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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND JUDICIAL DISTRICT**

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20 IN RE K12 INC. SECURITIES LITIGATION
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Master File No. 4:16-cv-04069-PJH

CLASS ACTION

**DEFENDANTS' NOTICE OF MOTION,
MOTION TO DISMISS, AND
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES**

ORAL ARGUMENT REQUESTED

Hearing Date: April 19, 2017
Time: 9:30 a.m.
Place: Ronald V. Dellums Federal Building,
Oakland, Courtroom 3
Judge: Hon. Phyllis J. Hamilton

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on April 19, 2017, at 9:30 a.m., in the Courtroom of the
3 Honorable Phyllis J. Hamilton, United States District Judge, at 1301 Clay Street, Oakland,
4 California, Defendants K12 Inc. (“K12”), Nathaniel A. Davis, Timothy L. Murray, Ronald J.
5 Packard, and James J. Rhyu (collectively, “Defendants”) will and hereby do move this Court for
6 an Order dismissing the Consolidated Amended Class Action Complaint (“AC”) filed by Lead
7 Plaintiffs Babulal Tarapara and Mark Beadle (collectively, “Plaintiffs”). This Motion is made
8 pursuant to (1) Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), and (2) the Private
9 Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. § 78u-4 *et seq.*, for failure to
10 state a claim upon which relief can be granted under Sections 10(b) and 20(a) of the Securities
11 Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78t(a), and Rule 10b-5 promulgated thereunder by
12 the U.S. Securities and Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5.

13 The Motion is based upon this Notice, the accompanying Memorandum of Points and
14 Authorities, Defendants’ Request for Judicial Notice, the Declaration of Stephen P. Barry in
15 Support of Defendants’ Motion and the exhibits attached thereto, the AC and the exhibits
16 attached thereto, and any further materials as may be submitted to the Court. Defendants seek
17 dismissal of the AC with prejudice.

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1 **I. INTRODUCTION**

2 In a 105-page Amended Complaint, Plaintiffs collect and rehash criticisms of online
3 education generally and K12 in particular, but fall far short of meeting their burden to state a
4 securities law violation by any Defendant. Despite their lengthy pleading, Plaintiffs fail to
5 establish that any challenged statement was materially false or misleading when made, let alone
6 plead particularized facts supporting a strong inference that any such statement was made with
7 knowledge of falsity or deliberate recklessness. Each deficiency is fatal under the PSLRA.

8 First, Plaintiffs fail to allege particularized facts showing that even one of the 42
9 statements they challenge was materially false or misleading when made. Plaintiffs allege, for
10 example, that K12 failed to disclose before 2014 that a contract with a partner school might not
11 be renewed, and assert that such non-disclosure rendered misleading any statements about K12's
12 future relationship with the school. But the notice of non-renewal—the sole basis for Plaintiffs'
13 allegation—served only to avoid an *automatic* renewal of the parties' existing contract, and did
14 not foreclose a continuing relationship. Indeed, the AC's own allegations show that, at the time
15 of Defendants' statements, K12 was actively engaged in negotiations with the school, which in
16 fact yielded a new 2014 contract to continue supplying the school's academic curriculum.

17 Plaintiffs next challenge statements regarding K12 students outperforming national
18 averages on "Scantron" tests. But Plaintiffs rely solely upon a statistical calculation error in a
19 single year—which was disclosed by K12 when discovered, and which did *not* render the
20 comparison for that (much less any other) year false. On the contrary, even after correcting the
21 error, Defendants' statements remained demonstrably true.

22 Then, citing criticisms of online education generally, Plaintiffs attack statements about
23 the quality of K12's services and the schools it serves. But the lion's share of these challenged
24 statements are forward-looking and protected under the statutory safe harbor, or non-actionable
25 "puffing." Furthermore, Plaintiffs' "facts" fail to contradict any disputed statement. Plaintiffs
26 rely, for example, on a third-party industry study published as many as 19 months *after* any
27 relevant challenged statement was made. Citing the study's "industry wide findings" about
28 "typical" virtual schools, Plaintiffs assert that K12's positive statements about its academic

1 results must have been false or misleading. But Plaintiffs paint with too broad a brush; the
2 reports they cite are not specific to K12, and in any event cannot establish that Defendants' *prior*
3 statements were false when made.

4 Second, the AC lacks particularized facts establishing the requisite strong inference that
5 any Defendant acted with fraudulent intent. Most tellingly, Plaintiffs offer no reason *why*
6 Defendants intentionally would have defrauded investors. The AC does not allege a single sale
7 of K12 stock by any Defendant. And despite alleging that some employees received higher
8 bonuses in one year due to the Scantron error, Plaintiffs admit that the same individuals failed to
9 qualify for *any* bonus tied to academic performance the very next year, refuting any plausible
10 suggestion of a scheme to purposefully manipulate K12's results for personal gain. Plaintiffs'
11 inability to plead a cogent motive to commit fraud undercuts any inference of scienter.

12 Plaintiffs also fail to establish that Defendants were deliberately reckless. With respect to
13 K12's Scantron results, for example, Plaintiffs allege no facts showing that Defendants knew or
14 were reckless in not knowing *at the time of their statements* that K12's 2013-14 calculations
15 were incorrect. Plaintiffs' attempt to assert fraud merely because a statement turned out to be
16 mistaken—a mistake that K12 disclosed and immediately corrected upon discovery—is precisely
17 the sort of “fraud-by-hindsight” pleading the PSLRA was enacted to prevent.

18 **II. FACTUAL BACKGROUND¹**

19 K12 provides online educational services for students in kindergarten through 12th grade.
20 AC ¶¶ 3-4, 37. The largest of K12's three business segments, its managed school division,
21 contracts with independently-governed virtual charter schools across the country to provide
22 “turnkey” management services—including hiring teachers, supplying instructional materials,
23 and overseeing academic administration. *Id.* ¶¶ 38, 42-43. In 2015-16, K12 managed virtual
24 public schools in 33 states and the District of Columbia. *Id.* ¶ 43. The Company's other
25 segments include (i) institutional sales of online curriculum and educational software to schools

26 _____
27 ¹ The facts are taken from the AC and assumed true for purposes of this motion. As set forth in
28 the accompanying Request for Judicial Notice filed, Exhibits (“Ex.”) to the Declaration of
Stephen P. Barry submitted herewith are properly deemed incorporated into the AC, or are
matters of which this Court may take judicial notice.

1 and school districts that manage their own programs, and (ii) its private school segment, through
2 which K12 directly owns and operates a small number of private schools. *Id.*

3 Because of their flexibility and availability to students with fewer geographic restrictions,
4 K12-managed virtual schools serve a high proportion of students from low-income backgrounds,
5 who are academically “at-risk” and elect to leave their brick-and-mortar schools already behind
6 grade level, or who otherwise have special needs. *Id.* ¶¶ 53, 64. As *public* charter schools, *K12*
7 *partner schools are required to accept all students who choose to enroll.* These realities have
8 been well-documented. *Id.* ¶ 54. And because these charter schools often attract struggling
9 students seeking an alternative to traditional school settings, their overall academic
10 performance—measured on a static proficiency basis—is in many cases lower relative to those
11 traditional schools. As a result, K12 has “has had its fair share of critics over the years.” *Id.* ¶ 7.

12 **A. K12’s Relationship with Agora Cyber Charter School**

13 In 2009, K12 entered into a management agreement with the Agora Cyber Charter School
14 (“Agora”), an online public school based in Pennsylvania. The contract provided that it would
15 automatically renew on June 30, 2015 unless either party notified the other at least 18 months
16 prior to that date. Ex. A ¶¶ 5.1, 5.2; AC ¶ 136. On June 28, 2012, Agora’s Board of Trustees
17 (the “Agora Board”) sent K12 a “notice of non-renewal” that cancelled the contract’s automatic
18 renewal clause—but neither terminated the contract nor precluded Agora from later renewing or
19 negotiating another agreement. Ex. B; AC ¶¶ 136-37. On November 8, 2012, the Board sent
20 K12 a second letter to “clarify” that its prior “letter was not intended to suggest that Agora ...
21 intend[ed] to disassociate itself from K12,” but “simply to fulfill the notice requirement
22 contained in the [existing] Education[] Services Agreement.” Ex. C. In this follow-up letter, the
23 Agora Board noted its interest in “begin[ning] negotiations with K12 regarding the provision of
24 educational services after the expiration of the current” contract. *Id.* According to the AC, the
25 parties negotiated the terms of their continued relationship through late 2014, with the potential
26 for K12 to provide further managed-school services, or unbundled educational content and
27 support services while Agora itself assumed management duties. *See* AC Exs. A-B, ¶¶ 147-48.

28 On June 24, 2014, the Agora Board issued a request for proposals (“RFP”) for online

1 education services and materials, and invited K12 and other vendors to submit bids. *Id.* ¶ 147.
2 K12 reported the RFP from Agora to investors two days later, after the market close on June 26,
3 noting that it had “been working with the Board and look[ed] forward to providing robust
4 submissions for the provision of educational services, products, and curriculum.” *Id.* ¶ 154. On
5 June 27, 2014, the Company’s stock price fell approximately 5% to close at \$24.32. *Id.* ¶ 274.
6 Plaintiffs allege this “announcement partially revealed that the Agora Board was considering
7 different arrangements for the services and products required to run Agora.” *Id.* ¶ 275.

8 On an August 14, 2014 call with Wall Street analysts, K12’s then-Chairman and CEO,
9 Nate Davis, responded to a request for an “update on Agora.” *Id.* ¶ 156. He announced that, at a
10 recent public meeting, the Agora Board had “made some decisions and indicated a clear interest
11 to be a self-managed organization”—meaning it would no longer contract for management
12 services from K12 or any other vendor. *Id.* Davis further cautioned: “Beyond that, we don’t
13 really know, because we’re not going to hear until the next board meeting.” *Id.* On October 9,
14 2014, K12 reported in a press release that Agora had decided to absorb its administrative
15 functions following expiration of its existing contract with K12—but that it had reached a new
16 agreement to continue purchasing academic curriculum from K12 over a three-year period. *Id.*
17 ¶¶ 149-50, 157. K12’s stock price declined 7% that day, to close at \$14.87. *Id.* ¶ 287.

