

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION 500 North Capitol Street
Washington, D. C. 20549 Plaintiff,

V.

NATIONAL STUDENT MARKETING CORPORATION CORTES W. RANDELL
JOHN G. DAVIES DONALD F. FERGUSSON JAMES F. JOY BERNARD J. KUREK
ROGER O. WALTHER PEAT, MARWICK, MITCHELL & CO. ANTHONY M.
NATELLI JOSEPH SCANSAROLI WHITE & CASE MARION JAY EPLEY, III
ROBERT A. KATZ CAMERON BROWN PAUL E. ALLISON WILLIAM J. BACH
ROBERT P. TATE LORD, BISSELL & BROOK MAX E. MEYER LOUIS F.
SCHAUER , Defendants

Civil Action No. 225-72

First Amended Complaint For Injunctive And Other Relief

The Securities and Exchange Commission (“Commission”) for its complaint alleges upon information and belief that:

1. Defendants National Student Marketing Corporation (“NSMC”), Cortes W. Randell (“Randell”), John G. Davies (“Davies”), Donald A. Fergusson (“Fergusson”), James F. Joy (“Joy”), Bernard J. Kurek (“Kurek”), Roger O. Walther (“Walther”), Peat, Marwick, Mitchell & Co. (“PMM”), Anthony M. Natelli (“Natelli”), Joseph Scansaroli (“Scansaroli”), White & Case, Marion Jay Epley, III (“Epley”), Robert A. Katz (“Katz”), Cameron Brown (“Brown”), Paul E. Allison (“Allison”), William J. Bach (“Bach”), Robert P. Tate (“Tate”), Lord, Bissell & Brook, Max E. Meyer (“Meyer”), and Louis F. Schauer (“Schauer”) directly and indirectly, have engaged, are engaged and are about to engage in acts and practices which constitute and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934, as amended (“Exchange Act”) [15 U.S.C. 78j(b)] and Rule 10b-5 [17 CFR 240.10b-5] promulgated thereunder and Section 17(a) of the Securities Act of 1933, as amended (“Securities Act”) [15 U.S.C. 77q(a)].
2. Defendants NSMC, Randell, Davies, Fergusson, Kurek, Walther, White & Case, Epley, Katz, PMM, Natelli and Scansaroli, directly and indirectly, have engaged, are engaged and are about to engage in acts and practices which constitute and will constitute violations of Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and rules promulgated thereunder.
3. Defendants NSMC, Randell, Davies, Fergusson, Joy, Kurek, Walther, White & Case, Epley, PMM, Natelli and Scansaroli, directly and indirectly have engaged, are engaged and are about to engage in acts and practices which constitute and will constitute violations of Section 14(a) of the Exchange Act [15 U.S.C. 78n(a)] and rules promulgated thereunder.
4. The Commission brings this action pursuant to Sections 20(b) and (c) of the Securities Act [15 U.S.C. 77t(b) and (c)] and Sections 21(e) and (f) of the Exchange Act [15 U.S.C. 78u(e) and (f)] to restrain and enjoin said defendants from engaging in such acts and practices.
5. This Court has jurisdiction of this action pursuant to Section of the Securities Act [15 U.S.C. 77v(a)] and Sections 21(f) and 27 of the Exchange Act [15 U.S.C. 78u(f) and 78aa].
6. Many of the acts and practices constituting the violations of law alleged herein took place in the District of Columbia and defendant NSMC is a successor to National Student Marketing Service, Inc. (“D.C. Corporation”), which had been incorporated under the laws of the District of Columbia on May 20, 1966 and had its principal business offices in the District of Columbia from May 1966 to June 1970. The D.C. Corporation changed its name in January 1968 to National Student Marketing Corporation.
7. The defendants directly and indirectly made use of means or instruments of transportation or communication in interstate commerce or of the mails in connection

with each of the acts and practices alleged herein in the District of Columbia and elsewhere. The defendants will, unless restrained and enjoined, continue to engage in the acts and practices alleged herein and in acts and practices of similar purport and object.

The Defendants

8. Defendant NSMC, which has approximately 2,400 stockholders, is a corporation which was incorporated under the laws of the State of Delaware on December 4, 1969 and which now maintains its principal place of business at 175 West Jackson Boulevard, Chicago, Illinois. The common stock of defendant NSMC is registered with plaintiff Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. 781] pursuant to the filing by defendant NSMC with plaintiff Commission of a registration statement for such securities under Section 12(g) of the Exchange Act [15 U.S.C. 781(g)] on or about April 29, 1970 which became effective on June 1, 1970. The D.C. Corporation had common stock registered with the Commission pursuant to Section 12 of the Exchange Act pursuant to the filing by the D.C. Corporation with plaintiff Commission of a registration statement for such securities under Section 12(g) of the Exchange Act on or about August 15, 1968 which became effective October 14, 1968. Effective April 1, 1970, pursuant to a reincorporation plan dated as of December 17, 1969, defendant NSMC acquired all the assets and assumed all the liabilities of the D. C. Corporation in exchange for the common stock of defendant NSMC. The common stock of defendant NSMC and its predecessor was at all relevant times traded on the over-the-counter market. Except as hereinafter noted, the D.C. Corporation is referred to as NSMC. The fraudulent scheme which is the subject of this complaint commenced in 1968 and resulted in the issuance of approximately 11,200,000 shares of unregistered securities of NSMC between the fall of 1968 and June 1970 in 83 separate transactions. During this period of time the price of NSMC's stock ranged from a low of \$6.00 per share, the initial public offering price in April 1968, to a high of \$144.00 per share on December 15, 1969 (reported as \$72.00 per share after the first 2 for 1 split in December 1968 but before the second split in December 1969). On February 1, 1972, NSMC's stock was quoted at 2¼ bid, 2½ asked. As of December 31, 1970, NSMC had approximately 13,600,000 shares of common stock outstanding. (The number of shares referred to throughout the complaint, unless otherwise indicated, reflects the total shares distributed after giving effect to two 2 for 1 stock splits).

9. Defendant Randell, who resides at 1100 Crest Lane, McLean, Virginia, was at all material times Director, President, Chief Executive Officer, and a member of the Finance and/or Executive Committee of defendant NSMC until on or about February 19, 1970, Chief Operating Officer until about July 22, 1969 and Treasurer until approximately August 1968.

10. Defendant Davies who resides at 60 Walworth Avenue, Scarsdale, New York, has held or currently holds the following positions with defendant NSMC: Director - December 16, 1968 to date Assistant Secretary - February 1, 1969 to May 1969 General Counsel - February 1, 1969 to date Secretary - May 1969 to date Vice President - August 1, 1970 to date Member of Executive Committee - October 13, 1969 to date

10a. Defendant Fergusson, who resides at 4010 Canyon Road, LaFayette, California, became a director of NSMC in January 1968, a vice-president in July 1968 and a member of the Finance and/or Executive Committee in February 1969, all of which posts he resigned in April 1970.

11. Defendant Joy, who resides at Browndock Road, Navesink, New Jersey, has been a director of defendant NSMC since September 1968, a member of the Finance and/or Executive Committee from October 1968 until June 30, 1970, a Senior Vice President from approximately June 1969 to February 25, 1970 and an Executive Vice President from approximately February 25, 1970 to June 30, 1970.

12. Defendant Kurek, who resides at 13218 Point Pleasant Drive, Fairfax, Virginia, was at all relevant times either Controller, Treasurer or Vice President and a member of the Finance and/or Executive Committee of defendant NSMC until May 1, 1970.

13. Defendant Walther, who resides at 456 North American Avenue, Greenwich, Connecticut, has held or currently holds the following positions with defendant NSMC: Director -February 1969 to date Executive Vice President and Chief Operating Officer - July 22, 1969 to February 24, 1970 President and Chief Executive Officer -February 25, 1970 to April 22, 1970 Member of Finance and/or Executive Committee -May 1969 to April 22, 1970

14. Defendant PMM is a national firm of certified public accountants with an office at 1025 Connecticut Avenue, N.W. Washington, D.C. Defendant PMM has been defendant NSMC's independent auditors for the fiscal years ended August 31, 1968 and 1969 and December 31, 1969 and 1970 and issued opinions as to the fairness of the financial position of defendant NSMC as of the four above noted dates and on the results of operations for the periods then ended.

15. Defendant Natelli, who resides at 8564 Horseshoe Lane, Potomac, Maryland, has been at all relevant times a certified public accountant, a partner of the accounting firm of PMM, and the partner in charge of the Washington, D. C. office of PMM, as well as the partner specifically in charge of the NSMC engagement from the fall of 1968 through early 1970.

16. Defendant Scansaroli, who resides at 1121 University Boulevard West, Silver Spring, Maryland, has been at all relevant times a certified public accountant and was an auditor on the staff of PMM holding various positions from July 15, 1962 through August 1969. In September 1969, Scansaroli left the employ of PMM and became Assistant Controller of defendant NSMC. Scansaroli resigned from NSMC in June 1970.

