of the Indictment, began working at ACTAS at its Center City location in February 2003. Trial Tr. 129-33, dated 11-09-09.

89. In September 2003, Nanette Sasak transferred to the Northeast Philadelphia location at 2735 Welsh Road, Northeast Philadelphia. There, Sasak worked on student admissions and defaulted loan accounts. Her duties included interviewing prospective students and sending letters to students who had defaulted on their student loans. Trial Tr. 47, dated 11-13-09.

90. In March 2004, due to chronic financial problems at the school, Mathew laid off Nanette Sasak. She immediately applied for unemployment compensation benefits, which she started to receive that same month (March 2004) from the Commonwealth of Pennsylvania. Trial Tr. 48-49, dated 11-13-09.

91. As a condition of receiving unemployment compensation benefits, Nanette Sasak was required to report biweekly, either by telephone or by Internet, whether she had

been available to work during the time frame and whether she had, in fact, worked for the week during which she was receiving unemployment benefits. Id.

92. During the entire time that Sasak received unemployment compensation, she answered the above questions in the negative. Trial Tr. 158, dated 11-12-09; Trial Tr. 50, dated 11-13-09.

93. In June 2004, Mathew called Sasak asked her to return to work for a project, relating to the identification of students who had been improperly charged a \$100 administrative fee, and returning the fee to those students. Trial Tr. 71-72, dated 11-13-09; Trial Tr. 5-8, dated 11-19-09. Mathew knew that Sasak was receiving unemployment compensation and agreed to pay \$15/hour in cash. Trial Tr. 51-52, dated 11-13-09.

94. During the time period Nanette Sasak worked on the project for Mathew, she received seven unemployment compensation checks in the aggregate totaling \$3,972. Trial Tr. 53, 185-59, 167-69, dated 11-12-09.

95. If Nanette Sasak had reported the cash wages she was paid while working at ACTAS when receiving unemployment compensation benefits to the Commonwealth of Pennsylvania as she was required to, the Bureau of Unemployment Compensation would have reduced the amount of her unemployment benefits dollar for dollar, or terminated them. Trial Tr. 164-65, 178-180, dated 11-12-09.

### III. APPLICABLE LAW

#### A. WIRE AND MAIL FRAUDS

The applicable laws follow, in relevant part. In Counts 1-6, Defendant is charged with wire fraud, in violation of 18 U.S.C. § 1343, and aiding and abetting, in violation of 18 U.S.C. § 2, for conducting an allegedly fraudulent scheme he executed by improperly reporting student disenrollment dates to ED and, as such, retaining approximately \$1.2 M of federal funds that should have been refunded at the time of the student's "drop date." See Indictment ¶ 13.

In Counts 14-20, in connection with the Unemployment Compensation Case, Defendant is charged with mail fraud, in violation of 18 U.S.C. § 1341, and aiding and abetting, in violation of 18 U.S.C. § 2, for conducting a fraudulent scheme to alleged pay former employees "under the table" while they were simultaneously receiving unemployment compensation from the Pennsylvania DOL.

Here, federal wire and mail fraud are treated similarly for statutory purposes.<sup>8</sup> Under §§ 1341 and 1343,

---

<sup>8</sup> "The mail fraud and wire fraud statutes are 'in pari materia and are, therefore, to be given similar construction.'" United States v. Mitani, 2009 U.S. Dist. LEXIS 49643, at \*20 n.1 (E.D. Pa. 2009) (quoting United States v. Tarnopol, 561 F.2d 466, 475 (3d Cir. 1977)).

Title 18 U.S.C. 1341 and 1343 provide in relevant part:  
Whoever, having devised or intending to devise any scheme

[t]he federal mail and wire fraud statutes criminalize the use of the mails or wires to execute a 'scheme or artifice to defraud.' To prove mail and wire fraud, the evidence proffered by the Government must establish, beyond a reasonable doubt, that (1) the defendant's knowing and willful participation in a scheme or artifice to defraud, (2) with the specific intent to defraud, and (3) the use of the mails or interstate wire communications in furtherance of the scheme.

United States v. McGeehan, 584 F.3d 560, 565 (3d Cir. Pa. 2009) (citing United States v. Antico, 275 F.3d 245, 261 (3d Cir. 2001)).<sup>9</sup> "Additionally, the object of the alleged scheme or artifice to defraud must be a traditionally recognized property right." United States v. Al Hedaithy, 392 F.3d 580 (3d Cir. 2004) (citing United States v. Henry, 29 F.3d 112, 115 (3d Cir. 1994)).

Specifically, "to establish predicate offenses under 1341 or 1343, it is the scheme that must be fraudulent, not necessarily the particular mail or wire transmissions that constitute the offenses." Kolar v. Preferred Real Estate Invs.,

---

or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . [uses the mails or wires, or causes their use] for the purpose of executing such scheme or artifice shall be fined under this title or imprisoned . . . .

18 U.S.C. §§ 1341, 1343.

<sup>9</sup> The Third Circuit further explained, in United States v. Pearlstein, that the "prosecution must establish either that the defendant devised the fraudulent scheme or that the defendant 'wilfully participated in it with knowledge of its fraudulent nature.'" 576 F.2d 531, 537 (3d Cir. 1978).