18 **B. K12’s Relationship with Tennessee Virtual Academy**

19 In 2011, shortly after the Tennessee legislature authorized school districts to open and
20 operate online public schools, the Tennessee Virtual Academy (“TNVA”) was established as a
21 K12 partner school. *Id.* ¶ 90. Following the 2013-14 school year, based purportedly on the
22 school’s academic performance, Tennessee’s education commissioner capped the number of
23 students permitted to enroll at TNVA. *Id.* ¶ 97. K12 reported the enrollment limit on August 14,
24 2014—during the same conference call in which it addressed recent Agora developments. *Id.* ¶
25 98. Davis acknowledged that TNVA’s 2013-14 state test scores “were low,” but—citing the
26 education commissioner’s findings—noted that students “who persisted in the school for two or
27 more years performed at a reasonable level.” Ex. D at 4; AC ¶¶ 97-98. K12’s stock price
28 dropped 13% the same day, to close at \$19.42. *Id.* ¶ 279.

1 **C. Scantron Testing and Results at K12-Supported Schools**

2 During the alleged Class Period, K12 used reading and math tests developed by Scantron
3 Corporation—an independent vendor—to assess student learning and the performance of public
4 schools that it manages nationwide. Tests were administered at the start and end of each school
5 year “to provide a common measure of academic achievement across all K12-managed public
6 schools, since testing varies from state to state.” *Id.* ¶¶ 59, 66. K12 also compared its aggregate
7 results to the mean “gains” of Scantron’s national norm group—approximately 600,000 students.
8 *Id.* K12 reported the results in annual Academic Reports, and tied a small percentage of
9 executive bonuses to the collective performance of its partner schools. *Id.* ¶¶ 60, 72.

10 K12 published its Academic Report for the 2013-14 school year on May 4, 2015. *Id.* ¶
11 68. An accompanying press release noted that K12-managed schools overall had outperformed
12 the Scantron norm group’s mean gain in both reading and math. *Id.* ¶¶ 69-70. The following
13 year, K12 disclosed an error in the statistical methodology used to tally the 2013-14 results. The
14 Company’s CEO, Stuart Udell, explained during an August 9, 2016 investor call that, in
15 aggregating student results, K12 had erroneously omitted students whose gains from the fall to
16 spring examinations were statistically insignificant. *Id.* ¶¶ 193, 198. Udell further explained,
17 however, that, when the error was corrected, K12 students’ mean gains still exceeded the norm
18 group’s averages in both subjects, and outstripped the mean group’s gains in every grade for
19 math, and in all but two grades for reading. *Id.* K12’s Academic Report for the 2014-15 school
20 year, released in November 2016, provided corrected 2013-14 figures confirming that K12
21 schools achieved 109 and 104 percent of the norm group’s reading and math gains. *Id.* ¶ 199.
22 K12’s stock price did not meaningfully react to K12’s report of the Scantron error, and the AC
23 does not allege any corrective disclosures concerning this issue during the Class Period.

24 **D. Industry-Wide Criticisms & the California Settlement**

25 On the whole, online public education and school choice have met with close scrutiny in
26 recent years. During an October 30, 2014 investor call, addressing a question about the
27 “sentiment” among “departments of ed” towards K12’s learning model, Davis suggested that
28 regulators were “just beginning to understand ... the dynamics of an online school program.” *Id.*

¶ 164; Ex. E at 11. Noting that outside observers had “always compared” K12 to “state averages” instead of schools with comparable “demographics,” Davis indicated he was “disappointed” that there had not been “enough recognition for the good work we’re doing.” *Id.* After announcing 1Q15 financial results that day, K12’s stock price declined 14%.² *Id.* ¶ 293.

A year later, on October 27, 2015, three research groups published an “industry-wide report on the online charter school industry.” *Id.* ¶¶ 18, 166. Citing “industry-wide findings,” the study criticized the academic outcomes of “typical” virtual schools, despite finding that online schools can provide “a flexible, student-centered educational option” appropriate for some students. *Id.* ¶¶ 16, 169. K12’s stock price fell 16% to close at \$10.25. *Id.* ¶ 309.

Later the same day, following the market close, K12 disclosed in its 1Q16 Form 10-Q that it had received a civil subpoena from the California Attorney General (“California AG”) captioned as an industry-wide investigation of “for-profit virtual schools.” *Id.* ¶ 183. The 10-Q did not elaborate on the subpoena’s substance, and indicated no allegation of misconduct on the part of K12 or any other industry participant. On October 28, the next trading day, K12’s stock price *rose* to \$10.32. Subsequently, in July 2016 (nine months after the Class Period ended), K12 agreed to a voluntary settlement in which the California AG stipulated there had been no finding of wrongdoing, and which required a \$6 million contribution to defray the costs of the investigation. *Id.* ¶¶ 187-90. K12’s stock price did not react to the settlement announcement.

III. THE CHALLENGED STATEMENTS

Plaintiffs allege “three general categories” of false or misleading statements between October 10, 2013 and October 27, 2015 (the “Class Period”). *Id.* ¶ 201.³

First, Plaintiffs challenge 18 statements regarding the Agora contract process and K12’s Pennsylvania operations generally (the “Agora Statements”).⁴ *Id.* ¶¶ 202-24. For example:

- Davis’s statement during a February 4, 2014 investor call: “[T]he Pennsylvania

² K12’s fiscal year runs from July 1 to June 30, meaning “1Q15” ended September 30, 2014.

³ Attached hereto as Appendix A (“App. A”) is a chart setting forth each alleged misstatement.

⁴ Eight of the Agora Statements were made in 2015 and 2016, well after the new Agora contract was reported. Plaintiffs allege only that these statements show how important Agora was financially to K12—not that they concealed the non-renewal, which was disclosed in June 2014.

1 legislation has some proposals in it that would affect us negatively. I don't know if that
2 legislation will go through or won't go through. We monitor it closely." *Id.* ¶ 203.

- 3 • In a June 26, 2014 press release: "[T]his Fall, [Agora] must submit an application for the
4 renewal of its charter agreement with the Pennsylvania Department of Education (PDE),
5 to continue operations for the 2015-2016 school year and beyond. The Agora Board has
6 elected to use an RFP process for the services and products required to operate the
7 school. Proposals are due to the Agora Board on July 25, 2014. K12 Inc. has been
8 working with the Board and looks forward to providing robust submissions for the
9 provision of educational services, products, and curriculum." *Id.* ¶ 207.
- 10 • In K12's 1Q15 Form 10-Q: "On October 9, 2014, the Company entered into a three year
11 contract to provide academic curriculum to Agora for a reduced scope of services that
12 will include the academic curriculum beginning in the 2015-16 school year." *Id.* ¶ 219.

13 Plaintiffs contend these and similar statements were materially false or misleading because they
14 allegedly omitted the "facts" that Agora (1) had indicated an intention not to automatically renew
15 its existing contract with K12, and (2) had supposedly "expressed disappointment with K12's
16 curriculum and was developing its own" that could "be provided as an option to Agora students
17 as soon as possible" and "eventually replace" K12's. *Id.* ¶¶ 145, 202-24.

18 Second, Plaintiffs challenge 11 statements regarding K12's Scantron results and the
19 utility of Scantron testing generally (the "Scantron Statements"). *Id.* ¶¶ 225-42. For example:

- 20 • Packard's statement during a November 7, 2013 investor call: "To ascertain that the
21 students were performing adequately, we adopted an adaptive test from Scantron that was
22 designed to measure student learning gains and it showed that our students were learning
23 at [national] norm levels." *Id.* ¶ 225.
- 24 • In a March 20, 2014 press release: "In the 2012-2013 school year, on Scantron
25 assessments K12-managed public schools achieved 125 percent norm group gain in
26 Reading across all grades and 102 percent norm group gain in Mathematics across all
27 grades." *Id.* ¶ 229.
- 28 • In K12's 2015 Academic Report: "In the 2013-2014 school year, in grades 3-10, students
in K12-managed public schools exceeded the Scantron national norm group mean gain
both in Reading and Mathematics." *Id.* ¶ 239.

Plaintiffs argue that these statements were materially false or misleading because K12 later—in
2016, long after the Class Period ended—(1) determined its 2013-14 Scantron analysis had
erroneously omitted certain scores, (2) adopted Scantron's methodology for excluding "outlier"
scores,⁵ and (3) noted that "many states" in 2014-15 had adopted "new tests," which "limited"

⁵ As explained in the 2016 Academic Report, K12 had previously excluded outlier scores using a
statistically appropriate "standard deviations" approach. Ex. F at 26 & n.13. In 2016, K12

1 K12’s “ability to provide a year-over-year view of school performance.”⁶ *Id.* ¶¶ 225-42.

2 Third, Plaintiffs challenge a catch-all assortment of 13 statements broadly related to the
3 nature and quality of “K12’s academic services and offerings” (the “Quality and Effectiveness
4 Statements”). *Id.* ¶¶ 243-68. These include, for example:

- 5 • In the March 20, 2014 press release: “Persistence makes a difference. Data confirm that
6 students perform better on state proficiency tests the longer they stay with the K12
7 program.” *Id.* ¶ 243.
- 8 • In K12’s 2014 and 2015 Form 10-Ks: “We believe that our learning systems are able to
9 effectively address the educational needs of both advanced and special education students
10 because they employ flexible teaching methods and students can use them at their own
11 pace.” *Id.* ¶¶ 253, 267.
- 12 • Davis’s statement during an October 30, 2014 call: “When you have a high percentage of
13 students who traditionally underperform in their schools before joining K12, our average
14 static test scores are bound to be lower than traditional schools. But even with these high
15 percentage of students who are often considered at risk, in many instances our academic
16 performance is now better than school districts with light characteristics.” *Id.* ¶ 257.
- 17 • Murray’s statement during the same call: “[W]e gained approval for 95 courses from the
18 University of California which audits course requirements to ensure that students have
19 attained a body of general knowledge that will provide the breadth and perspective to
20 enable success for more advanced study in the California university system.” *Id.* ¶ 259.

21 Plaintiffs claim that Defendants’ positive statements were materially false or misleading in light
22 of (1) the Online Charter School Study’s critical “industry-wide” findings in October 2015; (2)
23 alleged “complaints” by and “concerns” among unnamed school personnel regarding aspects of
24 the K12 program; and (3) K12’s 2016 agreement with the California AG to adopt specified
25 conduct measures, including in the area of special education. *Id.* ¶¶ 243-68.

