

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

EAST COAST TEST PREP LLC d/b/a)	Case No. 15-cv-03705-JRT-JSM
Achieve Test Prep, and MARK OLYNYK)	
)	
Plaintiffs,)	
)	
v.)	
)	
ALLNURSES.COM, INC., DAVID R.)	
SMITS, as Administrator of the Estate of)	
Brian Short, ABC COMPANIES 1-10 and)	
JOHN DOES 1-10,)	
)	
Defendants.)	
)	

SECOND AMENDED COMPLAINT

Plaintiffs East Coast Test Prep LLC d/b/a Achieve Test Prep ("ATP") and Mark Olynyk (ATP, and Mark Olynyk are sometimes collectively referred to herein as "Plaintiffs", and in the singular as "Plaintiff"), by way of Second Amended Complaint against Defendants says:

THE PARTIES

1. Plaintiff ATP is a New Jersey limited liability company having a business address of 40 Galesi Drive, Wayne, New Jersey.
2. Plaintiff Mark Olynyk is an individual residing in Morris County, New Jersey.
3. Defendant Allnurses.com, Inc. ("Allnurses") is a corporation having a business address of 261 School Avenue, Suite 300, Excelsior, Minnesota.
4. Allnurses owns and operates Websites, including without limitation, a Website that uses the domain name allnurses.com, jobs.allnurses.com, and employers.allnurses.com (sometimes referred to herein as "Allnurses.com", "Allnurses.com Website" or the "Allnurses

Website”).

5. Defendant Brian Short, R.N. (“Short”) is the founder and Administrator of Allnurses.com, and upon information and belief, President of Allnurses.com, Inc.

6. Brian Short died on or about September 10, 2015.

7. Defendant David R. Smits is the Personal Representative of the Estate of Brian Short, and is named as a Defendant solely in that capacity.

8. Any references to “Short” or “Brian Short” herein mean and refer to Brian Short, as well as his estate.

9. Defendants John Does 1-10 are fictitious names of individuals, without regard to gender, who are not yet known or identified, including without limitation, persons who have posted on the Allnurses.com Website using an Allnurses.com user name.

10. duskyjewel is the Allnurses.com user name of an anonymous person who has posted on the Allnurses.com Website.

11. JustBeachyNurse is the Allnurses.com user name of an anonymous person who has posted on the Allnurses.com Website.

12. LadyFree28 is the Allnurses.com user name of an anonymous person who has posted on the Allnurses.com Website.

13. monkeyhq is the Allnurses.com user name of an anonymous person who has posted on the Allnurses.com Website.

14. Pixie.RN is the Allnurses.com user name of an anonymous person who has posted on the Allnurses.com Website.

15. Defendants ABC Companies 1-10 are fictitious names of business entities or other organizations which are not yet known or identified.

16. ABC Companies 1-10 include, without limitation, business entities or other organizations, for which John Does 1-10 are employed or otherwise agents, and whose conduct at all times relevant were within the course or scope of their employment or agency, including without limitation, posting, editing, or “Liking”, on the Allnurses' Websites.

17. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1367.

18. Venue is proper under 28 U.S.C. § 1391.

BACKGROUND

Achieve Test Prep and Allnurses

19. ATP is in the business of providing test preparation services for individuals seeking entry into various careers, including without limitation, nursing.

20. Mark Olynyk is an employee and owner of ATP.

21. Mark Olynyk registered on Allurses.com as user “learning-is-good”.

22. ATP has several offices located in New Jersey.

23. The New Jersey locations of ATP are well publicized by ATP, including without limitation, on its Website’s homepage and locations page, and appearing as part of the first Google organic search result for “achieve test prep” (See Exhibit “A”, at 14-15, Screen Shot Set 6.)

24. The Wayne New Jersey location of ATP appears in three places in the first organic result Google search for the term “achieve test prep” (See Exhibit “A”, at 14-15, Screen Shot Set 6.)

25. At all times relevant, Defendants knew or should have known that ATP had locations in New Jersey.

26. ATP has used “Achieve Test Prep” as its trademark at least as early as 2009.

27. ATP is not a college and does not issue degrees or give college credit.

28. Instead, ATP's services are designed to prepare nursing students for standardized exams which enable the students to get full credit for college courses without taking the courses, a process known as credit-by-examination.

29. The standardized exams are given by an independent college, or an independent testing center, which enable the student to earn credit towards a nursing degree such as a Bachelor of Science in Nursing ("BSN") or Associates of Science in Nursing ("ASN") from such college.

30. Upon information and belief, Brian Short was in charge of all operations of Allnurses, including without limitation, its Websites.

31. The Allnurses.com Website is self-described as "the collective voice of the nursing community, supporting the profession by providing a place where nurses can network, share and learn from their peers." (<http://allnurses.com/aboutus-info.html>, accessed on March 2, 2015).

32. The Allnurses Website is also self-described as the largest peer to peer nursing site in the world. (Id.)

33. On March 13, 2015, Allnurses published that there were 10,172 readers online (at time of access) and had 891,799 members. (See Exhibit "A" at 4 and 5, Screen Shot Set 1.)

34. Allnurses provides a platform for its members to post comments and/or questions and receive feedback and responses from members on a range of topics in the field of nursing, including but not limited to education and required coursework/exams for licensure.

35. To post a comment or participate in the online discussion, a user must register with Allnurses.

36. Members of Allnurses are permitted to create new discussion threads on the Website discussion boards or publish comments on existing threads.

37. Discussion threads are initiated in pre-established forums on Allnurses.com.

38. In addition, Allnurses.com is also an employment website posting thousands of job openings in the nursing industry, accessible at the URL jobs.allnurses.com. (See Exhibit E generally).

39. Allnurses also maintains a portion of its website for employers to create job postings, accessible at the URL employers.allnurses.com. (See Exhibit F).

40. Upon information and belief, Allnurses generates substantial revenue from advertising that appears on its Website.

41. Allnurses also generates revenue from job postings on its Website placed by employers.

42. The Allnurses Website is a commercial Website.

43. Various colleges and other education related companies advertise on the Allnurses Website. (See Exhibit "A", generally.)

44. Upon information and belief, one of the ways that Allnurses generates revenue from advertising is by clicking on ads that link to other URL's or Websites.

45. Upon information and belief, one of the ways that Allnurses generates revenue from advertising is by lead generation, when a user not only clicks on an advertising link, but also fills out a form related to products or services offered by the advertiser.

46. Upon information and belief, ads on the Allnurses Website can take various forms, ranging from a display or banner ad, to a simple hyperlink displaying the advertiser's name or trademark.

47. Upon information and belief, banner ads are dynamic, and change according to various factors, and can appear or disappear based upon the browsing history of individual Internet users.

48. All users of the Website at the same time may not have the same experience with respect to the ads seen at any given time.

49. Upon information and belief, payment for advertising may be paid directly by the advertisers to Allnurses, or indirectly through intermediaries, such as advertising agencies or Internet media advertising companies such as Google, which may be placing the ads on the Allnurses Websites.

50. Upon information and belief, John Doe Defendants are paid money or other compensation by Allnurses, Brian Short or one or more ABC Companies to make posts, including without limitation, posts on Allnurses.com which are false, misleading, defamatory and derogatory against ATP, and favorable to Allnurses.

51. Allnurses and the advertisers derive financial and commercial benefit from the advertisers' advertising on the Allnurses Website.

52. Allnurses is incentivized to attract users to its Website who are prospective customers for its advertisers, and then encourage said users to click on links directed to the advertisers' Websites or URLs that contain content which promotes, markets or advertises the advertiser's products or services.

53. Allnurses also operates a Website with the domain name: <http://allnurses-breakroom.com/> which replicates many of the Website pages from the allnurses.com Website (referred to herein as "allnurses-breakroom.com" or "Shadow Website").

54. The Allnurses.com Website hosts a discussion thread titled: “Achieve Test Prep....anyone?” located at URL: <http://allnurses.com/excelsior-college-online/achieve-test-prep-815067.html> (accessed on March 13, 2015). (See, e.g., Exhibit “A”, at 58-82, Screen Shot Set 14.)

55. The “Achieve Test Prep....anyone?” thread appears in the “Excelsior College Online Nursing” forum.

56. As of the date that this Second Amended Complaint is filed, the “Achieve Test Prep. . . anyone?” thread remains viewable on the Allnurses website.

57. The entire “Achieve Test Prep....anyone?” thread is replicated on the Shadow Website at URL: <http://allnurses-breakroom.com/excelsior-college-online/achieve-test-prep-815067.html> (accessed on March 13, 2015).

58. Allnurses also operates a Website with the domain name: <http://newsletters.allnurses.com> (referred to herein as “newsletters.allnurses.com Website”).

59. The newsletters.allnurses.com Website displays advertising, including ads of colleges, such as Excelsior College.

Excelsior College

60. Advertisements and promotional information for Excelsior College appear on the Websites operated by Allnurses, including without limitation, Allnurses.com Website, its Shadow Website, and the newsletters.allnurses.com Website.

61. Advertisements and promotional information for Excelsior College appear on the allnurses.com Website, in various forms, ranging from banner and display ads, to simple hyperlinks displaying “Excelsior College”. (See e.g. Exhibit “A”, Screen Shot Sets 1, 2, 3, 5, 6, 7 and 9).

62. Excelsior College is one of the colleges for which ATP provides test preparation classes, as well as many other accredited colleges throughout the country.

63. The credit-by-examination method allows a student to “test-out” of certain required courses for a particular college on subjects that the students have already learned or acquired knowledge on in order to satisfy the credit requirements of the schools, thereby, saving the student time and money by not having to pay for, and take, the required courses at the college.

64. ATP provides assistance to students by preparing them to take certain credit-by-examination tests, with the goal of ATP’s students passing the tests and satisfying the credit requirement of the colleges.

65. Excelsior College offers its students the option to earn credit-by-exam, and it also offers test preparation programs in competition of ATP. (See Exhibit “A”, at 37-40, Screen Shot Set 10.)

66. Excelsior College competes with ATP in providing education related services to students and prospective students, and receiving payment for those services.

67. Excelsior College currently enrolls students in its college in various degree programs, such as nursing.

68. ATP offers test preparation instruction to students and prospective students who desire to take and pass exams that colleges, such as Excelsior College, accept as credit for courses in lieu of enrolling in those courses and obtaining passing grades for those courses (testing out of the courses).

69. Some colleges, such as Excelsior College, allow students to test-out of the majority of the required courses for a degree by taking exams, thereby allowing a student to pass

said exams and earn credit towards a degree, such as nursing, while leaving only a few courses left to take directly with the college.

70. ATP provides test preparation programs for these course test-out exams, such as test-out exams for Excelsior College, including, nursing-related courses offered by Excelsior College.

71. Generally, students seeking a degree from colleges such as Excelsior College, choose to either (i) enroll in a college, such as Excelsior College, register for courses and attend classes for those courses with the goal of passing those courses and earning credit towards their degrees, or, (ii) enroll in a test preparation program such as ATP and then challenge and pass the college equivalency exam.

72. By enrolling in a college and taking courses, the students pay tuition, the amount of which is often determined by the number of course credits being taken by the student. Each college sets the minimum number of credits required to obtain the particular degree.

73. By enrolling in a test preparation program, such as ATP, students can save time and money, as the test preparation programs usually cost less, and require less time, than enrolling in a course and completing all the course work that goes along with a regular college course.

74. Excelsior College is a competitor of ATP because each competes for education dollars to be spent by students in pursuit of degrees.

75. Moreover, Excelsior College has announced on its Website at URL <http://www.excelsior.edu/nursing-theory-examination-changes> (accessed on March 9, 2015), that beginning in July 2015, Excelsior College will be offering registrations for its test-out exam preparation courses to start in Fall 2015, for its nursing degrees, which it is calling “Nursing

Theory Conference Examination Series (NTCX)". (See Exhibit "A", at 37-40, Screen Shot Set 10.)

76. As such, Excelsior College is directly competing with ATP in the test preparation market.

Registering to Become a Member of Allnurses

77. To register as a member on Allnurses, one must create a unique username and provide a password, provide an e-mail address, and check a box that states "I'm not a robot". (See Exhibit "A", at 43-44, Screen Shot Set 12.)

78. Allnurses does not require that registrants use his, her or its real or legal name. (See e.g., Id.)

79. Immediately above the "Make Me A Member" button to submit the information to Allnurses is a statement: "Your participation implies full acceptance with our Terms of Service." (See e.g., Id.)

80. The "Terms of Service" text is a hyperlink to URL <http://allnurses.com/terms-info.html> (accessed on March 2, 2015), which is a page titled "Terms of Service" ("TOS"). (See Exhibit "A", at 45-57, Screen Shot Set 13.)

81. The TOS does not require that registrants use his, her or its real names or reveal their true identities.

82. The TOS is a binding agreement between Allnurses and its registered members.

Terms of Service Promotes Freedom To Debate and Impartiality of Administration of Allnurses.com Website

83. Through the Allnurses.com Website, including without limitation, the TOS available to the public, Allnurses and Brian Short hold Allnurses.com out to the public as forums

that promote lively and free debate, where members are free to disagree, and imply that the moderating and administration of the forums will be fair and impartial.

84. Allnurses, through its communications to its members, holds itself out as being fair and impartial with respect to the moderating and administration of the forums. An example of such communication is a private message from Administrator sirI to user GRN77 on September 12, 2014.