Inc., 2010 U.S. App. LEXIS 702, at \*19 (3d Cir. Jan. 12, 2010) (internal citations omitted); see also United States v. Klein, 515 F.2d 751, 754 (3d Cir. 1975) (mail fraud statute requires proof of specific intent to defraud). Simply put, the Government must prove a "scheme of fraud" in order for Defendant to be found guilty of wire and mail fraud. It cannot be that the mailings or wirings alone were false.<sup>10</sup>

#### **B. AIDING AND ABETTING**

Under § 1341, the Government alleges that Defendant aided and abetted other actors in the scheme of fraud, in violation of 18 U.S.C. § 2. In relevant part, 18 U.S.C. § 2, entitled "Principals," states:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2 (1951).

To establish a violation of § 2, the Government "must prove that 'the defendant charged with aiding and abetting that

---

<sup>10</sup> See also Camiolo v. State Farm Fire & Cas. Co., 334 F.3d 345, 364 (3d Cir. 2003) ("While innocent mailings or wire communications may supply the necessary communication element for these criminal offenses, there must be 'some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension.'" ) (internal citations omitted).

crime knew of the commission of the substantive offense and acted with the intent to facilitate it.'" United States v. Carbo, 572 F.3d 112, 118 (3d Cir. 2009) (citing United States v. Kemp, 500 F.3d 257, 293) (internal quotations and citations omitted). There, the Third Circuit found that the "key phrase for our purposes is 'knew of the commission of the substantive offense' . . . because a defendant who does not know of the state law cannot be said to have known of the commission of the substantive offense." Id.

**C. THEFT CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS**

In Count 7, Defendant is charged with theft concerning programs that received federal funds, in violation of 18 U.S.C. § 666(a)(1)(A) and (b). Section 666(a)(1)(A) states, in relevant part:

(a) Whoever, if the circumstance described in subsection (b) of this section exists--

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that--

(i) is valued at \$ 5,000 or more, and

(ii) is owned by, or is under the care, custody

. . . .  
(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$ 10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

18 U.S.C. §§ 666(a)(1)(A) and (b) (1994); see also United States v. Richards, 9 F. Supp. 2d 455, 458 (D.N.J. 1998) (stating that, under 18 U.S.C. § 666(a)(1)(A), a conviction for theft from a federally funded program requires that a defendant has a "specific intent to convert money or property from the program." ).

**D. FALSE STATEMENTS**

In Counts 8-13, Defendant is charged with falsification of federal documents by signing CEOCSs averring no additional federal funds were to be refunded, in violation of 18 U.S.C. § 1001 (making a false statement to a federal agency). In relevant part, § 1001 states:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years . . . .

18 U.S.C. § 1001 (2006).

**E. SPECIFIC INTENT**

In order to prove that Defendant violated 18 U.S.C. §§ 1341, 1343, 666(a)(1)(A) and (b), 1001, and 2, by conducting a

fraudulent scheme and obtaining nearly \$1.2 million from the federal government in loans and grants and approximately \$3,000 from the Pennsylvania DOL in unmerited unemployment compensation funds, the Government must meet a specific intent standard of proof. As such, "a defendant cannot be convicted . . . unless the Government proves beyond a reasonable doubt that he knowingly and willfully participated in a scheme to obtain money or property through fraud and specifically intended to do so." Hedaithy, 392 F.3d at 590; Antico, 275 F.3d at 260.<sup>11</sup>

#### IV. CONCLUSIONS OF LAW AND DISCUSSION<sup>12</sup>

##### A. "TITLE IV FEDERAL FUNDS CASE" - COUNTS 1-13

Defendant is charged with: six (6) counts of wire fraud, in violation of 18 U.S.C. § 1343 and aiding and abetting,

---

<sup>11</sup> "[W]ith respect to most specific-intent crimes, including mail fraud in most circumstances, ignorance of the law is no excuse." Carbo, 572 F.3d at 116 (citing United States v. Paradies, 98 F.3d 1266, 1285 (11th Cir. 1996) ("In mail fraud cases, the government need only prove that the defendant had the intent to deceive, and ignorance of the law is no defense.")). An exception to this rule exists where intent to violate a legal duty is an element of a crime. See id.

<sup>12</sup> This memorandum solely purports to determine whether the Government established, beyond a reasonable doubt, Defendant's guilt as to the criminal charges brought pursuant to the Indictment. As such, nothing herein, either individually or in aggregate, shall be construed to infer that Defendant is not subject to civil liability under a differing standard of proof.

in violation of 18 U.S.C. § 2; one (1) count of theft concerning programs receiving federal funds, in violation of 18 U.S.C. § 666(a)(1)(A); and six (6) counts of false statements, in violation of 18 U.S.C. § 1001.

a. Wire Fraud

The Government argues that by inputting check numbers into Drop Reports submitted to ED, Defendant was attempting to show that he had paid refunds that were not, in fact, paid and that by signing CEOCSs Defendant was certifying that no outstanding refunds existed.

In opposition, Defendant argues that the Government has failed to meet its burden as (a) Defendant did not make intentional misrepresentations or intentionally deceive the Government because he did not know that a certification as to prior refunds had a bearing on whether a future reimbursement request would be granted; (b) the CEOCSs are not material facts and, even if deemed material, the CEOCSs were not false as Defendant certified the accuracy of the statements therein, which were true;<sup>13</sup> (c) ED did not rely on Defendant's representations

---

<sup>13</sup> The Government argues that Defendant signed and submitted CEOCSs that certified that no outstanding refunds were owed to ED or PHEAA. In response, Defendant argues that, by signing the CEOCSs, he was only certifying to the truth and accuracy of the required statements as per the federal regulations and ED instructions, not that he had paid every refund ever owed.