17. Defendant White & Case is a law firm with offices at 14 Wall Street, New York, New York, and has been a law firm representing defendant NSMC since approximately August 1968.

18. Defendant Epley, who resides at 30 Summit Avenue, Bronxville, New York, has been a partner of the law firm of White & Case since July 1, 1969.
19. Defendant Katz, who resides at 1050 Park Avenue, New York, New York, is an attorney at law, practicing in the city of New York at 375 Park Avenue, New York, New York.
20. Defendant Brown who resides at 600 South Ridge Road, Lake Forest, Illinois, has been Chairman of the Board of Directors of defendant NSMC since February 25, 1970 and a member of the Executive Committee of defendant NSMC since November 10, 1969 and President and Chief Executive Officer of defendant NSMC since April 21, 1970. Prior to October 31, 1969, Brown was President and a director of Interstate National Corporation (“Interstate”), which corporation merged with NSMC.
21. Defendant Allison, who resides at 221 E. Washington Street, Bloomington, Illinois, was a director of Interstate at the time of its merger with and into defendant NSMC and continues to be a director of the Interstate successor, a wholly owned subsidiary of defendant NSMC.
22. Defendant Bach, who resides at 606 S. Moore Street, Bloomington, Illinois, was a director of Interstate at the time of its acquisition by defendant NSMC and continues to be a director of Interstate’s successor, a wholly owned subsidiary of defendant NSMC.
23. Defendant Tate who resides at 1322 E. Washington Street, Bloomington, Illinois, was Chairman of the Board of Directors of Interstate at the time of its acquisition by defendant NSMC and continues to be a director of Interstate’s successor, a wholly owned subsidiary of defendant NSMC.
24. Defendant Lord, Bissell & Brook is a law firm with offices at 135 South LaSalle Street, Chicago, Illinois, and has been a law firm representing Interstate or its predecessors since approximately 1952.
25. Defendant Meyer is a partner of the law firm of Lord, Bissell & Brook and was a director of Interstate at the time of its merger with and into defendant NSMC.
26. Defendant Schauer, who resides at 4931 Central, Western Springs, Illinois, has been a partner in the law firm of Lord, Bissell & Brook since January 1, 1963.

FIRST CLAIM

Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5] and Sections 13(a) and 14(a) of the Exchange Act [15 U.S.C. 78m(a) and 78n(a)] and rules and regulations thereunder.

27. Plaintiff realleges paragraphs 1 through 16. During the period from approximately August 1968 to date hereof, defendants NSMC, Randell, Davies, Fergusson, Joy, Kurek, Walther, PMM, Natelli and Scansaroli, and each of them, separately and in concert, directly and indirectly, in connection with the purchase and sale of securities of defendant NSMC and in connection with the purchase of securities of various other corporations, have employed and are employing devices, schemes and artifices to defraud, have obtained and are obtaining money and property by means of untrue statements of material facts and by omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and have been engaged in transactions, acts, practices and courses of business which have operated and are operating as a fraud and deceit upon the shareholders of defendant NSMC and other purchasers and sellers and prospective purchasers and sellers of defendant NSMC's securities.

Among the corporations acquired by defendant NSMC in connection with the above scheme are the following: Date; Shares of NSMC Securities Exchanged in Consideration; Company Acquired; Financial Statement(s) Given to the Companies and their stockholders by NSMC. Number(s) in parenthesis refer(s) to paragraph(s) of complaint describing statement(s)

2/1/69; 31,430; Colad Co., Inc.; For the period ending Aug. 31, 1968, (28)

2/6/69; 1,200,000; New England Travel Corp.; For the periods ending Aug. 31, 1968, (28) and Nov. 30, 1968 (30)

2/19/69; 80,000; Consultants for Market Isolation, Inc.; For the period ending Aug. 31, 1968, (28)

2/19/69; 145,396; Renselaar Corp.; For the period ending Aug. 31, 1968, (28)

4/24/69; 594,000; Impressions by M, Inc.; For the period ending Aug. 31, 1968, (28)

10/10/69; 458,350; Five-Dollar-A-Day Tours, Inc.; For the periods ending Aug. 31, 1968, (28) and Feb. 28, 1969, (31)

10/10/69; 13,952; Frommer-Pasmanier Publishing Corp.; For the periods ending Aug. 31, 1968, (28) and Feb. 28, 1969, (31)

10/14/69; 77,274; Mailbag International, Inc.; For the periods ending Aug. 31, 1968, (28) and Feb. 28, 1969, (31)

10/14/69; 103,594; MII Services, Inc.; For the periods ending Aug. 31, 1968, (28) and Feb. 28, 1969, (31)

10/17/69; 600,000; Mar-Clay Mills Inc.; For the periods ending Aug. 31, 1968, (28) and Feb. 28, 1969, (31)

10/29/69; 480,000; W. R. Simmons & Associates Research, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

10/29/69; 504,732; Varsity House, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

10/31/69; 1,651,334; Interstate National Corp.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 500,998; Stuckey & Speer, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 263,842; Cottrell Bus Service, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 8,996; Clintcott, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 2,734; Cottrell Bus Service, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 234,190; Ritzenthaler Bus Lines, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 87,338; Central West Motor Stages, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

11/13/69; 24,246; Air-Ride, Inc.; For the periods ending Aug. 31, 1968, (28) and May 31, 1969, (32)

12/30/69; 29,600; Golden Arrow Line, Inc.; For the period ending Aug. 31, 1969, (39)

12/21/69; 68,000; Campus Subscriptions, Inc.; For the period ending Aug. 31, 1969, (39)

1/8/70; 1,482,761; Cliftex Clothing Co., Inc.; For the period ending Aug. 31, 1969, (39) [This acquisition was rescinded in June, 1970.]

1/13/70; 386,000; Tanger Creighton, Inc.; For the period ending Aug. 31, 1969, (39)

1/29/70; 12,867; Ango Enterprises, Inc.; For the period ending Aug. 31, 1969, (39)

As part of the aforesaid violative conduct, materially false and misleading press releases and speeches were made, issued and disseminated to the public and to shareholders; materially false and misleading reports, proxy statements and a registration statement

were filed with plaintiff Commission; material facts concerning defendant NSMC's financial condition, business operations and transactions with certain directors and employees of defendant NSMC were not disclosed; and materially false and misleading financial statements were issued and disseminated to the press, all of which are more fully described in the paragraphs 28 through 46 below.

28. On or about December 31, 1968, defendant NSMC mailed to its shareholders, plaintiff Commission (which received such report at its offices in the District of Columbia) and others, its annual report to shareholders entitled "Annual Report 1968" which contained audited Consolidated Financial Statements for the fiscal year ended August 31, 1968. Said Consolidated Financial Statements were audited by defendant PMM and included a Consolidated Balance Sheet, Consolidated Statements of Earnings, Retained Earnings and Paid in Capital and the accompanying footnotes. The opinion of defendant PMM included in said annual report states that defendant PMM's "examination was made in accordance with generally accepted auditing standards" and also states that the financial statements of defendant NSMC "present fairly the consolidated financial position of National Student Marketing Corporation and subsidiaries at August 31, 1968 and the results of their operations for the year then ended, in conformity with generally accepted accounting principles . . ." Defendants NSMC, Randell, Kurek, PMM, Natelli and Scansaroli directly and indirectly participated in the preparation of said annual report. Defendants NSMC, Randell and Kurek, as part of the fraudulent scheme, also prepared, helped to prepare and/or caused to be disseminated publicly a press release which in part summarized the financial information contained in the annual report. The annual report to shareholders is materially false and misleading in that:

(a) The consolidated balance sheet as of August 31, 1968 materially overstated assets by approximately \$1,700,000 as a result of the improper recording and accounting for unbilled accounts receivable and accrued costs and estimated earnings on contracts in progress, and materially overstated liabilities by approximately \$1,000,000 as a result of the improper recording and accounting for accrued costs on contracts in progress.

(b) The consolidated statement of earnings for the fiscal year ended August 31, 1968 materially overstated sales by approximately \$1,700,000, costs by approximately \$1,000,000 and earnings before income taxes and extraordinary items by \$695,689 (out of a total of such earnings reported of \$699,116 as a result of the improper recording of sales and related costs from purported contracts in progress.

(c) The consolidated statement of retained earnings for the fiscal year ended August 31, 1968 materially overstated retained earnings as a result of the matters discussed in subparagraphs (a) and (b) above.

(d) Footnote 3 to the Consolidated Financial Statements of defendant NSMC entitled "Contracts in Progress" does not disclose that a material amount of the purported contracts in progress which were accounted for on the basis of their being contracts at August 31, 1968 were not, in fact, contracts, never existed as client commitments, were

entered into after August 31, 1968 or contained guarantees which precluded their being recorded as income.

(e) The opinion of defendant PMM is materially false and misleading in that:

(1) The examination made by defendant PMM was not conducted in accordance with generally accepted auditing standards,

(2) The financial statements of defendant NSMC were not prepared in conformity with generally accepted accounting principles, and

(3) The financial statements of defendant NSMC do not present fairly the consolidated financial position and results of operations of defendant NSMC and subsidiaries as of and for the fiscal year ended August 31, 1968, for the reasons noted in subparagraphs (a) through (d) above.