85. GRN77 is the user name of a member of Allnurses.com.

86. At all times relevant, the individual who registered GRN77 as a user name on Allnurses.com was and is an employee of ATP.

87. onesmallchange is the user name of a member of Allnurses.com.

88. At all times relevant, the individual who registered onesmallchange as a user name on Allnurses.com was and is an employee of ATP.

89. The TOS include the following provisions governing the operation of the Website by Allnurses and its members posting on the discussion boards:

1. "We promote the idea of lively debate. This means you are free to disagree with anyone on any type of subject matter as long as your criticism is constructive and polite." (See Exhibit "A", at 54, Screen Shot Set 13.)
2. "You are not allowed to post libelous information about a person, school, instructor, health care facility, or entity." (See Id.)
3. "No potentially libelous information about specific schools, instructors, or health care facilities/entities should be posted in these forums." (See Id.)

4. “Any post which is violative of any law or is invasive of a person’s privacy will be taken down immediately.” (See Id.)
5. “You will enjoy a great deal of freedom here, with the ability to freely debate upon a number of subjects, as long as you remain civil and polite to each other.” (See Exhibit “A”, at 57, Screen Shot Set 13.)

90. Additionally, the TOS provide that "ALLNURSES.COM, INC. staff reserves the right to edit/remove the posts and/or disable the account of any member who does not comply with these guidelines or any reason deemed appropriate by the administration for the safety and good of the community." (See Exhibit “A”, at 49, Screen Shot Set 13.)

Monitoring and Administration of the Forums by Allnurses

91. The various discussion threads, grouped by forums on the Allnurses.com Website, are monitored, moderated and administered by Moderators, Administrators and Managers.

92. The Moderators are overseen by Administrators.

93. The Administrators are overseen by Managers.

94. The Moderators, Administrators and Managers are responsible to ensure compliance with the TOS.

95. Upon information and belief, at all times relevant hereto, all personnel of Allnurses, including without limitation, Moderators, Administrators and Managers, were responsible to Brian Short.

96. Upon information and belief, Moderators, Administrators and Managers are volunteers, employees, contractors or agents of Allnurses, and at all times relevant, acted on behalf of Allnurses.

97. At all times relevant hereto, Pixie.RN was a Senior Moderator working for Allnurses at the direction of the Administrators, Managers and Brian Short.

98. Pixie.RN holds a BSN degree, is a Registered Nurse (RN) and is an Emergency Medical Technician Paramedic (EMT-P).

99. Pixie.RN is Senior Moderator in charge of one or more discussion threads on Allnurses.com.

100. Pixie.RN is a Senior Moderator in charge of the discussion thread on the allnurses.com Website: "Achieve Test Prep....anyone?" thread.

101. NRSKarenRN is a Senior Moderator of the Allnurses.com Website.

102. NRSKarenRN holds a Bachelor of Science in Nursing degree and is a Registered Nurse.

103. NRSKarenRN was responsible for monitoring and moderating the "Achieve Test Prep....anyone?" thread.

104. traumaRUs is an Administrator of the Allnurses.com Website.

105. traumaRUs holds a Master of Science in Nursing degree (M.S.N.), is an Advanced Practice Registered Nurse (A.P.R.N.), and is Clinical Nurse Specialist (C.N.S.).

106. traumaRUs is an Administrator who was responsible for administrating the "Achieve Test Prep....anyone?" thread and supervising Pixie.RN.

107. sirI is an Administrator of the Allnurses.com

108. sirI holds a Master of Science in Nursing degree (M.S.N.), is an Advanced Practice Registered Nurse (A.P.R.N.) and Nurse Practitioner (N.P.)

109. sirI is an Administrator who was responsible for administrating the "Achieve Test Prep....anyone?" thread and supervising Pixie.RN.

110. The thread entitled "Achieve Test Prep....anyone?" was created on February 12, 2013 by poster Heavenly4505.

111. The thread consists of an extended discussion about the advantages and disadvantages of using ATP's test preparation services in conjunction with Excelsior's Registered Nurse program.

112. On March 13, 2015, the "Achieve Test Prep....anyone?" thread had 33,875 views and 88 comments. (See Exhibit "A", at 6-7, Screen Shot Set 2.)

113. Pixie.RN is a graduate of Excelsior College.

114. Pixie.RN endorsed and approved false and misleading statements posted by poster monkeyhq on August 22, 2014. (See Exhibit "A", at 10, Screen Shot Set 4; at 62, Screen Shot 14.)

115. The thread had a large number of posts by many different Allnurses members over an extended period of time.

116. The August 22, 2014 posts by monkeyhq and JustBeachyNurse are part of a thread entitled "Achieve Test Prep....anyone?".

117. On or about August 22, 2014, Poster monkeyhq published a comment on the thread "Achieve Test Prep....anyone?". (See Exhibit "A" at 62, Screen Shot Set 14.)

118. This comment falsely states that "Test Prep companies for Excelsior Exams will be **obsolete** by July 1, 2015... it is a total waste of your investment." (Emphasis in original.) (<http://allnurses.com/excelsior-college-online/achieve-test-prep-815067-page3.html>, accessed on March 10, 2015.) (See Id.)

119. Poster monkeyhq's August 22, 2014 comment is a false representation because ATP's test preparation services will not be obsolete by July 1, 2015.

120. monkeyhq's post expressly refers to facts misstated by JustBeachyNurse in the prior post ("As Beachy said...").

121. JustBeachyNurse stated in his or her post:

ATP and similar services will be redundant **as of July 1, 2014 when all challenge exam candidates will be mandated to take the Excelsior online exam prep classes prior to becoming eligible to sit the challenge exams.** The prep classes are not free (though prep class plus challenge exam should cost less than the online courses)[.] (Emphasis added.) (See Exhibit "A" at 61, Screen Shot Set 14.)

122. The statement that **all** Excelsior College challenge exam candidates would be required to take Excelsior College's own online exam prep class prior to becoming eligible is false.

123. The statement made by JustBeachyNurse that ATP's test prep for Excelsior College would be redundant is false.

124. There are material differences between ATP and Excelsior College test preparation instruction which would mean that ATP's test preparation would not be redundant to Excelsior College's services, or obsolete in any event.

125. For instance, ATP offers live instruction for its test preparation, where Excelsior College does not; ATP students are provided with ATP's "911 support" whereby a student can request extra help in preparing to pass an exam, such as free course retakes, free refresher courses, and free one-on-one customized tutoring from an instructor.

126. As of the date of the posts by JustBeachyNurse and monkeyhq, on August 22, 2014, the test preparation requirements for Excelsior general education courses remained unchanged, and therefore, ATP's general education test preparation were **not** obsolete or redundant.

127. As of the date of this First Amended Complaint, the test preparation requirements for Excelsior general education courses remain unchanged, and therefore, ATP's general education test preparation remains **neither** obsolete **nor** redundant.

128. On September 9, 2014 poster monkeyhq, made a post referring to his or her prior statements about test prep companies (such as ATP) being obsolete and stated that "Achieve will not offer nursing courses to **ANYONE NEW** to their test prep program. This was confirmed on Achieve Test Prep website only yesterday." (See Exhibit "A", at 67-68, Screen Shot Set 14.) (Emphasis in original)

129. These statements by monkeyhq are false, including without limitation, because the statements misrepresent the information which was on ATP's Website and because the statements misrepresent that Achieve Test Prep will not provide nursing exams test prep for anyone who was new to ATP.

130. The September 9, 2014 post by monkeyhq was edited on February 7, 2015 by Senior Moderator NRSKarenRN, updating Website links to Excelsior College. (See Exhibit "A", at 67-70, Screen Shot Set 14.)

131. Reasonable readers of ordinary intelligence of the posts by monkeyhq and JustBeachyNurse and the "Like this" endorsement by Pixie.RN on behalf of Allnurses would understand the posts to be statements based on facts that purchasing services from ATP is of no value and a waste of time and money because of changes by Excelsior College as to its requirement for registering for all of its test-out challenge exams.

132. The facts which form the basis of the statements are false, and the statements are false.

133. As a result of the forgoing false statements, prospective customers and existing customers were, and will continue to be, scared away from doing business with, or continuing to do business with ATP.

**Senior Moderator Pixie.RN Endorses
monkeyhq and JustBeachyNurse Posts**

134. Moderators, administrators, Managers and members of Allnurses are able to "Like" posts, which appears below the comment which is "Liked".

135. "Liking" a post is interpreted by the online community as a show of support and endorsing the post.

136. When a Senior Moderator, such as Pixie.RN, "Likes" a post, it is interpreted by the online community as endorsing and approving of the post on behalf of Allnurses, and lending credibility to the statements stated therein, including without limitation, facts and implied facts set forth in such posts.

137. Senior Moderator Pixie.RN "Liking" a post has particular significance to the Allnurses online community, because, she or he is looked up to in the community as having expertise in the subject matter, by reason of her Senior Moderator status with Allnurses.com as well as her numerous articles on various nursing and general education topics which are published on the Allnurses Website as well as other biographical information made available on the Allnurses Website.

138. Senior Moderator Pixie.RN has made many posts on Allnurses.com, has published numerous articles on Allnurses.com, and provides information on a wide variety of nursing education and profession topics on the Website.

139. As of March 13, 2015, Pixie.RN had published 12,822 posts on the Allnurses Website, since she became a member on August 8, 2005, of which 32% were "Liked", and

Pixie.RN had "liked" 7,418 posts. (<http://allnurses.com/member-85677/>, accessed March 13, 2015) (See Exhibit "A", at 36, Screen Shot Set 9.)

140. Pixie.RN has been an Allnurses member for approximately 9-1/2 years (approximately 115 months).

141. On average, Pixie.RN has posted approximately 111 posts per month (12,822 divided by 115 months), or approximately 3.7 posts per day (111 divided by 30).

142. Pixie.RN has authored 32 articles published on Allnurses.com (in addition to her 12,882 plus posts) at URL <http://allnurses.com/member-85677/topics.html>. (See Exhibit "C".)

143. Pixie.RN's articles range widely from eligibility and requirements for state licensure of nurses, to credit-by-exam (test-out) options (instead of taking certain courses).

144. For instance, Pixie.RN published an article entitled: "The Excelsior College Distance Learning ADN Program: Facts, Answers, and Links", "by Pixie.RN, BSN, RN, EMT-P Senior Moderator". (See Exhibit "A", at 27-35, Screen Shot Set 8; Exhibit "B".)

145. The byline of the article shows that the article was viewed 41,529 times: "Jan 14, '13 | 41,527 Views | 76 Comments". (See Exhibit "A", at 33-35, Screen Shot Set 8; Exhibit "B", at 1.)

146. The high number of views of this one Pixie.RN article indicates that her articles are viewed by many people giving Pixie a high degree of notoriety, credibility and respect in the field of nursing.

147. Another article by Pixie.RN explains the Excelsior College Clinical Performance in Nursing Exam. (See Exhibit "D".)

148. By her numerous articles and posts, as well as her title "Senior Moderator", Pixie.RN is considered an expert on all matters pertaining to Excelsior College in the Allnurses

community, such as whether Achieve Test Prep services will be “obsolete” or “redundant”, or no longer of any value or relevant based on rule changes.

149. Pixie.RN’s “Like” is tantamount to an endorsement or certification by Senior Moderator Pixie.RN, on behalf of Allnurses (which holds itself out as fair and impartial), that what is stated in the post is factually correct.

150. Pixie.RN.’s unqualified “Like this” endorsement of the post by monkeyhq is understood by a reasonable person of ordinary intelligence that the Senior Moderator of “Achieve Test Prep....anyone?” thread, who is a graduate of Excelsior College, with substantial expertise in (i) the course and exam requirements of Excelsior College, (ii) the legal requirements for nursing licensure by state authorities and (iii) the nursing profession generally, agrees with the statements contained in the monkeyhq post, including without limitation the facts referred to therein, whether expressly stated or implied, thereby providing support for, and agreement with the truthfulness of the facts and statements referred to in the post.

151. By her act of publishing or posting her unqualified “Like this” (also referred to herein as “Liking” or “Liked”) on behalf of Allnurses as to the monkeyhq post, Pixie.RN has in effect ratified, restated and republished the statements made in monkeyhq’s August 22, 2014 post.

152. Posts by Senior Moderator Pixie.RN. are perceived by the “Achieve Test Prep....anyone?” thread audience as having greater weight than anonymous members, because Allnurses.com holds itself out, as well as its moderators and administrators, as being fair and impartial.

153. Posts by Senior Moderator Pixie.RN are perceived by the “Achieve Test Prep....anyone?” thread audience as having greater weight than anonymous members, because

Pixie.RN and Allnurses.com hold Pixie.RN out as having expertise on the subject matter of the thread, including without limitation, Excelsior College.

154. By Pixie.RN “Liking” a post pertaining to the Excelsior College examination requirements or changes in rules, she provides instant credibility to the post. Her “Like” under these circumstances is not merely a friendly gesture, as in the social media world, rather an endorsement as to the truth of a post and the statements contained therein

155. Notwithstanding that only one word was posted by Pixie.RN to show her unqualified agreement and approval of the August 22, 2014 monkeyhq post, because of the great respect that the Allnurses.com online nursing community has for Senior Moderator, Pixie.RN., BSN, RN, EMT-P, her comments carry great weight and credibility with the viewing audience as to the posts that she “Likes”.