Defendant argues that it was clear refunds were owed,

in the CEOCSs since they were aware outstanding refunds were owed throughout the entire relevant time period; and (d) ED did not suffer actual harm.

To prove wire fraud, the Government must prove three elements beyond a reasonable doubt. First, that Defendant knowingly and willfully participated in a scheme to deceive ED and PHEAA into believing that all refunds were paid. See Pearlstein, 576 F.2d 531, 537 (3d Cir. 1978) (holding that the prosecution must establish either that the defendant devised the fraudulent scheme or that the defendant "willfully participated

---

beginning in January 2002, when ED specialists visited ACTAS to oversee the change in ownership between Bubb and Mathew. Further, Defendant questions the "materiality" of the CEOCSs as legal misrepresentations where the federal regulations omit the CEOCSS entirely as requirements. ED uses CEOCSs as in-house forms.

In Neder v. United States, the Supreme Court held that "immaterial misrepresentations or means" are those "incapable of influencing the intended victim." 527 U.S. 1, 24 (1999); see also United States v. Stewart, 151 F. Supp. 2d 572 (E.D. Pa. 2001) (holding that were a defendant is charged with having made fraudulent representations, the word "fraudulent" clearly encompasses the notion of materiality).

The CEOCSs certified that the accompanying forms (the PMS-270 and Student Roster) were accurate. As such, it is clear that ED could be influenced by the CEOCSs submissions and therefore, the submissions are material representations. However, the issue here is less broad in scope. The central issue is whether Defendant believed he was certifying that no outstanding refunds existed (i.e., that all outstanding refunds had been paid by him) or that he was certifying as to the accuracy of the included forms, the PMS-270 and Reimbursement Student Roster, he actually submitted stapled to each CEOCS.

in it with knowledge of its fraudulent nature").<sup>14</sup> Second, that Defendant specifically intended to deceive ED and PHEAA into believing that all refunds were paid. Third, that Defendant used mail or interstate wire communications (i.e., submission of the CEOCSs) in furtherance of that scheme. See McGeehan, 584 F.3d at 565; United States v. Clapps, 732 F.2d 1148, 1152 (3d Cir. 1984).

1. Knowing and Willful Participation in a Scheme to Defraud

Based on Defendant's understanding of the necessary payment regulations governing student refunds, confusion by the reimbursement process (i.e., over the representative nature of checks and calculation errors in tabulating the amount of the student refunds owed), and Defendant's conduct during the reimbursement period, the Court finds that the Government did not prove, beyond a reasonable doubt, that Defendant knowingly or willfully participate in a scheme to defraud ED of outstanding student refunds owed.

i. Defendant's Understanding of the Necessary Payment Regulations

---

<sup>14</sup> See Hedaithy, 392 F.3d 590 ("a defendant cannot be convicted . . . unless the Government proves beyond a reasonable doubt that he knowingly and willfully participated in a scheme to obtain money or property through fraud and specifically intended to do so."); see also Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1415 (finding that in proving fraud, the "scheme need not involve affirmative misrepresentation[s], but [that] the statutory term 'defraud' usually signifies 'the deprivation of something of value by trick, deceit, chicane or overreaching.'") (quoting McNally v. United States, 483 U.S. 350, 358 (1987)).

Defendant is accused of providing false information on the CEOCS statements used to support the reimbursement requests. The instructions provided to ACTAS in reference to reimbursement requests specifically state that the "information submitted to receive funds" must be "accurate." The following is a list of the requisite accurate information to be provided to ED, in conjunction with the CEOCS: (1) that the institution properly calculated student awards; and (2) that the institution's students were eligible to receive their awards, based on factors, including, but not limited to, whether the students: (a) were enrolled and attending an eligible program at an eligible location; (b) met any applicable ability to benefit requirements, and (c) were meeting satisfactory academic progress standards. See Gov't Ex. 4 at 6. On the CEOCS, directly following those instructions, is a portion of text in which the institution is apprised of the legal ramifications of certifying inaccurate information.

Additionally, federal regulation § 668.162(d) governs the CEOCSs and states that agents who sign CEOCSs, and the attached PMS-270 and Reimbursement Student Rosters, are certifying as to the truth of the statements therein. 34 C.F.R. § 668.162(d). Here, Defendant points out that § 668.162(d) cannot, as the Government argues, refer to all students for which the institution ever owed refunds, as it would then mean that all

refunds from the time of the school's inception, including prior ownership liabilities, should have been assessed at that time as well.

At trial, on direct examinations, Defendant explained:

Q: Finally, when you signed the six chief executive officer's certification statements that are the subjects of this [I]ndictment, what was it your understanding you were signing?

A: My clear understanding is I am signing that the documents which I am submitting the forms 270 and the spreadsheet and all the documents along with that which we are submitting are true to the best of my knowledge.

Q: Did you have any sense that form was asking you about refunds that came before the date of the certification?

A: Never.

Q: When did you first learn that the Department of Education was claiming that that's what it meant?

A: Only the day I was arrested and -- brought -- the day I came to know that is -- only after they arrested me and brought me to the court, they handed me a paper. When I was reading that I was surprised. That is the only time I came to know.

Q: What was the paper they handed you?

A: Indictment.

Q: The [I]ndictment. During the period of time that you filed the twelve -- and actually you filed twelve of those certifications, didn't you?

