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GURBIR S. GREWAL, ATTORNEY
 GENERAL OF NEW JERSEY, on
 behalf of the STATE OF NEW
 JERSEY *ex rel.* HECTOR PERALTA,

Plaintiff,

v.

ACADEMY BUS, LLC; ACADEMY
 LINES, LLC; ACADEMY EXPRESS,
 LLC; NUMBER 22 HILLSIDE, LLC;
 NO. 22 HILLSIDE CORPORATION;
 THOMAS F.X. SCULLIN; FRANK
 DIPALMA; ANTONIO LUNA; EDWARD
 ROSARIO; JANE & JOHN DOES; and
 XYZ CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION - ESSEX COUNTY
 DOCKET NO. ESX-L-1669-17

CIVIL ACTION

ATTORNEY GENERAL OF NEW JERSEY'S COMPLAINT IN INTERVENTION

Gurbir S. Grewal, Attorney General of New Jersey ("Plaintiff" or the "Attorney General"), on behalf of the State of New Jersey (the "State"), by and through this Complaint in Intervention, alleges as follows against Defendants Academy Bus, LLC, Academy Lines, LLC, Academy Express, LLC, Number 22 Hillside, LLC, and No.

22 Hillside Corporation (collectively, "Academy" or "Academy Defendants"); Thomas F.X. Scullin, and Frank DiPalma (collectively, "Academy Officer Defendants"); and Antonio Luna and Edward Rosario (collectively, "Academy Employee Defendants") (Academy Defendants, Academy Officer Defendants, and Academy Employee Defendants are collectively referred to as "Defendants") states:

INTRODUCTION

1. This case concerns an extensive multi-year, multi-million dollar fraud perpetrated by (i) Academy, which advertises itself as the largest privately owned and operated transportation company in the United States, (ii) the Academy Officer Defendants, and (iii) the Academy Employee Defendants against New Jersey Transit, New Jersey Transit customers, and the taxpayers of the State of New Jersey.

2. New Jersey Transit contracted with Academy to provide bus services throughout the Hudson County service area, including heavily used lines serving New York City. Under these contracts, Academy was required to report each month the number of bus trips it missed for each bus route, and New Jersey Transit would deduct \$150 for each reported missed bus trip, and \$300 for any unreported missed trip later discovered. Academy also was not permitted to charge New Jersey Transit the contractual fee for miles and hours "driven" for missed bus trips.

3. Between at least April 2012 and December 2018, Defendants (i) systematically, knowingly, and deliberately underreported to New Jersey Transit each month the number of missed bus trips for the Hudson County contracts to avoid paying thousands of missed trip fees, and (ii) overcharged New Jersey Transit for hours and miles driven (by charging for hours and miles not actually driven).

4. Academy's fraud was massive. Between at least April 2012 and December 2018, Academy deliberately failed to report to New Jersey Transit tens of thousands of missed bus trips, defrauding New Jersey Transit out of more than \$15 million.

5. In 2016 alone, Academy deliberately failed to report more than 12,000 missed trips, averaging over 1,000 unreported missed trips each month, and defrauding New Jersey Transit out of more than \$3.6 million. In the three-month period from September through November 2016, according to Academy's internal database, Academy failed to report to New Jersey Transit more than 3,500 missed bus trips, an average of more than 40 bus trips a day.

6. Academy's fraud did not just cause financial harm to New Jersey Transit and New Jersey taxpayers. It also caused the riding public to suffer because Academy missed tens of thousands of bus trips on busy Hudson and South Hudson service area bus lines. Riders were delayed if not stranded.

JURISDICTION AND VENUE

7. Jurisdiction is proper over Defendants pursuant to N.J.S.A. 2A:32C-5(a) for violations of the New Jersey False Claims Act ("FCA"), N.J.S.A. 2A:32C-1 to 18, that are the subject of this Complaint because each alleged violation occurred in this State.

8. Venue is proper in Essex County pursuant to New Jersey Court Rule 4:3-2 because New Jersey Transit's headquarters is located in Essex County; Defendants present their invoices to New Jersey Transit in Essex County; and Defendants regularly transact business in Essex County.

PARTIES

9. Plaintiff is the Attorney General, acting on behalf of the State, pursuant to his authority under the FCA. The Attorney General brings this action under N.J.S.A. 2A:32C-5(a) and N.J.S.A. 2A:32C-6(a) because Defendants submitted or caused to be submitted false claims for payment to New Jersey Transit, a State entity, and also submitted false records to get false claims paid in violation of N.J.S.A. 2A:32C-3(a) and (b).

10. Relator Hector Peralta ("Peralta"), a resident of the State of New Jersey, was employed by Number 22 Hillside, LLC and/or No. 22 Hillside Corporation as a bus driver and driver trainer from May 20, 2002 until his promotion to Operations Supervisor in November 2002, a position he held until his promotion to Terminal Manager in August 2006. Peralta served as a Terminal Manager for

Number 22 Hillside, LLC and/or No. 22 Hillside Corporation from August 2006 until Academy terminated his employment on October 27, 2016.

11. Defendant Number 22 Hillside, LLC is a New Jersey limited liability corporation registered to do business in New Jersey, with its principal office located at 111 Paterson Avenue in Hoboken, New Jersey. Defendant Number 22 Hillside, LLC operates buses for New Jersey Transit and various universities in the New York area.

12. Defendant No. 22 Hillside Corporation is a New Jersey corporation registered to do business in New Jersey, with its principal office located at 111 Paterson Avenue in Hoboken, New Jersey. Upon information and belief, Defendant No. 22 Hillside Corporation and Defendant Number 22 Hillside, LLC serve the same roles within the Academy structure.

13. Defendant Academy Lines, LLC is a New Jersey limited liability company registered to do business in New Jersey, with its principal office located at 111 Paterson Avenue in Hoboken, New Jersey. Defendant Academy Lines, LLC, primarily operates private commuter bus routes. Defendant Academy Lines, LLC, employs Defendant Thomas Scullin.

14. Defendant Academy Express, LLC is a New Jersey limited liability company registered to do business in New Jersey, with its principal office located at 111 Paterson Avenue in Hoboken,

New Jersey. Defendant Academy Express, LLC, holds authority from the Federal Motor Carrier Safety Administration as a motor carrier primarily engaged in interstate special and charter operations (MC-413682). Defendant Academy Express, LLC, primarily operates charter buses for private customers. Defendant Academy Express, LLC, employs Defendant Frank DiPalma.

15. Defendant Academy Bus, LLC, is a New Jersey limited liability company registered to do business in New Jersey, with its principal office located at 111 Paterson Avenue in Hoboken, New Jersey. Defendant Academy Bus, LLC, is the 100% owner and parent corporation of Academy Lines, LLC, Academy Express, LLC, and Number 22 Hillside, LLC.

16. Defendant Thomas F.X. Scullin ("Defendant Scullin") is a resident of Pennsylvania and the Vice President and Chief Operating Officer of each of the Academy Defendants, a position he has held since approximately 2001.

17. Defendant Frank DiPalma ("Defendant DiPalma") is a resident of New Jersey and the Controller of each of the Academy Defendants, a position he has held since approximately 2011.

18. Defendant Antonio Luna ("Defendant Luna") is a resident of New York and was an Assistant Manager at Defendant Number 22 Hillside, LLC and/or No. 22 Hillside Corporation from 2017 until August 2019. He currently works part-time for Academy as a dispatcher.

19. Defendant Edward Rosario ("Defendant Rosario") is a resident of New York and currently a General Manager at Defendant Number 22 Hillside, LLC and/or No. 22 Hillside Corporation, a position he has held since November 2016.

20. While each of the Academy Defendants serve different parts of the Academy operation, at all relevant times Defendants Number 22 Hillside, LLC, No. 22 Hillside Corporation, Academy Lines, LLC, Academy Express, LLC, and Academy Bus, LLC, functioned as one operation, all managed by the Academy Officer Defendants, among others, shifting drivers and buses from one company to the other to maximize Academy's profits overall.

21. Defendants XYZ Corporations 1-10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Attorney General. As these Defendants are identified, the Attorney General shall amend the Complaint to include them.

22. Defendants John & Jane Does 1-10 are fictitious individuals meant to represent any additional individuals who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Attorney General. As these Defendants are identified, the Attorney General shall amend the Complaint to include them.

GENERAL ALLEGATIONS

A. Academy's Contracts with New Jersey Transit

23. On June 26, 2011, pursuant to a competitive bidding process, New Jersey Transit and Defendant Number 22 Hillside, LLC entered into a contract to service bus routes 2, 22, 22x, 23, and 88 ("Hudson Service Area") for New Jersey Transit.