156. Pixie.RN’s “Liking” the post by monkeyhq on August 22, 2014 would be interpreted by a reasonable person with ordinary intelligence as Pixie.RN and Allnurses endorsing, approving, and vouching for truthfulness of the statements contained in the post, to the detriment of ATP.

157. Because the August 22, 2014 post by monkeyhq expressly refers to the previous post by JustBeachyNurse (“As Beachy said....”), the “Liking” of monkeyhq's post by Pixie.RN is also an endorsement and approval by Pixie.RN and on behalf of Allnurses, and thereby vouching for the credibility of the JustBeachyNurse post.

158. As a result of the express endorsement and approval by Pixie.RN of the monkeyhq post, and the implied endorsement and approval of the JustBeachyNurse posts, reasonable persons of ordinary intelligence reading the post and the “Like this” by Pixie.RN would understand the statements contained in the posts to be true, including without limitation,

that services provided by ATP were or would be obsolete, redundant, and a total waste of investment.

159. The statements that the services provided by ATP are or would be obsolete, redundant, and a total waste of investment, are false.

160. As a result of the endorsement and approval by Pixie.RN on behalf of Allnurses, readers of the thread who were prospective customers of ATP were scared away from doing business with ATP, and current customers of ATP were susceptible of discontinuing doing business with ATP.

161. The “Like” by Pixie.RN was done as a representative of Allnurses, and was not “information provided by another information content provider” as that term is used in the Communications Decency Act (47 U.S.C. § 230(c)(1).

162. The “Like this” by Pixie.RN is not subject to the defense of 47 U.S.C. § 230(c)(1).

Senior Moderator Pixie.RN Falsely States That Excelsior College “Warns” Students About Using Test Prep Companies

163. On February 12, 2013, Pixie.RN misrepresents that Excelsior College warns about using third-party test prep companies, and promotes Excelsior College, including providing a link to its Website.

164. Since the focus of the “Achieve Test Prep....anyone?” thread is about ATP, the statement posted by Pixie.RN is of and concerning ATP.

165. Pixie.RN posted the following:

Feb 12, '13 by Pixie.RN, BSN, RN, EMT-P Senior Moderator

EC **warns** students about third-party publishers and test prep companies -- they are not affiliated with EC, nor does EC endorse their use (<http://www.excelsior.edu/about-test-...ation-services>).

EC's program is set up to provide an outline/syllabus for each class in the form of a free exam content guide that you can download. *
* * I'd advise you to think twice before you add a lot of money to the bottom line of your education bill! Good luck, whatever you decide. (Emphasis added.)

(See Exhibit "A", at 60, Screen Shot Set 14.)

166. This statement is false because Excelsior College did not "warn" students about third-party publisher test preparation companies.

Posts Falsely State That ATP is Under Federal Investigation

167. On September 12, 2014, member LadyFree28 posted to the "Achieve Test Prep....?" thread stating that ATP was under federal investigation.

168. The September 12, 2014 post by LadyFree28 was responding to posts made earlier on in the thread about another test preparation company, "TCN", being under federal investigation.

169. LadyFree28's post stated:

But the discussion is about THIS particular test-prep program that IS being investigated by the federal government and is under a current lawsuit; there are too many forums that have stated the Achieve "deceived" them with their practices; that is the MAIN focus of this discussion, NOT "other test prep companies." (Emphasis in original.)

170. A reasonable person would understand LadyFree28's post would mean that ATP was the subject of a federal investigation, for several reasons:

a. "But the discussion is about THIS particular test-prep program" and the "MAIN focus of this

discussion" refers to ATP, as the thread is predominantly about ATP, as the title of the thread expressly announces: ("Achieve Test Prep....anyone?").

(Emphasis in original.)

- b. This statement is followed by: “there are too many forums that have stated the Achieve ‘deceived’ them with their practices” (emphasis added), implying that Achieve was under investigation because it deceived people with its practices. No other test prep company is referred to in the post.
- c. The post goes on to exclude other test prep companies: “NOT ‘other test-prep programs’”, again, implying that only ATP is the test prep company under investigation.

171. Because LadyFree28's post makes reference to “Achieve ‘deceived’” by its “practices”, a reasonable person of ordinary intelligence would understand that to mean that ATP is under investigation by the Federal Trade Commission.

172. The statement posted by LadyFree28 on September 12, 2014 that ATP "is being investigated by the federal government" is false and defamatory.

173. ATP has not been investigated by the FTC.

174. The false statements by LadyFree28 were, and remain to be, harmful to ATP, as the post remains on the Allnurses.com Website, accessible to the public.

175. On September 12, 2014, member duskyjewel also posted to the “Achieve Test Prep....anyone?” thread stating that ATP was under federal investigation.

176. duskyjewel’s post was in direct response to a post from learning-is-good:

"Quote from Learning-is-good 'Duskyjewel, You are going to scare people by saying some test prep centers are under federal investigation, but my guess is it's just one.'"

177. In response, duskyjewel posted:

"Sounds like you should be scared. TCN + Achieve equals more than one."

178. By commenting that “TCN + Achieve equals more than one” test preparation company under investigation, duskyjewel was stating that both TCN (The College Network, another test preparation company) and ATP are both under federal investigation.

179. The post by duskyjewel is false and defamatory.

180. ATP has not been investigated by the FTC.

181. The false statements by duskyjewel were and remain harmful to ATP, as the post remains on the Allnurses.com Website, accessible to the public.

182. All of the foregoing false statements about ATP were made with negligence as to their falsity, or with reckless disregard as to whether the statements were true or false, or were made with knowledge as to their falsity.

183. All of the foregoing statements were made willfully and/or maliciously.

184. All of the foregoing statements were made in bad faith.

185. As a result of the foregoing false statements, prospective customers and existing customers were, and will continue to be scared away from doing business with, or continuing to do business with ATP.

Pixie.RN and Allnurses Had Knowledge of the Falsity of the Posts that ATP was Part of the FTC Investigation of TCN

186. A separate discussion thread was started on August 10, 2014, by monkeyhq on the Allnurses.com Website titled: “NEWS: The College Network Class Action Lawsuit Filed” (hereinafter referred to as “TCN Lawsuit Thread”) at URL <http://allnurses.com/excelsior-college-online/news-the-college-941641.html> (accessed on March 17, 2015).

187. monkeyhq’s initiating post states:

A Class Action Lawsuit against the College Network has been filed in Ohio. In addition, the Federal Trade Commission is investigating TCN (again) for numerous violations.

This is relevant news to those nurses who were affected by this company, those who are currently using this company, and those who may be thinking about using this company.

An informed consumer is a smart consumer.

Posting the link to the article from Indy Star news:

<http://www.indystar.com/story/news/2...suit/13848511/>

If I have placed this in the wrong category, please relocate.

188. The post cites to an article appearing in the Indianapolis Star newspaper about the lawsuit and FTC investigation, title: “Test preparation or predator? The College Network faces complaints, lawsuit” at URL

<http://www.indystar.com/story/news/2014/08/09/test-preparation-predator-college-network-faces-complaints-lawsuit/13848511/> (accessed on March 17, 2015).

189. The newspaper article references only The College Network as the subject of the FTC investigation.

190. The article does not mention any other test preparation company.

191. The article does not mention ATP.

192. None of the posts to the TCN Lawsuit Thread mention ATP.

193. Pixie.RN is a Senior Moderator of the TCN Lawsuit Thread.

194. Pixie.RN published two posts to the TCN Lawsuit Thread on August 10, 2014 and August 11, 2014.

195. Pixie RN was aware of the posts on the TCN Lawsuit Thread and the link to the Indiana Star newspaper Website containing the article which discussed only TCN being the subject of the FTC investigation.

196. Contrary to the TOS, and in bad faith, Allnurses failed to remove the false and defamatory statements on the “Achieve Test Prep....anyone?” thread that ATP was under federal investigation, or under investigation along with TCN, implying ATP was under investigation by the FTC.

197. Pixie.RN and Allnurses knew, or should have known, that the statements on the “Achieve Test Prep....anyone?” thread that ATP was under federal investigation, or under investigation along with TCN, implying ATP was under investigation by the FTC, were false, defamatory, and injurious to ATP.

198. The failure of Pixie.RN and Allnurses to act as stated above was willful, malicious and in bad faith.

199. The act of Allnurses to close “Achieve Test Prep....anyone?” thread and the block postings and disable accounts of learning-is-good, GRN77, and onesmallchange was contrary to the TOS, in breach of Allnurses obligations pursuant to the TOS, and done in bad faith.

200. Said acts and omissions caused, and continue to cause injury to ATP, including without limitation, because ATP was prevented from making posts to correct the record.

Senior Moderator Pixie.RN. Actively Contributed to the “Achieve Test Prep....anyone?” Thread, with Posts Promoting Excelsior College and Criticizing ATP

201. Senior Moderator Pixie.RN was an active participant in the discussion thread “Achieve Test Prep....anyone?”

202. On October 2, 2013, Pixie.RN makes a post favorable to Excelsior College, and against test prep companies, such as ATP:

Oct 2, '13 by Pixie.RN, BSN, RN, EMT-P Senior Moderator

As I said in the other forum: If you are pursuing an ADN with Excelsior you will still have to enroll with them at some point; if

you'd like to pay extra on top of what EC will charge you, that's up to you -- you are an adult, after all. Best of luck.

203. By the statement “if you’d like to pay extra on top of what EC will charge you”, Pixie.RN is being critical of test prep companies, such as ATP.

204. On February 10, 2014, Pixie.RN makes a post promoting Excelsior College:

Feb 10, '14 by Pixie.RN, BSN, RN, EMT-P Senior Moderator

If you need the structure of a course, EC now has 8-week courses vs. test out exams. The courses are more expensive; however they will qualify a person for federal financial aid. Just a thought.

205. On February 10, 2014, Pixie.RN makes yet another post promoting Excelsior College, and includes a link to its Website, and encouraging people to sign up for an Excelsior College program fast, before it fills up:

Feb 10, '14 by Pixie.RN, BSN, RN, EMT-P Senior Moderator

Found it:

https://my.excelsior.edu/documents/7...rsing_Cost.pdf

That document/budget planning worksheet indicates that there are course options for each nursing theory exam, as well as for Micro and A&P I and II. The only problem is that EC underestimated the interest in courses, and apparently they fill up almost instantly. I'm seeing traffic on Facebook that indicates that students are being limited to a certain number of courses per semester so that there are more spaces. Hopefully they hire more instructors!

206. On September 10, 2014, Pixie.RN made a post to correct something monkeyhq said:

Sep 10, '14 by Pixie.RN, BSN, RN, EMT-P Senior Moderator

Quote from monkeyhq [posted September 10, 2014:]

This is not my opinion, it is fact. Excelsior provides all the necessary material for study for their exams

Just to clarify ... EC does NOT directly provide the material for study. The recommended textbooks and readings are outlined in the exam content guide, but does EC provide the actual materials from which to completely prepare for an exam?

No.

Ulana is correct - we don't really know what is going to happen.

(See Exhibit "A", at 77, Screen Shot Set 14.)

207. Pixie.RN is quick to make a correction on information that is inaccurate concerning materials which are not offered as part of an Excelsior College program.

208. However, no attempt is made by Pixie.RN or other Allnurses Moderators, Administrators or Managers to correct or remove the false and misleading comments which are defamatory, derogatory or disparaging against ATP, contrary to the Allnurses' TOS.

209. On October 2, 2013, Pixie.RN edited a post by user LPN2BSNRN posted on October 2, 2013. At the bottom of the posts there is a statement: "Last edit by Pixie.RN on Oct 2, '13"

210. Allnurses does not disclose what material was edited.

211. Additionally, Pixie.RN made other posts, as follows:

- a. a post on February 10, 2014,
- b. a post on September 10, 2014,
- c. a post on September 11, 2014,
- d. four posts on September 12, 2014, and
- e. a post on September 16, 2014.

212. Additionally, Pixie.RN "Liked" the following posts:

- a. an August 22, 2014 post by monkeyhq,
- b. a September 4, 2014, post by JustBeachyNurse, and
- c. a September 15, 2014 post by Neversaydiemedic,

213. In all, Senior Moderator Pixie.RN either authored, edited or “Liked” 17 posts on the Achieve Test Prep....anyone?” thread, almost all of them either favorable of Excelsior College or unfavorable to ATP.

John Doe Defendants Are Paid To Post

214. JustBeachyNurse joined Allnurses.com on August 6, 2010, and has made 25,659 posts (<http://allnurses.com/member-437599/posts.html>, accessed April 4, 2015) (See Exhibit “A”, at 83, Screen Shot Set 15.)

215. JustBeachyNurse has been a member of Allnurses.com for approximately 4-2/3 years, or approximately 56 months. (See Id.)

216. From the time JustBeachyNurse joined Allnurses.com, through April 4, 2015, the member has averaged approximately 458 posts every month (25,659 divided by 56), and averaging about 15.2 posts every day (458 divided by 30).

217. The volume and frequency of posts of JustBeachyNurse is far greater than that of Senior Moderator Pixie.RN (see above: Pixie.RN published 12,822 posts on Allnurses.com in approximately 9-1/2 years, which averages 111 posts per month, and 3.7 posts per day; see Exhibit “A”, at 36, Screen Shot Set 9.)

218. As compared to Senior Moderator Pixie.RN, JustBeachyNurse has posted double the amount of comments overall (25,659 versus 12,822) in less than half the years.

219. On average, JustBeachyNurse has posted about four times the number of posts on monthly and daily basis as Senior Moderator Pixie.RN.