26 Ultimately, Plaintiffs allege that the “truth” emerged at various points during the Class
27 Period—through (1) the June 26, 2014 announcement of Agora’s RFP process, *id.* ¶ 273; (2) the
28 August 14, 2014 disclosure of the TNVA enrollment cap and Agora’s interest in self-
management, *id.* ¶¶ 277-78; (3) K12’s October 9, 2014 report confirming that Agora would
assume management responsibilities, *id.* ¶ 284; (4) Davis’s suggestion on October 30, 2014 that
instead adopted the methodology Scantron uses for calculating the national norm group’s overall
gains, excluding scores beyond the 25th and 75th percentiles. *Id.*

⁶ Highlighting changes in *state* testing did not “indirectly ... demonstrate [a] shift away from the
previous importance placed on the Scantron Tests,” AC ¶ 196, as Plaintiffs suggest. K12
continued in 2016 to “report results on norm-referenced tests (Scantron)” as a uniform
benchmark for student and school performance nationwide. Ex. F at 10.

1 regulators were “just beginning ... to understand the dynamics of an online school program,” *id.*
 2 ¶ 291; and (5) publication of the Online Charter School Study and K12’s disclosure of the
 3 California AG’s industry-wide inquiry on October 27, 2015, *id.* ¶¶ 296, 306; *see also id.* ¶ 18.

4 **IV. ARGUMENT**

5 Securities class actions trigger a uniquely strict pleading standard. “Congress intended to
 6 make it difficult for private securities litigants to survive a motion to dismiss unless they possess,
 7 at the time of filing, evidence that defendants had knowledge of, or were deliberately reckless
 8 regarding, the falsity of public statements at the time they were made.” *Verona Partners, LLC v.*
 9 *Tenet Cap. Partners*, 2006 WL 2669035, at *13 (N.D. Cal. Sept. 18, 2006) (Hamilton, J.).

10 Fundamentally, the PSLRA requires Plaintiffs to identify with particularity “each
 11 statement alleged to have been false or misleading, specify the reason or reasons why each such
 12 statement is misleading, and, if an allegation regarding the statement or omission is made on
 13 information and belief, state with particularity all facts on which that belief is formed.”⁷ *In re*
 14 *Bare Escentuals, Inc. Sec. Litig.*, 745 F. Supp. 2d 1052, 1075 (N.D. Cal. 2010) (Hamilton, J.).
 15 The complaint must also allege particularized facts supporting a “strong inference” of “scienter,
 16 *i.e.*, the defendant’s intention to deceive, manipulate, or defraud.” *Tellabs, Inc. v. Makor Issues*
 17 *& Rights, Ltd.*, 551 U.S. 308, 313 (2007). “If the complaint does not satisfy these pleading
 18 requirements, the court ... must dismiss the complaint.” *Pac. Gateway*, 169 F. Supp. 2d at 1165.

19 **A. The AC Amounts to Improper “Puzzle Pleading”**

20 As an initial matter, the AC’s 342 paragraphs offer confusing, irrelevant, and excessively
 21 lengthy allegations, contrary to the basic requirement that a complaint set forth “a short and plain
 22 statement of the claim showing that the pleader is entitled to relief,” and that “[e]ach allegation
 23 ... be simple, concise, and direct.” Fed. R. Civ. P. 8(a)(2), (d)(1). Courts are “loathe to allow
 24 plaintiffs to tax defendants, against whom they have leveled very serious charges, with the
 25 burden of solving puzzles in addition to the burden of formulating an answer to their complaint.”
 26 *In re Autodesk, Inc. Sec. Litig.*, 132 F. Supp. 2d 833, 842 (N.D. Cal. 2000) (Hamilton, J.). Thus,

27 _____
 28 ⁷ Matters “not alleged on personal knowledge” are alleged on information and belief. *In re Pac.*
Gateway Exch., Inc. Sec. Litig., 169 F. Supp. 2d 1160, 1165 n.2 (N.D. Cal. 2001) (Hamilton, J.).

1 “vague claims about what statements were false or misleading and how they were false’ are
 2 subject to dismissal.” *Jackson v. Fischer*, 931 F. Supp. 2d 1049, 1060 (N.D. Cal. 2013)
 3 (Hamilton, J.) (quoting *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1070 (9th
 4 Cir. 2008)). This Court has consistently dismissed “puzzle” pleadings in PSLRA cases.⁸

5 Here, Plaintiffs block-quote extensive passages from public statements, and then repeat
 6 for each excerpt a series of supposedly contrary “facts.” See, e.g., AC ¶¶ 203, 205, 207, 210,
 7 216, 234, 243, 245, 247, 249, 255, 259, 263. But Plaintiffs repeatedly fail to specify the portion
 8 of each statement alleged to be false and why, or what contrary information any Defendant
 9 supposedly knew—much less when or how they knew it.⁹ The sheer number of challenged
 10 statements further renders the AC overly confusing. Plaintiffs dispute, among others, statements
 11 about the renewal of the Agora contract, the regulatory environment in Pennsylvania, the impact
 12 of NCAA actions, Scantron testing, student persistence, special education, and California
 13 coursework—generally with only repeated boilerplate as to what rendered any such statements
 14 actionable when made. The AC thus improperly shifts the burden to Defendants and this Court
 15 to “try to figure out exactly what the misleading statements are, and to match the statements up
 16 with the reasons they are false or misleading.” *Autodesk*, 132 F. Supp. 2d at 842. Dismissal is
 17 justified on this basis alone.

18 **B. Plaintiffs Fail to Allege an Actionable Misstatement or Omission**

19 Beyond the AC’s structural deficiencies, Plaintiffs fail to plead an actionable statement
 20 that was materially false or misleading when made.

21 **1. Many of the Challenged Statements are Forward-Looking and** 22 **Protected by the PSLRA’s Statutory Safe Harbor**

23 First, many of the challenged statements are “forward-looking” and protected by the

24 ⁸ See, e.g., *Shankar v. Imperva, Inc.*, 2016 WL 2851859, at *2 (N.D. Cal. May 16, 2016)
 25 (Hamilton, J.) (explaining dismissal of complaint that “suffered from a lack of precision,
 26 including lumping together statements that could give rise to a viable claim with statements that
 27 were too vague to be actionable”); *Autodesk*, 132 F. Supp. 2d at 841-42 (dismissing complaint
 containing lengthy excerpts without “indicat[ing] exactly what is false within [each] highlighted
 passage”); *Pac. Gateway*, 169 F. Supp. 2d at 1166 (granting dismissal on similar grounds).

28 ⁹ Only in limited instances do Plaintiffs embolden portions of block quotes and (ostensibly) cabin
 their challenge to the specific “statements in bold.” See AC ¶¶ 225, 227, 253, 261, 267.

1 PSLRA’s statutory “safe harbor.”¹⁰ Such statements are categorically immune from liability if
 2 either (1) they are accompanied by “meaningful cautionary statements,” *In re Cutera Sec. Litig.*,
 3 610 F.3d 1103, 1112 (9th Cir. 2010), or (2) the plaintiff fails to plead facts supporting a strong
 4 inference that the defendant made the statement with “‘actual knowledge’ that it was ‘false or
 5 misleading’ at the time made,” *In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079, 1091 (9th Cir.
 6 2002) (quoting 15 U.S.C. § 78u-5(c)(1)(B)(i)).¹¹

7 The AC challenges numerous protected forward-looking statements. *See* App. A. For
 8 example, Plaintiffs challenge several projections regarding K12’s relationship with Agora, its
 9 operational prospects in Pennsylvania, and its future business plans and priorities:

- 10 • “It’s always difficult to predict what a legislature is going to do and what’s going to
 11 happen.... Pennsylvania ... has some proposals in it that would affect us negatively. I
 don’t know if that legislation will go through or won’t go through.” AC ¶ 203.
- 12 • “[A]s everybody knows, ... we will file this year and next year in 2015, and then we will
 13 seek an approval for our Agora school.... We negotiate a new service contract, and then
 they will get a charter renewal process going in the state of Pennsylvania....” *Id.* ¶ 205.
- 14 • “K12 Inc. ... looks forward to providing robust submissions for the provision of
 15 educational services, products, and curriculum [at Agora].” *Id.* ¶ 207.
- 16 • “I don’t think the number [of special education students] is going to decline in percent. I
 think you may see it actually go up a little bit or stay flat.” *Id.* ¶ 247.

17 Each of these statements is protected if it is either (a) accompanied by meaningful cautionary
 18 language or (b) not alleged to have been made with actual knowledge of falsity.

19 **a. K12’s Meaningful Cautionary Language**

20 “Meaningful cautionary language” means simply “factors that could cause actual results
 21

22 ¹⁰ A forward-looking statement is “any statement regarding (1) financial projections, (2) plans
 23 and objectives of management for future operations, (3) future economic performance, or (4) the
 24 assumptions ‘underlying or related to’ any of these issues.” *No. 84 Employer-Teamster Joint
 Council Pension Tr. Fund v. Am. West Holding Corp.*, 320 F.3d 920, 936 (9th Cir. 2003).

25 ¹¹ The safe harbor’s two inlets are independent. A forward-looking statement coupled with
 26 cautionary language is not actionable “regardless of the plaintiff’s showing of scienter.” *Cutera*,
 27 610 F.3d at 1112. Likewise, “even if unaccompanied by cautionary language, forward-looking
 28 statements cannot support liability unless they are made with actual knowledge of their falsity.”
Bare Escentuals, 745 F. Supp. 2d at 1080. Thus, “a complaint alleging fraud based on forward-
 looking statements must allege facts suggesting materiality, lack of meaningful cautionary
 language, and the actual knowledge of the speaker that the statement was false and misleading.”
In re Harmonic Inc. Sec. Litig., 163 F. Supp. 2d 1079, 1087 (N.D. Cal. 2001) (Hamilton, J.).