24. From April to November 2012, New Jersey also contracted with Defendant Number 22 Hillside, LLC to operate bus routes 10 and 119 ("South Hudson Service Area") on a temporary basis. After a competitive bidding process, New Jersey Transit and Defendant Number 22 Hillside, LLC entered into an agreement, dated November 12, 2012, for Defendant Number 22 Hillside, LLC to service the South Hudson Service Area.

25. Defendant Number 22 Hillside, LLC and/or No. 22 Hillside Corporation continues to operate bus routes 2, 10, 22, 22x, 23, 88 and 119 on the Hudson and South Hudson Service Area lines, scheduling approximately 175,000 bus trips across these seven bus routes each year.

26. Between April 2012 and December 2018, New Jersey Transit exercised options to extend Academy's operation of the Hudson and South Hudson Service Area bus routes. In extending those contracts, New Jersey Transit considered, among other factors, Academy's past performance on New Jersey Transit contracts, which was primarily based on Academy's self-prepared operations reports

submitted to New Jersey Transit each month. As shown below, Academy knowingly submitted false and misleading information in those reports.

27. Under these Academy-New Jersey Transit contracts, New Jersey Transit pays Academy based on the number of miles and hours it operates. Academy bills New Jersey Transit approximately \$12 million dollars per year for these services. New Jersey Transit retains all bus fares that Academy collects along these routes. Academy also agrees to "maintain the routes and schedules" for New Jersey Transit's published bus schedules for the Hudson and South Hudson routes, with "an average on-time performance of no less than ninety five (95) percent at terminal points of the trips over thirty (30) consecutive calendar days."

28. The contracts also state that "[f]or purposes of on-time performance, a bus will be considered not to be on-time and therefore to be 'off schedule' if it departs from any scheduled time point either before the scheduled departure or more than twenty (20) minutes after its scheduled departure time. Also, a bus will be 'off-schedule' if a scheduled trip is commenced but not completed."

29. Academy must report to New Jersey Transit "[b]y the seventh (7th) calendar day of each calendar month . . . all bus trips in the prior calendar month that operated 'off-schedule' and the reasons therefor" (the "Missed Trip Reports").

30. New Jersey Transit pays Academy only for the actual passenger bus trips it provides to New Jersey Transit, based on a rate that includes the number of miles the bus traveled, the number of hours the bus operated, and an "other cost" factor that accounts for certain fixed costs.

31. The contracts also include specific provisions for "Missed Trips," defined as:

(1) any scheduled trip which does not commence within twenty (20) minutes of the time designated for the start of that trip (as denoted on the printed public timetable supplied by NJ TRANSIT); and/or (2) any scheduled trip which fails to arrive at its scheduled final destination point for that trip (as denoted on the printed public timetable supplied by NJ TRANSIT) within twenty (20) minutes of the scheduled time of its arrival from said point.

32. Academy must submit detailed reports each month to New Jersey Transit about its operations, and, relying on those reports, New Jersey Transit pays Academy for bus trips provided, after deducting assessments applied for Missed Trips. The contracts require that Academy comply with the following procedure for reporting "Missed Trips":

The Carrier shall report in writing to NEW JERSEY TRANSIT by the seventh (7th) calendar day of each calendar month each and every "missed" bus trip, which occurred during the preceding month and the dates and reasons therefor. If no "missed" trips occurred, the Carrier must so report. If a trip was "missed" as a result of fire(s), strikes, storm conditions (or other acts of nature), road accidents or detours, or other circumstances which cannot be reasonably anticipated, and are beyond

the control of the Carrier, such causes must be noted by the Carrier on the "Daily and Monthly Reports of Operations." NEW JERSEY TRANSIT shall consider the causes listed by the Carrier on a case by case basis, and shall notify the carrier of any assessment to be imposed as a result of such review. Payment for Contracted Services will be withheld until the required "Daily and Monthly Reports of Operations" is received.

Failure by the Carrier to file such daily and monthly reports will not excuse the Carrier from any assessments provided by this Agreement.

33. New Jersey Transit reduces contractual payments by \$150 for each reported Missed Trip, and \$300 for each unreported Missed Trip under the contracts:

Assessment of damages for Missed Trips will be calculated as follows:

- Missed Trips that are properly and timely reported, as noted above, by the Carrier to NJ TRANSIT will be assessed in the amount of \$150.00 per trip.
- Missed Trips not properly and timely reported, as noted above, by the Carrier to NJ TRANSIT will be assessed in the amount of \$300.00 per trip.

Assessments for "Missed Trips" will be automatically deducted by NJ TRANSIT from the monthly payments to the Carrier [Academy]. If the Carrier [Academy] contests such assessments, it must do so pursuant to the dispute resolution provision in Part "B" below.

34. Thus, Academy knew that because New Jersey Transit relied on the accuracy of Academy's monthly reports to calculate its monthly payments under the contracts, Academy would be paid less money if it reported more Missed Trips. Academy also knew that New Jersey Transit's determination of whether Academy met its

required "average on-time performance" of 95% depended on the accuracy of Academy's monthly reports.

B. Academy's Fraudulent Underreporting of Missed Trips

35. Despite its contractual obligations, Academy knowingly, deliberately, and regularly submitted to New Jersey Transit false, fraudulent reports of its monthly Missed Trip numbers.

36. By submitting the false reports, Academy defrauded New Jersey Transit in material ways between at least April 2012 and December 2018 by: (i) receiving millions of dollars more each year than it would have if it had submitted accurate reports by avoiding the assessment of damages for each Missed Trip under the contracts, and (ii) charging New Jersey Transit for the miles and hours of operating buses that, in fact, never ran.

37. The false reporting also hid from New Jersey Transit Academy's failure to meet its other contractual obligations. For example, Academy obscured its failure to meet the 95% average on-time performance requirement. Between 2015 and 2017, according to Academy records, Academy missed more than 36,000 bus trips, out of 525,000 scheduled trips, or about 6.8% - meaning that Academy fell below the 95% average on-time performance threshold required in the contract. Yet Academy reported to New Jersey Transit that it missed only 7,369.5 bus trips, or 1.4% of its scheduled trips, for that period. Academy falsely claimed to be meeting its contractual obligations only by falsely claiming to be servicing far more bus

trips for New Jersey Transit customers than it actually was. Academy went to great lengths to defraud and keep New Jersey Transit in the dark while the public endured the poor bus service Academy provided.

38. The Academy Officer Defendants and Academy Employee Defendants directed and perpetuated this fraud.

39. The Academy Employee Defendants, operating from 1500 Jefferson Street in Hoboken, prepared the false Missed Trip Reports under the direction and instruction of the Academy Officer Defendants, operating out of Academy's main headquarters and principal place of business at 111 Paterson Avenue in Hoboken. Each Academy Officer Defendant and Academy Employee Defendant knowingly assisted and was an active participant in the fraud on New Jersey Transit involving the false Missed Trip reporting.

40. Internal Academy documents and sworn testimony show that Academy's exceedingly high number of actual Missed Trips most months resulted from Academy's deliberate decision to divert its short supply of bus drivers away from the bus lines it operated for New Jersey Transit in favor of higher paying contracts. Academy Officer Defendants were aware of, and directed, the shifting of bus drivers from New Jersey Transit runs to Academy's other operations, including higher-paying private charter trips, to the detriment of New Jersey Transit and its customers.

41. Between 2012 and 2018, Academy's fraudulent

underreporting of Missed Trips defrauded New Jersey Transit and New Jersey taxpayers out of over \$15 million.

C. Peralta's First-Hand Knowledge of Academy's Fraud

42. Peralta obtained first-hand knowledge of Academy's fraud while he was working at Number 22 Hillside, LLC and/or No. 22 Hillside Corporation as an Operations Supervisor and Terminal Manager. In those roles, he was tasked with creating and submitting the monthly Missed Trip Reports to New Jersey Transit.

43. Peralta calculated the number of Missed Trips to input into these reports by reviewing Academy's internal database, the Line Run System, on a daily basis and recording which bus runs were reported as having been cancelled. Peralta would then forward his Missed Trip calculations to Defendant DiPalma, who would bring the report to Defendant Scullin, for his review and approval.

44. Peralta testified that Defendant Scullin called him every month and ordered that Peralta "bring down the numbers" of Missed Trips before they were reported to New Jersey Transit.

45. Peralta recalled at least one occasion where Defendant DiPalma relayed a message from Defendant Scullin to "bring the number down" of Missed Trips that would be reported to New Jersey Transit.

46. Peralta also testified that Defendant Scullin warned Peralta "many times . . . not to send [Defendant Scullin] any e-mails about miss[ed] trips" to avoid 'leav[ing] a paper trail,'

and directed Peralta to falsify Missed Trip Reports "via telephone."