220. duskyjewel joined Allnurses.com on April 17, 2012, and has made 1,427 posts (<http://allnurses.com/member-677450/topics.html>, accessed April 4, 2015) (See Exhibit “A”, at 84 Screen Shot Set 16.)

221. From the time duskyjewel joined Allnurses.com, to the time of the member's last post, the member has made approximately 40 posts every month, averaging more than one per day.

222. The last post by duskyjewel was on October 16, 2014, two weeks after a letter dated October 2, 2014, sent by sent by counsel for ATP to Allnurses demanding removal of false and defamatory material.

223. monkeyhq joined Allnurses.com on August 2, 2014 and made his or her last post dated October 12, 2014 , two weeks after a letter dated October 2, 2014, sent by sent by counsel for ATP to Allnurses demanding removal of false and defamatory material (<http://allnurses.com/member-983995/> accessed on April 4, 2015) (See Exhibit "A" at 85, Screen Shot Set 17).

224. LadyFree28 made her first post on October 31, 2004 (<http://allnurses.com/member-54735/posts-331.html>, accessed on April 4, 2015), and made her last post on April 5, 2015, resulting in a list of posts 331 Web pages long, of approximately 10 posts per Web page. (Exhibit "A" at 86-87, Screen Shot Set 18).

225. LadyFree28 has made approximately 3,310 posts (331 Web pages times 10 per page), resulting in approximately 26 posts per month (Exhibit "A", at 87-90, Screen Shot Set 18). LadyFree28 has posted, on average, 26 posts per month, or almost one per day on average for over 10 years.

226. Upon information and belief, John Doe Defendants Pixie.RN, JustBeachyNurse, monkeyhq, duskyjewel, and LadyFree28 have devoted substantial amounts of time reading discussion threads on Allnurses.com, drafting comments, and participating in the discussion threads.

227. Upon information and belief, John Doe Defendants Pixie.RN, JustBeachyNurse, monkeyhq, duskyjewel, and LadyFree28 receive payment, or other things or items of value to compensate the member for the time and effort devoted to participation in the various discussion forums on Allnurses.com and posting comments to Allnurses.com.

228. Upon information and belief, John Doe Defendants Pixie.RN, JustBeachyNurse, monkeyhq, duskyjewel, and LadyFree28 receive said payments or compensation from Allnurses.com, Brian Short and/or one or more ABC Companies.

Allnurses Denied Access To Posters learning-is good, GRN77, and onesmallchange, and Shut Down Thread

229. On or about September 11, 2014, following the posts by monkeyhq and JustBeachyNurse containing false statement about the ATP program, member GRN77 sent the following message to the Help Desk of Allnurses:

I work for Achieve Test Prep. It has come to my attention that there is a lot of incorrect information being posted on your blog that is damaging to ATP. I wish to enter posts to correct information that is incorrect. But when I read the terms of service it states I can't post self-promoting posts. I don't want to break any rules but I don't see how I could possibly counter some of the inaccurate information without specifically stating facts that might appear to some to be self-promoting.

So my question is this, so long as the main purpose of my post is just to correct the incorrect posted information, can I go ahead and proceed? I only intend to directly speak to information already posted and won't look to turn the post into an opportunity to sell. If I cross any lines, if someone lets me know, I can correct along the way.

230. On September 12, 2014, GRN77 received the following response from Administrator sirI:

That is perfectly acceptable. We often have members from certain universities/other entities who come and address issues offering clarification. This is just fine.

We appreciate your efforts in trying to get the correct information posted as long as it stays within Terms of Service. Thank you very much.

231. GRN77 also received the following response from Senior Moderator NRSKareRN on September 15, 2014:

Sep 15, '14 by NRSKareRN, BSN, RN Senior Moderator

I have many concerns with how your website <http://www.achievetestprep.com/> portrays itself LPN to BSN Programs-- it is very misleading.

232. As is evident from the communication with GRN77, NRSKareRN had made a determination about the ATP Website being “very misleading” based on her review of the ATP Website.

233. In response to negative comments, on or about September 13, 2014, Senior Moderator Pixie.RN, an Excelsior College graduate, sent a private message to member learning-is-good:

Good evening. I think the forum members are reacting poorly to your posts because it is clear that you have a vested interest in Achieve Test Prep, which we have verified by your IP address (not visible to general members). Excelsior students are constantly bombarded with information from third-party publishers who claim to be necessary for the program, or state they just want to help students succeed, then rope students into expensive contracts that aren't necessary. To come to the forum and maintain an attitude as some kind of defender of objectivity while actually working for a third-party test prep company doesn't exactly line up with a message of honesty.

Pixie.RN
Senior Moderator
(EC Grad, 2008)

234. On or about September 16, 2014, GRN77 logged into her Allnurses account and discovered that the “Achieve Test Prep....Anyone?” thread was closed, which prevented any member from posting comments in response to the false statements and misrepresentations made by posters about ATP.

235. On September 17, 2014 learning-is-good sent a private message to Allnurses asking:

“Can you please tell me why this forum was closed? [referring to the “Achieve Test Prep....?” thread.]

236. On September 18, 2014, Allnurses Administrator using the user name traumaRUs, responded:

Yes, to be honest, we have a lot of concern regarding the information that posters have put out there. It had run its course. Thanks.

237. On September 18, 2014, learning-is-good responded to Allnurses administrator asking:

"May I ask specifically what are the concerns?"

238. Administrator SirI responded that the thread was closed and the administrator acknowledged it contained:

There was a lot of misleading information and instead of trying to clarify, it was just a circular discussion. The thread had multiple reports by members including reports of personal confrontation. After Admin discussion, it was decided to close it. Thank you for your inquiry.

239. Allnurses was aware when it shut down the “Achieve Test Prep....anyone?” thread that it contained false and misleading information.

240. On or about December 30, 2014, ATP employee registered for an Allnurses.com account with the username onessmallchange. The ATP employee used her ATP e-mail address when registering.

241. On or about December 30, 2014, user onessmallchange posted a comment on a thread entitled "Achieve Test Prep questions" in response to a comment from November 30, 2014. This comment, although polite and informative, was removed from the forum.

242. On or about January 6, 2015, user onessmallchange posted a comment on the same thread in response to a comment directed at the December 30, 2014 post. This post was also removed from the forum.

243. On or about January 8, 2015, user onessmallchange posted a comment on the same thread in response to a comment directed at the January 6, 2015 post. This post was also removed from the Website.

244. User onessmallchange did not attempt to further post on this thread following three failed attempts at responding to negative comments about ATP.

245. All of the posts published by user onessmallchange were removed shortly after publication, and none of the other posts in the thread were removed.

246. On or about January 29, 2015, user onessmallchange posted a comment on "Achieve Test Prep questions" in response to a comment on the thread entitled "Achieve Test Prep.... anyone?". Upon information and belief, this comment was once again removed shortly after posting.

247. On or about February 6, 2015, user onessmallchange was banned from logging onto her Allnurses account.

248. User onesmallchange inquired into the reason behind the banishment, and received automated responses from Defendant Allnurses.

249. Allnurses and Brian Short hold Allnurses out as being a fair and impartial online discussion forum, when in practice, it favors its advertisers and sponsors, such as Excelsior College, to the detriment of ATP.

250. Allnurses and Brian Short are biased towards its advertisers and sponsors, such as Excelsior College.

251. Allnurses and Brian Short, in breach of its TOS, took no action to take down false, defamatory, derogatory and disparaging statements against ATP, but did block learning-is-good, GRN77 and onesmallchange from posting statements to correct the misstatements posted on the Allnurses.com Website.

252. Defendants Allnurses and Brian Short did not allow posters learning-is-good and GRN77 to lively and freely debate and allow said posters to freely disagree with the posts on the "Achieve Test Prep....anyone?" thread.

253. Aggravating the harm to ATP, Allnurses closed the "Achieve Test Prep....anyone?" thread, while leaving the false, defamatory, derogatory and disparaging statements on the Allnurses Websites for all to see, and without the ability for anyone, including without limitation, learning-is-good, GRN77 and onesmallchange, to correct the record.

254. Once the threads are closed to future comments, they remain on the Allnurses Website indefinitely.

255. Even though the "Achieve Test Prep.... anyone?" thread was closed on or about September 16, 2014, Senior Moderator NRSKarenRN edited a post by monkeyhq dated September 9 (or 10), 2014, correcting a link which redirects to Excelsior College's Website:

Sep 9, '14 by monkeyhq

* * *

You can read about Excelsior's program change [HERE](#)

Last edit by NRSKarenRN on Feb 7, '15 : Reason: updated links

256. The corrected link (<http://www.excelsior.edu/nursing-theory-examination-changes>) directs the user to an Excelsior College page on their Website that offers test preparation services in competition ATP.

257. While on the one hand, Allnurses prevents ATP and others from posting statements correcting misinformation about ATP, on the other hand, Allnurses makes sure that readers are directed to Excelsior College's Website page offering services competing with ATP, to the detriment of ATP.

258. Allnurses acted in bad faith and breached its TOS by failing to remove the false and misleading, defamatory, derogatory and disparaging statements on the "Achieve Test Prep....anyone?" thread.

259. The conduct of Allnurses in failing to abide by its obligations in the TOS by failing to remove the false and misleading, defamatory, derogatory, and disparaging content against ATP was done knowingly, maliciously, in bad faith, and for the purpose of lessening the competition between ATP and Excelsior College.

260. Allnurses had notice, including without limitation its counsel, that the postings on the "Achieve Test Prep....anyone?" thread contained false and defamatory statements, but Allnurses took no action to remove the false and defamatory statements.

261. Allnurses was also subsequently made aware that the "Achieve Test Prep....anyone?" thread violated its own TOS.

262. Despite having repeated knowledge of the false and defamatory nature of the thread, and the fact that the thread violated the TOS, Allnurses refused to remove the false, misleading, defamatory, derogatory and disparaging statements.

263. Upon information and belief, there is an undisclosed relationship or connection between Excelsior College and other colleges, on the one side, and Pixie.RN or other persons working for Allnurses, or Allnurses itself, on the other side.

264. Upon information and belief, said undisclosed connection or relationship is a material omission of Allnurses.

265. Upon information and belief, said undisclosed connection or relationship, if disclosed, would materially affect the weight or credibility of the endorsements by Pixie.RN.

266. Said undisclosed connection or relationship, if disclosed, would materially affect the weight or credibility that readers would ascribe to the posts and statements on the Allnurses Website, including without limitation, the TOS, that proclaim that Allnurses assures its users can engage in lively and free debate and are free to disagree, and imply the moderators and administrators of the Website will monitor, moderate and administer the Website fairly and impartially.

267. Said undisclosed connection or relationship, if disclosed, would materially affect the weight or credibility that readers would ascribe to the entire thread generally, as well as to individual posts.

268. Upon information and belief, failure to disclose said connection or relationship was done negligently or knowingly and in bad faith.

269. Defendants' failure to disclose said connection or relationship is a violation of the Federal Trade Commission regulations, 16 CFR Part 255 (Guides Concerning Use Of

Endorsements And Testimonials In Advertising) including without limitation, subsection, §255.5 (Disclosure of material connections) (see http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=b0cb3e5a94d578c040589860ea2b885f&n=pt16.1.255&r=PART&ty=HTML#se16.1.255_11)

Allnurses Utilizes ATP's Trademark To Drive Traffic To Allnurses Website and Confuse Users

270. Allnurses positioned a hyperlink to an Excelsior College information page immediately above the ATP Trademark, "Achieve Test Prep", appearing in the title of the "Achieve Test Prep....anyone?" thread, on each of the seven pages on which the thread spans. (See Exhibit "A", at 24-26, Screen Shot Set 7.)

271. By positioning the hyperlink "Excelsior College Online Nursing /" immediately above the "Achieve Test Prep" trademark, Allnurses has caused confusion as to the affiliation of Excelsior College.

272. Visitors to the "Achieve Test Prep....anyone?" pages, are likely to be confused that Excelsior College is affiliated with ATP, and click on the "Excelsior College Online Nursing /" link, which directs the user to an Excelsior College information page.

273. Allnurses employs the same advertising strategy elsewhere on the Website, by using content favorable to Excelsior College to drive traffic to the Excelsior College information page.

274. For instance, in connection with the article written by Senior Moderator Pixie.RN, entitled "The Excelsior College Distance Learning ADN Program: Facts", Allnurses placed the same hyperlink to an Excelsior College information page immediately above the article title. (See Exhibit "A", at 27-28, Screen Shot Set 8.)

275. Upon information and belief, Allnurses contributed to the use of ATP's mark, "Achieve Test Prep", in the title of the discussion thread "Achieve Test Prep.... anyone?"

276. The text "Achieve Test Prep....anyone?" used in the title appears nowhere in the lead-off post of the thread by Heavenly4505, or anywhere else in the thread.

277. Allnurses caused the text that was used for the visible portion of the thread title, "Achieve Test Prep....anyone?", to be included in the "title" field of the source code for the Website page, also referred to as the title metadata. (See Exhibit "A", at 41-42, Screen Shot Set 11.)

278. The main purpose of including text from the visible content portion of the Webpage to be included in the metatags contained in the source code such as "title", "keywords", "content", etc., is to improve optimization or searchability by Google and other search engines, so that search engines provide a higher ranking of the Website in its results pages.

279. The use of ATP's trademark as metadata as part of Allnurses Website is not part of the visible content on the Web, but part of the programming source code.