1 to differ materially from those in the forward-looking statement.” 15 U.S.C. § 77z-2. The safe
 2 harbor therefore applies so long as risk disclosures acknowledged the unpredictability of the
 3 eventual results underlying the plaintiff’s claim. *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 929
 4 (9th Cir. 1996). Further, the warning need not directly accompany the alleged misstatement.
 5 *Employers Teamsters Local Nos. 175 & 505 Pension Tr. Fund v. Clorox Co.*, 353 F.3d 1125,
 6 1133 (9th Cir. 2004). If “any cautionary language provided by the defendants at any time
 7 sufficiently warned of the risk of which plaintiffs complain,” *In re Gilat Satellite Networks, Ltd.*,
 8 2005 WL 2277476, at *13 (E.D.N.Y. Sept. 19, 2005), then “the speaker’s state of mind is
 9 irrelevant, and the safe harbor applies regardless of any knowledge of falsity.” *Shankar v.*
 10 *Imperva, Inc.*, 2015 WL 5530175, at *8 (N.D. Cal. Sept. 17, 2015) (Hamilton, J.).¹²

11 Here, Plaintiffs contend that statements concerning K12’s future prospects with Agora
 12 were misleading “because the Agora Board had informed K12 that it did not intend on renewing
 13 its contract with K12.” AC ¶ 208. As the AC recognizes, however, K12 warned explicitly of the
 14 risk that its management agreement with Agora would expire in June 2015 and might not be
 15 renewed. *See id.* ¶¶ 212-13 (acknowledging that K12’s 10-Ks included “a discussion of the risk
 16 on [sic] non-renewal of a Managed Public School Contract” and “cit[ed] the Agora Board
 17 negotiations as an example”). For example:

- 18 • K12 “filed the Agora/K12 Contract as an exhibit both to its Form 10-Q for the fiscal
 19 quarter ended March 31, 2013”—even prior to the date of any challenged statement—
 20 and to its 2013 and 2014 10-Ks. AC ¶ 202. Paragraph 5.1 of that contract provided
 21 that the agreement would “terminate on June 30, 2015.” Ex. A.
- 22 • K12’s 2Q14 and 3Q14 10-Qs incorporated “the risk factors disclosed in” K12’s 2013
 23 10-K, Ex. H at 28; Ex. I at 28—including the risk of “failure to ... renew existing
 24 contracts with schools.” Ex. J at 3. The 10-K, filed on August 29, 2013, explained:
 “Our contracts with the Managed Public Schools we serve are subject to periodic
 renewal, and each year several of these agreements are set to expire.... We usually
 begin to engage in renewal negotiations during the final year of these contracts with
 the independent boards and governing authorities of these schools.... [I]f we are

25 ¹² SEC filings are proper vehicles for risk factors and other warnings. *Clorox*, 353 F.3d at 1133
 26 (safe harbor applies to forward-looking oral statements that refer listeners to cautionary language
 27 in “a readily available written document”); *see, e.g., Bare Escentuals*, 745 F. Supp. 2d at 1080
 28 (noting “investors were ... directed to” the “defendants’ Form 10-Ks” in press releases and
 conference calls). Here, K12 started every conference call cited in the AC by warning of the
 “risks and uncertainties” inherent in any forward-looking statements, and by referring investors
 to its most recent SEC filings for related information. *See, e.g., Ex. G* (Aug. 4, 2015 Tr.) at 3.

1 unable to renew several such contracts or one significant contract expires during a
2 given year, or if such renewals have significantly less favorable terms than existing
3 contracts, ... our business, financial condition, results of operations and cash flow
4 could be adversely affected.” *Id.* at 37. The 10-K warned in particular that the Agora
5 contract could be “terminated.” *Id.* at 42.

- 6 • K12’s 2014 10-K, filed on August 15, 2014, similarly warned that the Company
7 might be “unable to renew [school] contracts,” and—noting that its “turn-key ...
8 contract with the school” was set to “expire[] on June 30, 2015”—specifically cited
9 the Agora RFP process as reflecting such a risk. Ex. K at 38, 63.¹³
- 10 • In oral statements, K12 executives acknowledged that Agora had “indicated a clear
11 interest to be a self-managed organization” by mid-2014, and cautioned that K12
12 “didn’t really know” what outcome the Agora discussions would yield. AC ¶ 210.

13 Having issued repeated public warnings of the exact non-renewal risk underlying Plaintiffs’
14 claims, K12’s forward-looking statements on that topic cannot give rise to liability.¹⁴

15 The same holds true for Defendants’ other forward-looking statements. For example, the
16 AC challenges statements concerning K12 partner schools’ potential decision—like Agora—to
17 become self-managed but continue using the K12 curriculum. *See* AC ¶¶ 218, 220. Plaintiffs
18 contend these statements, too, were “misleading” because, “although Agora entered into a three-
19 year contract with K12 for curriculum, Agora”—according to an anonymous witness—“had
20 expressed disappointment with K12’s curriculum and was developing its own ... to eventually
21 replace K12.” *Id.* ¶ 224. Yet even if these underlying “facts” could somehow be construed as
22 contrary to Defendants’ statements (and they cannot),¹⁵ K12 specifically cautioned in public
23 filings that the “independent boards of the schools or school districts we serve [could]
24 subsequently shift their priorities or change objectives, and as a result reduce the scope [of] or
25 terminate their relationship with us.” Ex. J (2013 10-K) at 36. Statements about the expected

26

27 ¹³ Plaintiffs’ bald contention (at ¶ 202) that “[t]he Company’s 2Q2014 10-Q, 3Q2014 10-Q, and
28 2014 10-K each omitted to state the risk that K12’s contract with Agora would either not be
renewed, or that the nature of this contract would materially change” is simply wrong.

¹⁴ Plaintiffs also challenge—out of context—Davis’s response to an analyst question concerning
“legislation or funding” in Pennsylvania, without reference to Agora. *See* AC ¶ 203. There too,
Davis cautioned that it was “difficult to predict what a legislator is going to do and what’s going
to happen,” stating: “I don’t know if that legislation will go through or won’t go through.” Ex. L
(Feb. 4, 2014 Tr.) at 9. Such cautionary language forecloses any claim.

¹⁵ Plaintiffs dramatically overstate Agora’s purported intentions in any event. The AC elsewhere
alleges only that “Agora planned to develop its own curriculum over the following four years,”
having previously failed to secure regulatory approval for an in-house curriculum. *Id.* ¶¶ 146-49.

1 “impact” of the NCAA’s credit recognition decision cannot support a claim for the same reason.
 2 See AC ¶ 249; Ex. J (2013 10-K) at 48 (cautioning that K12’s “curriculum and approach to
 3 instruction may not achieve widespread acceptance, which would limit [K12’s] growth,” and that
 4 some “academics and educators ... may favor less formalistic methods”).¹⁶

5 **b. Plaintiffs Have Not Pled Facts Establishing Defendants’ Actual**
 6 **Knowledge of Falsity**

7 In addition, Plaintiffs have failed to show that K12’s forward-looking statements were
 8 made with knowledge of their falsity. See *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 388 (9th
 9 Cir. 2010). The AC is silent as to what specific facts each Defendant actually knew prior to his
 10 respective statements. And many of the AC’s allegations prove the accuracy of those statements.

11 Regarding Agora, for example, Plaintiffs assert that it was materially misleading for K12
 12 to make representations concerning “negotiat[ing] a new service contract” and submitting
 13 proposals “for the provision of educational services, products, and curriculum” without
 14 disclosing the Agora Board’s notice of non-automatic renewal. AC ¶¶ 205, 207. Yet that notice
 15 did not contradict the truth—which is borne out in e-mails attached to the AC—that K12 was
 16 actively negotiating a new contract and submitting business proposals at the time of Defendants’
 17 statements.¹⁷ See *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002)
 18 (distinguishing statements that allegedly are incomplete or do not include all relevant facts, but
 19 are not misleading, from statements affirmatively creating a misleading impression). The
 20 “communications” referenced in the AC make clear that the Board’s notice “was not intended to

21 ¹⁶ Plaintiffs also contest Murray’s expectation in February 2014 that K12’s efforts “to ensure that
 22 the vast majority of students complete the Scantron exams in the fall” would enable “an even
 23 more accurate picture of academic gains across all types of students for the 2013-2014 school
 24 year.” AC ¶ 227. Plaintiffs’ apparent theory is that, because a later-discovered error led K12 to
 25 report incorrect Scantron figures for 2013-14, it was misleading for Murray in early 2014 to
 predict an “accurate picture” of students’ academic performance. See *id.* ¶ 228. But K12 during
 the same call cited the risk factors noted in its recent “filings with the SEC,” Ex. L at 3—
 including risks surrounding the uncertainty and potential impact of standardized testing. See Ex.
 J (2013 10-K) at 37-38. Once again, K12’s cautionary disclosures preclude Plaintiffs’ claims.

26 ¹⁷ Plaintiffs’ redacted e-mails show that K12 had submitted a “revised proposal” to the Agora
 27 Board in June 2014, and “suggested” in August 2014 that K12 “manage [Agora] for another
 28 year” while the school renewed its charter. AC Exs. A-B. Plaintiffs have not given Defendants
 unredacted copies of the exhibits. In any event, this Court “is not required to accept factual
 allegations that are contradicted by the very documents plaintiffs attach to the complaint.” *In re*
Metricom Sec. Litig., 2004 WL 966291, at *15 (N.D. Cal. Apr. 29, 2004) (Hamilton, J.).

1 suggest” that Agora wished “to disassociate itself from K12,” as Plaintiffs imply, but merely to
 2 preserve the ability to negotiate new terms rather than automatically renew the existing terms.
 3 Exs. B-C. Far from being contradictory, Agora’s expressed desire to “negotiat[e]” with K12
 4 supported Defendants’ statements. *Id.*¹⁸

5 Having failed to allege facts establishing both a lack of cautionary language and
 6 Defendants’ knowledge of falsity, Plaintiffs cannot override the PSLRA’s safe harbor.

7 2. “Puffing” Statements Are Not Actionable As a Matter of Law

8 In the Ninth Circuit, “[s]tatements of mere corporate puffery, ‘vague statements of
 9 optimism like “good,” “well-regarded,” or other feel good monikers,’ are not actionable because
 10 ‘professional investors, and most amateur investors as well, know how to devalue the optimism
 11 of corporate executives.’” *Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051,
 12 1060 (9th Cir. 2014) (quoting *Cutera*, 610 F.3d at 1111). Furthermore, such statements are not
 13 “capable of objective verification,” and therefore cannot constitute false or misleading statements
 14 of fact. *Oregon Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 606 (9th Cir. 2014).

15 The AC challenges several non-actionable puffing statements, *see* App. A—for example:

- 16 • describing K12 as a “good partner” to, and discussing “the value K12 has brought,”
 17 Agora, AC ¶¶ 205, 207;
- 18 • indicating that K12 was “working very, very hard” to resolve NCAA issues, *id.* ¶ 249;
- 19 • noting the ability of K12’s “learning systems” to “effectively address the educational
 20 needs of ... special education students,” *id.* ¶¶ 253, 267;
- 21 • referencing K12’s aim “to provide the finest education to our students,” *id.* ¶ 235; and
- 22 • describing K12’s curriculum as “[t]he strength of our program” and “one of the great
 23 assets we have,” *id.* ¶ 251.