29. On or about December 31, 1968, defendant NSMC filed with plaintiff Commission at its office in the District of Columbia an annual report on Form 10-K [17 CFR 249.310] for the fiscal year ended August 31, 1968 pursuant to Section 13(a) of the Exchange Act. Defendants NSMC, Randell, Kurek, PMM, Natelli and Scansaroli directly and indirectly, participated in the preparation of said annual report on Form 10-K. Said annual report on Form 10-K contained substantially the same audited consolidated financial statements for the fiscal year ended August 31, 1968 which had been mailed to shareholders of defendant NSMC, plaintiff Commission and others. Said annual report on Form 10-K is materially false and misleading for the reasons set forth in paragraph 28 above.

30. On or about February 3, 1969, defendants NSMC, Randall, Davies and Kurek, as part of their fraudulent course of conduct, prepared, helped prepare and/or caused to be released and disseminated to shareholders of defendant NSMC and the public a report entitled "Financial Report First Quarter 1969." It contained a Consolidated Statement of Income of defendant NSMC for the three months ended November 30, 1968 and was summarized in a public press release dated February 3, 1969. The First Quarter Report is materially false and misleading in that the consolidated statement of earnings contained therein materially overstates sales by approximately \$500,000 and the consolidated statement of earnings contained therein materially overstates gross profit and earnings before income taxes by approximately \$200,000 and thereby materially overstates net income. In early 1969 defendant NSMC issued approximately 1,500,000 shares of its common stock in four different transactions (described in part in the chart in paragraph 27) through the use of the materially false and misleading financial statements described in this paragraph and in paragraph 28 above. The first half report is materially false and misleading in that:

(a) The Consolidated Statement of Income materially overstates sales by approximately \$1,400,000 (which overstatement included a purported sale made to Pontiac Division General Motors Corporation for approximately \$800,000) as a result of the improper recording of contracts in progress.

(b) The Consolidated Statement of Income materially overstates net income after taxes.

(c) The report failed to disclose that unbilled accounts receivable totaling approximately \$1,000,000 and related accrued liabilities previously reported for the fiscal year ended August 31, 1968, were reversed as of or prior to February 28, 1969, in recognition of the fact that these unbilled receivables never existed or were had for other reasons. The report failed to disclose the reasons for such reversals and the amount of the reduction in net income and retained earnings resulting from such reversals. Of the approximately \$1,000,000 in unbilled accounts receivable written off, approximately \$750,000 and related liabilities of approximately \$540,000 were applied retroactive to August 31, 1968. Said report failed to disclose the effect on sales, costs of sales and earnings of such retroactive reversals.

As part of such fraudulent course of conduct, defendant NSMC failed to file with the Commission a report on Form 9-K for the six months ended February 28, 1969, as was required by Section 13(a) of the Exchange Act and Rule 13a-13 thereunder as then in effect (17 CFR 240.13a-13 (1969)].

32. On or about August 25, 1969, defendants NSMC, Randell, Davies, Joy, Walther and Kurek as part of the fraudulent course of conduct prepared, helped to prepare and/or caused to be released and disseminated to shareholders of defendant NSMC and the public a report entitled "Financial Report Third Quarter 1969." It contained a Consolidated Statement of Income of defendant NSMC for the nine months ended May 31, 1969 and was summarized in a public press release. In October and November 1969, defendant NSMC issued approximately 3,800,000 shares of its common stock in eleven different transactions (described in part in the chart in paragraph 27) through the use of materially false and misleading financial and other information described in this paragraph and paragraphs 31 and 33. The Third Quarter Report is materially false and misleading in that:

(a) The Consolidated Statement of Income contained therein materially overstates sales by approximately \$1,500,000 (which overstatement includes a purported sale to Eastern Airlines of approximately \$500,000) as a result of the improper recording of unbilled accounts receivable.

(b) The Consolidated Statement of Income materially overstates cost of sales by approximately \$800,000.

(c) The Consolidated Statement of Income materially understates selling, general and administrative expenses by approximately \$1,100,000.

(d) The Consolidated Statement of Income materially overstates net income after taxes.

33. On or about September 30, 1969, defendant NSMC filed with the Commission at its offices in the District of Columbia and mailed to NSMC stockholders a proxy statement

dated September 27, 1969, to be used for a special meeting of defendant NSMC's shareholders to be held October 8, 1969, to consider, among other things, the acquisition and merger with and into NSMC of the following companies: Interstate National Corporation ("Interstate"), Five Dollar A Day Tours, Inc., Frommer-Pasmanier Publishing Company, Mar-Clay Mills, Inc., Mailbag International, Inc., and MII Services, Inc. Defendants NSMC, Randell, Davies, Walther, Joy, Kurek, Fergusson, PMM, Natelli and Scansaroli directly and indirectly participated in the preparation of said proxy statement. Said proxy statement contains NSMC's Consolidated Financial Statement for the fiscal year ended August 31, 1968, and for the nine months ended May 31, 1969. Said proxy statement is materially false and misleading for the reasons stated in paragraphs 28, 31 and 32 above and in that:

(a) Defendant NSMC's Consolidated Balance Sheet as of May 31, 1969, materially overstates assets by approximately \$2,100,000 as a result of the improper recording of \$1,900,000 in unbilled receivables and accrued costs and estimated earnings on contracts in progress, and the overstatement by approximately \$200,000 in deferred costs relating to prepared sales program and promotional items.

(b) Defendant NSMC's Consolidated Balance Sheet as of May 31, 1969, materially understates accounts payable by approximately \$300,000.

(c) Defendant NSMC's Consolidated Balance Sheet as of May 31, 1969, materially overstates accrued costs on contracts in progress by approximately \$1,000,000.

(d) Defendant NSMC's Consolidated Balance Sheet and Statement of Retained Earnings as of May 31, 1969, materially overstates retained earnings as a result of the items described in subparagraphs (a), (b) and (c) above.

(e) Defendant NSMC's Consolidated Statement of Earnings for the nine months ended May 31, 1969, materially overstates sales by approximately \$1,500,000, and materially overstates earnings before income taxes and extraordinary credit by approximately \$1,800,000.

(f) Defendant NSMC's earnings per share before and after extraordinary credit for the nine months ended May 31, 1969, is materially overstated.

(g) Footnote 3 to the Consolidated Financial Statements of defendant NSMC entitled "Contracts in Progress" fails to disclose that a material amount of contracts in progress, which were accounted for on the basis of obtaining client commitments, were never in fact client commitments, were not in fact contracts, were entered into after May 31, 1969 or contained guarantees which precluded their being recorded as income.

(h) Defendant NSMC's Consolidated Balance Sheet as of the year ended August 31, 1968, materially overstates assets by approximately \$1,000,000 as a result of the improper recording of unbilled accounts receivable and accrued costs and estimated earnings on contracts in progress.

(i) Defendant NSMC's Consolidated Balance Sheet as of fiscal year ended August 31, 1968, materially overstates accrued costs on contracts in progress by approximately \$500,000.

(j) Defendant NSMC's Consolidated Balance Sheet as of and Statement of Retained Earnings for fiscal year ended August 31, 1968, materially overstates retained earnings as a result of items described in subparagraphs (h) and (i), above.

(k) Defendant NSMC failed to disclose adequately in the proxy statement that unbilled receivables and accrued costs and estimated earnings and contracts in progress of approximately \$750,000 reflected as assets in NSMC's annual report to shareholders for fiscal year ended August 31, 1968 and defendant NSMC's annual report on Form 10-K for fiscal year ended August 31, 1968 were written off during the nine month period ended May 31, 1969 and applied retroactive to defendant NSMC's fiscal year ended August 31, 1968.

(l) Defendant NSMC failed to disclose adequately in the proxy statement that the write-off referred to in subparagraph (k) above, had the effect of materially reducing sales by approximately \$750,000 and earnings before taxes and extraordinary items by approximately \$210,000 and of materially reducing net earnings in the Consolidated Statement of Earnings for the fiscal year ended August 31, 1968.

(m) Defendant NSMC's Consolidated Statement of Earnings for the fiscal year ended August 31, 1968 materially overstates sales by approximately \$1,000,000, cost of sales by approximately \$500,000, net earnings before extraordinary items and taxes by approximately \$485,000 and earnings from extraordinary items by approximately \$100,000.

(n) Defendant NSMC's proxy statement fails to disclose that defendant Randell on behalf of defendant NSMC entered into employment agreements with various individuals to induce them to become employees of defendant NSMC and to induce them to accept salaries and other compensation less than what they otherwise would have, and as part of such agreements, defendant Randell transferred his money and his NSMC securities to such individuals.