A: Yeah.

Q: During the entire reimbursement period?

A: Yes.

Q: During that period, did anybody every call you from ED and say these certificates are false, you can't sign them?

A: Nobody.

See Mathew Trial Tr. 54-56, 11-19-09.

The Court concludes, after reading the ED instructions and federal regulations, it was reasonable for Defendant to conclude that both the CEOCS instructions and federal regulations called for the submission of accurate information and not that they called for a certification that all outstanding student refunds had been paid.

ii. Confusion by the Reimbursement Process

During the period of time ACTAS was placed on reimbursement, various refund calculation errors occurred that ED and Defendant were working together to address. The financial complications coupled with miscommunications between Mr. Glass, the attorney representing ACTAS, and ED made the financial situation further unclear.

First, in 2004, once Defendant allegedly realized that problems with the reimbursements were going on at the school, he contacted his attorney, Mr. Glass, to assist with the program review concerns and refunds. See Mathew Trial Tr. 95, 11-19-09. Defendant also learned outstanding refunds were owed stemming from the tenure of Bubb, the prior owner. Then Defendant's financial aid officer, Ms. Stanley, contacted ED to report a

miscalculation had been ongoing during Defendant's ownership of the school; specifically, that drop dates were being improperly calculated as late as April 19, 2004. See Gov't Ex. 23, Letter from Mr. Glass to Klinger and Mr. Gelfand, dated May 5, 2004.

Following Ms. Stanley's self-reporting, Defendant testified that he sent Mr. Glass copies of the front of checks he had set aside to send to ED once the liabilities were finalized, which he believed ED was going to address in the FPRD. Mr. Glass began to independently correspond with Mr. Gelfand of ED to determine how to handle the outstanding refunds. Mr. Glass then sent Mr. Gelfand a letter, representing that the copies of the front of the checks were, in fact, monies paid as refunds. Defendant was never sent a copy of that communication and testified that he had no knowledge that Mr. Glass represented the checks had, in fact, been negotiated.

At trial, Defendant testified as to the following:

Q: Now, in the process, did an issue arise as to the checks that you had sent the front of to the department of education?

A: Yes.

Q: Tell the Court about that.

A: When I talked to Mr. Gelfand on May 10th, I realized - he told me there are problems they found, they are going to send me a letter about. So I was sure that there are some mistakes then in calculations. So there is no meaning for me to send those checks at that time. So I hold that check.

Q: The amount provided for in those checks, was it

ever paid?

A: Yes.

See Mathew Trial Tr. 9-10, dated 11-19-09.

In his trial testimony, Defendant explained that he only sent the fronts of the checks to Mr. Glass, his attorney, to demonstrate his intent to pay the full refunds at the time the calculation corrections had been established. Noticeably, he did not authorize Mr. Glass to send the front of the checks to ED, representing that they had been negotiated. Once he learned that both the fronts and backs of the checks were required by ED in order to receive requested reimbursement funds, he paid the refunds on that same day.<sup>15</sup>

---

<sup>15</sup>

Q: And you - and the reason why you gave him [Mr. Glass] the checks is because -- just to show the government that you paid the refunds that --

A: No.

Q: -- since -- isn't that the reason why you gave the checks?

A: The reason I gave that is because I wanted to pay the refund. . .

Q: And it [the checks] bears your signature, correct?

A: That is correct . . . .

Q: And the copies of these checks you forwarded to Mr. Glass for forwarding to the government, correct?

A: Yeah, I forwarded the copy to him telling that this is what we are going to send.

Q: And - just so I'm clear, the reason why you sent

As the Court pointed out at trial, Defendant never saw a copy of the letter from Mr. Glass to Mr. Gelfand of the ED. Therefore, due to the overarching confusion between Defendant and ED, the lawyer's mistaken representations to ED cannot be imputed to the Defendant.

Based on an overview of the relevant facts, the Court concludes that Defendant's actions comport with the notion that the entire reimbursement process was ongoing and, once refund calculations were completed, ED could identify outstanding liabilities and Defendant could determine whether they were correct and, if so, issue payment.

iii. Defendant's Conduct During the Reimbursement Period

Defendant's conduct during the reimbursement period was not "reasonably calculated to deceive persons of ordinary prudence and comprehension." See Kehr, 926 F.2d at 1415 (stating

---

Mr. Glass those checks was to show the government that you paid these refunds?

A: Not to say I'm paid. At that point, you know, I'm just sending so I'm going to pay with those checks.

Q: Well, the reason why you sent the checks - the reason why, clearly isn't it, is to let the government know that you paid those monies, correct?

A: No. If I paid the money and if the money was received by the government, I would have had the back of the check by the time I am signing it.

See Mathew Trial Tr. 100-02, 11-19-09.

that "a scheme or artifice to defraud 'need not be fraudulent on its face, but must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension.'").

In 2002, ED found that ACTAS was under new ownership and had inaccurate and missing financial records. In April 2003, Ms. DellaVecchia visited ACTAS during the program review and found Mr. Bubb, the prior owner, still assisting with running the school. Defendant specifically testified that Mr. Bubb was kept on as he was familiar with the Title IV programs. Further, at the program review's exit conference, Ms. DellaVecchia informed Defendant that he would need to hire an outside accountant to assess the school's Title IV funding.