24 This Court and others in the Ninth Circuit have consistently rejected claims based on
 25 comparable statements. *See, e.g., Apollo*, 774 F.3d at 606 (dismissing as puffery “[w]e believe

25 ¹⁸ The AC likewise fails to establish that other forward-looking statements were knowingly
 26 unsubstantiated when made. Regarding Murray’s comments about the NCAA, for example,
 27 Plaintiffs assert it was misleading to omit the “fact” that, according to the Online Charter School
 28 Study, “students in the typical online charter school have less synchronous instructional time ...
 than students in a brick and mortar school.” AC ¶ 250. But that study was published 18 months
after Murray’s remarks, and pertained only to “typical” virtual schools generally. *Id.* In any
 event, the “concerns” Plaintiffs allege do not contradict any aspect of Murray’s remarks.

1 that our track record for enrollment and revenue growth is attributable to our offering
 2 comprehensive services”); *Imperva*, 2015 WL 5530175, at *6 (“‘very strong’ and ‘strong
 3 demand’”); *see also In re ITT Educ. Servs., Inc. Sec. & S’holder Deriv. Litig.*, 859 F. Supp. 2d
 4 572, 580-81 (S.D.N.Y. 2012) (statement that school was “focused on the outcomes for the
 5 students” was “typical corporate puffery”). The same outcome is appropriate here.¹⁹

6 **3. Plaintiffs Fail to Establish That Any Statements of Historical Fact**
 7 **Were Materially False or Misleading When Made**

8 Finally, Defendants’ alleged misstatements are not actionable because the AC fails to
 9 allege particularized facts showing that the statements were false or misleading when made. The
 10 PSLRA imposes “exacting requirements for pleading ‘falsity.’” *Metzler*, 540 F.3d at 1070.
 11 Plaintiffs must specify with particularity “each statement alleged to have been misleading” and
 12 “the reason or reasons why the statement is misleading[.]” 15 U.S.C. § 78u-4(b)(1); *Ronconi v.*
 13 *Larkin*, 253 F.3d 423, 429 (9th Cir. 2001). And to demonstrate that it was false *when made*, a
 14 complaint must identify “contemporaneous statements or conditions” that are “inconsistent” with
 15 the challenged statement. *In re Read-Rite Corp. Sec. Litig.*, 335 F.3d 843, 846 (9th Cir. 2003).

16 Here, Plaintiffs assert that numerous statements were misleading based on Defendants’
 17 failure to disclose certain purported “facts.” Importantly, however, the securities laws “prohibit
 18 only misleading and untrue statements, not statements that are incomplete.” *Brody*, 280 F.3d at
 19 1006.²⁰ Accordingly, it “is not enough” for Plaintiffs “to plead that [Defendants] failed to make
 20 a full disclosure.” *Cutera*, 620 F.3d at 1109; *see also Imperva*, 2016 WL 2851859, at *2 (a
 21 statement “does not become actionable merely because it is incomplete”). Rather, “to be

22 ¹⁹ Plaintiffs also challenge several opinion statements. *See, e.g.*, AC ¶ 203 (“So we think we are
 23 in a pretty positive environment.”), ¶ 205 (“I think we are a good partner for Agora....”), ¶ 225
 24 (“[W]e felt and still believe the gains from the adaptive tests designed to measure gains are far
 25 better than state tests.”). Such statements cannot support a claim unless Plaintiffs allege with
 26 particularity that the “speaker” did not “actually hold[] the stated belief,” or “identify particular
 27 (and material) facts going to the basis for the issuer’s opinion ... whose omission makes the
 28 opinion statement at issue misleading to a reasonable person reading the statement fairly and in
 context.” *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct. 1318,
 1326, 1332 (2015). Plaintiffs come nowhere close to carrying that heavy burden here.

²⁰ “[C]ompanies have no duty to disclose facts, and must do so only ‘when necessary to make ...
 statements made, in light of the circumstances under which they were made, not misleading.’”
Kovtun v. Vivus Inc., 2012 WL 4477647, at *14 (N.D. Cal. Sept. 27, 2012) (Hamilton, J.)
 (quoting *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1321 (2011)).

1 actionable under the securities laws, an omission must ... ‘affirmatively create an impression of
2 a state of affairs that differs in a material way from the one that actually exists’”—and “to
3 survive a motion to dismiss under the PSLRA, the complaint ‘must specify the reason or reasons
4 why the statements ... were misleading or untrue, not simply why the statements were
5 incomplete.’” *In re Harmonic Inc. Sec. Litig.*, 2002 WL 31974384, at *18-19 (N.D. Cal. Nov. 13,
6 2002) (Hamilton, J.) (quoting *Brody*, 280 F.3d at 1006); *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d
7 1046, 1054 (9th Cir. 2014).

8 **a. The Agora Statements**

9 Plaintiffs challenge several statements regarding Agora’s RFP in advance of the school’s
10 periodic charter renewal. *See* AC ¶¶ 207, 212, 213, 216. The AC cites, for example, a statement
11 in K12’s 2014 10-K: “In fiscal year 2014, Agora elected to use a request for proposal process for
12 the services and products required to operate the school for the 2015-16 school year in
13 connection with its charter renewal application.” *Id.* ¶ 213. Plaintiffs baldly assert that K12
14 “masked” the RFP process “as simply a necessary process in Agora’s required charter renewal
15 application.” *Id.* ¶ 154. But the AC alleges no facts suggesting that K12’s statement was false or
16 misleading; Agora did in fact opt to use an RFP process in preparing its “October 2014 charter
17 renewal application,” *id.* ¶ 131—and that is exactly what K12 told investors. Plaintiffs “must do
18 more than say that ... statements ... were false and misleading; they must demonstrate with
19 specificity why and how that is so.” *Rombach v. Chang*, 355 F.3d 164, 174 (2d Cir. 2004).

20 Nor was it false or misleading for K12 in October 2014 to announce its three-year
21 curriculum contract with Agora. AC ¶¶ 216, 218-19, 220-23. Plaintiffs admit such statements
22 were factually true, *see id.* ¶ 146, yet assert they were “misleading” given Agora’s alleged plan
23 to “eventually” develop its own curriculum. *Id.* ¶ 224. But “[a]ccurate statements of historical
24 fact are not materially misleading,” *Harmonic*, 2002 WL 31974384, at *9, and “[a]llegations that
25 are ‘not necessarily inconsistent’ with the allegedly false statement do not establish falsity.” *In*
26 *re DotHill Sys. Corp. Sec. Litig.*, 2009 WL 734296, at *10 (S.D. Cal. Mar. 18, 2009).
27 Regardless, even if Agora did aspire to create an in-house curriculum, Defendants’ statements
28 did “not convey an implicit prediction” that K12’s Agora relationship would “continue into the

1 future.” *Harmonic*, 2002 WL 31974384, at *9. Because Defendants did not give an impression
2 differing materially from the true state of affairs, their challenged statements cannot support a
3 claim. *Brody*, 280 F.3d at 1006.

4 **b. The Scantron Statements**

5 With regard to the Scantron Statements, as set forth below, *infra* at 24-25, Plaintiffs fail
6 to allege particularized facts establishing that the error reflected in K12’s 2013-14 results was
7 anything other than a mistake, and thus have not pled scienter. Even at the first step, however,
8 Plaintiffs fail to establish that Defendants’ statements were materially false or misleading.

9 The AC challenges, for example, Packard’s statement in November 2013 that Scantron
10 testing then “showed that [K12] students were learning at national norm levels.” AC ¶ 225. But
11 Plaintiffs’ factual allegations focus on K12’s Scantron analysis during the 2013-14 school year,
12 which had only just begun at the time of Packard’s comments. K12 did not calculate its 2013-14
13 results until May 2015—18 months after the challenged statement—and those results *supported*
14 Packard’s remarks. In 2016, even after recalculating its 2013-14 gains, K12 determined that its
15 students *still* outperformed the Scantron norm group’s mean gain in both math and reading (even
16 if by a smaller margin), as reported. *See supra* at 5. For the same reason, even if K12’s
17 recalculation required revision of the original *figures*, Plaintiffs have not alleged facts *materially*
18 contradicting statements about K12 students’ overall performance relative to the national
19 average. “It simply cannot be that a reasonable investor’s decision would conceivably have been
20 affected by” the precise numerical change in K12’s reported scores. *Retail Wholesale & Dep’t*
21 *Stores Union Local 338 Ret. Fund v. Hewlett-Packard Co.*, --- F.3d ---, 2017 WL 218026, at *7
22 (9th Cir. Jan. 19, 2017).²¹

23
24 ²¹ As yet another pleading deficiency, the AC fails to establish a “causal connection” between the
25 Scantron Statements and Plaintiffs’ claimed losses. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336,
26 342 (2005). In the Ninth Circuit, “loss causation” must be alleged “with particularity.” *Apollo*,
27 774 F.3d at 605. Yet here, Plaintiffs do not allege *any* correction of the Scantron Statements
28 during the Class Period. Because K12’s 2013-14 Scantron results were not corrected until
August 2016, ten “months after the end of the [C]lass [P]eriod,” Plaintiffs have not pled loss
causation as to that category of statements. *Schleicher v. Wendt*, 2005 WL 1656871, at *4 (S.D.
Ind. July 14, 2005). In any event, Plaintiffs have not alleged that K12’s disclosure of the error
led to any statistically significant movement in K12’s stock price.

1 Plaintiffs also challenge statements related to K12’s 2012-13 Scantron results. *See* AC ¶¶
 2 229-32. But the isolated error in K12’s analytical methodology for 2013-14 had zero bearing
 3 on—and cannot demonstrate the falsity of—statements related to the prior year’s testing results,
 4 and Plaintiffs allege no facts establishing that it did.

5 Finally, Plaintiffs challenge statements concerning the utility of Scantron generally:

- 6 • “[W]e felt and still believe the gains from the adaptive tests designed to measure
 7 gains are far better than state tests that impute gains from non-scaled CRT tests that
 8 were not designed to measure gains....” *Id.* ¶ 225.
- 9 • “Because state-administered tests vary widely in their standards, students in K12-
 10 managed virtual academies also take Scantron performance series tests in reading and
 11 mathematics, because we want a national comparison on gain.” *Id.* ¶ 234.

12 Even if such statements could be deemed assertions of fact and not opinion, *see supra*
 13 note 19, Plaintiffs plead no contrary facts. Plaintiffs contend that “important stakeholders”
 14 purportedly “did not agree that the Scantron tests were better than state tests in determining a
 15 student’s academic outcomes.” *Id.* ¶ 226 (citing *id.* ¶¶ 141 and 94). But such broad-brushed
 16 subjective criticisms cannot demonstrate that Scantron did *not*—as a factual matter—better
 17 measure student academic growth nationally than once-annual state proficiency-level tests. *See*
 18 *In re Rigel Pharm., Inc. Sec. Litig.*, 697 F.3d 869, 877 (9th Cir. 2012) (“[D]isagreements over
 19 statistical methodology and study design are insufficient to allege a materially false statement.”).