D. Academy's Own Records Show That Academy Falsely Reported the Number of Missed Trips to New Jersey Transit.

47. During all relevant times, Academy used its internal Line Run System database to track its daily bus operations and determine how many hours its drivers had worked for purposes of calculating their pay.

48. Academy's Line Run System corroborates Peralta's account of Academy's knowing, deliberate, and fraudulent underreporting of Missed Trips to New Jersey Transit.

49. Academy's Line Run System shows that Academy missed dozens more trips than it reported to New Jersey Transit on almost every day between April 2012 and December 2018.

50. The Line Run System organizes Academy's bus schedule into "runs." Each "run" consists of multiple "trips" along a specific New Jersey Transit route. For instance, New Jersey Transit Route 119 operates between Bayonne and the Port Authority Bus Terminal in New York City. Each time the driver assigned to this route travelled from one end point of the route to the other (i.e., from Bayonne to Port Authority, or from Port Authority to Bayonne), the bus driver completed one trip. A single "run" assigned to a driver on a route in the Hudson and South Hudson Service Areas consists of between one and eleven "trips" per day.

51. The Line Run System includes 27 fields of data for every bus run, including a field labeled "CXD" (an abbreviation for "cancelled"). The CXD field shows whether a run operated, and hence, whether a driver needed to be paid for that run.

52. As detailed below, a comparison of the data in Academy's Line Run System to Academy's Missed Trip reporting to New Jersey Transit demonstrates Academy's fraudulent reporting.

E. Example of Fraud Reflected in Academy's Line Run System and Other Internal Documents: April 2016

i. Academy Underreported Missed Trips to New Jersey Transit.

53. Academy's knowing, deliberate, and fraudulent underreporting of Missed Trips is illustrated by multiple sources of documents and data, including Academy's Line Run System.

54. Below is a snapshot of selected rows and columns from Academy's Line Run System data on April 1, 2016:

A	E	G	H	I	M	N	O	P	Q	R	S
RouteDate	Description	Report	Start	Clear	Drv1	Bus1	Dispatche	BusType	PayDate	PayAmt	CXD
04/01/16	HUD RUN 009 ROUTE 10	5:30 AM	5:50 AM	9:12 AM			0 NABI	NULL		0	1
04/01/16	HUD RUN 010 AM ROUTE 10	5:30 AM	5:50 AM	9:34 AM			0 NABI	NULL		0	1
04/01/16	HUD RUN 204 ROUTE 2	5:35 AM	5:55 AM	13:35 PM	103044	6033	1 NABI	4/1/2016 0:00	147.86		0
04/01/16	HUD RUN 908 AM ROUTE 119	5:36 AM	5:56 AM	8:27 AM	113850	6017	1 NABI	4/1/2016 0:00	41.16		0
04/01/16	HUD RUN 205 AM ROUTE 2	5:40 AM	6:00 AM	9:21 AM	103323	6054	1 NABI	4/1/2016 0:00	106.93		0
04/01/16	HUD RUN 011 AM ROUTE 10	5:45 AM	6:05 AM	9:27 AM	113825	6204	1 NABI	4/1/2016 0:00	52.92		0
04/01/16	HUD RUN 805 AM ROUTE 88	5:47 AM	6:07 AM	9:23 AM	110559	6044	1 NAB	4/1/2016 0:00	89.95		0
04/01/16	HUD RUN 909 AM ROUTE 119	5:48 AM	5:08 AM	10:03 AM	112533	6200	1 NABI	4/1/2016 0:00	60.76		0
04/01/16	HUD RUN 206 AM ROUTE 2	5:50 AM	6:10 AM	9:22 AM	110244	6193	1 NABI	4/1/2016 0:00	62.81		0
04/01/16	HUD RUN 207 AM ROUTE 2	5:50 AM	6:10 AM	8:22 AM	112598	6026	1 NABI	4/1/2016 0:00	0		0
04/01/16	HUD RUN 404 AM ROUTE 22-23	5:55 AM	6:15 AM	9:02 AM	112410	6030	1 NABI	4/1/2016 0:00	44.8		0
04/01/16	HUD RUN 405 AM ROUTE 22	5:55 AM	6:15 AM	11:50 AM	111268	6049	1 NABI	4/1/2016 0:00	91.5		0
04/01/16	HUD RUN 302 AM ROUTE 23	5:56 AM	6:16 AM	8:09 AM	105522	6027	1 NABI	4/1/2016 0:00	0		0
04/01/16	HUD RUN 406 AM ROUTE 22x	5:58 AM	6:18 AM	8:23 AM			0 NABI	NULL		0	1
04/01/16	HUD RUN 012 AM ROUTE 10	6:08 AM	6:28 AM	9:54 AM	113801	6055	1 NABI	4/1/2016 0:00	53.9		0

The bus runs listed with a "1" under Column S, labeled "CXD," were reported as cancelled. This is further confirmed by the lack of

(i) a driver listed in Column M; (ii) a bus number in Column N; and (iii) payment to a bus driver in Columns Q and R.

55. Sorting the Line Run System data by cancelled runs for April 1, 2016, shows 12 cancelled runs for that day:

A	E	G	H	I	M	N	O	P	Q	R	S
RouteDate	Description	Report	Start	Clear	Drv1	Bus1	Dispatche	BusType	PayDate	PayAmt	CXD
04/01/16	HUD RUN 009 ROUTE 10	5:30 AM	5:50 AM	9:12 AM			0	NABI	NULL	0	1
04/01/16	HUD RUN 010 AM ROUTE 10	5:30 AM	5:50 AM	9:34 AM			0	NABI	NULL	0	1
04/01/16	HUD RUN 406 AM ROUTE 22x	5:58 AM	6:18 AM	8:23 AM			0	NABI	NULL	0	1
04/01/16	HUD RUN 808 AM ROUTE 88	6:35 AM	6:55 AM	9:23 AM			0	NABI	NULL	0	1
04/01/16	HUD RUN 409 AM ROUTE 22	6:55 AM	6:15 AM	8:53 AM			0	NABI	NULL	0	1
04/01/16	HUD RUN 304 AM ROUTE 23	7:12 AM	7:32 AM	8:29 AM			0	NABI	NULL	0	1
04/01/16	HUD RUN 021 ROUTE 10	13:50 PM	14:10 PM	19:28 PM			0	NABI	NULL	0	1
04/01/16	HUD RUN 012 PM ROUTE 22	13:55 PM	14:15 PM	19:50 PM			0	NABI	NULL	0	1
04/01/16	HUD RUN 023 ROUTE 10	16:18 PM	16:38 PM	18:26 PM			0	NABI	NULL	0	1
04/01/16	HUD RUN 421 ROUTE 22X	16:30 PM	16:50 PM	19:27 PM			0	NABI	NULL	0	1
04/01/16	HUD RUN 422 ROUTE22 X	17:00 PM	17:20 PM	18:27 PM			0	NABI	NULL	0	1
04/01/16	HUD RUN 902 PM ROUTE 2	11:50 AM	12:10 PM	18:13 PM			0	NABI	NULL	0	1

56. New Jersey Transit's bus route schedules, known as "paddles," show how many bus trips are assigned to each bus run. For instance, the relevant paddle in April 2016, as seen below, shows that three trips (represented by the arrows) were assigned to Run 009 on Route 10, which travels between Bayonne and Jersey City (Journal Square). Thus, Academy missed three trips every time Run 009 was cancelled.

PADDLE - WEEKDAY	
009	
ROUTE 010	
5:30a	REPORT
5:50a	OUT (40 FT)
6:30a	N JFK & 3RD
6:30a	JFK & 3RD
6:38a	JFK & 27TH
6:44a	JFK & 63RD
6:48a	JFK & MCAD
6:58a	JFK & COMM
7:07a	JRNAL SQ.
7:18a	S JOURNAL SQ.
7:18a	JRNAL SQ.
7:28a	JFK & COMM
7:38a	JFK & MCAD
7:42a	JFK & 63RD
7:51a	JFK & 27TH
7:58a	JFK & 2ND
8:08a	N JFK & 3RD
8:08a	JFK & 3RD
8:17a	JFK & 27TH
8:27a	JFK & 63RD
8:31a	JFK & MCAD
8:42a	JFK & COMM
8:52a	JRNAL SQ.
8:52a	JOURNAL SQ. (DH)
9:12a	AT GARAGE

57. Applying this methodology to each of the 12 cancelled runs on April 1, 2016, reveals that Academy had at least 32 Missed Trips that day.