Defendant complied with each request. See Pl.'s Ex. 13, Def.'s Ltr Resp. to FPRD, dated 10/22/04 ("In addition, I retained the prior owner as a campus director and relied on him to organize the documents and manage the preparations for the program review . . . . I hired an auditor and a financial aid servicer who were presented to me as experts in the field who could manage (in the case of the servicer) significant aspects of the financial aid process. I now question their expertise.") ]

In the PRR, dated September 16, 2003, ED formally accused ACTAS of failing to make refund payments and then noted that "instructions for the repayment of any liability will be

issued in the Final Program Review Determination." See Trial Tr. 99, dated 11-10-09. However, no date was set for the Final Program Review Determination and, in fact, the Final Program Review Determination was not issued until October 8, 2004, over one year later. Trial Tr. 61-62, dated 11-10-09.

Communications between ED and Defendant continued through the reimbursement process. In June 2003 through July 2004, Defendant requested and ED released \$1,211,322 in Pell Grants and federally backed loans to ACTAS; for each request, Defendant submitted a CEOCS and supporting documentation.<sup>16</sup>

---

<sup>16</sup> ED workers knew, as early as April 2003, that ACTAS had outstanding refunds owing. However, instead of withholding future funding until resolution of the outstanding liabilities, Mr. Gelfand continued to release federal funds to Defendant from May 8, 2003 through September 14, 2004, when ED terminated ACTAS' agreement to participate in Federal IV funding.

Further, when questioned, Mr. Gelfand himself testified that no refunds were released unless he was satisfied that the CEOCS and submitted students files were accurate:

Q: But in the end, if you approve them, that's -- that's your seal of approval that the information was sufficient to establish that the students qualified, the students were entitled to the -- the money that was requested and the students had received the money that was requested as the -- as the regulation requires.

A: I -- again, I am not at the institution and my job is to review the documentation that they sent to us and the paper. So based on what I see on the paper, that's --

Q: Yeah.

A: -- what I'm processing and releasing the funds

In April 2004, Mr. Gelfand contacted ACTAS and suspended Title IV reimbursement because no reports of dropped students had been submitted since ACTAS had been placed on reimbursement in May 2003. Following this initial interaction between Defendant and Mr. Gelfand in April 2004, Defendant forwarded correspondence to his attorney, Mr. Glass. Subsequent confusion arose. However, in each instance where Defendant was directly contacted by ED, he attempted to be responsive. In June 2004, Mr. Gelfand made follow-up calls, advising Defendant that both sides of negotiated refunds checks had never been submitted to ED. That same day, Defendant wired ED the identified refunds.

A fair reading of the exchanged communications is that Defendant proposed to compile and submit documentation regarding refunds in response to ED requests. Defendant, through his attorney, even submitted a letter acknowledging that \$70,469.69 in refunds was still owed. See Pl.'s Ex. 10, Letter from Mr.

---

based on that.

Q: And you wouldn't release the money unless you were satisfied, would you?

A: That's correct.

See Gelfand Trial Tr. 216:21-217:10, dated 11-10-09.

By continuing to release funds to Defendant through September 14, 2004, ED was representing to Defendant that Defendant's reports of known outstanding refunds were accurate.

Glass to ED, dated August 13, 2004.<sup>17</sup>

Moreover, on October 22, 2004, Defendant notified ED that the refunds identified were being appealed and to note the positive steps ACTAS had employed since receiving the Final Program Review Determination. See Pl.'s Ex. 13, Def.'s Resp. to FPRD (noting that a different accountant was employed to complete the close out audit and a new consultant, Mr. Bogart from Busse Educational Consulting, was hired to review ACTAS' financial records, including refund calculations).

Finally, Defendant stated that ACTAS was still open and intending to "teach out" all current and remaining students. Id. Even after Defendant was informed by the Accrediting Commission that all federal funding was being withdrawn, he sent a letter to ED to inform them of his future course of action:

---

<sup>17</sup> During this process, Defendant made other representations that indicate acknowledgment of outstanding refunds and intent to pay. On August 10, 2004, Mr. Gelfand sent Defendant a letter, requesting a copy of the backs of the checks inserted into the Drop Reports as they had not been negotiated. See Pl.'s Ex. 9 (noting copies of the front and backs of checks #s 1176, 1177, 1182, 1183, 1184, 1185, and 1187 had not been sent by Defendant).

In response, on August 13, 2004, Defendant sent a letter stating that "the school and owner recognize their commitment to pay refunds when due" and that, due to ongoing obligations to students at ACTAS, they were having difficulty paying timely refunds. See Pl.'s Ex. 10 at 1-3. In his letter, Defendant included a copy of the negotiated #1176 check and listed the known outstanding refunds. Defendant further addressed the issue of future conflicts, which was to be raised in the final program review determination. Id. at 2.

I was informing the accrediting commission and copied to the board - I mean Department of Education state and federal government that I will be - I will not enroll anymore new students until I teach-out all students. Two, I will be teaching out all the existing students who are willing to come - will come to school and want to finish their education.

See Mathew Trial Tr. 12-13 (noting that from May 2003, when ACTAS was placed on reimbursement, through December 2005, the withdrawal of all federal funds, Defendant testified that he personally contributed \$1.465 million of the \$3,026,547.85 in expenses). It is unlikely that, in its dealings with ED, a person contemplating a scheme to defraud those of prudent sensibilities would commit to identifying refunds owed over a two year time period and continue to teach-out the students enrolled at his own cost.