18 c. The “Quality and Effectiveness” Statements

19 Challenges to the “Quality and Effectiveness” Statements fare no better. Plaintiffs
 20 dispute, for example, broad statements concerning the effect of “persistence” at K12 schools, and
 21 the academic performance of K12’s low-income and “at risk” students. *See* AC ¶¶ 243, 245,
 22 257, 261, 263. But Plaintiffs fail to plead facts showing, for instance, the falsity of K12’s
 23 challenged statements that, as of March 2014, students improved academically “the longer they
 24 stay[ed] with the K12 program.” *Id.* Plaintiffs again rely solely on an “industry-wide” study
 25 published well *after* any challenged statement was made. *Id.* ¶¶ 16, 250. *Accord Okla.*
 26 *Firefighters Pension & Ret. Sys. v. Capella Educ. Co.*, 873 F. Supp. 2d 1070, 1085-86 (D. Minn.
 27 2012) (government report “did not reveal what Plaintiff allege[d] had been fraudulently omitted”
 28 because “[a]ll of the disclosures concerned the for-profit industry as a whole, and only one

1 specifically mentioned [the defendant]”).²² Regardless, the cited report largely *supports*
 2 Defendants’ statements—finding, for instance, that “stayers” at online schools “had stronger
 3 growth in their second year than in their first year.” AC ¶ 175.

4 Plaintiffs similarly challenge broad statements concerning K12’s ability to serve students
 5 with special needs. *Id.* ¶¶ 247, 253, 267. Here too, however, Plaintiffs merely point to alleged
 6 outside criticisms and isolated complaints—including from unspecified “teachers”—that, at
 7 most, reflect subjective concerns. Such allegations do not constitute contrary “facts,” and fail to
 8 render any challenged statement false or misleading. *See In re Netflix, Inc., Sec. Litig.*, 2005 WL
 9 1562858, at *7 (N.D. Cal. June 28, 2005) (existence of complaints does not establish the falsity
 10 of statements about company services); *Curry v. Yelp Inc.*, 2015 WL 1849037, at *8 (N.D. Cal.
 11 Apr. 21, 2015) (“customer complaints alleging a state of affairs contrary to a defendant’s
 12 representations” cannot “independently suffice to establish the falsity of those representations”).

13 Likewise, K12’s voluntary agreement with the California AG to implement various
 14 special education measures does not establish the falsity of any prior statement; contrary to
 15 Plaintiffs’ suggestion, the California AG nowhere stated that K12 or any California partner
 16 school was not in compliance with their special education obligations. Plaintiffs cite, for
 17 example, K12’s commitment to undertake steps related to website “accessibility.” AC ¶¶ 15,
 18 248. But contrary to requiring “actions to come into compliance with the Americans with
 19 Disabilities Act,” *id.*, the settlement noted K12’s “*existing* initiative to ensure an accessible
 20 learning environment,” and required implementation of further measures only following “the
 21 adoption of final web accessibility rules implementing Section 508 of the Rehabilitation Act of
 22 1974 and the Americans with Disabilities Act” by the U.S. Department of Justice, Ex. M at ¶
 23 6(aa)(1) (emphasis added)—a regulatory effort that is still ongoing.²³ In any event, a company’s
 24 voluntary “improvements” or operational changes do not establish that prior positive statements

25 ²² Because it failed to “correct” any prior misstatements, the Online Charter School Study also
 26 does not constitute a viable “corrective disclosure” capable of supporting the loss causation
 27 element of Plaintiffs’ fraud claim. *Cf. Apollo*, 774 F.3d at 608-09 (no loss causation based on a
 “report [that] focused on the for-profit education industry as a whole”).

28 ²³ *See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and
 Services of State and Local Government Entities*, 81 Fed. Reg. 28,658 (proposed May 9, 2016).

1 were false when made. *Gammel v. Hewlett-Packard Co.*, 905 F. Supp. 2d 1052, 1075 (C.D. Cal.
2 2012); *In re Am. Apparel, Inc. S'holder Litig.*, 855 F. Supp. 2d 1043, 1071 (C.D. Cal. 2012).²⁴

3 Lastly, Plaintiffs challenge statements regarding the University of California's ("UC")
4 approval of K12 courses pursuant to its "A-G" certification program. AC ¶¶ 255, 259, 265.
5 Plaintiffs assert that all such statements were "materially misleading" because K12 "did not offer
6 any approved courses to satisfy" the "laboratory science and visual and performing arts"
7 components of the A-G program. *Id.* ¶ 256. But Defendants nowhere suggested otherwise. On
8 the contrary, K12—in a challenged press release, for example—identified the exact subject areas
9 of its approved courses (without mentioning laboratory science or visual and performing arts),
10 and provided links to a "complete list" of those courses. Ex. N at 1-2. Thus, even if Defendants
11 allegedly "did not provide all the information [K12] possessed" about UC's policy towards
12 laboratory science and visual and performing arts courses in the online setting, "the information
13 [K12] did provide—and the reasonable inferences one could draw from that information—were
14 entirely consistent with the more detailed explanation of the [A-G program] that [Plaintiffs]
15 argue the [challenged statements] should have included." *Brody*, 280 F.3d at 1007.

16 Because Plaintiffs have not pled particularized facts demonstrating that any challenged
17 statement was materially false or misleading when made, *see* App. A, they cannot state a claim.

18 **C. Plaintiffs' Allegations Do Not Support a Strong Inference of Scienter**

19 The Complaint also fails to allege particularized facts supporting a "strong" inference that
20 any Defendant acted with the requisite state of mind—*i.e.*, with "conscious disregard,"
21 "deliberate recklessness," or "actual knowledge" of any material omission. *In re Silicon*
22 *Graphics Inc. Sec. Litig.*, 183 F.3d 970, 974, 979 (9th Cir. 1999). Such "factual allegations must
23

24 ²⁴ In addition to failing to demonstrate the falsity of any prior challenged statement, K12's
25 disclosure of the of California AG subpoena—and subsequent voluntary settlement—cannot
26 support loss causation. "[T]he announcement of an investigation, without more, is insufficient to
27 establish loss causation." *Loos v. Immersion Corp.*, 762 F.3d 880, 890 (9th Cir. 2014). Rather, a
28 plaintiff must allege additional facts showing "that investors understood" the announcement to
be a "partial disclosure" of a prior "inaccuracy." *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1210
(9th Cir. 2016). Here, Plaintiffs allege no facts indicating that the market understood K12's
announcement to reflect fraud; on the contrary, K12's stock price did not react negatively in the
trading day after the disclosure (and actually *rose*). AC ¶ 311.

1 not only be particular, but also must strongly imply [the defendant’s] contemporaneous
 2 knowledge that the statement was false when made.” *In re Infonet Servs. Corp. Sec. Litig.*, 310
 3 F. Supp. 2d 1080, 1102 (C.D. Cal. 2003); *see also Zucco Partners, LLC v. Digimarc Corp.*, 552
 4 F.3d 981, 991 (9th Cir. 2009) (“deliberate recklessness” is a “form of intentional or knowing
 5 misconduct”). And Plaintiffs must plead facts establishing scienter as to *each* Defendant and
 6 *each* alleged misstatement. *In re Silicon Storage Tech., Inc.*, 2006 WL 648683, at *22 (N.D.
 7 Cal. Mar. 10, 2006) (Hamilton, J.).²⁵

8 “The relevant inquiry is ‘whether all of the facts alleged, taken collectively, give rise to a
 9 strong inference of scienter.’” *Jackson v. Fischer*, 2015 WL 1143582, at *16 (N.D. Cal. Mar. 13,
 10 2015) (Hamilton, J.). To that end, the Court “must consider” competing “inferences unfavorable
 11 to the plaintiffs,” *Gompper v. VISX, Inc.*, 298 F.3d 893, 896-97 (9th Cir. 2002)—including
 12 “plausible nonculpable explanations for the defendant’s conduct,” *Bare Escentuals*, 745 F. Supp.
 13 2d at 1077. Ultimately, the “inference of scienter must be more than merely plausible or
 14 reasonable—it must be *cogent* and *at least as compelling* as any opposing inference of non-
 15 fraudulent intent.” *Tellabs*, 551 U.S. at 314 (emphasis added).

16 **1. Plaintiffs Fail To Plead Facts Establishing Any Motive To Defraud**

17 To begin, Plaintiffs fail to allege any motivation for Defendants to commit fraud. That
 18 gap in Plaintiffs’ theory cuts against any inference of scienter. *See Sharenow v. Impac Mortg.*
 19 *Holdings, Inc.*, 385 F. App’x 714, 717 (9th Cir. 2010) (finding an “inference of non-fraudulent
 20 intent” absent “evidence that the officers had any profit motive that might tempt them to mislead
 21 investors”); *In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1178 (C.D. Cal. 2007) (a “lack
 22 of any tangible, personal benefit ... weighs against” a finding of “scienter”).

23 *First*, Plaintiffs have not alleged that any Defendant sold K12 stock during the Class
 24 Period. And none did. As this Court has recognized, “the fact that [an insider] retained most of
 25

26 ²⁵ One Defendant, Ronald Packard, was a K12 employee for just two months of the Class Period,
 27 having stepped down as CEO in December 2013. And he is alleged to have made only one
 28 challenged statement. *See* AC ¶ 225. As this Court has confirmed, “[i]t is not sufficient under
 the PSLRA to allege scienter against defendants as a group.” *In re Verisign, Inc. Deriv. Litig.*,
 531 F. Supp. 2d 1173, 1207 (N.D. Cal. 2007) (Hamilton, J.). The AC contravenes that rule.

1 his stock militates against an inference of scienter.” *In re FoxHollow Techs., Inc. Sec. Litig.*,
2 2008 WL 2220600, at *30 (N.D. Cal. May 27, 2008) (Hamilton, J.); *Metzler*, 540 F.3d at 1067
3 (lack of insider sales “suggest[s] that there was no insider information from which to benefit”).