34. On or about October 7, 1969, defendant NSMC filed a registration statement on Form S-14 [17 CFR 239.240] with plaintiff Commission at its offices in the District of Columbia pursuant to the Securities Act. The registration statement related to the sale of 54,285 shares of common stock of defendant NSMC by certain selling shareholders. Defendants NSMC, Randell, Davies, Walther, Kurek, PMM, Natelli and Scansaroli directly and indirectly participated in the preparation of such registration statement. Defendants Randell, Davies, Walther, Joy, Fergusson and Kurek each signed the registration statement. Defendants PMM consented to the references to them in the registration statement as experts with regard to their report on the financial statements of defendant NSMC and subsidiaries and to the use of their report in said registration

statement. An amendment to the registration statement was filed on or about October 13, 1969. The registration statement as amended became effective on October 14, 1969. On or about October 22, 1969, defendant NSMC filed with plaintiff Commission Post Effective Amendment No. 1 to the Form S-14, which became effective on October 22, 1969. Said Post Effective Amendment No. 1 did not materially amend the registration statement which became effective on October 14, 1969. The registration statement contained consolidated financial statements of NSMC including Consolidated Statement of Earnings for each of the five years ended August 31, 1968 and Consolidated Statement of Earnings for the nine months ended May 31, 1968 and May 31, 1969 and Consolidated Balance Sheets as of August 31, 1968 and May 31, 1969. Said registration statement was materially false and misleading for the reasons noted in paragraphs 28, 32 and 33 above.

35. On October 31, 1969, in connection with the merger between defendant NSMC and Interstate, defendants NSMC Randell, Joy and Davies received a letter from defendant PMM, as is more fully described in paragraph 48 below, stating that the May 31, 1969 financial statements required material adjustments. On or before November 5, 1969 defendants Fergusson, Walther and Kurek also were apprised of the contents of the letter. Notwithstanding the letter, defendants NSMC, Randell, Joy, Davies, Fergusson, Walther and Kurek as part of the fraudulent scheme failed to revise the "Financial Report Third Quarter 1969" referred to in paragraph 32 above, the proxy statement referred to in paragraph 33 above or the registration statement referred to in paragraph 34 above, all of which documents included the false May 31, 1969 statements. Defendant PMM failed to insist that the above documents be revised and, such revisions not being forthcoming, failed to withdraw from their engagement with defendant NSMC. As part of this fraudulent scheme, defendants NSMC, Randell, Davies and Joy and others permitted certain persons who had either received the letter or had knowledge of it to sell NSMC stock without making public disclosure of the contents of the letter. In furtherance of the fraudulent scheme, defendants NSMC, Randell, Joy and Davies failed to reveal to Interstate and its representative the pending negotiations for the purported sales of Compujob, Inc., ("Compujob") and Collegiate Advertising Ltd., ("CAL"), wholly owned subsidiaries of NSMC.

36a. As part of the fraudulent, scheme defendants NSMC, Randell, Walther, Joy, Fergusson, Davies and Kurek continued to conceal the existence of the letter from PMM and the contents thereof referred to in paragraph 35 above.

36b. NSMC filed with plaintiff Commission monthly reports on Form 8-K for the months of October and November 1969 which contained misrepresentations as to the truthfulness, accuracy and fairness of NSMC's financial statements as of May 31, 1969.

37. On or about October 8, 1969, at a meeting of shareholders of defendant NSMC, defendant Randell, as part of the fraudulent scheme of conduct, stated that sales of defendant NSMC for the fiscal year ended August 31, 1969, would be approximately \$50 million and earnings for the same period would be \$.80 to \$.85 per share. On or about October 14, 1969, defendant Randell as part of the fraudulent scheme of conduct, gave a speech in Boston, Massachusetts in which he stated that sales of NSMC for fiscal year

ended August 31, 1969, would be approximately \$55,000,000, earnings would be \$3,500,000 and earnings per share would be \$.80 to \$.85. Such statements were materially false and misleading in that defendant NSMC did not have a profit for the nine months ended May 31, 1969, that the prediction was predicated on defendant NSMC's acquisition of certain companies and that unless those acquisitions took place, NSMC would show a loss for the year ended August 31, 1969.

38. On or about November 5, 1969, defendant Randell, as part of the fraudulent scheme of conduct gave a speech in New York City before the New York Society of Security Analysts. A text of the speech was distributed at the meeting and to the press. In the speech, Randell predicted defendant NSMC would have earnings for the fiscal year ended August 31, 1969, in excess of \$.75 a share on sales of approximately \$55 million and described the campus marketing network of NSMC as follows:

“A vital aspect of NSMC's marketing system is its ongoing sales force. Seven hundred student representatives currently cover more than 1050 colleges attended by 88% of the total college enrollment. These representatives, who are full-time students, are now personally hired-and sponsored by 24 district managers, who are full-time employees of the company. The district managers are in turn supervised by four regional managers and a national director here in New York The distribution and sales feedback is completely computerized and . . . [t]here is complete verification for all on campus activities.”

Such speech was materially false and misleading in that it failed to disclose that:

(a) The prediction of earnings in excess of \$.75 per share was predicated on defendant NSMC's acquisition of certain companies, none of which had been acquired prior to August 31, 1969, and some of which had not been acquired even as of the date of the speech and was further predicated upon NSMC's selling two wholly owned subsidiaries at a gain, which sales are more fully described in subparagraphs (i) and (j) of paragraph 39 below.

(b) The campus marketing network described above was losing money for the company and its elimination from the company was being seriously considered.

39 On or about December 1, 1969, NSMC mailed to its shareholders, the Commission and others its annual report to shareholders entitled “National Student Marketing Corporation Annual Report 1969” which contained audited consolidated financial statements for the fiscal year ended August 31, 1969 and comparative consolidated financial statements for the fiscal year ended August 31, 1968. Defendants NSMC, Randell, Davies, Fergusson, Kurek, Walther, PMM and Natelli directly and indirectly participated in the preparation of said report. The opinion of defendant PMM included in said report states that defendant PMM's “examination was made in accordance with generally accepted auditing standards,” and that the financial statements contained in the report “present fairly the consolidated financial position of National Student Marketing Corporation and subsidiaries at August 31, 1969, and the results of their operations for

the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year in all material respects.” Said report was materially false and misleading in that:

(a) The Consolidated Financial Statements failed to disclose that unbilled accounts receivable, accrued costs and estimated earnings on contracts in progress of approximately \$800,000 reflected in NSMC’s annual report for the fiscal year ended August 31, 1968 were written off during fiscal year ended August 31, 1969 and retroactively applied to defendant NSMC’s fiscal year ended August 31, 1968.

(b) The Consolidated Financial Statements failed to disclose that the write-off referred to in subparagraph (a) above had the effect of materially reducing sales by approximately \$800,000, net earnings before income taxes and extraordinary items by approximately \$210,000 and net earnings and net earnings per share before and after extraordinary items by material amounts.

(c) The Consolidated Balance Sheet for the fiscal year ended August 31, 1968, materially overstated assets by approximately \$950,000 and materially overstates retained earnings as a result of the improper recording and accounting of unbilled accounts receivable and accrued costs.

(d) The Consolidated Statement of Earnings for the fiscal year ended August 31, 1968, materially overstated sales by approximately \$950,000, earnings before income taxes and extraordinary items by approximately \$500,000, earnings from extraordinary items by approximately \$100,000 and net earnings and earnings per share before and after extraordinary items by material amounts.

(e) The Consolidated Statement of Retained Earnings for the fiscal year ended August 31, 1968, is materially overstated.

(f) The Consolidated balance Sheet as of August 31, 1969, materially overstates assets by approximately \$2,200,000 as a result of:

(1) The improper recording of approximately \$1,800,000 of unbilled accounts receivable and accrued costs and estimated earnings on contracts in progress which includes a purported unbilled account receivable from American Airlines, Inc., of \$396,760 and a purported unbilled account receivable from Eastern Airlines, Inc. of \$667,240.

(2) The overstatement of long term notes receivable by approximately \$445,000.

(g) The Consolidated Statement of Earnings for the fiscal year ended August 31, 1969, materially overstates income from services by approximately \$1,700,000, materially overstates earnings before income taxes and extraordinary items by approximately \$1,500,000, materially overstates income resulting from extraordinary items by approximately \$370,000 and materially overstates net earnings.

(h) The Consolidated Statement of Retained Earnings for the fiscal year ended August 31, 1969, is materially overstated.

(i) The Consolidated Financial Statements fail to disclose with regard to the purported sale of a wholly owned subsidiary of NSMC, Compujob, which sale is purportedly described in footnote 3 to the consolidated financial statements, that:

(1) Negotiations for the sale of Compujob, engaged in by defendants Fergusson, Walther and Davies, were initiated after the close of the fiscal year in order that defendant NSMC could improperly record an extraordinary gain on the sale for the fiscal year ended August 31, 1969, and in order that defendant NSMC's income per share would meet defendant Randell's predictions.

(2) The purchasers of Compujob were not personally liable on the \$225,000 promissory note ("note") received by defendant NSMC from the Compujob purchasers.