280. Allnurses caused the ATP trademark to be placed as metadata in the source code of the Allnurses Website.

281. The use of ATP's trademark in the metadata part of Allnurses Website is not "information provided by another information content provider" as that term is used in the Communications Decency Act (47 U.S.C. § 230(c)(1)).

282. Allnurses uses the term "achieve-test-prep" as part of the URL (address) for the entire "Achieve Test Prep....anyone?" thread. (See, e.g. Exhibit "A", Screen Shot Sets 2, 4, 6, 7 and 11.)

283. The term “achieve-test-prep” is identical to the word mark “Achieve Test Prep” used by ATP, except that Allnurses has replaced the two spaces between the three words with hyphens.

284. The use of the ATP trademark as part of the “Achieve Test Prep....anyone?” thread URL is not “information provided by another information content provider” as that term is used in the Communications Decency Act (47 U.S.C. § 230(c)(1)).

285. By causing ATP’s trademark, “Achieve Test Prep”, to be placed as the first words in the title metadata and using a nearly identical version of ATP’s trademark (“achieve-test-prep”) as part of the URL for the “Achieve Test Prep....anyone?” thread, Allnurses has contributed to the high Google search ranking of the thread “Achieve Test Prep.... anyone?”

286. But for Allnurses causing ATP’s trademark “Achieve Test Prep” to be placed in title field of the metadata and for the “Achieve Test Prep” thread and using a variant of ATP’s trademark (“achieve-test-prep”) as part the thread’s URL, Google and other search engine would not have ranked those pages so high.

287. The foregoing uses by Allnurses of the terms: “Achieve Test Prep” and “achieve-test-prep” infringes on the trademark rights of ATP.

288. The high ranking of Google and other search engines for the “Achieve Test Prep....anyone?” thread has caused many Internet users to visit the “Achieve Test Prep....anyone?” thread and Allnurses Website.

289. The general public, and prospective and existing customers of ATP, have visited the Allnurses Website searching for ATP

290. The prospective customers and the general public, that have visited the Allnurses Website searching for ATP are likely to be confused as to the affiliation of ATP.

291. The general public, and prospective and existing customers of ATP have visited the Allnurses Website searching for ATP and read false and misleading information provided by Allnurses.

292. By Allnurses using ATP's trademark in the metadata of the Allnurses Website, Allnurses is causing substantially more people to visit its Website than if Allnurses had not manipulated the metadata.

293. When one types in Plaintiff's trademark, "achieve test prep" in the Google Search bar, the Allnurses Website thread "Achieve Test Prep.... anyone?" ranks as the second organic result, behind only Plaintiff's organic search result. (See Exhibit "A", at 14-18, Screen Shot Set 6.)

294. When one types in "achieve test prep reviews" in the Google Search bar, the Allnurses Website thread "Achieve Test Prep.... anyone?" ranks as the third organic result, behind only Plaintiff's organic search results. (See Exhibit "A", at 19-23, Screen Shot Set 6.)

295. An important aspect of obtaining that high result is because Plaintiff's mark is the first words of the title, not only the visible text of the title that all users see, but the metadata "title" field that Google and other search engines search on. (See Exhibit "A", at 41-42, Screen Shot Set 11.)

296. By placing Plaintiff's mark first in the title on the visible content and in the metadata, Google ranks the page high, in conjunction with other criteria that Google has with respect to ranking.

297. In order to drive traffic to its advertiser and sponsor, Excelsior College, Allnurses places a link to the Excelsior College information page immediately above the title. (See Exhibit "A", at 24-26, Screen Shot Set 7.)

298. When users search Google, for “Achieve Test Prep”, and then click on the second result link taking them to the thread on the Allnurses Website. (See Exhibit "A", at 14-18, at Screen Shot Set 6.)

299. Because of the proximity of the "Excelsior College Online Nursing /" link to the ATP trademark used in the title, some users will likely be confused into thinking there was an affiliation between the two companies. (See Exhibit “A”, at 24-26, Screen Shot Set 7.)

300. Even if the users realize once arriving at the Excelsior College information page that the two companies may not be affiliated, the damage is already done because of initial interest confusion.

301. Visitors to the Allnurses Website, including the general public, members of Allnurses.com forums, prospective customers of ATP, and existing customers of ATP, read (i) the false and misleading information provided by ATP in its TOS, (ii) the false and misleading information in the posts, (iii) the defamatory, derogatory and disparaging statements included in the posts, and (iv) the endorsement and approval by Allnurses personnel of said false and misleading information, and defamatory, derogatory and disparaging statements.

302. Ads on the Allnurses Websites drive traffic to the advertisers on Allnurses Website, thereby generating revenue for Allnurses.

303. Upon information and belief, Allnurses receives revenue from advertisers or their agencies or contractors, based on pay-by-click arrangements, pay-by-lead generations (where the referring Website gets paid according to the number of clicks or an advertiser pays a forwarding Website by the number of clicks, or the number of users fill out a lead form or short questionnaire s to the products and services).

304. Upon information and belief, Allnurses received compensation for ads appearing on its Websites, including ads for Excelsior College.

Injury to ATP

305. The conduct of Defendants Allnurses, Brian Short, and anonymous John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree28, duskyjewel, and Pixie.RN, have caused injury to ATP, including without limitation, a loss of businesses, people tending to disassociate themselves to ATP, lessening of standing in the community, and injury to the reputation of ATP.

306. Defendants ABC Companies 1-10 have caused injury to ATP, including without limitation, a loss of businesses, people tending to disassociate themselves to ATP, lessening of standing in the community, and injury to the reputation of ATP.

307. ABC Companies 1-10 have engaged in tortious conduct, including without limitation, defamation, trade libel, tortious interference with prospective economic advantage and contractual relations and restraint of trade.

308. As a result of the conduct of Defendants, Allnurses and Brian Short have breached the TOS, including without limitation, censoring and blocking posts by learning-is-good, GRN77 and onesmallchange that would have provided contrary viewpoints and correct the misstatements and misinformation contained on the Allnurses Website, ATP was deprived of the opportunity to lessen or neutralize the negative impact of the false, misleading, defamatory, derogatory and disparaging statements of and concerning ATP.

309. Defendants' conduct was willful and malicious and in bad faith.

310. As a result of Defendants' conduct, Plaintiff has sustained, and will continue to sustain, substantial damage.

311. The injury to Plaintiffs is, and will continue to be, irreparable.

COUNT ONE

**(DEFAMATION BY JOHN DOE DEFENDANTS
JUSTBEACHYNURSE, MONKEYHQ, AND
LADYFREE28 AND DUSKYJEWEL)**

312. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

313. The aforesaid conduct of John Doe Defendants, including without limitation, JustBeachyNurse's false statement that ATP's test preparation service would be redundant, monkeyhq's false statement that ATP's services would be obsolete, LadyFree28's and duskyjewel's false statement that ATP was under federal investigation, and JustBeachyNurse's false statement that ATP's test preparation service would be redundant, is defamatory.

314. Said conduct has caused economic harm to ATP, including, without limitation, loss of business from prospective customers and a loss of current customers; caused people to not to associate with ATP; caused harm to the reputation and good will of ATP; and caused a lessening of ATP's standing in the community.

315. The defamatory statements were published on the Internet, accessible worldwide, on the Allnurses Website, and viewed by tens of thousands of people, including without limitation, prospective and current customers of ATP.

316. The defamatory statements were of and concerning ATP.

317. John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree28 and duskyjewel published the foregoing defamatory statements with knowledge that the statements were false or with reckless disregard as to whether they were true or false, or with negligence as to whether the statements were true or false.

318. The false and defamatory statements caused a loss of business of ATP, including, without limitation, loss of business from prospective customers and a loss of current customers, people tending not to associate with ATP, harm to the reputation and good will of ATP, and lessening of standing in the community.

319. As a result of publication by the Defendants of the defamatory statements, Plaintiffs have sustained, and will continue to suffer damages, including without limitation, economic damage.

320. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants ABC Companies 1-10 and John Does 1-10 as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages;
- e. attorneys' fees, expenses and costs;
- f. pre-judgment and post-judgment interest; and
- g. such other relief as the court may deem just and equitable.

COUNT TWO

(DEFAMATION BY JOHN DOE DEFENDANT PIXIES.RN, AND DEFENDANT ALLNURSES AND BRIAN SHORT)

321. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

322. The foregoing false statements and endorsements published by Pixie.RN, including without limitation, statements that Excelsior College "warned" students about third-party test preparation companies, and posting "Like this" on a defamatory post of monkeyhq, are defamatory.

323. Said defamatory statements were published on the Internet, accessible worldwide, on the Allnurses Website, and viewed by tens of thousands of people, including without limitation, prospective and current customers of ATP.

324. The defamatory statements were of and concerning ATP.

325. Pixie.RN was working for Allnurses as a Senior Moderator at the time she published the defamatory statements, in the course of her performing her duties as Senior Moderator.

326. Brian Short was in charge of the operations of Allnurses.com, including its Moderators, Administrators and Managers.

327. Upon information and belief, the aforementioned defamatory statements were published by Pixie.RN with the knowledge of or at the direction of Brian Short.

328. Upon information and belief, Brian Short knew the statements were false, or was reckless with respect to the falsity of the statements, or was negligent with respect to the falsity of the statements.

329. Brian Short failed to cause the takedown of the aforementioned defamatory statements posted.

330. Pixie.RN and Allnurses.com published the foregoing defamatory statements with knowledge that the statements were false or with reckless disregard of whether they were true or false or with negligence as to whether the statements were true or false.

331. The aforesaid conduct of Pixie.RN and Allnurses, including without limitation posting the aforesaid false statements and endorsements by Pixie.RN caused economic harm to ATP, including, without limitation, loss of business from prospective customers and a loss of business from current customers; people tending not to associate with ATP; harm to the reputation and good will of ATP; and lessening of ATP's standing in the community.

332. As a result of publication by the Pixie.RN and Allnurses of the defamatory statements, Plaintiffs have sustained, and will continue to suffer damages, including without limitation, economic damage.

333. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendant Pixie.RN, Defendant Allnurses and Defendant Brian Short's estate, as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages;
- e. attorneys' fees, expenses and costs;
- f. pre-judgment and post-judgment interest; and
- g. such other relief as the court may deem just and equitable.

COUNT THREE

**(TRADE LIBEL BY JOHN DOE DEFENDANTS
JUSTBEACHNURSE, MONKEYHQ, LADYFREE28,
DUSKYJEWEL, PIXIE.RN, AND DEFENDANTS
ALLNURSES AND BRIAN SHORT)**

334. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

335. John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree28, duskyjewel and Pixie.RN, and Defendants Allnurses and Brian Short, published the aforementioned false, defamatory and disparaging statements.

336. John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree28, duskyjewel and Pixie.RN, and Defendant Allnurses and Defendant Brian Short acted with malice in publishing the false statement.

337. The statements published by Defendants contained false allegations about ATP's products, services, property or business.

338. Defendants' actions have caused, and continue to cause pecuniary harm, to Plaintiff.

339. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree28, duskyjewel, and Pixie.RN, and Defendants Allnurses and Defendant Brian Short, as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages;
- e. attorneys' fees, expenses and costs;
- f. pre-judgment and post-judgment interest; and
- g. such other relief as the court may deem just and equitable.

COUNT FOUR

**(NON-APPLICABILITY OF COMMUNICATIONS
DECENCY ACT (47 U.S.C. §230(c)) AS TO
DEFENDANTS ALLNURSES AND BRIAN SHORT)**

340. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

341. Defendants Allnurses, including without limitation, its Moderators, Administrators, Managers, and Brian Short, did not act in "good faith" pursuant to 47 U.S.C. §230(c)(2)(A).

342. Allnurses restricted access to the Allnurses Website from users learning-is-good, GRN77 and onesmallchange.

343. Said restriction was contrary to its representation and covenant to users as stated in the TOS, for lively and free debate and freedom to disagree.

344. Defendants Allnurses, including without limitation, its Moderators, Administrators and Managers restricted access of learning-is-good, GRN77 and onesmallchange from correcting the false and injurious statements posted on the Website about ATP, including without limitation, statement that ATP was under federal investigation, and its services were obsolete and redundant.

345. Upon information and belief, Defendants received advertising and other revenue from colleges, including Excelsior College which is also a competitor of ATP.

346. While prohibiting learning-is-good, GRN77 and onesmallchange from posting corrective statements as to the false and derogatory statements contained within the "Achieve Test Prep....anyone?" thread, but leaving the discussion thread accessible to the public, it engaged in unfair competition and anticompetitive behavior.

347. Upon information and belief, Defendants acted in concert with, or were directly and/or indirectly influenced by or induced by its advertisers or business partners who are competitors to ATP, to silence posters, such as learning-is-good, who had viewpoints critical of posters such as LadyFree28, who in turn were critical of ATP and posted false and derogatory statements about ATP and other test preparation centers.

348. Defendants knew, or should have known, that said conduct and publication of false and derogatory statements would cause injury to ATP, including without limitation, scaring customers and prospective customers away from doing business with ATP.

349. The aforestated conduct of blocking content provided by ATP or others, or restricting access to posts by ATP of contrary view points to those concerning the "Achieve Test Prep....anyone?" thread in violation of its own TOS for the purpose of diminishing the competition between ATP and the advertisers and other business partners of Defendants, is in bad faith because it is anti-competitive and a restraint of trade in violation of the public policy of the States of New Jersey and Minnesota.