4 *Second*, solely with regard to the Scantron Statements, Plaintiffs cite K12’s performance
5 management objectives as evidence that Defendants and other senior executives benefited from
6 their alleged misstatements in the form of incrementally higher bonuses—collectively little more
7 than \$200,000 split among multiple employees. AC ¶¶ 72-77. But “[g]eneralized assertions of
8 financial motive, without more, are insufficient to meet the heightened pleading requirement of
9 the PSLRA.” *Verona*, 2006 WL 2669035, at *12. Indeed, “it is common for executive
10 compensation, including stock options and bonuses, to be based partly on the executive’s success
11 in achieving key corporate goals.” *Rigel*, 697 F.3d at 884. Here, taking “into account plausible
12 opposing inferences”—including that the calculation for one year was in error, and was promptly
13 disclosed and corrected by K12 itself—there is no basis to “conclude that there [was] fraudulent
14 intent merely because [Defendants’] compensation was based in part on [their] successes” in
15 achieving “routine corporate objectives.” *Id.*; *see also Autodesk*, 132 F. Supp. 2d at 844
16 (rejecting allegation of “large bonuses”). Tellingly, the AC concedes that the same K12
17 executives failed to attain their academic PMOs the very next year. *See AC ¶ 77*. Such “logical
18 inconsistencies” in Plaintiffs’ theory undermine any inference of a fraudulent scheme.
19 *McCasland v. FormFactor, Inc.*, 2009 WL 2086168, at *8 (N.D. Cal. July 14, 2009)

20 **2. Plaintiffs Fail to Plead Facts Supporting a Strong Inference of** 21 **Deliberate Recklessness**

22 Lacking any plausible allegations of motive, Plaintiffs assert deliberate recklessness. In
23 the Ninth Circuit, alleged “[f]acts showing mere recklessness ... are not sufficient to establish a
24 strong inference of deliberate recklessness. Plaintiffs must come closer to alleging *intent*.”
25 *Metricom*, 2004 WL 966291, at *34. Moreover, in the absence of compelling motive allegations,
26 “the strength of [Plaintiffs’] circumstantial allegations must be correspondingly greater.”
27 *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1354 (S.D. Cal. 1998) (citation omitted).
28

1 school year and timely corrected that mistake upon discovery. Such “allegations of negligence
2 are insufficient to establish a strong inference of deliberate recklessness.” *DSAM Global Value*
3 *Fund v. Altris Software, Inc.*, 288 F.3d 385, 390 (9th Cir. 2002). Plaintiffs cannot state a fraud
4 claim on the facts alleged.

5 **c. The “Quality and Effectiveness” Statements**

6 Plaintiffs’ scienter allegations regarding their catch-all category of “Quality and
7 Effectiveness” Statements also fail. Here too, the AC catalogs criticisms involving K12, and
8 then asserts that statements bearing some marginal (if any) relation to those criticisms must have
9 been knowingly false when made. Despite 342 paragraphs of allegations, however, Plaintiffs fail
10 to allege concrete information contradicting any challenged statement—let alone particularized
11 facts demonstrating that Defendants were aware of (or deliberately disregarded) that
12 contradictory information at the time of their statements.

13 In particular, Plaintiffs cite the purported “concerns” prompting Agora’s self-
14 management transition in late-2014, and the Online Charter School Study and California AG
15 settlement in 2016. *See, e.g.*, AC ¶¶ 250, 262, 268. But “Plaintiffs allege no factual basis to
16 support their [implicit] assertion that [D]efendants received or possessed information that was at
17 odds with the statements they are alleged to have made publicly.” *Autodesk*, 132 F. Supp. 2d at
18 843. To the extent *any* negative inferences can be drawn, the “innocent inferences cognizable
19 from the facts pled” are dispositive in Defendants’ favor. *Zucco*, 552 F.3d at 991.

20 **CONCLUSION**

21 The AC should be dismissed with prejudice.²⁶

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27 ²⁶ Because Plaintiffs have not established a primary violation of the federal securities laws, their
28 Section 20(a) claim “must also be dismissed.” *Pac. Gateway*, 169 F. Supp. 2d at 1168.

1 Dated: January 30, 2017

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ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest that Marshall C. Wallace concurred in filing the foregoing Notice of Motion, Motion to Dismiss, and Supporting Memorandum of Points and Authorities.

Dated: January 30, 2017

/s/ Peter A. Wald
Peter A. Wald

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CERTIFICATE OF SERVICE

Pursuant to Civil Local Rule 5-5, I hereby certify that a true and correct copy of the foregoing will be served today, January 30, 2017, on counsel of record via ECF in this action.

Dated: January 30, 2017

/s/ Peter A. Wald
Peter A. Wald

APPENDIX A – ALLEGED MISSTATEMENTS

Statements Concerning Agora			
	DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
1.	2Q2014 10-Q, 3Q2014 10-Q, FY2014 10-K (Exs. H, I, K) AC ¶ 202	<u>As Alleged in the AC:</u> “The Company’s 2Q2014 10-Q, 3Q2014 10-Q, and FY2014 10-K each omitted to state the risk that K12’s contract with Agora would either not be renewed, or that the nature of this contract would materially change.”	<ul style="list-style-type: none"> • The AC does not allege any omission of material fact, and acknowledges that K12 publicly “filed the Agora/K12 Contract as an exhibit both to its Form 10-Q for the fiscal quarter ended March 31, 2013” and to the Company’s FY2013 and FY2014 10-Ks. AC ¶¶ 202(a)-(b). Paragraph 5.1 of the contract provided that the agreement would “terminate on June 30, 2015.” MTD at 16-18. • K12’s 2Q2014 and 3Q2014 10-Qs incorporated “the risk factors disclosed in ‘Risk Factors’ in Part I, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended June 30, 2013 as filed with the SEC on August 29, 2013,” including the risk of “failure to ... renew existing contracts with schools.” In particular, the 2013 10-K advised of the risk that K12’s contract with Agora could be “terminated.” K12’s 2014 10-K noted similar risks. MTD at 11-14.
2.	February 4, 2014 Conference Call (Ex. L) Speaker: Davis AC ¶ 203	<u>As Alleged in the AC:</u> “On the February 4, 2014 earnings call with investors and analysts, Davis responded to an analyst’s request for an update on any state issues, including legislation or fund [sic]. The analyst also specifically asked if there was any update on Pennsylvania: NATE DAVIS: This is Nate speaking, hi Suzi. It’s always difficult to predict what a legislature is going to do and what’s going to happen. Of course the Pennsylvania legislation has some proposals in it that would affect us negatively. I don’t know if that legislation	<ul style="list-style-type: none"> • Forward-Looking. MTD at 10-14. • Puffery (e.g., “pretty positive environment”). MTD at 15-16. • Opinion. MTD at 16 n.19. • Plaintiffs mischaracterize Davis’s statement as relating specifically to the Agora contract. The corresponding analyst question related instead to “legislation or funding” both nationally and at the

¹ All alterations appear in the Amended Complaint (“AC”).

Statements Concerning Agora		
DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
	<p>will go through or won't go through. We monitor it closely. We make sure that we give our input and the schools give their input.</p> <p>So I can't handicap it and tell you that in fact it's going to happen or isn't going to happen. We monitor it closely, and our current thinking is that if it happens it would only happen late in the year. It would not affect us in much in the current year. That's the only one that I would -- that I highlight. I don't think there are any others that I see that have significant risk at this time. So we think we are in a pretty positive environment. As the economy's gotten better, a number of states have thought about the things that they need to do to continue to support education better. So we get the benefit of that. But I don't see a significant negative opportunity out --negative risk out there today.”</p> <p><u>Actual Language:</u></p> <p>“Suzanne E. Stein – Morgan Stanley, Research Division: And are there any state-by-state issues with regard to legislation or funding that you would highlight? And I guess specifically, could you provide any update on Pennsylvania?</p> <p>Nathaniel Alonzo Davis: This is Nate speaking. It's always difficult to predict what a legislator is going to do and what's going to happen. Of course, the Pennsylvania legislation has some proposals in it that would affect us negatively. I don't know if that legislation will go through or won't go through, we monitor it closely. We make sure that we give our input, and schools give their input. So I can't handicap it and tell you that it's actually going to happen or isn't going to happen. We monitor it closely, and our current thinking is that if it happens, it would only happen late in the year and would not affect us much in the current year. So that's the only one that I'd highlight. I don't think there are any others that I see that have significant risk at this time. So we think we're in a pretty positive environment as the economy has gotten better, a number of</p>	<p>state level within Pennsylvania. Davis's statement thus related to state action potentially affecting K12 revenues—not a local school board's decision whether to renew their service agreement with K12. MTD at 13 n.14.</p> <ul style="list-style-type: none"> • The AC alleges no particularized facts showing that Davis did not believe K12 was “in a pretty positive environment”—either nationally or concerning Pennsylvania, specifically—with regard to legislation or funding. MTD at 16 n.19.

Statements Concerning Agora			
	DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
		states have thought about the things that they need to do to continue to support education better. And so we get the benefit of that. But I don't see a significant negative opportunity -- negative risk out there today."	
3.	April 29, 2014 Conference Call (Ex. O) Speaker: Davis AC ¶ 205	<p><u>As Alleged in the AC:</u></p> <p>"[I]n the question and answer section of the April 29, 2014 earnings call, Defendants were asked to 'spend a minute on Pennsylvania as we move into the potential renewal on that contract?' In response, Davis stated: 'In terms of our own school, as everybody knows, in the next year, year and a half, we will have -- actually we will file this year and next year in 2015, and then we will seek an approval for our Agora school. That approval is something we continue to work on. We negotiate a new service contract, and then they will get a charter renewal process going in the state of Pennsylvania, as well.</p> <p>'We watch what others are doing as they go through the process and make sure that our service contracts will be compliant with everything that the state wants. I think we are a good partner for Agora, and I think they are happy with what we have done.'"</p> <p><u>Actual Language:</u></p> <p>"So I don't see a major funding change in Pennsylvania although we may see some small funding changes. I think we'll always see some of that. In terms of our own school as everybody knows in the next year, year and a half we will have actually will file this year, this next year in 2015. And then you'll see an approval for our Agora school that approval is something we work on, we negotiate on the new service contract and then they will get a charter renewal process going in the state of Pennsylvania as well.</p> <p>We watch what others are doing as they go through the process and make sure that our service contracts will be compliant with</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that Agora did not intend to seek state approval for the school's charter. And the AC's allegations show that K12 did actively work to negotiate a new service contract with the Agora Board. MTD at 14-15. • Puffery (e.g., "good partner"). MTD at 15-16. • Opinion. MTD at 16 n.19. • The AC alleges no particularized facts showing that Davis did not believe K12 was a good partner for Agora or that "they" were not "happy" with what K12 had done as of April 2014. <i>Id.</i>