58. In addition, Academy created internal spreadsheets providing daily and monthly Missed Trip data. A spreadsheet for April 2016, titled "NJ Transit Missed Trips - April 2016," also stated the same 32 Missed Trips for April 1, 2016, that appeared in Academy's Line Run System data:

NJ TRANSIT MISSED TRIPS - April 2016									
	2	10	22	22x	23	88	119	Dep Fees	Total
1-Apr	6	13	5	5	1	2	0	21	32

59. Academy appeared to have missed even more bus trips than this on April 1, 2016. The Line Run System notes state that three different drivers covering routes on the Route 10, 23 and 88 lines, missed a collective 4.37 hours of driver time that day, with no indication that anyone covered those routes in their absence. This would mean Academy likely missed an additional three to five more bus trips that day. Discovery in this action may yield a more precise calculation of the actual number of Missed Trips.

60. Yet when it came time to report to New Jersey Transit the number of Missed Trips for April 1, 2016, Academy falsely reduced the Missed Trip numbers from 32 (or more) to one.

61. Specifically, on May 4, 2016, based on Defendant Scullin's orders passed down through Peralta, an Academy operations supervisor emailed Academy's "Daily Report of Operations" for April 2016 to Paul Lopes, Manager of Private Carrier Affairs at New Jersey Transit, reporting only one Missed Trip for April 1, 2016:

**DAILY REPORT OF OPERATIONS
NO. 22 HILLSIDE CORP.
HUDSON COUNTY SERVICE
INTERRUPTIONS/DELAYS**

WEATHER: _____

DATE: 04.01.16

SPECIAL EVENTS: _____

DAY OF WEEK: Friday

Route	Bus No.	Route	Describe cause of delay	Passengers delayed	Minutes delayed	Trips lost	Action taken
2						0	
10						1	
22						0	
22x						0	
23						0	
88						0	
119						0	
						1	

62. Applying the same methodology to calculate Missed Trips for the entire month of April 2016, the Line Run System data shows that Academy missed at least 1,117 bus trips for the month - a calculation that only takes into account the bus routes that Academy fully cancelled, and thus, likely an undercount.¹ Yet, Academy reported only 19 Missed Trips to New Jersey Transit on its Daily Report of Operations for the month - less than 2% of its actual Missed Trips. Academy's fraudulent reporting also hid that Academy missed more than 5% of scheduled trips and, thus, failed to satisfy its contractual obligation to cover at least 95% of

¹ Notes in the Line Run System suggest the actual Missed Trips number is higher, due to trips missed on runs that were not cancelled. The notes also indicate partial coverage of runs that were otherwise cancelled, but those are far fewer than missed trips on runs that were not cancelled. It is anticipated that discovery in this action will yield a more precise, and likely higher, calculation of Missed Trip numbers.

scheduled trips for the month.

63. In addition to the false monthly Missed Trip Reports, Academy also separately submitted invoices to New Jersey Transit, incorporating the falsified information about its Missed Trips.

64. For April 2016, an Academy employee who reported to Defendant DiPalma submitted to New Jersey Transit invoices for the Hudson and South Hudson Service Area contracts, billing just under \$1 million for the month. Each invoice Academy submitted to New Jersey Transit showed a deduction of \$150 for each of 16 reported Missed Trips for the two lines (three fewer than on its Missed Trip Report). Academy therefore deducted \$900 for the Hudson Service Area contract for six Missed Trips, and \$1,500 for the South Hudson Service Area contract for 10 Missed Trips.

65. Academy supported these Missed Trip deductions in the monthly invoices with another fraudulent document – a Missed Trips report in which Academy represented that it missed only 16 bus trips that month (April 2016):

**Missed Trips
No. 22 Hillside, LLC
Hudson County Local Bus Service**

Month Of: April, 2016

<u>Date</u>	<u>Route #</u>	<u># of Trips</u>	<u>Day Type</u>	<u>Scheduled Hours</u>	<u>Hours Missed</u>	<u>Scheduled Miles</u>	<u>Miles Missed</u>	<u>Missed Trip Penalty</u>
4/4/2016	88	1	Wkdy	0.87	0.87	7.15	7.15	\$150.00
4/11/2016	88	1	Wkdy	0.87	0.87	7.15	7.15	\$150.00
4/12/2016	88	1	Wkdy	0.87	0.87	7.15	7.15	\$150.00
4/15/2016	88	1	Wkdy	0.87	0.87	7.15	7.15	\$150.00
4/20/2016	88	1	Wkdy	0.87	0.87	7.15	7.15	\$150.00
4/28/2016	88	1	Wkdy	0.87	0.87	7.15	7.15	\$150.00

Missed Trips
No. 22 Hillside, LLC
South Hudson Local Bus Service

Month Of: April, 2016

Date	Route #	# of Trips	Day Type	Scheduled	Hours	Scheduled	Miles Missed	Missed Trip
				Hours	Missed			
4/1/2016	10	1	Wkdy	0.81	0.81	7.37	7.37	\$150.00
4/5/2016	10	1	Wkdy	0.81	0.81	7.37	7.37	\$150.00
4/8/2016	10	1	Wkdy	0.81	0.81	7.37	7.37	\$150.00
4/13/2016	10	1	Wkdy	0.81	0.81	7.37	7.37	\$150.00
4/18/2016	10	1	Wkdy	0.81	0.81	7.37	7.37	\$150.00
4/21/2016	119	2	Wkdy	1.49	2.98	14.35	28.70	\$300.00
4/22/2016	119	2	Wkdy	1.49	2.98	14.35	28.70	\$300.00
4/26/2016	10	1	Wkdy	0.81	0.81	7.37	7.37	\$150.00

66. Academy engaged in similar fraudulent conduct each month between April 2012 and December 2018. The invoices and Missed Trip Reports that Academy submitted to New Jersey Transit each month were not merely false; they vastly underreported the number of Missed Trips Academy had for the month.

ii. Academy Also Overbilled New Jersey Transit by Falsifying the Number of Hours and Miles It Operated.

67. The invoices and Missed Trip Reports not only falsified the number of Missed Trips Academy had for the month, but also falsified the number of hours and miles Academy operated for New Jersey Transit for the month. New Jersey Transit pays Academy based on operated hours and miles at rates set by contract. The contracts set forth the dollar value for each hour and each mile, as well as the number of hours and miles assigned to a trip on each route.

68. In its invoices, Academy was supposed to calculate the total operated miles and hours if every trip was covered and subtract the total missed miles and hours for the trips that were

missed.

69. If Academy had properly reported the number of Missed Trips for April 2016, based upon the information from Academy's own Line Run System, Academy would have reduced its invoices to New Jersey Transit by \$53,139.47 based on the hours and miles for scheduled trips that Academy did not operate. But Academy only reduced its April 2016 invoices for the Hudson and South Hudson Service Area lines by \$1,165.12 (\$893.33 + \$271.79) for missed hours and miles based on the Missed Trips it reported, as seen in the screenshots from the invoices below (highlights added).

Hudson Invoice					South Hudson Invoice				
Total Operated Hours	7,733.25	X	36.37	281,258.30	Total Operated Hours	5,640.11	X	38.84	219,061.87
Total Operated Miles	64,941.09	X	1.91	124,037.48	Total Operated Miles	51,646.00	X	2.07	106,907.22
Total Other Fee	6,020.04	X	30	180,601.20	Total Other Fee	3,646.17	X	30	109,385.10
Sub-Total				<u>585,896.98</u>	Sub-Total				<u>435,354.19</u>
Total Missed Miles	42.90	x	(1.91)	(\$81.94)	Total Missed Miles	144.67	x	(2.07)	(\$299.47)
Total Missed Hours	5.22	x	(36.37)	(\$189.85)	Total Missed Hours	15.29	x	(38.84)	(\$593.85)
Sub-Total				<u>(\$271.79)</u>	Sub-Total				<u>(\$893.33)</u>
Retainage				(11,712.50)	Retainage				(8,689.22)
Less Missed Trip Penalties	(150.00)	X	6	(\$900.00)	Less Missed Trip Penalties	(150.00)	X	13	(\$1,950.00)
Labor Hours Agreement									
Total Due Academy				<u>\$ 573,012.69</u>	Total Due Academy				<u>\$ 423,821.63</u>

70. Thus, for April 2016, based upon the information from Academy's own Line Run System, Academy made at least three separate false submissions to New Jersey Transit: (i) the Missed Trip Report, (ii) the monthly invoice for the Hudson Service Area line, and (iii) the monthly invoice for the South Hudson Service Area

line. Academy similarly made multiple false submissions every month from April 2012 through December 2018, by misrepresenting to New Jersey Transit how many miles and hours it operated and the number of Missed Trips it had for the month.