(3) The note would only be paid out of the proceeds of 4,500 shares of defendant NSMC's common stock which was the collateral securing the promissory note, [References to number of shares in subparagraphs (i) and (j) of this paragraph do not give effect to the 2 for 1 stock split that occurred in December 1969].

(4) Concurrent with the sale of Compujob, defendants NSMC, Davies and Joy had made provisions for the sale of the collateral at such a price that the proceeds were insufficient to pay off the note.

(5) Concurrent with the sale of Compujob by defendant NSMC, defendant Randell transferred 4,500 shares of NSMC's common stock to the purchasers of Compujob for an interest in a corporation owned by the purchasers of Compujob, Strider Oceanic Corporation ("Strider"). The 4,500 shares so transferred by defendant Randell to the purchasers of Compujob were used by them as the collateral for the note given to defendant NSMC in the Compujob purchase.

(6) Defendant NSMC agreed to manage the business of Compujob from the time of sale until October 31, 1970.

(7) Defendant NSMC undertook, pursuant to the management agreement, to make cash advances to Compujob repayable solely out of Compujob's post income tax earnings and then only to the extent of 60% of such earnings.

(8) Defendant NSMC agreed to indemnify and hold harmless the purchasers of Compujob from any expense, loss or damage resulting from the sale of Compujob to the purchasers.

(9) Defendant NSMC agreed to indemnify and hold harmless the sellers of Strider stock from any expense, loss or damage resulting from the sale of Strider stock to defendant Randell.

(10) The purchasers of Compujob agreed to terminate the business of Compujob at defendant NSMC 'S request and that all expenses of termination were to be borne by defendant NSMC.

(j) The Consolidated Financial Statements fail to disclose with regard to the purported sale of a wholly owned NSMC subsidiary, CAL, which sale is purportedly described in footnote 3 to the Consolidated Financial Statements, that:

(1) Negotiations for the sale of CAL, engaged in by defendants Fergusson, Walther and Davies, were initiated after the close of the fiscal year ended August 31, 1969 but the agreements were dated August 28 and August 29, 1969, in order that defendant NSMC could improperly record an extraordinary gain on the sale for the fiscal year ended August 31, 1969, and in order that defendant NSMC's income per share would meet defendant Randell's predictions.

(2) Concurrent with the sale of CAL by defendant NSMC, defendant Randall transferred 9,559 shares of NSMC common stock for an interest in a corporation, National Student Marketing Canada Limited, ("Canada"), owned by the purchasers of CAL.

(3) The business of CAL was to be combined with that of Canada in the formation of a new public company in which defendant Randell was to have an interest.

(4) Concurrent with the sale of CAL by defendant NSMC, defendant Randell sold 2,250 shares and defendant Fergusson sold 2,125 shares of NSMC common stock to the purchasers of CAL at a discount, receiving promissory notes in return.

(5) The collateral which secured the \$220,000 promissory notes given by the purchasers of CAL to purchase CAL from defendant NSMC, 3,200 shares of common stock of defendant NSMC, came from the shares sold by defendants Randell and Fergusson, as described in subparagraphs (2) and (4) above.

(6) Defendant NSMC agreed that, if on the maturity date of the promissory notes given by the CAL purchasers the sale of the 3,200 shares of defendant NSMC's common stock would not produce an amount necessary to retire the promissory notes, then defendant NSMC would furnish or cause to be furnished, such additional shares of defendant NSMC's common stock which would produce sufficient monies to pay off the promissory notes or would accept the amount realizable on the 3,200 shares of defendant NSMC's common stock in full satisfaction of the promissory notes.

(7) Defendant NSMC and/or defendant Randell agreed to cause to be paid to the purchasers of CAL \$271,190 (Canadian dollars) by not later than November 28, 1969, and in any event to hold the purchasers of CAL harmless from all of CAL's direct and indirect liabilities incurred in the course of its business up to and including August 31, 1969.

(8) Defendant NSMC and/or defendant Randell agreed to indemnify and hold the purchasers of CAL and each of them harmless from and against any and all claims, liabilities, loss or damage arising out of any of the matters referred to in subparagraph (7) above.

(9) Defendant NSMC agreed that it would guarantee CAL's line of bank credit up to \$125,000 after the sale.

(k) The Consolidated Financial Statements as of August 31, 1969, fail to disclose that of the \$1,763,992 in unbilled accounts receivable reflected in the Consolidated Financial Statements as of August 31, 1968, approximately 77% or \$1,365,000 were written off, and of that amount approximately \$800,000 had been written off retroactive to August 31, 1968.

(l) Footnote 4(a) to the Consolidated Financial Statements entitled "Contracts in Progress -Fixed-Fee Type Contracts" is materially false and misleading in that it fails to disclose that a material amount of such contracts did not in fact exist as contracts, never in fact existed as client commitments, were entered into after August 31, 1969, or contained guarantees which precluded their being recorded as income.

(m) The Annual Report to shareholders for fiscal 1969 fails to disclose a material reduction and curtailment of operations in the services offered by defendant NSMC and a material change in defendant NSMC's method of operations.

(n) The Annual Report to shareholders for fiscal 1969 contains a president's letter signed in facsimile by defendant Randell which states, in part, on page 6:

"In short, the past year has been one of bringing together new sources of strength and creativity -people, organizations, clients. And together, their contribution has surpassed the sum total of what they would have contributed individually.

One immediate indication of how synergy or interaction has worked is found in some of this year's sales and profit figures. In fiscal 1969, sales increased to \$67,869,142 from \$50,340,608 [N]et profits rose to \$3,865,080 in 1969 from \$2,376,912 in 1968. And reported earnings per share have increased 45% from \$.53 in 1968 to \$.77 in 1969.

With this rate of growth, we are keenly aware of the necessity for effective control to ensure our future success." (emphasis added)

The above statement is materially false and misleading because the figures are false for reasons stated above and because it fails to disclose that sales and net earnings of NSMC were increased substantially by the retroactive inclusion of companies which, were acquired by NSMC after the end of the fiscal year.

(o) The opinion of defendant PMM is materially false and misleading in that:

(1) The financial statements of defendant NSMC did not present fairly the consolidated financial position of defendant NSMC and subsidiaries at of August 31, 1969 and the results of operations for the year then ended for the reasons noted above.

(2) The financial statements of defendant NSMC were not prepared in conformity with generally accepted accounting principles.

40. On or about December 18, 1969, defendant NSMC filed with Plaintiff Commission at its offices in the District of Columbia a proxy statement pursuant to Section 14 of the Exchange Act in connection with the annual meeting of shareholders of defendant NSMC to be held December 30, 1969. The proxy statement incorporates by reference defendant NSMC's financial statements contained in the annual report for the year ended August 31, 1969. Defendants NSMC, Randell, Davies, Walther, Kurek, Fergusson, PMM and Natelli directly and indirectly participated in the preparation of the proxy statement.

The proxy statement is materially false and misleading in that:

(a) The proxy statement, in connection with disclosure therein relating to remuneration of certain officers and directors and in connection with the financial statements incorporated therein, fails to disclose the transfer of money and securities to various employees, officers and directors of defendant NSMC by defendant Randell on behalf of defendant NSMC as inducements to them to become employees of defendant NSMC.

(b) The proxy statement fails to disclose the association of defendants Randell and Fergusson with the transactions in which CAL and Compujob, two wholly owned subsidiaries of defendant NSMC, were sold. The information not disclosed is more fully described in subparagraphs (i) and (j) of paragraph 39 above.

(c) The financial statements of defendant NSMC for fiscal year ended August 31, 1969 incorporated by reference in the proxy statement, are materially false and misleading for the reasons noted in paragraph 39 above.

41. On December 30, 1969, at the annual meeting of shareholders of defendant NSMC, defendant Randell in answer to a stockholder's question stated that defendant NSMC would have net earnings of \$2.00 per share in the next full fiscal year, the same earnings per share figure noted in defendant Randall's speech of November 5, 1969, discussed in paragraph 38 above. Said statement is materially false and misleading in that it fails to disclose that defendant NSMC's tentative results for three months ended November 30, 1969, indicated sales and net earnings to be approximately 8% and 37% below budget respectively and that tentative earnings for said quarter were approximately \$.12 per share.

42. On or about January 19, 1970, defendant NSMC filed with plaintiff Commission at its offices in the District of Columbia an annual report on Form 10-K for defendant NSMC's fiscal year ended August 31, 1969, pursuant to Section 13(a) of the Exchange Act. The annual report on Form 10-K contained audited consolidated financial statements

of defendant NSMC and subsidiaries for the fiscal year ended August 31, 1969, with comparative figures for the fiscal year ended August 31, 1968. Defendants NSMC, Randall, Davies, Walther, Kurek, Fergusson, PMM and Natelli directly and indirectly participated in the preparation of said annual report on Form 10-K. The consolidated financial statements were audited by defendant PMM. The opinion of defendant PMM included in said annual report states that defendant PMM's "examination was made in accordance with generally accepted auditing standards," and that the financial statements of defendant NSMC present fairly the consolidated financial position of National Student Marketing Corporation and subsidiaries at August 31, 1969, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles . . ." Defendant Davies signed said report as Secretary of defendant NSMC. Said report was materially false and misleading for the reasons stated in paragraph 39 above.