Defendant's reasonable belief that the FPRD would identify all outstanding liabilities and Defendant's continued cooperation with and document turnover during the reimbursement period are not actions that comport with one devising a fraudulent scheme to hide the very nature of those documents. Under the circumstances, the Government did not prove, beyond a reasonable doubt, that Defendant knowingly and willfully participated in a scheme to defraud the ED by signing CEOCSs while outstanding refunds were owed.

## 2. Specific Intent

Section 1341 mail fraud, § 1343 wire fraud and §

666 are specific intent offenses. United States v. Coyle, 63 F.3d 1239, 1243 (3d Cir. 1995). "To prevail under [those] statute[s], the government must show that a defendant intended to commit fraud at the time of the alleged fraudulent behavior." United States v. Vitillo, 2004 U.S. Dist. LEXIS 22419, at \*18-19 (E.D. Pa. Nov. 2, 2004) (internal citation omitted).

"The specific intent element may be found from a material misstatement of fact made with reckless disregard for the truth." United States v. Hannigan, 27 F.3d 890, 892 (3d Cir. Pa. 1994) (citing United States v. Boyer, 694 F.2d 58, 59-60 (3d Cir. 1982)). The Boyer court held that:

a fraudulent intent is necessary to sustain the charge of a scheme to defraud. An untrue statement or representation which is in fact false only amounts to fraud if the defendant making it either knew the statement to be false and he made it, made the statement with the intent to defraud, or, as I have said, these things were due to recklessness on his part.

694 F.2d at 59.<sup>18</sup>

Applying the Boyer rationale to the facts of this case, the Court concludes that the Government failed to prove, beyond a reasonable doubt, that Defendant had a specific intent to defraud ED of Title IV funds.

Upon close consideration of the evidence and a weighing

---

<sup>18</sup> In Boyer, the court found that reckless disregard was "equivalent" to intentional misrepresentation "because you may not recklessly represent something as true which is not true even if you don't know it if the fact you don't know it is due to reckless conduct on your part." 694 F.2d at 59.

of the witnesses' credibility, the Court finds that the Government failed to prove, beyond a reasonable doubt, that Defendant had fraudulent intent in signing the CEOCSs. See Pearlstein, 576 F.2d at 537 (in prosecution for mail fraud government must prove willful participation in fraudulent scheme with knowledge of its falsity); Klein, 515 F.2d at 754 (mail fraud statute requires proof of specific intent to defraud). As discussed in detail above, Defendant did not reasonably believe that by signing the CEOCSs, he was certifying that all outstanding refunds had been paid. Therefore, Defendant did not make the statements "knowing" them to be false and Defendant did not sign the CEOCSs with the intent to defraud.

Accordingly, the Government failed to demonstrate, beyond a reasonable doubt, that Defendant specifically intended to devise a scheme to defraud ED of monies received for students attending ACTAS. Camiolo, 334 F.3d at 364.

### 3. Use of Mail or Interstate Wire Communications in Furtherance of the Scheme

Here, the Government focuses on the inference that Defendant's CEOCS submissions and failure to negotiate specific checks are sufficient evidence to demonstrate a fraudulent scheme. However, the law requires more. See Camiolo, 334 F.3d at 364 ("While innocent mailings or wire communications may supply the necessary communication element for these criminal

offenses, there must be 'some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension.'" (internal citations omitted).

The Court has determined that Defendant did not intend to devise a scheme to defraud ED of outstanding student refunds. Therefore, the Government failed to prove, beyond a reasonable doubt, that Defendant mailed the CEOCSs in furtherance of a fraud scheme.

b. Theft Concerning Programs on Federal Funds

The Government argues that Defendant is guilty of stealing federal funds through ACTAS, in violation of 18 U.S.C. § 666(a)(1)(A) and (b); see also Richards, 9 F. Supp. 2d 455, 458 (D.N.J. 1998) (stating that, under 18 U.S.C. § 666(a)(1)(A), a conviction for theft from a federally funded program requires that a defendant has a "specific intent to convert money or property from the program").

However, since the Court has concluded that Defendant did not manifest specific intent to defraud ED of the Title IV funds, the Government also failed to prove, beyond a reasonable doubt, that Defendant had the specific intent to steal those funds through ACTAS, a federally funded program.

c. False Statements

The Third Circuit has held that "to establish knowing

and willful conduct in the making of a false statement, the government must show that a defendant 'acted deliberately and with knowledge that the representation was false.'" United States v. Curran, 20 F.3d 560, 567 (3d Cir. 1994) (citing United States v. Glantzman, 447 F.2d 199, 200 (3d Cir. 1971) (government failed to prove that defendant had personal knowledge of falsity)). Further, the Curran court held that "to convict a person accused of making a false statement, the government must prove not only that the statement was false, but that the accused knew it to be false. Thus, the government is required to show that the misrepresentation was not made innocently or inadvertently." 20 F.3d at 567.

Where the Court has determined that Defendant did not have personal knowledge of the falsity of the CEOCSs and did not know that by signing the CEOCSs he was certifying that all outstanding refunds had been paid, Defendant cannot, in turn, be found to have "acted deliberately and with knowledge that the representation was false." United States v. Barr, 963 F.2d 641, 645 (3d Cir. 1992) (holding that "[a] conviction under § 1001 requires . . . [proof of] specific intent"). Further, the Government failed to show, beyond a reasonable doubt, that Defendant had personal knowledge of any alleged misrepresentations made in the PMS-270s and Reimbursement Student Rosters submitted in addendum to the relevant CEOCSs. See infra.