F. Additional Evidence of Academy's Fraud: December 2016

71. Academy's reporting of Missed Trips for December 2016 provides further evidence of its fraudulent conduct.

72. The Line Run System for December 2016 shows over 1,000 Missed Trips attributable to Academy's cancelled runs, but on Monday, January 9, 2017, Academy reported to New Jersey Transit that it had only 236 Missed Trips for the month.

73. Academy's internal emails show that on January 6, 2017, three days before falsely reporting Missed Trip numbers to New Jersey Transit, Defendant Rosario sent Defendant DiPalma a spreadsheet entitled, "New Jersey Transit Missed Trips December 2016." That spreadsheet contained three tabs: (i) "Departure Fees," listing 1,006 Missed Trips; (ii) "RN," referring to "Real Numbers," also listing 1,006 Missed Trips; and (iii) "Adjustment," listing 236 Missed Trips.²

² Academy's "RN" or "Real Number" in its internal spreadsheets does not precisely match the number of cancelled runs from the Line Run System but provides further evidence of Academy's gross underreporting of Missed Trips. It appears that in addition to the cancelled runs from the Line Run System, Academy may have used other inputs, including other missed trips caused by driver delays

74. Thus, that spreadsheet contained two tabs with "real" Missed Trip numbers - the "RN"/Real Number tab and the "Departure Fees" tab (which Academy appears to have used to calculate its Departure Fee reports to Port Authority, as it includes a column that counts Missed Trips for the bus routes that use Port Authority terminals) - and a third tab, "Adjustment," containing the fraudulent "adjusted" numbers that Academy would report to New Jersey Transit:

or absences and other factors, plus any credits for covered trips in cancelled runs. In several instances, the "RN" number in the spreadsheets is higher than the number of Missed Trips calculated based on cancelled runs in the Line Run System. It is anticipated that discovery will yield a more precise calculation of the number of Missed Trips.

NJT MISSED TRIPS - DECEMBER 2016								
	2	10	22	22x	23	88	119	Total
1-Dec	0	25	9	5	0	5	0	44
2-Dec	0	18	5	5	0	9	0	37
3-Dec	0	5	0	0	0	6	0	11
4-Dec	0	0	7	0	0	0	0	7
5-Dec	0	23	7	7	0	5	0	42
6-Dec	0	6	5	2	0	8	0	21
7-Dec	0	31	11	3	0	8	0	53
8-Dec	0	25	7	2	4	5	0	43
9-Dec	1	17	7	3	0	23	0	51
10-Dec	6	0	0	0	0	0	0	6
11-Dec	6	0	0	0	0	0	0	6
12-Dec	0	34	11	5	0	20	4	74
13-Dec	3	7	0	0	0	1	0	11
14-Dec	0	29	11	6	0	12	0	55
15-Dec	0	45	15	2	2	9	1	74
16-Dec	0	48	11	3	0	12	0	74
17-Dec	0	11	0	0	0	9	0	20
18-Dec	0	9	0	0	0	0	0	9
19-Dec	0	43	8	5	0	14	0	70
20-Dec	0	32	2	3	0	18	0	55
21-Dec	0	29	3	3	0	18	0	53
22-Dec	0	34	7	3	0	14	0	58
23-Dec	0	25	7	3	0	18	0	53
24-Dec	0	33	0	0	0	0	0	33
25-Dec	0	12	8	0	0	0	0	20
26-Dec	0	0	0	0	0	0	0	0
27-Dec	0	0	1	2	2	3	0	8
28-Dec	0	10	1	2	0	5	0	18
29-Dec	0	0	0	0	0	0	0	0
30-Dec	0	0	0	0	0	0	0	0
31-Dec	0	0	0	0	0	0	0	0
	16	551	143	61	8	222	5	1006

"Adjustment" Tab (numbers reported to New Jersey Transit)

NJT MISSED TRIPS - DECEMBER 2016 NEW ADJUSTMENT								
	2	10	22	22x	23	88	119	Total
1-Dec	0	5	0	0	0	5	2	12
2-Dec	0	6	0	0	0	9	1	16
3-Dec	0	0	0	0	0	0	0	0
4-Dec	0	0	0	0	0	0	0	0
5-Dec	0	6	2	0	0	2	1	11
6-Dec	0	7	1	0	0	3	0	11
7-Dec	0	4	2	0	0	3	1	10
8-Dec	0	4	1	0	2	2	0	9
9-Dec	0	5	1	0	0	9	0	15
10-Dec	0	0	0	0	0	0	0	0
11-Dec	0	0	0	0	0	2	0	2
12-Dec	0	5	0	0	0	2	3	10
13-Dec	0	6	0	0	0	1	2	9
14-Dec	0	5	0	0	0	2	0	7
15-Dec	0	9	2	2	0	3	1	17
16-Dec	0	7	0	0	0	2	1	10
17-Dec	0	0	0	0	0	0	0	0
18-Dec	0	0	0	0	0	0	0	0
19-Dec	0	7	2	0	0	8	0	17
20-Dec	1	8	3	0	0	7	0	19
21-Dec	0	7	4	0	0	6	0	17
22-Dec	0	6	3	0	0	5	0	14
23-Dec	0	7	0	0	0	8	0	15
24-Dec	0	0	0	0	0	0	2	2
25-Dec	0	0	0	0	0	0	0	0
26-Dec	0	0	0	0	0	0	0	0
27-Dec	0	0	0	0	0	1	3	4
28-Dec	0	7	0	0	0	2	0	9
29-Dec	0	0	0	0	0	0	0	0
30-Dec	0	0	0	0	0	0	0	0
31-Dec	0	0	0	0	0	0	0	0
	1	111	21	2	2	82	17	236
<div> Departure Fees RN Adjustment + </div>								

75. As noted, on January 9, 2017, Academy reported to New Jersey Transit the 236 Missed Trips for December 2016 in the "Adjustment" tab, using the false numbers from that third tab.

76. Thus, these internal documents further demonstrate that Academy knowingly submitted, or caused to be submitted, Missed Trip Reports and invoices containing false statements to New Jersey Transit in connection with claims for payment, with knowledge that these reports and invoices contained false information.

G. Academy Improved Its Missed Trip Reporting Only After New Jersey Transit Started Spot Checking Academy's Performance.

77. On five days in November 2017 - November 3, 6, 8, 10, and 13 - New Jersey Transit spot-checked Academy's performance on Route 10 using a GPS tracking device called "Clever" that New Jersey Transit installed on its buses to track the movement of individual buses.

78. Based on New Jersey Transit's spot-check analysis of the Clever data, New Jersey Transit found 317 Missed Trips for Academy solely for those five days - a high number for one bus route over a five-day period, considering that Academy regularly reported that all seven bus routes had missed many fewer trips for the entire month.

79. On November 14, 2017, Paul Lopes at New Jersey Transit informed Defendants Luna and Rosario, as well as other Academy employees, about New Jersey Transit's spot-checking in an email communication, attached a copy of its analysis, and asked Academy for an explanation for the apparent Missed Trips.

80. In response, on November 17, 2017, Defendant Luna acknowledged that 255 of the 317 Missed Trips that New Jersey Transit had identified were indeed missed without an excuse and provided explanations for the remaining trips. In Defendant Luna's response, he falsely suggested that Academy's performance was

atypical and promised that "[w]e're making strives [sic] on getting more work covered."

81. Subsequent internal Academy emails and documents show that when Academy prepared its Missed Trip spreadsheets for that month, Academy employees highlighted the cells of days when New Jersey Transit had monitored Academy's performance.

82. On December 4, 2017, Defendant Luna emailed Defendant Rosario and another Academy employee, stating that "[Defendant Rosario] is going over to 111 tomorrow to review the numbers." Here, "111" refers to Academy's headquarters at 111 Paterson Avenue, where Defendant DiPalma and the other Academy Officer Defendants all worked.

83. The next day, December 5, 2017, in anticipation of Defendant Rosario's meeting with, upon information and belief, Defendants Scullin and DiPalma, Defendant Luna sent Defendant Rosario a spreadsheet of November 2017 Missed Trips and stated, "don't forget to take with you Paul's report, to show how their [sic] checking," referring to Paul Lopes at New Jersey Transit. The column for Route 10 on the November 2017 Missed Trips spreadsheet was highlighted on each day New Jersey Transit had spot-checked. The spreadsheet reflected a total of 907.5 Missed Trips for November 2017. Academy's Line Run Data for that month, in contrast, reflected 1,224 Missed Trips.