350. The aforestated conduct of Defendants was in not in "good faith" pursuant to 47 U.S.C. Section 230(c)(2)(A), and thus, that Section of the Communications Decency Act ("CDA") is not a defense to liability against Defendants for their "restrict[ing] access to or availability of material".

351. The blocked material was not "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable", pursuant to 47 U.S.C. Section 230(c)(2)(A), and, therefore, was not blocked in compliance with that Section of the CDA.

352. As Defendants Allnurses and Brian Short did not act in good faith by restricting ATP's access to publish on the Allnurses Website, Defendants Allnurses and Brian Short are not

protected under the "Good Samaritan Clause" of the Communications Decency Act, 47 U.S.C. §230(c).

353. 47 U.S.C. §230(c)(1) is not applicable to the content and material provided by Moderators, Administrators, Managers of Allnurses.com Website and other personnel of Allnurses, including without limitation "Likes" posted and published by Pixie.RN and on the "Achieve Test Prep....anyone?" thread.

354. 47 U.S.C. §230(c)(1) is not applicable to ATP providing content to be used in the source code or metadata for its Websites, including without limitation, ATP's trademark "Achieve Test Prep" in "title", "description", or "keywords" fields in the "Achieve Test Prep....anyone?" thread on allnurses.com.

355. Pursuant to 47 U.S.C. §230(e)(2), the protections of 47 U.S.C. §230(c) are not applicable to intellectual property claims, such as trademark infringement claims.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as set forth elsewhere in this Second Amended Complaint.

COUNT FIVE

(BREACH OF TERMS OF SERVICE BY DEFENDANTS ALLNURSES AND BRIAN SHORT)

356. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

357. The TOS is an agreement between Allnurses and Brian Short, and its members in which the rights and obligations of parties are set forth.

358. Plaintiff Mark Olynyk registered as a member on the Allnurses.com Website.

359. The TOS is enforceable against Allnurses and Brian Short.

360. The TOS, in the Section "Posting Information", states:

You are not allowed to post libelous information about a person, school, instructor, health care facility, or entity. Any post which is violative of any law or is invasive of a person's privacy will be taken down immediately. (See Exhibit "A", at 55, Screen Shot Set 13.)

361. The parties to the TOS intended, as is set forth in the TOS, that any "entity" which is the subject of "libelous information" benefit from the TOS, including without limitation, that such "libelous information" which are "violative of any law", "will be taken down immediately".

362. "Libelous statements" are a violation of tort law, and are subject to take-down by the TOS.

363. The aforesated defamatory posts and "Like" described above are "libelous information" against ATP and are "violative of any law".

364. Defendants Allnurses and Brian Short are obligated to ATP pursuant to the TOS to immediately remove any statements that are "violative of any law", namely, the law of defamation and trade libel, among other laws.

365. ATP is an entity intended to benefit under the TOS.

366. Defendants Allnurses and Brian Short have certain obligations to ATP under the TOS of the Website Allnurses.com, including without limitation, to take down defamatory or "potentially libelous" or "libelous" information defamatory posts

367. The TOS provides that the Website promotes "lively debate" and "free[dom] to disagree with anyone on any type of subject".

368. The TOS also provides protection against "potentially libelous information about a(n)...entity".

369. The TOS grants authority to its Administrators and Moderators to restrict access in situations where a user is violating the TOS, of which there is a "zero-tolerance policy".

370. Allnurses and Brian Shorts promises in its TOS that its members shall be allowed to freely disagree with the online posts and comments, be allowed to engage in lively debates and freely debate.

371. Through its TOS and communications with its members, Allnurses and Brian Short imply that Allnurses.com will treat its members fairly, with impartiality, and without bias in favor of, or against, any particular view point or member with respect to enforcement of said provisions.

372. The TOS is written on behalf of Brian Short, and all of the Administrators and Moderators of Allnurses.

373. The TOS is binding on Allnurses and Brian Short.

374. Plaintiffs have performed all of their obligations under the TOS.

375. Defendant Allnurses and Brian Short have materially breached the TOS by failing to perform the obligations as stated therein, including without limitation:

- a. immediately taking down libelous information,
- b. preventing Plaintiffs and others from posting statements correcting the false, defamatory, and derogatory statements posted by Pixie.RN, Allnurses and others,
- c. prohibiting Plaintiffs and others from "lively debate" and "freely debate, and free[dom] to disagree with anyone on any type of subject".

376. As a direct and proximate cause of Defendants' failure to perform its obligations under the TOS, Plaintiff has suffered, and will continue to suffer harm.

377. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages;
- e. attorneys' fees, expenses and costs;
- f. pre-judgment and post-judgment interest;
- g. such other relief as the court may deem just and equitable.

COUNT SIX

(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING BY DEFENDANTS ALLNURSES AND BRIAN SHORT)

378. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

379. In every agreement, there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the agreement, and that each party will deal fairly and honestly with the other party in performing or enforcing the terms of the agreement.

380. Defendants Allnurses and Brian Short have a duty to act fairly and honestly with its members.

381. By and through the aforementioned conduct, Defendants Allnurses and Brian Short breached their duty of good faith and fair dealing and acted in bad faith in connection with enforcing the TOS.

382. As a direct and proximate result of the conduct of Defendants Allnurses and Brian Short, Plaintiffs have been, and will continue to be damaged.

383. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. attorneys' fees, expenses and costs;
- e. punitive damages; and
- f. pre-judgment and post-judgment interest; and
- g. such other relief as the court may deem just and equitable.

COUNT SEVEN

(PROMISSORY ESTOPPEL AS TO DEFENDANTS ALLNURSES AND BRIAN SHORT)

384. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

385. Defendants made a clear and definite promise in the TOS.

386. The promise was made with the expectation that its members would rely thereon.

387. Plaintiffs had a right to rely the promise in the TOS.

388. Plaintiffs relied on the promise, including without limitation, refraining from taking legal action earlier than they did.

389. Plaintiffs incurred detriment of a definite and substantial nature in reliance on the promise, including without limitation being prejudiced in discovering the identities of the posters to Allnurses.com.

390. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages;
- e. attorneys' fees, expenses and costs;
- f. pre-judgment and post-judgment interest; and
- g. such other relief as the court may deem just and equitable.

COUNT EIGHT

(COMMON LAW MISREPRESENTATION BY DEFENDANTS)

391. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

392. John Doe Defendant Pixie.RN had a duty as a Senior Moderator to provide accurate information as part of any posts or comments she made to the Allnurses.com, including without limitation, the discussion thread entitled: "Achieve Test Prep....anyone?".

393. Defendant Allnurses and Brian Short had a duty to supervise the Moderators, Administrators and Managers.

394. Defendants Allnurses and Brian Short had a duty to Plaintiffs and other members of Allnurses.com that the Moderators, Administrators and Managers not post false and misleading information on Allnurses.com, including without limitation, the discussion thread entitled: "Achieve Test Prep....anyone?".

395. Defendants made a material misrepresentation of a presently existing or past fact, including without limitation, (i) Pixie.RN endorsing Posts containing false statements by "Liking" post of monkeyhq, and by implication, post of JustBeachyNurse, as to the services of ATP being obsolete, redundant, and a total waste of investment, (ii) false statement by Pixie.RN that Excelsior College "warned" students about third-party test preparation companies, and (iii) false statements in the TOS that Allnurses allows for free and lively debate and freedom to disagree, and implying that Allnurses.com is a fair and impartial discussion forum.

396. Pixie.RN, had a duty not to make any material omissions on Allnurses.com, including without limitation, the discussion thread entitled: "Achieve Test Prep....anyone?".

397. Defendant Allnurses and Brian Short had a duty to ensure that the Moderators, Administrators and Managers not make any material omissions on Allnurses.com, including without limitation, the "Achieve Test Prep....anyone?" discussion thread.

398. Pixie.RN, Allnurses and Brian Short breached their respective duties not to make material misrepresentations or material omissions.

399. Pixie.RN, Allnurses, and Brian Short made no disclosure as to any relationship or connection between Excelsior College and other colleges, on the one side, and Pixie.RN or other persons working for Allnurses, or Allnurses itself, on the other side.

400. Upon information and belief, Defendants Allnurses.com and Brian Short had knowledge or belief that the statements were false, or recklessly disregarded whether the statements were true or false, or were negligent as to whether the statements were true or false.

401. Defendants Allnurses.com and Brian Short intended others would rely on the aforementioned false statements or material omissions.

402. Upon information and belief, one or more John Doe Defendants had a connection or relationship with Allnurses, or one or more advertiser or sponsor of Allnurses (including without limitation, receiving payments or compensation).

403. Said John Doe Defendants who posted a comment endorsing said advertiser or sponsor, including without limitation, posting a “Like” of a comment endorsing said advertiser or sponsor, or who posted a comment critical of ATP, had a duty to disclose said connection or relationship as part of the posted comments, endorsements, “Likes” or criticism of ATP.

404. Upon information and belief, one or more Defendants ABC Companies, Allnurses and Brian Short knew or should have known that the John Doe Defendants, with whom it or he had a relationship or connection, had posted comments endorsing said ABC Companies, Allnurses or Brian Short, or being critical of ATP, without providing a disclosure as to said relationship or connection, had a duty to publish said disclosure.

405. Said John Doe Defendants, ABC Companies, Allnurses and Brian Short breached their duties to provide said disclosures.

406. Upon information and belief, one or more John Doe Defendants had a connection or relationship with Allnurses, or one or more advertiser or sponsor of Allnurses (including without limitation, receiving payments or compensation).

407. Said John Doe Defendants who posted comments endorsing said advertiser or sponsor, including without limitation, posting a “Like” of a comment endorsing said advertiser or sponsor, or who posted a comment critical of ATP, had a duty to disclose said connection or relationships as part of said postings.

408. Upon information and belief, one or more Defendants ABC Companies, Allnurses and Brian Short knew or should have known that said John Doe Defendants, with whom it or he had a connection or relationship, had posted comments endorsing Allnurses, or its advertisers or sponsors, or being critical of ATP, without providing a disclosure as to said connection or relationship.

409. Said John Doe Defendants, ABC Companies, Allnurses and Brian Short had a duty to make disclosures of said connections and relationships.

410. Said John Doe Defendants, ABC Companies and Brian Short breached their duties to provide said disclosures.

411. Said undisclosed connection or relationship, if disclosed, would materially affect the weight or credibility of the endorsements and statement made by John Doe Defendants, including without limitation, on the “Achieve Test Prep....anyone?” discussion thread.

412. Said undisclosed connection or relationship, if disclosed, would materially affect the weight or credibility that readers would ascribe to the posts and statements on the Allnurses Website, including without limitation, the TOS, that proclaim that Allnurses assures its users that they can engage in lively and free debate and are free to disagree, and imply the moderators and administrators of the Website will monitor, moderate and administer the Website fairly and impartially.

413. Said undisclosed connection or relationship, if disclosed, would materially affect the weight or credibility that readers would ascribe to the “Achieve Test Prep....anyone?” thread as a whole, and posts contained therein.

414. Plaintiffs, reasonably relied on the misrepresentations and omissions of Defendants, including without limitation, refraining from taking legal action earlier than Plaintiffs did.

415. Upon information and belief, the delay in taking legal action has resulted in prejudice to Plaintiffs in the ability to obtain evidence relevant to its causes of action in the within matter, including without limitation, the evidence as to the identities of the Defendant John Does.

416. As a result of the material misrepresentations and omissions of Defendants, Plaintiffs have sustained and will continue to sustain damages.

417. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendants, Allnurses, Brian Short and Defendants ABC Companies, as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages;
- e. attorneys' fees, expenses and costs;
- f. pre-judgment and post-judgment interest;
- g. such other relief as the court may deem just and equitable.

COUNT NINE

**(NEW JERSEY CONSUMER FRAUD ACT
AS TO JOHN DOE DEFENDANT PIXIE.RN, DEFENDANT
ALLNURSES AND DEFENDANT BRIAN SHORT)**

418. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

419. The aforestated conduct of John Doe Defendant Pixie.RN and Defendants Allnurses and Brian Short, including without limitation, the aforementioned material misrepresentations and material omissions, constitutes a violation of the New Jersey Consumer Fraud Act.

420. Upon information and belief, Defendants Allnurses and Brian Short utilize the discussion boards through its Moderators, Administrators, personnel, volunteers, employees, contractors, servants and agents, to advance the interests of Allnurses' advertisers and sponsors, despite Allnurses and Brian Short holding out Allnurses to be fair and impartial forums which promotes lively and free debate where members are free to disagree.

421. Defendants Allnurses and Brian Short did not allow Plaintiffs to lively and freely debate and freely disagree with the posts on the "Achieve Test Prep....anyone?" thread.

422. Defendants Allnurses and Brian Short are biased towards, and publish statements in favor of the advertisers on Allnurses Websites and sponsors of Allnurses.

423. Upon information and belief, Defendant Allnurses profits from advertisements on its Website and sponsorships, of which one of those paid advertisers or sponsors is Excelsior College.

424. Upon information and belief, Defendants utilize the discussion boards through its moderators and administrators to advance the interests of its paying advertisers and sponsors, even though Allnurses holds itself out to be a fair and impartial discussion forum.

425. The aforementioned conduct of Defendants was unlawful and an unconscionable commercial practice in that it is misleading and stands outside the norm of reasonable business practice.