43. On or about May 18, 1970, defendant NSNC filed with plaintiff Commission at its offices in the District of Columbia an amended annual report on Form 10-K for NSMC's fiscal year ended August 31, 1969, pursuant to Section 13(a) of the Exchange Act. The amended annual report on Form 10-K contained audited financial statements of defendant NSNC and consolidated subsidiaries in addition to audited financial statements of defendant NSMC alone. The consolidated financial statements, and financial statements of defendant NSMC unconsolidated were audited by defendant PMM. The opinion of defendant NSMC included in said annual report states that defendant PMM's "examination was made in accordance with generally accepted auditing standards" and also states that the financial statements of defendant NSMC "present fairly the financial position of National Student Marketing Corporation at August 31, 1969 and the results of its operations for the year then ended and the financial position of National Student Marketing Corporation and consolidated subsidiaries at August 31, 1969 and the results of their operations for the year then ended, all in conformity with generally accepted accounting principles . . ." The financial statements include a consolidated and an unconsolidated balance sheet, statement of earnings and statements of retained earnings and paid in capital and accompanying footnotes. Defendants NSMC, Davies, Walther, PMM and Natelli participated directly and indirectly in the preparation of said annual report on Form 10-K. Defendant Davies signed said report as secretary of defendant NSMC. The audited financial statements contained in the annual report on Form 10-K are materially false and misleading for the reasons stated in paragraph 39 above. Further, said report was materially false and misleading because, in connection with the revisions in reporting on the sales of CAL and Compujob, defendant PMM failed to conduct its examination in accordance with generally accepted auditing standards once they knew of defendant Randell's involvement in those transactions.

44. On or about August 12, 1970, defendant NSMC filed with plaintiff Commission at its offices in the District of Columbia a report on Form 10-K for the four month fiscal period ended December 31, 1969, pursuant to Section 13(a) of the Exchange Act. Defendants NSMC, Davies, Walther, and PMM participated directly and indirectly in the preparation of the report, which was signed by defendant Davies as Secretary of defendant NSMC. The report contained audited financial statements for defendant NSMC and consolidated

subsidiaries in addition to audited financial statements for defendant NSMC alone. These financial statements include balance sheets, statements of loss, retained earnings and additional paid in capital and accompanying footnotes. These financial statements of defendant NSMC were audited by defendant PMM. Footnote 1 to these financial statements contains in part, information as to the net earnings of defendant NSMC as previously reported for the fiscal year ended August 31, 1969, and as restated giving effect to acquisitions occurring after August 31, 1969. The report is materially false and misleading in that footnote 1 materially overstates net earnings as previously reported for the fiscal year ended August 31, 1969, for the reasons noted in paragraph 39 above.

45. On October 21, 1970, the Commission revised its Form 10-K for reports to be filed by companies whose fiscal years ended on or after December 31, 1970. The revised form, in part, requires a company which is engaged in more than one line of business to report its sales and earnings by line of business for its last five fiscal years. In addition, the revised form requires a company to report a summary of that company's operations for the past five years.

On or about March 31, 1971, defendant NSMC filed with plaintiff Commission at its offices in the District of Columbia its annual report on Form 10-K for the fiscal year ended December 31, 1970, pursuant to Section 13(a) of the Exchange Act. Defendants NSMC, Davies and PMM participated directly and indirectly in the preparation of said annual report. Defendant Davies signed said report as Secretary of defendant NSMC. The annual report contained a Statement of Revenue and Earnings by Lines of Business for the four years and four months ended December 31, 1970, and a Consolidated Summary of Earnings (loss), Retained Earnings and Additional Paid in Capital for the five years and four months ended December 31, 1970. Said annual report on Form 10-K also contained audited financial statements of defendant NSMC for the fiscal year ended December 31, 1970, the four months ended December 31, 1969 and the fiscal year ended August 31, 1969. The audited financial statements contained consolidated balance sheets and statements of source and application of funds as of and for the fiscal years ended December 31, 1969 and 1970. The financial statements of defendant NSMC also included Statements of Earnings (loss), for the fiscal periods ended December 31, 1970 and 1969 and August 31, 1969, and Statements of Retained Earnings and Additional Paid in Capital for the fiscal periods ended December 31, 1969 and 1970 and August 31, 1969. The financial statements were accompanied by footnotes and were audited by defendant PMM. Said annual report on Form 10-K is materially false and misleading in that:

(a) The Statement of Revenue and Earnings by Lines of Business for the fiscal year ended August 31, 1968 overstates total revenue and earnings for the reasons stated in paragraph 28 above.

(b) The Statement of Revenue and Earnings by Lines of Business for the fiscal year ended August 31, 1969, overstates total revenue and earnings for the reasons noted in paragraph 39 above.

(c) The Consolidated Summary of Earnings (loss) for the fiscal year ended August 31, 1968 overstates total revenue, total cost, gross profit, earnings before and after extraordinary items and earnings per share before and after extraordinary items for the reasons stated in paragraph 28 above.

(d) The Consolidated Summary of Earnings (loss) for the fiscal year ended August 31, 1969, overstates total revenue, total cost, gross profit, earnings before and after extraordinary items and earnings per share before and after extraordinary items for the reasons stated in paragraph 39 above.

(e) The Statement of Earnings (loss) of defendant NSMC alone and defendant NSMC and consolidated subsidiaries for the year ended August 31, 1969 materially overstates earnings for the reasons stated in paragraph 39 above.

(f) The Statement of Retained Earnings of defendant NSMC and consolidated subsidiaries is materially overstated for the year ended August 31, 1969 for the reasons stated in paragraph 39 above.

(g) Footnote 12 to the financial statements entitled “extraordinary items for the year ended August 31, 1969” materially overstates extraordinary items for the reasons stated in paragraph 39 above.

46a. By the acts and practices described above defendants NSMC, Randell, Walther, Davies, Joy, Kurek, Fergusson, PMM, Natelli and Scansaroli, singly and in concert, directly and indirectly violated and aided and abetted violations of Section 17(a) of the Securities Act and Sections 10(b) and 14(a) of the Exchange Act and Rules 10b-5, 14a-3 and 14a-9 thereunder.

46b. By the acts and practices described above, defendants NSMC, Randell, Walther, Davies, Kurek, Fergusson, PMM, Natelli and Scansaroli, singly and in concert, directly and indirectly violated and aided and abetted violations of Section 13(a) of the Exchange Act and rules thereunder.

SECOND CLAIM

Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5] and Sections 13(a) and 14(a) of the Exchange Act [15 U.S.C. 78m(a) and 78n(a)] and rules and regulations thereunder.

47. Plaintiff hereby realleges paragraphs 1 through 26, 32 through 36 above.

48. On October 31, 1969, at the closing of the merger between defendant NSMC and Interstate, defendants NSMC, Randell, Davies, Joy, White & Case, Epley, Brown, Allison, Bach, Tate, Lord, Bissell & Brook, Meyer and Schauer received a comfort letter (“comfort letter”) from PMM. The comfort letter, a condition of the merger, was

required to state that PMM had no reason to believe that unaudited interim financial statements of NSMC as of May 31, 1969 and for the nine months then ended were not prepared in accordance with generally accepted accounting principles and practices or required any material adjustments in order that the results of operations of NSMC be fairly presented. In addition the comfort letter was to state that NSMC had not suffered any material adverse change in its financial position or results of operations from May 31, 1969 until five business days prior to the effective date of the merger. Unaudited financial statements of NSMC for the nine month period ended May 31, 1969 were contained in the proxy soliciting material which was mailed to the shareholders of NSMC and Interstate in seeking their approval of, among other things, the merger between NSMC and Interstate. Defendants White & Case and Epley together with others directly and indirectly participated in the preparation of the proxy soliciting material. The nine month financial statements contained in the proxy material reflected net earnings of NSMC of approximately \$700,000. At the time, Interstate had approximately 1200 shareholders. As a result of the merger, the shareholders of Interstate sold their shares in Interstate and received in exchange approximately 1,650,000 shares of NSMC.

(a) The comfort letter did not, however, satisfy the stated condition in the merger agreement. The comfort letter presented at the closing (which had been dictated over the telephone and was unsigned) stated in part:

“[O]ur examination in connection with the year ended August 31, 1969 which is still in process, disclosed the following adjustments which in our opinion should be reflected retroactive to May 31, 1969:

1. In adjusting the amortization of deferred costs at May 31, 1969, to eliminate therefrom all costs for programs substantially completed or which commenced 12 months or more prior, an adjustment of \$500,000 was required. Upon analysis of the retroactive effect of this adjustment, it appears that the entire amount could be determined applicable to the period prior to May 31, 1969.
2. In August 1969, management wrote off receivables in amounts of \$300,000. It appears that the uncollectibility of these receivables could have been determined at May 31, 1969 and such charge off should have been reflected as of that date.
3. Acquisition costs in the amount of \$84,000 for proposed acquisitions which the company decided not to pursue were transferred from additional paid-in capital to general and administrative expenses. In our opinion these should have been so transferred as of May 31, 1969.”