84. After the December 5, 2017 meeting at Academy's

corporate headquarters, where each of the Academy Officer Defendants worked, Defendant Luna and/or Defendant Rosario revised the number of Missed Trips upwards substantially from 907.5 to 1,121.5.

85. The Missed Trip Report that was ultimately sent to New Jersey Transit on December 11, 2017, by an Academy employee who reported to Defendant DiPalma, reported 1,121.5 Missed Trips for November 2017, far closer to the 1,224 Missed Trips reflected in Academy's Line Run Data for that month, and a stark contrast to its Missed Trip reporting for the prior two months of September (308) and October (240.5), even though all three months had approximately 1,200 Missed Trips each according to the Line Run System data. Acutely aware that New Jersey Transit was monitoring Academy's operations more closely, Academy also improved (and therefore increased) its Missed Trip reporting for the remainder of 2017 and into 2018, reporting more accurate numbers to New Jersey Transit than it had in prior years.

86. Even though it improved its reporting, Academy nonetheless continued to deceive New Jersey Transit and sought to prevent the discovery of its fraudulent conduct. In fact, in April 2019, Defendants Luna and Rosario exchanged text messages to express concern that New Jersey Transit was monitoring Academy and might discover the Missed Trip reporting fraud:

Rosario: R u aware that transit was surveying us on Monday afternoon? We have to provide accurate numbers of 4/15 on the missed trips report.

Luna: Really?

Luna: That's not good

H. Academy's Departure Fee Reports to the Port Authority of New York and New Jersey Further Corroborate Academy's Fraud.

87. Reports that Academy separately submitted to the Port Authority of New York and New Jersey ("Port Authority") about its bus operations also evidence Academy's fraud.

88. Some of the bus routes Academy operated for New Jersey Transit in the Hudson and South Hudson Service Areas went through the Port Authority Bus Terminal in New York City and the Port Authority Journal Square terminal in Jersey City. The Port Authority assesses bus operators a "Departure Fee" for each bus that departs from its terminals, and requires bus operators to self-report the total number of departures each month to calculate that monthly fee.

89. Thus, Academy had a financial incentive to accurately report to the Port Authority its bus departures, reflecting a high number of missed bus trips, because the Port Authority was charging Academy for each departed bus. At the same time, Academy had a financial incentive to falsely report the equivalent data to New Jersey Transit to avoid paying Missed Trip assessments.

90. Comparing Academy's Departure Reports to the Port Authority with the Missed Trip Reports to New Jersey Transit

illustrates Academy's fraud.

91. Academy's buses on Routes 2, 10, 88, and 119 all pass through Port Authority's Journal Square Terminal, requiring Academy to pay a departure fee. Each month, Academy submits to the Port Authority a Departure Fee report that reflects the total number of completed departures from Journal Square across these four routes. The number of "Missed Departures" Academy effectively reported to the Port Authority can be calculated by determining the number of departures that Academy was scheduled to operate according to New Jersey Transit's schedules, and then subtracting the number of departures Academy reported to the Port Authority in its Departure Fee reports.

92. Academy's Departure Fee reports to the Port Authority show many times more Missed Departures for the four lines that operate out of Journal Square than Missed Trips reported to New Jersey Transit for all seven of New Jersey Transit's Hudson County lines. For instance, in July, August, November, and December 2016, Academy reported at least 3.5 times more Missed Departures to the Port Authority for four lines than Missed Trips reported to New Jersey Transit for all seven lines. Indeed, for August 2016, Academy reported to the Port Authority that it had over seven times more Missed Departures than Missed Trips reported to New Jersey Transit.

93. This inconsistency between Academy's reports to New

Jersey Transit and the Port Authority is further corroboration that Academy intentionally and fraudulently underreported Missed Trips to New Jersey Transit.

I. Academy Officer and Employee Defendants Carried Out Academy's Fraud.

94. Academy carried out its fraud through the Academy Officer Defendants and Academy Employee Defendants.

i. Defendants Luna and Rosario

95. From 2017 to August 2019, Defendant Luna, the Operations Supervisor, prepared the initial Missed Trip Report, and then consulted with his supervisor, Defendant Rosario, the Terminal Manager, to determine how many Missed Trips to present to the Academy Officer Defendants.

96. Internal emails and reports, including those discussed above, show that Defendants Luna and Rosario prepared false Missed Trip Reports knowing that the reports did not accurately convey the Missed Trip numbers for the month.

97. Text messages between Defendants Luna and Rosario also show the two communicating openly about fraudulently changing the Missed Trip numbers.

98. For instance, in early April 2018, Defendants Luna and Rosario had the following text message exchange regarding calculating March 2018 Missed Trips, acknowledging that Academy maintained an internal "Real Number" calculation:

Luna: 1617 missed trips with the two snow days
 Rosario: Wow
 Luna: It might be a bit lower than that, **I think [Defendant Luna's assistant] put the snow days on the Real number sheet instead of the adjustment sheet** - so I'll let you know. (emphasis added)

99. As noted, internal Academy spreadsheets show different tabs for "RN"/Real Numbers and the lower "Adjustment" false numbers that Academy reported to New Jersey Transit. Academy reported to New Jersey Transit 711.5 Missed Trips for the entirety of March 2018.

100. In early August 2018, Defendants Luna and Rosario exchanged more texts about how much to adjust the "RN" (Real Numbers) before reporting to New Jersey Transit for the month of July:

Luna: RN- 686, Adjusted N - 441. Yes or No
 Luna: Good morning
 Rosario: Do 50 Less
 Luna: Okay
 Luna: 394 is that good?

101. Academy reported 394 Missed Trips to New Jersey Transit for July 2018.

102. Defendants Luna and Rosario discussed the "RN" and "adjusted" numbers again the next month, in another text exchange on September 7, 2018. Defendant Luna stated: "For August, 1154 RN, 744 adjusted. . . . Let me know to send." Later that same day, Defendant Rosario sent Defendant Luna an email attaching a

spreadsheet concerning August 2018 Missed Trips and wrote "call me." In the attached spreadsheet, the "RN" tab reflected 1,152 Missed Trips, while the "Adjustment" tab reflected 678 Missed Trips. Academy reported to New Jersey Transit 678 Missed Trips for August 2018.

103. One month later, in October 2018, Defendants Luna and Rosario again exchanged texts discussing how much to adjust the RN before reporting to New Jersey Transit:

Luna: * * * September RN- 1823.5, Adjust 974.5. Is this too much to adjust? Let me know

Rosario: Go with 700 range

Luna: Bro bro
It's 1800 missed, really - we are gambling this huh?

Luna: How does 806.5 sound??

104. Academy reported 804.5 Missed Trips to New Jersey Transit for September 2018.

ii. Defendant DiPalma

105. As the Academy Controller, Defendant DiPalma directed and participated in the fraudulent underreporting of Missed Trips to New Jersey Transit.

106. An Academy employee who reported to Defendant DiPalma was the person at Academy who submitted the false invoices to New Jersey Transit each month most frequently. That employee testified that Defendant DiPalma had to "approve every single invoice that

I send out to my contracts," including the New Jersey Transit invoices.

107. Defendant DiPalma received Missed Trip Reports that reflected vastly different Missed Trip totals than were reported to New Jersey Transit and, at times, received multiple drafts of Missed Trip Reports that reflected significantly different Missed Trip totals. An Academy employee that reported to Defendant DiPalma testified that Defendant DiPalma approved which Missed Trip total Academy would submit to New Jersey Transit in its invoice.

108. For instance, on October 3, 2016, an Academy employee sent an email to another Academy employee who reported to Defendant DiPalma, copying Defendant DiPalma and Hector Peralta, attaching a Missed Trip Report that reflected 1,354 Missed Trips for September 2016.

109. Three days later, on October 6, 2016, Defendant DiPalma and Peralta were copied on another internal email that attached a new draft of the Missed Trip Report that reflected 82 Missed Trips for September 2016, a reduction of 1,272 Missed Trips for that month.

110. That same day, on October 6, 2016, an Academy employee that reported to Defendant DiPalma emailed Lopes at New Jersey Transit with Academy's invoices for September 2016, reporting 99 Missed Trips. That employee testified that Defendant DiPalma

approved Academy's invoice reporting only 99 Missed Trips, despite receiving a report three days earlier that reported 1,354 Missed Trips for that same month.

111. Additionally, on January 6, 2017, Defendant Rosario sent Defendant DiPalma the spreadsheet referenced in Paragraphs 74 and 75 regarding December 2016. This spreadsheet had a tab entitled "RN," which meant the "Real Number" of Missed Trips (1,006), and another tab entitled "Adjustment," which reflected 236 Missed Trips. Despite being provided with this spreadsheet reporting that Academy missed 1,006 trips in December 2016, Defendant DiPalma approved an invoice that fraudulently reported 236 Missed Trips to New Jersey Transit.