426. Defendants misrepresent or mislead the public, users, and members of Allnurses.com that the forums are fair and impartial.

427. Plaintiffs suffered an ascertainable loss, including without limitation, the loss of customers and prospective customers from doing business with ATP, and a loss of good will of ATP.

428. Such ascertainable loss is a result of Defendants' unlawful and unconscionable commercial activity and false statements, including without limitation, its representations and promises as to operating its forums in a fair and neutral manner, allowing users to freely debate and disagree.

429. Allnurses Moderators and Administrators restricted access of learning-is-good, GRN77 and onesmallchange by blocking learning-is-good, GRN77 and onesmallchange from making posts to correct false statements by Pixie.RN and Allnurses and others, while leaving the false, defamatory and derogatory statements visible to all via the Internet without allowing learning-is-good, GRN77, onesmallchange, ATP and others to post counterstatements to correct the false statements.

430. By the foregoing conduct, the Moderators, Administrators, Managers, Brian Short, and Allnurses failed to operate the Allnurses.com forums in a fair and impartial manner,

which conduct is in violation of the obligations as set forth in the TOS, preventing ATP from diminishing or mitigating the harm caused by the “Achieve Test Prep....anyone?” thread.

431. Defendants Allnurses and Brian Short intended others would rely on the aforementioned false statements, material misrepresentations and material omissions and false promises.

432. The foregoing conduct of Allnurses, its Moderators, Administrators, Managers and Brian Short was unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission.

433. Plaintiffs’ ascertainable loss was caused by Defendants' unlawful conduct.

434. As a direct and proximate cause of result of Defendants' unlawful conduct, Plaintiffs have suffered, and will continue to suffer harm.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendant Pixie.RN, Defendant Allnurses and Defendant Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. treble damages;
- d. attorneys' fees, expenses and costs;
- e. pre-judgment and post-judgment interest; and
- f. such other relief as the court may deem just and equitable.

COUNT TEN

**(MINNESOTA CONSUMER FRAUD ACT AS TO JOHN DOE DEFENDANT PIXIE.RN,
DEFENDANT
ALLNURSES AND DEFENDANT BRIAN SHORT)**

435. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

436. The aforestated conduct of John Doe Defendant Pixie.RN and Defendants Allnurses and Brian Short, including without limitation, the aforementioned material misrepresentations and material omissions, constitutes a violation of the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69.

437. Upon information and belief, Defendants Allnurses and Brian Short utilize the discussion boards through its Moderators, Administrators, personnel, volunteers, employees, contractors, servants and agents, to advance the interests of Allnurses' advertisers and sponsors, despite Allnurses and Brian Short holding out Allnurses to be fair and impartial forums which promotes lively and free debate where members are free to disagree.

438. Defendants Allnurses and Brian Short did not allow Plaintiffs to lively and freely debate and freely disagree with the posts on the "Achieve Test Prep....anyone?" thread.

439. Defendants Allnurses and Brian Short are biased towards, and publish statements in favor of the advertisers on Allnurses Websites and sponsors of Allnurses.

440. Upon information and belief, Defendant Allnurses profits from advertisements on its Website and sponsorships, of which one of those paid advertisers or sponsors is Excelsior College.

441. Upon information and belief, Defendants utilize the discussion boards through its moderators and administrators to advance the interests of its paying advertisers and sponsors, even though Allnurses holds itself out to be a fair and impartial discussion forum.

442. The aforementioned conduct of Defendants was unlawful and an unconscionable commercial practice in that it is untrue, deceptive, and/or misleading.

443. Defendants deceive, misrepresent or mislead the public, users, and members of Allnurses.com that the forums are fair and impartial.

444. Plaintiffs suffered an ascertainable loss, including without limitation, the loss of customers and prospective customers from doing business with ATP, and a loss of good will of ATP.

445. Such ascertainable loss is a result of Defendants' unlawful and unconscionable commercial activity and false statements, including without limitation, its representations and promises as to operating its forums in a fair and neutral manner, allowing users to freely debate and disagree.

446. Allnurses Moderators and Administrators restricted access of learning-is-good, GRN77 and onesmallchange by blocking learning-is-good, GRN77 and onesmallchange from making posts to correct false statements by Pixie.RN and Allnurses and others, while leaving the false, defamatory and derogatory statements visible to all via the Internet without allowing learning-is-good, GRN77, onesmallchange, ATP and others to post counterstatements to correct the false statements.

447. By the foregoing conduct, the Moderators, Administrators, Managers, Brian Short, and Allnurses failed to operate the Allnurses.com forums in a fair and impartial manner,

which conduct is in violation of the obligations as set forth in the TOS, preventing ATP from diminishing or mitigating the harm caused by the “Achieve Test Prep....anyone?” thread.

448. Defendants Allnurses and Brian Short intended others would rely on the aforementioned false statements, material misrepresentations and material omissions and false promises.

449. The foregoing conduct of Allnurses, its Moderators, Administrators, Managers and Brian Short was unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission.

450. Plaintiffs’ ascertainable loss was caused by Defendants' unlawful conduct.

451. As a direct and proximate cause of result of Defendants' unlawful conduct, Plaintiffs have suffered, and will continue to suffer harm.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendant Pixie.RN, Defendant Allnurses and Defendant Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. treble damages;
- d. attorneys' fees, expenses and costs;
- e. pre-judgment and post-judgment interest; and
- f. such other relief as the court may deem just and equitable.

COUNT ELEVEN

**(TRADEMARK INFRINGEMENT (LANHAM ACT §43(a))
BY DEFENDANT ALLNURSES AND BRIAN SHORT)**

452. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

453. Section 43(a) of the Lanham Act, (15 U.S.C. § 1125(a)), provides in pertinent part that:

[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol . . . or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to affiliation . . . or as to the origin, sponsorship, or approval of . . . goods [or] services . . . shall be liable in a civil action

454. ATP has a valid and legally protectable trademark in "Achieve Test Prep".

455. ATP is the owner of the mark "Achieve Test Prep" for use in commerce in connection with providing test preparation services.

456. Defendants Allnurses and Brian Short used in commerce the same or a similar mark in connection with the sale or advertising of competing goods or services without ATP's consent.

457. The use by Defendants Allnurses and Brian Short of the "Achieve Test Prep" trademark belonging to ATP on the Allnurses Website enabled it to draw traffic and users to the Allnurses Websites, which, upon information and belief, enables Defendant to gain economic benefits.

458. Excelsior College offers test preparation programs in competition of ATP.

459. The use by Allnurses of ATP's trademark in connection with Excelsior College is infringement of trademark pursuant to 15 U.S.C. Section 1125(a).

460. The conduct of Defendants Allnurses and Brian Short in using ATP's trademark in commerce is likely to cause confusion, or to cause mistake, or to deceive users of Allnurses and consumers.

461. Allnurses actively seeks to attract current and prospective customers of ATP, by using ATP's mark in its Website, including without limitation, in the metadata and source code, for the purpose of gaining a high ranking Google search.

462. By typing "achieve test prep" in the Google search bar, Allnurses.com's "Achieve Test Prep....anyone?" search result ranks as the No. 2 organic search result.

463. By typing "achieve test prep reviews" in the Google search bar, Allnurses.com's "Achieve Test Prep....anyone?" search result ranks as the No. 3 organic search result.

464. The conduct of Defendants Allnurses and Brian Short, including without limitation, the use of the trademark of ATP, drives Internet traffic to the Allnurses Website which contains false or misleading description of fact, or false or misleading representation of fact, including without limitation:

- a. statements by Allnurses Senior Moderator Pixie.RN that Excelsior College "warned" students about third-party test preparation companies,
- b. Pixie.RN "Liking" post of monkeyhq, and by implication, post of JustBeachyNurse, as to the services of ATP being obsolete, redundant, and a total waste of investment.
- c. Misrepresentations in the TOS, including without limitation:
 1. that Allnurses.com allows its members have to lively and freely debate and free to disagree with anyone on any type of subject,

2. that Allnurses.com is a fair and impartial discussion forum Website,
 3. that Moderators and Administrators of Allnurses.com immediately take down libelous and potentially libelous information,
 4. that Allnurses.com materially omitted full disclosure of its affiliation and relationships with its advertisers and sponsors, including without limitation affiliation and relationships between, Moderators, Administrators, Managers and Brian Short, on the one side, and any and all its advertisers and sponsors of Allnurses, on the other side.
- d. a comment posted by monkeyhq that falsely states that "Test Prep companies for Excelsior Exams will be obsolete by July 1, 2015... it is a total waste of your investment." (Emphasis in original.) (<http://allnurses.com/excelsior-college-online/achieve-test-prep-815067-page3.html>, accessed on March 10, 2015.) (See Exhibit "A" at 62, Screen Shot Set 14.)
- e. a comment posted by monkeyhq's on August 22, 2014 that ATP's test preparation services were going to be obsolete by July 1, 2015.
- f. The monkeyhq August 22, 2014 post expressly refers to facts misstated by JustBeachyNurse in the prior post ("As Beachy said...").
- g. The post by JustBeachyNurse stated:
- ATP and similar services will be **redundant as of July 1, 2014 when all challenge exam candidates will be mandated to take the Excelsior online exam prep classes prior to becoming eligible to sit the challenge exams.** The prep classes are not free (though prep class plus challenge exam should cost less than the online courses)[.] (Emphasis added.) (See Exhibit "A" at 61, Screen Shot Set 14.)
- h. The statement that all Excelsior College challenge exam candidates would be required to take Excelsior College's own online exam prep class prior to becoming eligible is false.

- i. The statement made by JustBeachyNurse that ATP's test prep for Excelsior College would be redundant is false.
- j. A post by LadyFree28 which falsely stated that ATP was under federal investigation.
- k. The September 12, 2014 post by LadyFree28 was responding to posts made earlier on in the thread about another test preparation company, "TCN", being under federal investigation.
- l. The LadyFree28 post stated:

But the discussion is about **THIS** particular test-prep program that **IS** being investigated by the federal government and is under a current lawsuit; there are too many forums that have stated the Achieve "deceived" them with their practices; that is the **MAIN** focus of this discussion, **NOT** "other test prep companies." (Capitalized emphasis in original; underlined emphasis added.)

- m. A reasonable person would understand LadyFree28's post to mean that ATP was the subject of a federal investigation, for several reasons:
 1. "But the discussion is about **THIS** particular test-prep program" and the "**MAIN** focus of this discussion" refers to ATP, as the thread is predominantly about ATP, as the title of the thread expressly announces: ("Achieve Test Prep....anyone?"). (Emphasis in original.)
 2. This statement is followed by: "**there** are too many forums that have stated the Achieve 'deceived' them with their practices" (emphasis added), implying that Achieve was under investigation because it deceived people with its practices. No other test prep company is referred to in the post.
 3. The post goes on to exclude other test prep companies: "**NOT** 'other test-prep programs'", again, implying that only ATP is the test prep company under investigation.

4. Because LadyFree28's post makes reference to “Achieve ‘deceived’” by its “practices”, a reasonable person of ordinary intelligence would understand that to mean that ATP is under investigation by the Federal Trade Commission. (Emphasis added.)
 - n. The statement posted by LadyFree28 on September 12, 2014 that ATP "is being investigated by the federal government" is false.
 - o. A comment by member duskyjewel on September 12, 2014, stating that ATP was under federal investigation. duskyjewel’s post was in direct response to a post from learning-is-good:
 1. "Quote from Learning-is-good 'Duskyjewel, You are going to scare people by saying some test prep centers are under federal investigation, but my guess is it’s just one.’"
 - p. In response, duskyjewel posted:
 1. "Sounds like you should be scared. TCN + Achieve equals more than one."
 - q. By commenting that “TCN + Achieve equals more than one” test preparation company under investigation, duskyjewel was stating that both TCN (The College Network, another test preparation company) and ATP are both under federal investigation.
 - r. ATP has not been investigated by the FTC.
465. The foregoing false or misleading descriptions of fact, or false or misleading representations of fact:
 - a. misrepresent the nature, characteristics or qualities of the services of allnurses, including without limitation, its nurses forum Website and its advertisers and sponsors, and

- b. misrepresent the nature, characteristics or qualities of the services of ATP and its competitors, including without limitation, competitors which advertise on the Allnurses Websites or which are promoted on the Allnurses Websites, or other commercial activities, including without limitation Excelsior College.

466. Defendants Allnurses and Brian Short caused the placement of the “Excelsior College Online Nursing /” link to be immediately above the discussion thread title containing the ATP mark, “Achieve Test Prep....anyone?”, resulting in initial interest confusion of public users, prospective customers and current customers of ATP, as well as Allnurses.com members when searching on the Internet and being directed to the Allnurses Website instead of the ATP Website.

467. As a result of the proximity of the “Excelsior College Online Nursing /” link to be immediately above the “Achieve Test Prep....anyone?”, users are likely to click on the “Excelsior College Online Nursing /” link, and get directed to an Excelsior College information page.

468. Even if users realize once arriving at the Allnurses.com Website or Excelsior College information page that the companies may not be affiliated with ATP, the damage is already done, including without limitation, due to initial interest confusion.

469. The conduct of Allnurses and Brian Short in violation of Section 43(a) of the Lanham Act drives prospective customers away from ATP and to the sponsors or advertisers of ATP, including without limitation, competitors of ATP such as Excelsior College.