As such, the Court concludes that the Government failed to prove, beyond a reasonable doubt, that Defendant made false statements within the meaning of 18 U.S.C. § 1001.

**B. "UNEMPLOYMENT COMPENSATION CASE" - COUNTS 14-20**

Here, in Counts 14-20, Defendant is charged with seven (7) counts of mail fraud, in violation of 18 U.S.C. § 1341, and aiding and abetting, in violation of 18 U.S.C. §2.<sup>19</sup>

a. Mail Fraud

To prove mail fraud, in accordance with Third Circuit requirements, the Government must "prove that the defendant

---

<sup>19</sup> In relevant part, 18 U.S.C. § 2, entitled "Principals," states:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2.

To establish a violation of § 2, the Government "must prove that 'the defendant charged with aiding and abetting that crime knew of the commission of the substantive offense and acted with the intent to facilitate it.'" Carbo, 572 F.3d at 118 (citing Kemp, 500 F.3d 257 at) (internal quotations and citations omitted). There, the Third Circuit found that the "key phrase for our purposes is 'knew of the commission of the substantive offense' . . . . because a defendant who does not know of the state law cannot be said to have known of the commission of the substantive offense." Id.

participated in the fraudulent scheme knowingly and 'in furtherance of the illicit enterprise.'" United States v. Dobson, 419 F.3d 231, 237 (3d Cir. 2005) (quoting Pearlstein, 576 F.2d at 531) (reversing the district court for failing to instruct the jury on this element).

Specifically, in order for Defendant to be found guilty of mail fraud in connection with the mailing of the unemployment compensation checks to Ms. Sasak, under 18 U.S.C. § 1341, and aiding and abetting, under 18 U.S.C. § 2, Defendant must have knowingly and willfully participated in a scheme to defraud the Commonwealth of Pennsylvania of unemployment compensation and "acted with the intent to facilitate it." Carbo, 572 F.3d 118.

The Government alleges Defendant, as a principal in the alleged scheme to defraud, attempted to re-hire former employee, Nanette Sasak, after being informed that she was receiving unemployment compensation. The Government argues that Defendant is culpable for seven counts of mail fraud, each of Ms. Sasak's unemployment compensation requests during her re-employment with Defendant, and for causing and encouraging Ms. Sasak's drawing of state unemployment compensation while receiving monies from Defendant and failing to report that income.

Ms. Sasak worked for ACTAS until March 2004 when she was laid off by Defendant. See Trial Tr. 48, dated 11-13-09. Defendant testified that, on June 9, 2004, he received a letter

from Mr. Gelfand, informing him that there were problems with the reimbursement calculations. In order to address this particular issue, Defendant called Ms. Sasak to work on a short-term project whereby she would list and determine which students' reimbursements had been improperly calculated due to Ms. Stanley's confusion as to what the proper drop date to determine school attendance. See Mathew Trial Tr. 6-7, 11-19-09 (noting that Ms. Stanley had been using the date of determination "DOD" date, and not the last date of attendance "LOA").

Once she was laid off, Ms. Sasak began collecting unemployment compensation from the Commonwealth of Pennsylvania. When Defendant contacted her in June 2004 to work on a short term project for ACTAS, they agreed she would be paid approximately \$15/hour in cash. See id. at 71-72. Ms. Sasak had a duty to report any income she received to the Department of Labor and Industry while she was collecting unemployment. However, Defendant, as an employer, did not have a legal duty to report a former employee's current earning while working for the former employer.<sup>20</sup> As Ms. Sasak did not report any of the cash money

---

<sup>20</sup> At trial, Mr. Bruyere, an employee at the Commonwealth of Pennsylvania Department of Labor and Industry, Internal Audits Division, whose job entailed investigating unemployment compensation fraud, testified as to the following:

Q. Well, if -- if -- if an employee or former employee files a claim, the employer's notified of that claim. It has an opportunity at that time to indicate that it was a dismissal for cause or a

paid to her by Defendant while she collected unemployment during June 2004, she alone may be guilty of defrauding the Commonwealth.

---

quit. That would negate the claim, if that were --

A. That would --

Q. -- upheld?

A. --raise an issue --

Q. Right.

A. -- which would result in adjudication.

Q. Now, once -- once -- if an employer doesn't object, then the employee goes on to unemployment compensation. What obligation, if any, does the employer have after that?

A. After that, they're not obligated to return their -- those forms. It's possibly in their best interest to respond, but there is no legal obligation that mandates that an employer respond to a wage and separation verification request or a monthly notice of compensation charges if they don't choose to protest any of that information.

Q. So, from that point on, they're kept informed because it affects their fund and therefore their rate. But they're not obliged to do anything? Legally?

A. That's correct.

Q. Okay. Now, there -- there's nothing -- there's nothing wrong with an employer who has laid somebody off at a later date, hiring them to do part-time work, is there?

A. No, sir.

See Bruyere Trial Tr. 182:15-183:16, dated 11-12-09.