112. Additionally, Peralta testified that Defendant DiPalma instructed Peralta to reduce the number of Missed Trips that were reported to New Jersey Transit for September 2013. Specifically, after Peralta sent Academy's accounting department a report that reflected over 1,000 Missed Trips for September 2013, Defendant DiPalma told Peralta, "I spoke with Tom Scullin, you need to bring the number down." Defendant DiPalma then sent Peralta an email "with a little formula" that Defendant DiPalma used to fraudulently reduce the Missed Trip totals that Academy reported to New Jersey Transit. Academy ultimately reported 110 Missed Trips to New Jersey Transit for September 2013.

113. Additional emails from Academy personnel confirm that

Defendant DiPalma reviewed and approved the Missed Trip Reports before they were submitted to New Jersey Transit, including emails on April 5, 2016; June 3, 2016; November 8, 2016; January 4, 2017; March 7, 2017; and November 3, 2017.

iii. Defendant Scullin

114. Defendant Scullin, the Vice President and Chief Operating Officer of Academy, also directed and participated in the fraudulent underreporting of Missed Trips to New Jersey Transit.

115. Internal emails, texts, and Peralta's sworn testimony all evidence Defendant Scullin's direct involvement in, awareness of, and knowing participation in Academy's submission of fraudulent Missed Trip Reports and invoices to New Jersey Transit each month.

116. According to Peralta, Defendant Scullin routinely directed him to falsely reduce the number of Missed Trips reported to New Jersey Transit.

117. Peralta testified that Defendant Scullin ordered him every month to "bring down the numbers" of Missed Trips that would be reported to New Jersey Transit.

118. Emails from 2013, when Peralta handled the Missed Trip reporting, show that Defendant Scullin was fully aware of and directed the fraud. For instance, in a March 27, 2013 email, Peralta describes how he underreported Missed Trips to New Jersey

Transit:

From: Hector Peralta
Sent: Wednesday, March 27, 2013 7:02 AM
To: Tom Scullin
Subject: FYI

Tom,

A question is being raised as to why I reported the missed trips to NJ. They were conducting a survey for which reason, I had to report them.

Referencing the line run for February 2013, from 77 runs which consist of 567 trips, we only revealed 102 trips, less than 1%. We had no other choice due to time point checks.

Hector

119. And again, on April 2, 2013, Peralta described to Defendant Scullin that he underreported Missed Trips to New Jersey

Transit:

From: Hector Peralta
Sent: Tuesday, April 02, 2013 11:04 AM
To: Tom Scullin
Subject: Missed Trips
Attachments: March 2013 Missed Trips.PDF

Tom,

Attached is the missed trips for March 2013. The first two pages are the missed trips by run numbers which consist of approximately 600+ trips, the last two pages indicate the number (92 missed) reported to Frank DiPalma and NJ. If you notice almost on a daily basis we have the same runs open, but we covered them with a driver from another line for example 2302 is covered with the driver of the 2301 then falls back on his original run. The number after the hyphen at the end of the run number represents the number of missed trips on that particular run.

To be noted:

The delays on the 22 line is due to the construction of the Via-Duct, we have never had any complaints on this line before the construction began. As I mentioned in an earlier email, I made contact with Ken Beil NJ Bus Planning referencing this problem. They opted not to reroute it because too many bus stop will be missed on Palisade Ave.

Moving forward I will send you the missed trips on the daily basis.

Hector

120. Defendant Scullin responded with questions about driver

shortages, showing that he was aware of at least one cause of the high number of Missed Trips, as well as Academy's underreporting of Missed Trips to New Jersey Transit.

121. Emails and texts between other individual Defendants also show that Defendant Scullin was aware of, and participated in, the fraud.

122. For instance, on June 16, 2016, Defendant DiPalma emailed Peralta, instructing him to review one of New Jersey Transit's spot checks, adding: "Please let me know when you are available to meet and discuss your findings with Tom and I," referring to Defendant Scullin.

123. On June 29, 2016, Defendant DiPalma sent an email to Peralta, subject, "Missed Trips," referring to Defendant Thomas Scullin: "Hector, I spoke with Tom today. He will review the missed trip report and will let you know his thoughts." Academy reported 70 Missed Trips to New Jersey Transit for June 2016, failing to report 490 Missed Trips that appear in the Line Run System data for this month.

124. On July 3, 2018, Defendant Rosario and an Academy employee that reported to Defendant DiPalma exchanged texts about the fraudulent Missed Trip report Academy was preparing to submit to New Jersey Transit for June 2018. That employee and Rosario referenced Defendant Thomas Scullin's review and approval of the fraudulent missed trip numbers, as compared to the real numbers:

Employee: Did you review the missed trips with Tom
 Employee: It seem pretty low
 Rosario: No but we did really good in June
 Rosario: **I only reduced it by like 200**
 Employee: So should I show Tom the invoice or you
 think he is ok with that?
 Rosario: Show it to him. **Tell him real number was**
585
 Employee: Ok

(Emphasis added.)

125. Academy reported to New Jersey Transit that it had 334 Missed Trips for June 2018.

126. On January 12, 2018, New Jersey Transit's Ron Nichols emailed Defendants Scullin, DiPalma and Rosario, subject line "Hudson Service Missed Trips," stating that "the volume of these missed trips [in December 2017] are not acceptable." Defendant Scullin responded, falsely claiming that the volume of Missed Trips was an aberration:

Ron,
 I was made aware of the missed trips a couple weeks ago. During the summer and fall months we had approximately 40 drivers from our Florida locations helping us. Some of these drivers did our local transit work. They returned to Florida in the beginning of November and we got caught short. We have been training our charter drivers on the routes and have increased our recruiting efforts.
 We should see improvement in January and going forward.
 Thank you.

Thomas F.X. Scullin // VP & Chief Operating Officer // [REDACTED]
Academy Express, LLC // 111 Paterson Avenue // Hoboken, NJ 07030

127. Under oath, Defendant Scullin testified multiple times that ultimately it was his responsibility to ensure that the information submitted to New Jersey Transit was accurate.

iv. Additional Academy Officers, Employees and Entities

128. Discovery may reveal additional Academy Officers and

Employees (identified herein as "Jane & John Does") and additional corporate entities (identified herein as "XYZ Corporations 1-10") that share responsibility for the fraud.

129. For example, one reason that Academy was unable to cover the New Jersey Transit bus routes for the Hudson and South Hudson Service Area lines was because Academy was chronically short of bus drivers, and favored bus driver coverage for its higher paying private customers to the detriment of coverage for the New Jersey Transit contracts and its ridership.

130. Peralta, for instance, recalled that Academy's president, CEO and owner, Francis Tedesco, once instructed him to shift Academy drivers from New Jersey Transit bus routes for the Hudson and South Hudson Service Area lines to the higher-paying private charter bus routes, despite knowing that this would leave Academy unable to cover New Jersey Transit routes. And another Academy employee, who was working as a dispatcher, also testified that Tedesco ordered that employee to divert New Jersey Transit drivers to cover charter work. After the employee informed Tedesco that doing so would cause Defendant Number 22 Hillside, LLC to miss trips for New Jersey Transit, Tedesco said, "I don't care about NJ Transit. I want my drivers right now at this very moment for charter."

131. The Line Run System also provides evidence that Academy shifted drivers from New Jersey Transit runs to higher paying

charter work. For instance, a note in the Line Run System for a New Jersey Transit bus run operating from 10:40 a.m. to 7:42 p.m. on April 26, 2016, states, "DOING CHARTER JOB 217 FROM 3:30 PM - 7:30 PM," with no indication that another driver covered the New Jersey Transit run when the driver left. Another note on April 23, 2016, similarly states, "DOING CHARTER JOB 295 FROM 4 PM - 11 PM" when the driver was supposed to operate a New Jersey Transit run from 11:55 a.m. to 7:37 p.m. The Line Run System contains other similar notes.

J. Wide-Ranging Scope of Academy's Fraud

132. Between July 2014 to December 2018, based on Academy's Line Run System data, Academy failed to report to New Jersey Transit more than 30,000 Missed Trips. Assessing damages of \$300 for each unreported Missed Trip, Academy defrauded New Jersey Transit out of over \$9 million from July 2014 to December 2018.