470. The acts of infringement of Allnurses and Brian Short in violation of Section 43(a) of the Lanham Act have inflicted, and if continued, will inflict, irreparable harm on Plaintiffs

471. The conduct of Allnurses and Brian Short has caused, and, if said acts or similar acts continue, will continue to cause Plaintiffs to sustain losses and damages

472. The aforesaid wrongful conduct of Defendants was intentional.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. defendants' profits;
- d. plaintiffs' damages;
- e. treble damages;
- f. attorneys' fees, expenses and costs;
- g. pre-judgment and post-judgment interest; and
- h. such other relief as the court may deem just and equitable.

COUNT TWELVE

(COMMON LAW UNFAIR COMPETITION BY DEFENDANTS ALLNURSES AND BRIAN SHORT)

473. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

474. The unauthorized use by Defendants Allnurses and Brian Short of ATP's trademark, including without limitation, in its Website metadata and advertisements, constitutes acts of unfair competition through Defendants' appropriation for their own use of the name, brand, trademark, reputation, and goodwill of ATP.

475. Defendants Allnurses and Brian Short engaged in unfair competition by making the aforementioned misrepresentations and material omissions on Allnurses.com.

476. The foregoing conduct, including without limitation, the misrepresentations and material omissions was intended to mislead the public, members of the Allnurses.com, and prospective and current customers of ATP.

477. The misconduct of Pixie.RN, Allnurses and Brian Short, including without limitation the making false statements and disseminating incorrect and harmful information about ATP, misled the public, Allnurses members, prospective and current customers of ATP, and induced them to accept such statements as true.

478. Said Defendants further misled the public by portraying Allnurses itself as a fair and impartial venue for discussion, when in fact the Allnurses Website is biased against ATP and favorable towards its advertisers and sponsors, including without limitation, Excelsior College.

479. Upon information and believe, there is a connection, or relationship between Allnurses (including without limitation, its Moderators, Administrators, Managers, and Brian Short) and one or more John Doe Defendants which is material to whether Allnurses is fair and impartial, but which is not disclosed. The aforementioned acts of Defendants constitute unfair competition and unfair business practices contrary to the common law of the States of New Jersey and Minnesota.

480. The aforesaid wrongful conduct of Defendants was committed willfully, knowingly, maliciously, and in conscious disregard of ATP's rights.

481. The aforesaid infringements by Defendants have caused, and will continue to cause, injury to ATP's property and business.

482. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. defendants' profits;
- d. plaintiffs' damages;
- e. punitive damages;
- f. consequential damages;
- g. attorneys' fees, expenses and costs;
- h. pre-judgment and post-judgment interest; and
- i. such other relief as the court may deem just and equitable.

COUNT THIRTEEN

**(UNFAIR COMPETITION IN VIOLATION OF
N.J.S.A. § 56:4-1 ET SEQ.
BY DEFENDANTS ALLNURSES AND BRIAN SHORT)**

483. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

484. The unauthorized use by Defendants Allnurses and Brian Short of ATP's mark, including without limitation, in its Website content, metadata, and advertisements of others, constitutes acts of unfair competition through Defendants' appropriation for their own use of the name, brand, trademark, reputation, and goodwill of ATP in violation of N.J.S.A. § 56:4-1 et seq.

485. Defendants have enriched themselves by gaining additional viewers to the Allnurses Website, which consequently increases advertisement revenues earned.

486. The aforesaid infringement by Defendants was committed willfully, knowingly, maliciously, and in conscious disregard of ATP's rights.

487. The aforesaid infringement by Defendants has caused, and will continue to cause, injury to ATP's property and business.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses and Brian Short as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. defendants' profits;
- d. plaintiffs' damages;
- e. treble damages;
- f. attorneys' fees, expenses and costs;
- g. pre-judgment and post-judgment interest;
- h. such other relief as the court may deem just and equitable.

COUNT FOURTEEN

**(TORTIOUS INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE AND CONTRACTUAL RELATIONS
BY JOHN DOE DEFENDANTS JUSTBEACHNURSE, MONKEYHQ, LADYFREE28,
DUSKYJEWEL, PIXIE.RN, AND
DEFENDANTS ALLNURSES AND BRIAN SHORT)**

488. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

489. Plaintiffs have a reasonable expectation of an economic advantage for any person seeking to do business with ATP, and rely upon laws which prevent malicious and intentional actions by a competitor attempting to confuse such would-be customers/clients into doing business with a competitor other than ATP.

490. Upon information and belief, Defendants have knowingly and intentionally misled potential consumers of ATP's services to its competitors' Websites through strategic advertising on the Allnurses Website.

491. Upon information and belief, Defendants have knowingly and intentionally misled potential consumers of ATP into believing false information about ATP.

492. The Defendants' collective actions were committed with malice, willfulness and the intent to interfere with ATP's expectation to do business with persons seeking to do business with ATP, without reasonable and lawful justification or excuse.

493. But for the Defendants' collective actions, ATP had more than a reasonable expectation and/or probability that every prospective consumer who showed interest in seeking test preparation services from ATP would have paid ATP for such services.

494. In interfering with ATP's contractual relationships, Defendants either acted with the specific motive of depriving ATP of customers or out of a motivation to enhance its financial position for profit.

495. The Defendants' collective actions transgress generally accepted standards of common morality and law and constitute a violation of standards of socially acceptable conduct.

496. The Defendants will, if not preliminarily and permanently enjoined by the court, continue to tortiously interfere with ATP's prospective economic advantage, and causing ATP immediate and irreparable harm, damage and injury.

497. ATP has a right to pursue its business free from undue influence and molestation.

498. ATP is, and continues to be, in pursuit of business (i.e. prospective students).

499. Defendants have engaged in malicious and intentional action with the purpose of interfering with ATP's right to pursue business and interfering with contractual relations between ATP and its customers.

500. Defendants' actions have caused, and continue to cause, ATP to lose prospective economic gains and current customers.

501. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree28, duskyjewel, and Pixie.RN, and Defendants Allnurses and Defendant Brian Short, as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages
- e. attorneys' fees, expenses and costs
- f. pre-judgment and post-judgment interest; and
- g. such other relief as the court may deem just and equitable.

COUNT FIFTEEN

(VICARIOUS LIABILITY OF DEFENDANT ALLNURSES)

502. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

503. At all times relevant hereto, Pixie.RN worked for Allnurses.

504. At all times relevant hereto, Pixie.RN was a volunteer, employee, servant, contractor or agent for Allnurses.

505. At all times relevant hereto, Pixie.RN acted on behalf of Allnurses.

506. At all times relevant hereto, Pixie.RN was under the control of Allnurses.

507. At all times relevant hereto, Pixie.RN was intentionally induced by Allnurses to commit the aforementioned wrongful conduct.

508. At all times relevant hereto, Allnurses benefited from the wrongful conduct of Pixie.RN.

509. Allnurses is liable to Plaintiffs for vicarious, contributory or inducement liability for the aforementioned wrongful conduct of Pixie.RN.

510. Upon information and belief, at all times relevant hereto, other John Doe Defendants JustBeachyNurse, monkeyhq, LadyFree2 and duskyjewel were volunteers, employees, servants, contractors or agents of Allnurses, and acted on behalf of Allnurses.

511. Upon information and belief, at all times relevant hereto, one or more other John Doe Defendants, including without limitation, JustBeachyNurse, monkeyhq, LadyFree28 and duskyjewel, was under the control of, or intentionally induced by, Allnurses to commit the aforementioned wrongful conduct of said John Doe Defendants.

512. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. defendants' profits
- e. plaintiffs' damages

- f. treble damages
- g. punitive damages
- h. attorneys' fees, expenses and costs;
- i. pre-judgment and post-judgment interest; and
- j. such other relief as the court may deem just and equitable.

COUNT SIXTEEN

(CONTRIBUTORY, VICARIOUS AND INDUCEMENT LIABILITY OF ALLNURSES, BRIAN SHORT AND DEFENDANTS ABC COMPANIES)

513. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

514. Upon information and belief, at all times relevant hereto, John Doe Defendants Pixie.RN, JustBeachyNurse, monkeyhq, duskyjewel, and LadyFree28, were volunteers, employees, servants, contractors or agents of one or more Defendants ABC Companies, Allnurses and Brian Short

515. Upon information and belief, at all times relevant hereto, one or more John Doe Defendants, including without limitation, John Doe Defendants Pixie.RN, JustBeachyNurse, monkeyhq, duskyjewel, and LadyFree28, was under the control of, or was intentionally induced or encouraged by one or more Defendants ABC Companies.

516. Upon information and belief, at all times relevant, John Doe Defendants Pixie.RN, JustBeachyNurse, monkeyhq, duskyjewel, and LadyFree28 benefitted Brian Short, Allnurses and one or more Defendants ABC Companies.

517. Upon information and belief, one or more Defendants ABC Companies 1-10 are sponsors of, or advertise on, Allnurses Websites.

518. Allnurses, Brian Short and Defendants ABC Companies 1-10 are secondarily liable to Plaintiffs, including without limitation, for vicarious, contributory or inducement liability, for the aforementioned wrongful conduct of one or more John Doe Defendants, including without limitation:

- a. intentionally inducing or encouraging one or more John Doe Defendants to post statements on Allnurses.com using Plaintiff's trademark ("Achieve Test Prep"), or similarly confusing phrases.
- b. intentionally inducing or encouraging one or more John Doe Defendants to post statements on Allnurses.com which contain misrepresentations of fact or material factual omissions as described above, including without limitation, statements which:
 6. falsely state that the services of ATP are obsolete, redundant, and a total waste of investment,
 7. falsely state that Excelsior College "warned" students about third-party test preparation companies,
 8. falsely state in the TOS that Allnurses allows for free and lively debate and freedom to disagree, and implying that Allnurses.com is a fair and impartial discussion forum Website.
 9. fail to disclose a relationship or connection between the John Doe Defendants, on the one side, and advertisers and sponsors of Allnurses Websites, including without limitation, Excelsior College, on the other side.

519. The foregoing wrongful conduct has caused, and will continue to cause, injury to Plaintiffs, including without limitation, economic injury, loss of business, and injury to the reputation and good will of ATP, disassociation people with ATP, and lessening of standing of ATP in the community.

520. Defendants Allnurses and Defendants ABC Companies 1-10 are secondarily liable to Plaintiffs for said injuries.

521. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against Defendants Allnurses, Brian Short and Defendants ABC Companies as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. defendants' profits;
- e. plaintiffs' damages;
- f. treble damages;
- g. punitive damages;
- h. attorneys' fees, expenses and costs;
- i. pre-judgment and post-judgment interest; and
- j. such other relief as the court may deem just and equitable.

COUNT SEVENTEEN

**(ACTING IN CONCERT LIABILITY OF JOHN DOE DEFENDANTS,
DFENDNTS ABC COMPANIES, ALLNURSES, AND BRIAN SHORT)**

522. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth at length herein.

523. Upon information and belief, Allnurses, Brian Short and/or one or more ABC Companies committed one or more tortious acts described above:

- a. in concert with one or more John Doe Defendants or
- b. pursuant to a common design or purpose, including without limitation, (i) to lessen the competition between ATP and the advertisers and sponsors of Allnurses, including without limitation, Excelsior College; (ii) for advertisers and sponsors of Allnurses, including without limitation, Excelsior College, to unfairly compete between with ATP; and (iii) to harm the business, good will, reputation, and standing in the community of Plaintiffs.

524. Upon information and belief, Allnurses, Brian Short and one or more ABC Companies (i) had knowledge that the wrongful conduct, described above, of one or more John Doe Defendants was in breach of duty to Plaintiffs and (ii) gave substantial assistance or encouragement to said one or more John Doe Defendants to so conduct themselves.

525. Upon information and belief, Allnurses, Brian Short and one or more ABC Companies (i) gave substantial assistance to one or more John Doe Defendant in accomplishing a tortious result and (ii) said conduct of Allnurses, Brian Short and one or more ABC Companies, separately considered, constituted a breach of duty to Plaintiffs.

526. Upon information and belief, the aforesaid “substantial assistance or encouragement” includes, without limitation, conduct described above: (i) operating the Allnurses Websites and forums; (ii) establishing, moderating and administering the “Excelsior College Online Nursing /” forum; (iii) bad faith restricting and preventing members posting comments favorable to ATP and critical to Allnurses, (iv) facilitating publication of false, defamatory and derogatory posts; (v) falsely stating in the TOS that Allnurses allows for free and

lively debate and freedom to disagree, and implying that Allnurses.com is a fair and impartial discussion forum Website; (vi) paying or compensating anonymous posters, including without limitation, John Doe Defendants, to publish material online about ATP and its products and services which is false, defamatory and disparaging; and (vii) and failing to disclose the payment or compensation to John Doe Defendants.

527. Defendants acted willfully and maliciously.

WHEREFORE, Plaintiffs request judgment be entered against John Doe Defendants, Allnurses, Brian Short and Defendants ABC Companies as follows:

- a. preliminary and permanent injunctions;
- b. compensatory damages;
- c. consequential damages;
- d. defendants' profits;
- e. plaintiffs' damages;
- f. treble damages;
- g. punitive damages;
- h. attorneys' fees, expenses and costs;
- i. pre-judgment and post-judgment interest; and
- j. such other relief as the court may deem just and equitable.

JURY DEMAND

ATP hereby demands a jury on all issues so triable.

Dated: January 22, 2016

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed with the Court's Electronic Case Filing ("ECF") system, on this January 22, 2016, which will automatically send notice to all counsel of record entitled to receive notice.

/s Richard L. Ravin