

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

UNITED STATES SECURITIES AND	)	
EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 1:15-cv-00758-JMS-MJD
ITT EDUCATIONAL SERVICES, INC.,	)	
KEVIN M. MODANY, and DANIEL M.	)	
FITZPATRICK,	)	
	)	
Defendants.	)	

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**PLAINTIFF’S NOTICE REGARDING SETTLEMENT AND  
MOTION TO SET STATUS CONFERENCE**

Plaintiff United States Securities and Exchange Commission (“SEC”) hereby gives notice to the Court and the parties that the Commission will not approve the proposed settlements with Defendants Kevin M. Modany and Daniel M. Fitzpatrick.

As previously noted in prior filings [*see* Docs. # 163, 174], the SEC consists of five Commissioners, appointed by the President with the advice and consent of the Senate.<sup>1</sup> *See* 15 U.S.C. § 78d(a). Only the Commissioners, and not the staff of the SEC, have authority to settle an action filed in federal District Court. *See* 17 C.F.R. § 202.5(f) (“In the course of the Commission’s investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner”). Following the settlement conference in this case, SEC counsel prepared a detailed written memorandum for review and comment by the various Offices and Divisions of the SEC. The settlement proposal was then presented to the

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<sup>1</sup> There are presently only three sitting Commissioners.

Commissioners for consideration. As a result of that process, SEC counsel has been informed that the Commission will not approve the settlements.

The SEC respectfully requests that this case be returned to the Court's active docket and that a status conference be set as soon as reasonably practicable to discuss the case schedule.

Dated: August 11, 2017

Respectfully submitted,

/s/ Nicholas P. Heinke

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing document to be served upon all counsel of record by operation of the Court's Electronic Notification system this 11th day of August, 2017.

/s/ Nicholas P. Heinke  
Nicholas P. Heinke