In furtherance of a fraudulent scheme among defendants NSMC, Randell, Davies, Joy, White & Case, Epley, Brown, Allison, Bach, Tate, Lord, Bissell & Brook, Meyer and Schauer, the merger was closed on October 31, 1969 without the contents of the comfort letter being disclosed to public investors and the shareholders of NSMC or Interstate, even though said defendants knew shareholder approval of the merger had been obtained on the basis of materially false and misleading financial statements of NSMC for the period ended May 31, 1969.

(b) On October 31, 1969, at the closing meeting but before the merger between NSMC and Interstate was actually consummated, PMM informed defendants White & Case, Epley and Davies that PMM wished to add another paragraph to the comfort letter which paragraph would state that if the necessary adjustments had been made to NSMC’s unaudited consolidated statement of earnings for the period ended May 31, 1969, then NSMC would have shown a net loss for that period and that the consolidated operations of the company as it existed at May 31, 1969 would show a break-even as to net earnings for the year ended August 31, 1969. Defendants White & Case, Epley and Davies failed to inform the other persons present at the closing of this additional paragraph.

(c) On October 31, 1969, about an hour after the closing meeting had been concluded, defendant PMM informed defendants White & Case and Epley that PMM wished to add still another paragraph to the comfort letter which paragraph would state:

“In view of the above mentioned facts, we believe the companies should consider submitting corrected interim unaudited financial information to the shareholders prior to proceeding with the closing.”

Later that day, a final version of the comfort letter was delivered by PMM to defendants White & Case and Epley. It was materially unchanged from that set forth in subparagraphs (a), (b) and (c) above, except that the amount of receivables written off by management of NSMC and referred to in subparagraph 3 of the letter had been reduced from \$300,000 to \$200,000. Defendants White & Case and Epley made no effort to

communicate the contents of the final version of the comfort letter to the representatives of Interstate who had been present at the closing.

(d) As part of the fraudulent scheme, defendant White & Case, contemporaneous with receipt of the comfort letter, issued an opinion at the direction of the defendant Epley stating that all steps taken to consummate the merger had been validly taken and that NSMC had incurred no violation of any federal or state statute or regulation to the knowledge of counsel. Issuance of such an opinion was a condition to the merger, as had been represented to the shareholders of NSMC and Interstate in the proxy statements.

(e) As part of the fraudulent scheme defendant Lord, Bissell & Brook, contemporaneous with receipt of the comfort letter, issued an opinion at the direction of defendants Meyer and Schauer stating that all steps taken to consummate the merger had been validly taken and that Interstate had incurred no violation of any federal or state statute or regulation to the knowledge of counsel. Issuance of such an opinion was a condition to the merger, as had been represented to the shareholders of NSMC and Interstate in the proxy statements.

(f) On or about November 3, 1969, PMM mailed the final version of the comfort letter, as described above in subparagraphs (a), (b) and (c), to each of the directors of defendant NSMC and Interstate, including but not limited to defendants Randell, Davies, Fergusson, Joy, Walther, Brown, Bach, Allison, Meyer and Tate. As part of their fraudulent scheme of conduct, defendants NSMC, Randell, Davies, Fergusson, Joy and Walther failed and refused to issue a release or disseminate to the press, to shareholders of defendant NSMC or to file with the plaintiff Commission any report, press release or statement which indicated that NSMC's consolidated statement of income for the nine months ended May 31, 1969 materially overstated net income or to restate said financial statement. As part of their fraudulent scheme of conduct, defendants Brown, Meyer, Allison, Bach and Tate failed and refused to inform the Interstate shareholders, numbering approximately 1200, of the comfort letter.

(g) As part of the fraudulent scheme, defendants NSMC, Randell, Davies, Fergusson, Joy, Kurek and Walther failed to revise or amend information contained within defendant NSMC's registration statement on Form S-14 referred to in paragraph 34 above, failed to revise or amend defendant NSMC's proxy statement referred to in paragraph 33 above and failed to revise defendant NSMC publicly announced financial figures contained in the Third Quarter Report to Shareholders and the press release referred to in paragraph 32 above.

(h) As part of the fraudulent scheme, defendant PMM, who assisted in the preparation of and reviewed the NSMC financial statements as of May 31, 1969 and for the nine months then ended, and who issued the comfort letter, failed in accordance with their professional obligation to insist that the NSMC financial statements be revised in accordance with the comfort letter, and, failing that, to withdraw from the engagement and to come forward and notify plaintiff Commission or the NSMC and Interstate shareholders as to the materially misleading nature of the nine month financial statements.

(i) As part of the fraudulent scheme White & Case, Epley, Lord Bissell & Brook, Meyer and Schauer failed to refuse to issue their opinions referred to in subparagraphs (d) and (e) above and failed to insist that the financial statements be revised and shareholders be resolicited, and failing that, to cease representing their respective clients and, under the circumstances, notify the plaintiff Commission concerning the misleading nature of the nine month financial statements.

(j) Defendant NSMC filed with the Commission its monthly report on Form 8-K for the month of October 1969. The report, which was materially false and misleading, contained representations as to the fairness, truthfulness and accuracy of NSMC's financial statements as of May 31, 1969. The report was signed by Davies and transmitted to the Commission by defendant White & Case. As part of the fraudulent scheme defendants NSMC, White & Case, Epley and Davies continued to conceal the existence of the comfort letter or the contents thereof.

(k) By the acts and practices described in subparagraphs (a) through (j) above, defendants NSMC, Randell, Davies, Joy, Kurek, Walther, Fergusson, PMM, White & Case, Epley, Brown, Allison, Bach, Tate, Lord Bissell & Brook, Meyer and Schauer singly and in concert, directly and indirectly violated and aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

(l) By the acts and practices described in paragraphs (a) through (j) above, defendants NSMC, Davies, White & Case and Epley singly and in concert directly and indirectly violated and aided and abetted violations of Section 13(a) of the Exchange Act and Rule 13a-11 thereunder.

(m) By the acts and practices described in paragraphs (a) through (i) above, defendants NSMC, Randell, Davies, Joy, Kurek, PMM, White & Case and Epley singly and in concert directly and indirectly violated and aided and abetted violations of Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder.

THIRD CLAIM

Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5].

49. Plaintiff realleges paragraphs 1 through 26 and 48 above.

50. In furtherance of a fraudulent scheme among the defendants NSMC, White & Case, Epley., Brown, Allison, Bach, Tate, Lord, Bissell & Brook, Meyer and Schauer, defendant Lord, Bissell & Brook, after having received and read the comfort letter, issued an opinion, dated October 31, 1969 and prepared by or at the direction of defendant Schauer and/or Meyer, stating in substance that certain NSMC shares acquired by certain Interstate shareholders pursuant to the merger between NSMC and Interstate could be sold. Such shares were sold on or about October 31, 1969 for approximately \$3,000,000.

The opinion of defendant Lord, Bissell and Brook was requested by defendants Epley and White & Case on behalf of defendant NSMC after they had received the comfort letter. The opinion made no mention of the need for adjustments in the May 31, 1969 financial statements or the need for public disclosure of the contents of the comfort letter before the shares could be lawfully sold.

51. As part of the fraudulent scheme on or about October 31, 1969, after having received, read and been advised of the contents of the comfort letter, defendants Brown, Meyer, Allison, Bach and Tate and approximately seven other officers and directors of Interstate or subsidiaries thereof sold approximately 77,000 shares of NSMC common stock for approximately \$1,900,000 without disclosing the contents of said comfort letter.

52. By the acts and practices described in paragraph 50 and 51 above, defendants NSMC, White & Case, Epley, Brown, Allison, Bach, Tate, Lord, Bissell & Brook, Meyer and Schauer singly and in concert directly and indirectly violated and aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FOURTH CLAIM

Section 17(a) of the Securities 115 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5] and Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and Rules and regulations thereunder.

53. The plaintiff realleges paragraphs I through 26 and 39 above.

54. Defendant Katz represented the purchasers of Compujob, Inc. (“Compujob”) and prepared and/or drafted the documents in connection with the acquisition of Compujob by his clients. Defendant Katz issued legal opinions dated November 19 and November 26, 1969 relating to such disposition. Defendant Katz knew or should have known that his opinions were materially false and misleading and that they would be relied upon by third parties. The November 19, 1969 opinion, which was not substantively altered by the November 26, 1969 one, stated in part:

“As of August 29, 1969, the date of the Closing specified in the Agreement, title to all of the issued and outstanding capital stock of . . . [Compujob] and all of the risks and benefits of ownership thereof passed to the Purchasers.”

At the time of issuing such opinions defendant Katz knew or should have known that defendant NSMC intended to use such opinions to satisfy PMM that the sale of Compujob could be accounted for in defendant NSMC’s fiscal year ended August 31, 1969. The opinions, which were materially false and misleading, were issued although defendant Katz know or should have known that:

(a) Negotiations for the sale of Compujob commenced after August 31, 1969, the end of NSMC's fiscal year.