Year	Missed Trips Based on Cancelled Runs in Line Run System	Missed Trips Academy Reported to New Jersey Transit	Unreported Missed Trips Based on Cancelled Runs in Line Run System	Damages (unreported missed trips * \$300)
July to December 2014	5,267	4,603	711	\$213,300
2015	11,784	2,129	9,655	\$2,896,500
2016	13,234	1,173	12,061	\$3,618,300
2017	11,084	4,067.5	7,016.5	\$2,104,950
2018	10,584	10,332	829.5	\$248,850

Total Number of Unreported Missed Trips, July 2014-2018	30,273
Total Damages for July 2014-2018 (\$300 per unreported Missed Trip)	\$9,081,900

133. Academy's fraud for the period between April 2012 to June 2014 can be calculated using a different method based on data New Jersey Transit collects from each bus's fare box. New Jersey Transit tracks the number of fare boxes that were activated for a bus run each day when it tracks its daily collections. These reports reflect the number of different buses that were used each day for the Hudson and South Hudson Service Areas.

134. Examination of New Jersey Transit's Fare Box Data from 2016, together with Academy's Line Run System data from 2016, reveals a relationship between the number of buses Academy operated for New Jersey Transit and the number of associated Missed Trips.

135. Extrapolating from this examination, between April 2012 and June 2014, Academy defrauded New Jersey Transit out of an estimated \$5.8 million, with nearly 20,000 unreported Missed Trips for the time period.

136. Thus, based on these calculations and estimates, between April 2012 and December 2018 Academy defrauded New Jersey Transit out of \$14.9 million by fraudulently underreporting Missed Trips, based on a \$300 assessment per unreported Missed Trip.

Year	Unreported Missed Trips	Damages	Basis of Calculation
Apr.- Dec. 2012	5,271	\$1,581,300	Fare Box Data
2013	10,035	\$3,010,500	Fare Box Data
2014	4,728	\$1,418,400	Fare Box Data/Line Run System
2015	9,655	\$2,896,500	Line Run System
2016	12,061	\$3,618,300	Line Run System
2017	7,016.5	\$2,104,950	Line Run System
2018	829.5	\$248,850	Line Run System
TOTAL	49,596	\$14,878,800	

137. Further, when Academy underreported the number of Missed Trips for a month, it also overbilled New Jersey Transit for the number of hours and miles that Academy operated for the month. Between July 2014 and December 2018, Academy overbilled New Jersey Transit by more than an estimated \$1.5 million for hours and miles associated with trips that Academy did not in fact run.

138. Thus, based on these calculations and estimates, Academy overcharged New Jersey Transit by more than \$15 million between April 2012 and December 2018.

139. In fact, Academy's fraud for this period is even greater than set forth above, as discovery in this action is likely to further reveal. These calculations only include when Academy's Line Run System shows that Academy cancelled bus runs completely; they do not include numerous instances in the Line Run System where notes show that drivers started shifts late, left their shifts early, or dropped New Jersey Transit routes for higher paying private charter work, without any indication that other drivers

covered those missed bus trips. The Line Run System data also did not capture times when Academy's buses were more than 20 minutes late, which under the contracts should have been reported as a "Missed Trip." Nor does the Line Run System data reflect occasions when Academy only covered part of a run, resulting in a number of the trips on that run being cancelled but not reported as missed. On information and belief, between April 2012 and December 2018, Academy failed to report tens of thousands of bus trips that should have been reported as Missed Trips because they did not run at all or ran more than 20 minutes late, leading to millions of dollars more in damages. The estimates also do not include an estimated amount Academy overbilled New Jersey Transit for hours and miles falsely charged between April 2012 and June 2014.

COUNT I

**VIOLATION OF THE NEW JERSEY FALSE CLAIMS ACT
FALSE CLAIMS
N.J.S.A. 2A:32C-3(a)
(ALL DEFENDANTS)**

140. The Attorney General incorporates by reference the allegations set forth in paragraphs 1 through 139 as if set forth fully herein.

141. By virtue of the acts set forth above, Defendants knowingly presented, or caused to be presented, false or fraudulent claims to New Jersey for payment, in violation of N.J.S.A. 2A:32C-3(a).

142. Each invoice, which Defendants submitted or caused to be submitted to New Jersey Transit and which contained false information, was a false or fraudulent claim for payment.

143. By submitting or causing the submission of false information to New Jersey Transit, Defendants knew that these claims for payment were false, fraudulent or fictitious or were deliberately ignorant of the truth or falsity of said claims, or acted in reckless disregard of whether said claims were true or false.

144. Academy Officer Defendants and Academy Employee Defendants knowingly, deliberately, and actively engaged in defrauding New Jersey Transit.

145. The submitted claims, therefore, were false or fraudulent claims for payment to New Jersey Transit, a State entity, in violation of N.J.S.A. 2A:32C-3(a).

146. By reason of the Defendants' violations, the State sustained damages in a substantial amount to be determined at trial.

COUNT II

**VIOLATION OF THE NEW JERSEY FALSE CLAIMS ACT
FALSE RECORDS OR STATEMENTS
N.J.S.A. 2A:32C-3(b)
(ALL DEFENDANTS)**

147. The Attorney General incorporates by reference the allegations set forth in paragraphs 1 through 146 as if set forth fully herein.

148. By virtue of the acts set forth above, Defendants knowingly made, used, or caused to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State, in violation of N.J.S.A. 2A:32C-3(b).

149. Each invoice, Missed Trip Report, Daily Report of Operation, or other record, which Defendants prepared or caused to be prepared in support of a fraudulent invoice and which contained false information, was a false or fraudulent record or statement intended to get a false or fraudulent claim approved and paid by New Jersey Transit, a State entity.

150. Academy Officer Defendants and Academy Employee Defendants knowingly, deliberately, and actively engaged in defrauding New Jersey Transit.

151. These claims, therefore, were false or fraudulent claims for payment to New Jersey Transit, a State entity, in violation of N.J.S.A. 2A:32C-3(b).

152. By reason of the Defendants' violations, the State sustained damages in a substantial amount to be determined at trial.

COUNT III

**UNJUST ENRICHMENT
(ACADEMY DEFENDANTS)**

153. The Attorney General incorporates by reference the allegations set forth in paragraphs 1 through 152 as if set forth fully herein.

154. As set forth above, New Jersey Transit, a State entity, paid the Academy Defendants more money than the Academy Defendants were entitled to receive, due to the Academy Defendants' false or fraudulent claims about the number of buses operated and the number of Missed Trips for the month.

155. The circumstances in which the Academy Defendants received funds based on the false claims Academy submitted are such that, in equity and good conscience, the Academy Defendants should not have retained such funds, the amount of which is to be determined at trial.

156. By reason of the Academy Defendants' unjust enrichment, the State is entitled to disgorgement of all monies that Academy has received as a result of the fraudulent acts alleged herein, and/or imposition of a constructive trust in favor of the State on those funds.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Attorney General respectfully requests that the Court enter judgment jointly and severally against Defendants:

- a) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the FCA, N.J.S.A. 2A:32C-1 to 2A:32C-18;
- b) Assessing against Defendants, jointly and severally, three times the amount of damages that the State has sustained as a result of Defendants' violations of the FCA, in accordance with N.J.S.A. 2A:32C-3;
- c) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the FCA, including each false statement submitted and such other statements that the Attorney General may identify in this action, in accordance with N.J.S.A. 2A:32C-3;
- d) Directing the assessment of attorneys' fees, expenses, and costs against Defendants, jointly and severally, for the use of the State, as authorized by the FCA, N.J.S.A. 2A:32C-8, and accrued interest;
- e) Assessing against Defendants, jointly and severally, the damages that the State has sustained and/or amounts by which Defendants were unjustly enriched or by which

Defendants illegally obtained monies;

f) Disgorgement by the Academy Defendants of all illegal payments obtained by Defendants for their Unjust Enrichment; and

g) Granting such other relief as the interests of justice may require.

DEMAND FOR A JURY TRIAL

Pursuant to R. 4:35-1 of the New Jersey Court Rules, the Attorney General demands a jury trial in this case.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: *Kenneth S. Levine*
Lara J. Fogel
Kenneth S. Levine
Eric Boden
Dana Vasers
Deputy Attorneys General

Janine N. Matton
Jeremy E. Hollander
Assistant Attorneys General

Dated: October 6, 2020
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey False Claims Act is not the subject of any other action pending in any other court of this State. I further certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: *Kenneth S. Levine*
Kenneth S. Levine
Deputy Attorney General

Dated: October 6, 2020
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: *Kenneth S. Levine*
Kenneth S. Levine
Deputy Attorney General

Dated: October 6, 2020
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Deputy Attorneys General Lara Fogel and Kenneth Levine are hereby designated as trial counsel for the Plaintiff in this action.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: *Kenneth S. Levine*
Kenneth S. Levine
Deputy Attorney General

Dated: October 6, 2020
Newark, New Jersey