The Government argues that Ms. Sasak received seven unemployment compensation checks, totaling \$3,972, while she worked on the ACTAS project. Those checks were sent beginning on July 7, 2004 through September 30, 2004. See Indictment 13. Defendant argues, however, that Ms. Sasak's project extended from June 9, 2004 through June 14, 2004, resulting in a \$600 cash payment from Defendant for her work. See Trial Tr. 80, dated 11-19-09.<sup>21</sup>

Defendant testified that he knew it was unlawful to receive unemployment compensation while being gainfully employed without reporting the monies received for working. See Carbo, 572 F.3d at 118 (stating that a "defendant who does not know of the state law cannot be said to have known of the commission of the substantive offense."). However, Defendant testified that while he knew Ms. Sasak was receiving unemployment compensation, he did not know that she was not reporting the cash wages he was paying her for the particular ACTAS project. See Trial Tr. 63, 11-13-09. Defendant never told Ms. Sasak not to report the

---

<sup>21</sup> A: Initially during that first meeting I had denied receiving anything and then later admitted that I had.

Q: And roughly how much did you say you got? Does that say about 600 dollars?

A: Yeah.

See Sasak Trial Tr. 80, dated 11-13-09.

income he was paying her for the work on that project. See Trial Tr. 63, dated 11-13-09 ("Q: Did he [Defendant] tell you not to report the income? . . . Q: You said, 'No, he didn't. I just basically understood it or assumed it.' A: Correct.").

When police arrived at Defendant's home, placing him under arrest, Defendant was subjected to an interview with Officer Parisi. At trial, Defendant testified as to the following:

A: Did -- I paid a -- did -- those people work under the table for me. And I said "no".

Q: And was one of those people Nanette Sasak?

A: Yes. I said that.

Q: Why did you say that?

A: Because I paid her for a few hours and I told -- I never told her it is under the table. My understand is that it's not under the table. I paid her for a few hours she worked. That's all. A few days, you know, a few hours.

See Trial Tr. 152, dated 11-19-09.

Accordingly, the Government cannot demonstrate that an understanding existed between Defendant and Ms. Sasak, that she was to receive pay for her work on the project and not report it to the DOL. Though Defendant was aware of the state law, he did not intend for or aid in Ms. Sasak's failure to report the monies she earned while receiving unemployment compensation checks.

Here, the Government failed to show, beyond a

reasonable doubt, that Defendant knowingly participated in Ms. Sasak's failure to report her income from ACTAS to the Pennsylvania DOL, and therefore Defendant cannot be found criminally guilty of mail fraud and aiding and abetting, pursuant to 18 U.S.C. §§ 1341 and 2.

#### **V. CONCLUSION**

As to Counts 1 through 13, the Government failed to demonstrate, beyond a reasonable doubt, that Defendant had the specific intent to devise a scheme to defraud the federal government of Title IV funds. Therefore, the Court finds Defendant not guilty on each of these counts.

As to Counts 14-20, the Government failed to prove, beyond a reasonable doubt, that Defendant intended to facilitate Ms. Sasak's failure to report her income to the Commonwealth of Pennsylvania while she was receiving unemployment compensation. Therefore, the Court finds Defendant not guilty on each of these counts.

A judgment of acquittal shall be entered in for Counts 1 thru 20.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 : NO. 08-678  
v. :  
 :  
THOMAS MATHEW :

J U D G M E N T

**AND NOW**, this **15th** day of **April, 2010**, it is hereby **ORDERED** that, pursuant to the accompanying findings of fact and conclusions of law, it is ordered that:

- As to Count 1, for wire fraud, in violation of 18 U.S.C. § 1343, Defendant is found not guilty;

- As to Count 2, for wire fraud, in violation of 18 U.S.C. § 1343, Defendant is found not guilty;

- As to Count 3, for wire fraud, in violation of 18 U.S.C. § 1343, Defendant is found not guilty;

- As to Count 4, for wire fraud, in violation of 18 U.S.C. § 1343, Defendant is found not guilty;

- As to Count 5, for wire fraud, in violation of 18 U.S.C. § 1343, Defendant is found not guilty;

- As to Count 6, for wire fraud, in violation of 18 U.S.C. § 1343, Defendant is found not guilty;

- As to Count 7, for theft or bribery, as an agent and owner of a school receiving federal funds, in violation of 18 U.S.C. §§ 666(a)(1)(A) and (b), Defendant is found not guilty;

- As to Count 8, for issuing false statements to a federal official, in violation of 18 U.S.C. § 1001, Defendant is found not guilty;

- As to Count 9, for issuing false statements to a federal official, in violation of 18 U.S.C. § 1001, Defendant is found not guilty;

- As to Count 10, for issuing false statements to a federal official, in violation of 18 U.S.C. § 1001, Defendant is found not guilty;

- As to Count 11, for issuing false statements to a federal official, in violation of 18 U.S.C. § 1001, Defendant is found not guilty;

- As to Count 12, for issuing false statements to a federal official, in violation of 18 U.S.C. § 1001, Defendant is found not guilty;

- As to Count 13, for issuing false statements to a federal official, in violation of 18 U.S.C. § 1001, Defendant is found not guilty;

- As to Count 14, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation, in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty;

- As to Count 15, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation,

in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty;

- As to Count 16, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation, in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty;

- As to Count 17, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation, in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty;

- As to Count 18, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation, in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty;

- As to Count 19, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation, in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty;

- As to Count 20, for mail fraud and aiding and abetting a scheme of fraud regarding unemployment compensation, in violations of 18 U.S.C. §§ 1341 and 2, Defendant is found not guilty.

**AND IT IS SO ORDERED.**

S/Eduardo C. Robreno  
**EDUARDO C. ROBRENO, J.**