(b) The purchasers of Compujob were not personally liable on the \$225,000 promissory note given by them as consideration for their purchase of Compujob.

(c) The purchasers of Compujob agreed to terminate the business of Compujob at NSMC's request and that all expenses of termination were to be borne by NSMC.

(d) NSMC agreed to manage the business of Compujob from the of sale until October 31, 1970.

(e) In connection with the management of Compujob, NSMC was to make cash advances to Compujob which were repayable solely out of Compujob's post income tax earnings and then only to the extent of 60% of such earnings.

(f) NSMC agreed to indemnify and hold harmless the purchasers of Compujob from any expense, loss or damage resulting from their purchase of Compujob.

(g) Compujob incurred net losses from operations of approximately \$120,000 in its fiscal year ended August 31, 1969.

(h) The Compujob purchasers, contemporaneous with the purchase of Compujob, sold to Randell part interest in Strider Oceanic Corporation ("Strider") in exchange for which the Compujob purchasers received 4,500 shares of the common stock of NSMC which shares were then used as collateral for the \$225,000 promissory note referred to in subparagraph (b) above.

(i) NSMC agreed to indemnify and hold harmless the Compujob purchasers from any expense, loss or damage resulting from their sale of Strider stock to Randell.

As a result directly or indirectly of the issuance of such opinions the income from the sale of Compujob was improperly included in defendant NSMC's financial statements for its fiscal year ended August 31, 1969.

55. Defendant White & Case rendered an opinion dated November 20, 1969 to NSMC prepared by or at the direction of Epley in which White & Case concurred with the conclusion reached by Katz which is quoted in paragraph 54 above. The opinion, which was materially false and misleading, was issued although defendants White & Case and Epley knew or should have known that:

(a) NSMC intended to use the opinion to justify to PMM inclusion of the profit resulting from the sale of Compujob in the consolidated audited financial statements of NSMC for the fiscal year ended August 31, 1969, which statements would be included in the annual report to shareholders and filed with the Commission.

(b) No firm agreement existed for the sale of Compujob by defendant NSMC prior to August 31, 1969, as could be derived from, among other things, the facts that:

1. On or about October 31, 1969, in a document dated October 31, 1969, signed by Randell and prepared by or at the direction of Epley in connection with NSMC's merger with Interstate, NSMC represented that as of October 31, 1969:

(a) NSMC owned directly or indirectly all of the outstanding capital stock of Compujob.

(b) NSMC directly or indirectly had good and marketable title to all of the issued and outstanding shares of Compujob free and clear of any rights in third parties to purchase any shares thereof.

2. White & Case and Epley aided in the preparation of NSMC's proxy and registration statement filed with the Commission in late September 1969 and early October 1969 both of which described the business of Compujob and represented it to be a wholly owned subsidiary. Neither document referred to the existence of any agreements or negotiations for the disposition of Compujob.

3. Documents examined by White & Case and Epley prior to issuing their opinion were dated "as of August 27, 1969."

56. Defendant White & Case rendered opinions dated October 31, 1969 and November 20, 1969 to defendant NSMC prepared by or at the direction of defendant Epley in connection with the disposition by defendant NSMC of CAL. The November 20 opinion stated that the effect upon NSMC and the purchasers of CAL was as if ownership of the shares of CAL had been transferred thereunder on August 29. The opinion which was materially false and misleading was issued although defendants White & Case and Epley knew or should have known that:

(a) Defendant NSMC intended to use such opinion to justify to PMM inclusion of the profit resulting from the sale of CAL in the consolidated audited financial statements of NSMC for the fiscal year ended August 31, 1969, which statements would be included in the annual report to shareholders and filed with the Commission.

(b) No firm agreement existed for the sale of CAL by defendant NSMC prior to August 31, 1969 as could be deduced from, among other things, the facts that:

1. On or about Oct. 31, 1969, in a document dated Oct. 31, 1969, signed by defendant Randall and prepared by or at the direction of defendant Epley in connection with defendant NSMC's merger with Interstate, NSMC represented that as of October 31, 1969:

(a) NSMC owned directly or indirectly all of the outstanding capital stock of CAL,

(b) NSMC directly or indirectly had good and marketable title to all of the issued and outstanding shares of CAL free and clear of any rights in third parties to purchase any shares thereof.

2. Defendants White & Case and Epley participated in the preparation of defendant NSMC's proxy and registration statements filed with plaintiff Commission in late September and early October 1969. Both documents described the business of CAL and represented it to be a wholly owned subsidiary of defendant NSMC, and neither document referred to any agreement or negotiations for the disposition of CAL.

3. Certain of the documents examined by White & Case and Epley were dated "as of August 29, 1969."

57. As a result, directly and indirectly, of the issuance of the opinions referred to in paragraphs 55 and 56, the income from the sale of CAL and Compujob was improperly included in NSMC's financial statements for the year ended August 31, 1969 thereby making such financial statements materially false and misleading.

58. NSMC, Randell, Davies, Kurek, Walther, Fergusson, PMM, Natelli, White & Case, Epley and Katz participated directly and indirectly in the preparation of the "National Student Marketing Corporation Annual Report 1969", which report accounted for the sales of Compujob and Cal as of August 31, 1969, although each of said defendants knew or should have known that CAL and Compujob were owned by NSMC on August 31, 1969.

59. On or about January 19, 1970, defendant NSMC filed with plaintiff Commission at its offices in the District of Columbia an annual report on Form 10-K for defendant NSMC's fiscal year ended August 31, 1969, pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. Defendants NSMC, Randall, Davies, Kurek, Fergusson, Walther, PMM, Natelli, White & Case, Epley and Katz directly or indirectly, participated in the preparation of said report which contained among other information audited consolidated financial statements for the fiscal year ended August 31, 1969. Defendant Davies signed the report as Secretary of defendant NSMC. Said report is materially false and misleading and fails to comply with the requirements of Form 10-K for the reasons set forth in paragraphs 54 through 58 above.

60. As a result of the acts and practices described in paragraphs 54 through 59 above, NSMC, Randell, Davies, Kurek, Walther, Fergusson, PMM, Natelli, White & Case, Epley and Katz directly and indirectly singly and in concert violated and aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 13(a) of the Exchange Act and rules thereunder.

WHEREFORE the plaintiff Commission respectfully demands:

I

A final judgment of permanent injunction restraining and enjoining defendants NSMC, Randell, Davies, Fergusson, Joy, Kurek, Walther, PMM, Natelli, Scansaroli, White & Case, Epley, Katz, Brown, Allison, Bach, Tate, Lord, Bissell & Brook, Meyer and Schauer their agents, servants, employees, successors, assignees, and those persons in active concert or participation with them, from, directly or indirectly, in connection with the purchase or sale of securities of defendant NSMC or of any other issuer, making use of the means and instrumentalities of interstate commerce or of the mails to:

A. Make false and misleading statements and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning but not limited to:

1. the financial condition and results of operations of any issuer of securities;
2. the business operations of any issuer of securities;
3. the present and future sales revenue and net earnings of any issuer of securities; and
4. the contracts or agreements to which any issuer of securities is or will be a party.

B. Employ any device, scheme or artifice to defraud.

C. Engage in any act, practice or course of business which operates or would operate as a fraud and deceit upon any person.

II

A mandatory injunction requiring defendant NSMC or its successors promptly to file with the Commission the reports required by Section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)] and rules and regulations thereunder and to correct and amend in accordance with the findings of this Court the following annual reports on Form 10-K required to be filed with the Commission by Section 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder [17 CFR 240.13a-1]:

- A. The Annual Report for the fiscal year ended August 31, 1968;
- B. The Annual Report for the fiscal year ended August 31, 1969;
- C. The Report for the fiscal period ended December 31, 1969; and
- D. The Annual Report for the fiscal year ended December 31, 1970.

III

A final judgment of permanent injunction restraining and enjoining defendants NSMC, Randell, Davies, Fergusson, Kurek, Walther, White & Case, Epley, Katz, PMM, Natelli and Scansaroli, their agents, servants, employees, successors, assignees and those persons in active concert or participation with them, from, directly or indirectly, filing false and misleading annual and other periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] and the rules and regulations thereunder.

IV

A final judgment of permanent injunction restraining and enjoining defendants NSMC, Randell, Davies, Fergusson, Joy, Kurek, Walther, White & Case, Epley, PMM, Natelli and Scansaroli, their agents, servants, employees, successors, assignees, and those persons in active concert or participation with them from, directly or indirectly, filing with the plaintiff Commission and/or issuing and disseminating proxy soliciting materials in connection with any future annual or other meetings of shareholders of defendant NSMC or of any other person which do not comply with Section 14(a) of the Exchange Act [15 U.S.C. 78n(a)] and the rules and regulations thereunder.

V

Such other and further relief as the Court may deem just and equitable.

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Dated: February 15, 1972
Washington, D.C.