Statements Concerning Agora			
	DATE & SOURCE	CHALLENGED STATEMENT¹	REASON(S) NOT ACTIONABLE
		everybody that a state want. I think we are a good partner for Agora and I think they're happy with what we've done. But we'll always have to tweak in and adjust the contracts as we go forward as the state regulators ask for different things. We've seen that in every other state, I have no reason why I would see some small changes in Pennsylvania as well."	
4.	June 26, 2014 Press Release (Ex. P) AC ¶ 207	<p><u>As Alleged in the AC:</u></p> <p>"On June 26, 2014, K12 released a 'statement ... on Agora Cyber Charter School' in a press release available on its website: 'As required by the existing charter agreement, this Fall, the Agora Cyber Charter School in PA ("Agora") must submit an application for the renewal of its charter agreement with the Pennsylvania Department of Education (PDE), to continue operations for the 2015-2016 school year and beyond.</p> <p>The Agora Board has elected to use an RFP process for the services and products required to operate the school. Proposals are due to the Agora Board on July 25, 2014.</p> <p>K12 Inc. has been working with the Board and looks forward to providing robust submissions for the provision of educational services, products, and curriculum. We are confident that this process will lead to an even stronger application to PDE for the renewal of the school's charter. We are also confident that the value K12 has brought, and can continue to bring, to the students of Agora will be clear in this process. We are proud that so many of the parents with students at Agora have expressed overall satisfaction with the school and especially with K12's curriculum.'"</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that Agora was not required to submit a charter renewal application in order to continue operations; that the Agora Board had not elected as of June 2014 to use an RFP process for the services and products required to operate the school, with proposals due July 25, 2014; that K12 was not working with the Board as of June 2014 and intending to submit a proposal for the provision of educational services, products, and curriculum; or that parents of Agora students had not expressed overall satisfaction with the school and K12's curriculum. MTD at 16-18, • Puffery (e.g., "an even stronger application," and "the value K12 has brought"). MTD at 15-16.
5.	August 14, 2014 Conference Call	<p><u>As Alleged in the AC:</u></p> <p>"During the question and answer session of the August 14, 2014 earnings call, an analyst asked for an update on Agora, to which</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that the Agora Board had not as of August 2014

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	DATE & SOURCE	CHALLENGED STATEMENT¹	REASON(S) NOT ACTIONABLE
	(Ex. D) Speaker: Davis AC ¶ 210	<p>Davis responded: ‘They had one Board meeting. Agora did have one Board meeting where they made some decisions and indicated a clear interest to be a self-managed organization.</p> <p>Beyond that, we don’t really know, because we’re not going to hear until the next board meeting, which is August 25, I believe. After that Board meeting, I’m sure we’ll hear more. There really isn’t much to update you on other than the next Board meeting is August 25 and we will learn more then.’”</p> <p><u>Actual Language:</u></p> <p>“Corey Greendale – First Analysis: ... Can you give us -- is there any update on the Agora and either the timing or in feedback you’ve heard on that?</p> <p>Nate Davis: They had one board meeting. The board did have one board meeting where they made some decisions and indicated a clear interest to be self-managed organization beyond that we don’t really know because we are not going to hear until the next board meeting which is August 25th, I believe. After that board meeting, I’m sure we’ll hear more. So there really isn’t much update to on other than the next board meeting is August 25th and we’ll learn more there.”</p>	<p>convened a meeting and indicated an interest in becoming a self-managed organization. MTD at 16-18.</p> <ul style="list-style-type: none"> • The statement includes the facts that Plaintiffs allege were omitted—i.e., Agora’s interest in transitioning to a self-managed school. MTD at 16-18.
6.	FY2014 10-K (Ex. K) AC ¶ 212	<p><u>As Alleged in the AC:</u></p> <p>“Under the subheading, [sic] ‘Risks Related to Our Business and Our Industry’ of K12’s Risk Factors listed in the Company’s FY 2014 10-K, there was a discussion of the risk on [sic] non-renewal of a Managed Public School Contract, citing the Agora Board negotiations as an example: ‘in fiscal year 2014, the Agora Cyber Charter School . . . elected to use a request for proposal process for the services and products required to operate the school for the 2015-16 school year in connection with its charter renewal</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that the Agora Board had not elected to use an RFP process for the services and products required to operate the school for the 2015-16 school year, in connection with its charter renewal application. MTD at 16-18. • The statement—read in context—identified the risk

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	DATE & SOURCE	CHALLENGED STATEMENT¹	REASON(S) NOT ACTIONABLE
		<p>application.”</p> <p><u>Actual Language:</u></p> <p>“Our contracts with the Managed Public Schools we serve are subject to periodic renewal, and each year several of these agreements are set to expire. If we are unable to renew several such contracts or if a single significant contract expires during a given year, our business, financial condition, results of operations and cash flow could be adversely affected.</p> <p>In fiscal year 2014 we had contracts with 73 Managed Public Schools to provide our full range of products and services in 33 states and the District of Columbia. Some of these contracts are scheduled to expire in any given year and may not be renewed or may be renewed on terms much less favorable to us. Due to significant advance notice provisions or on the request of a school’s charter authority, we usually begin to engage in renewal negotiations before and during the final year of these contracts and any renewed contract could involve a restructuring of our services and management arrangements that could lower our revenue or even change how revenue and expenses are recognized. For example, in fiscal year 2014, the Agora Cyber Charter School (‘Agora’) elected to use a request for proposal process for the services and products required to operate the school for the 2015-16 school year in connection with its charter renewal application. Agora accounted for 13% of the Company’s revenue in fiscal year 2014. If we are unable to renew contracts such as Agora or if contract renewals have significantly less favorable terms or unbundle previously provided services, our business, financial condition, results of operations and cash flow could be adversely affected.”</p>	<p>that K12 might not negotiate a service agreement with the Agora Board prior to the existing contract’s expiration. The statement further indicated that Agora had not committed to utilizing K12’s services following the expiration of the then-existing agreement, but was undertaking an RFP process in order to identify a provider for 2015-16. MTD at 11-13.</p>
7.	FY2014 10-K	<p><u>As Alleged in the AC:</u></p> <p>“Later under this same subheading, the Form 10-K stated: ‘As noted</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that the Agora Board had not elected to use an RFP process for the services and products required to

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(Ex. K) AC ¶ 212	<p>above, the Agora School recently commenced a RFP process for the services and products required to operate the school for the 2015-16 school year in connection with its charter renewal application.”</p> <p><u>Actual Language:</u></p> <p>“We generate significant revenues from two virtual public schools, and the termination, revocation, expiration or modification of our contracts with these virtual public schools could adversely affect our business, financial condition and results of operation.</p> <p>In fiscal year 2014, we derived approximately 10% and 13% of our revenues, respectively, from the Ohio Virtual Academy and the Agora Cyber Charter School in Pennsylvania. As noted above, the Agora School recently commenced a RFP process for the services and products required to operate the school for the 2015-16 school year in connection with its charter renewal application. If our contracts with either of these virtual public schools are terminated, the charters to operate either of these schools are not renewed or are revoked, enrollments decline substantially, funding is reduced, or more restrictive legislation is enacted, our business, financial condition and results of operations could be adversely affected.”</p>	<p>operate the school for the 2015-16 school year, in connection with its charter renewal application. MTD at 16-18.</p> <ul style="list-style-type: none"> • The statement—read in context—identified the risk that K12 might not negotiate a service agreement with the Agora Board prior to the existing contract’s expiration. The statement further indicated that Agora had not committed to utilizing K12’s services following the expiration of the then-existing agreement, but was undertaking an RFP process in order to identify a provider for 2015-16. MTD at 11-13.
8. FY2014 10-K (Ex. K) AC ¶ 213	<p><u>As Alleged in the AC:</u></p> <p>“The FY2014 10-K, again discussed the Agora Board’s election of an RFP under ‘Management’s Discussion and Analysis of Financial Condition and Results of Operations,’ stating: ‘In fiscal year 2014, Agora elected to use a request for proposal process for the services and products required to operate the school for the 2015-16 school year in connection with its charter renewal application.’”</p> <p><u>Actual Language:</u></p> <p>“In fiscal year 2014, we derived approximately 13% and 10% of our</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that the Agora Board had not elected to use an RFP process for the services and products required to operate the school for the 2015-16 school year, in connection with its charter renewal application. MTD at 16-18. • The statement—read in context—indicated that the Agora contract would expire on June 30, 2015, and that Agora had not committed to utilizing K12’s

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		revenues, respectively, from the Agora Cyber Charter School ('Agora') in Pennsylvania and the Ohio Virtual Academy. In aggregate, these schools accounted for approximately 23% of our total revenues. We provide our full turnkey management solution pursuant to our contract with the Ohio Virtual Academy, which terminates on June 30, 2017. We provide our full turn-key solution to Agora pursuant to a contract with the school that expires on June 30, 2015. In fiscal year 2014, Agora elected to use a request for proposal process for the services and products required to operate the school for the 2015-16 school year in connection with its charter renewal application. The annual revenues generated under each of these contracts represented a material portion of our total revenues in fiscal year 2014; however, as our managed public schools expand and other business sectors grow, these proportions may decrease."	services following the agreement's expiration, but was undertaking an RFP process in order to identify a provider for 2015-16. MTD at 11-13.
9.	October 9, 2014 Press Release (Ex. Q) AC ¶ 216	<u>As Alleged in the AC:</u> "On October 9, 2014, K12 released a press release, available on its website, 'announc[ing] that it was awarded a three-year contract to provide the academic curriculum for Pennsylvania's Agora Cyber Charter School commencing in the 2015-2016 school year.' The press release further stated: 'Over the last several weeks, K12 has been working with the Agora School Board in a Request-for-Proposal (RFP) process for the services and products required to operate one of the state's largest online public schools. During the RFP evaluation process, K12 was selected to be the content provider for the school year beginning September 2015. The nationally recognized K12 curriculum uses a combination of online lessons and traditional materials to provide an innovative learning platform for students. The online lessons blend text, photos, illustration, animation, audio, and interactivity, giving students an engaging educational experience.'" <u>Actual Language:</u>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year curriculum contract starting in the 2015-16 school year, or that K12 was not selected as Agora's curriculum provider following the completion of an RFP process. Nor does the AC allege particularized facts contradicting K12's description of its curriculum generally. MTD at 16-18. • The statement—read in context—acknowledged the Agora Board's decision to "absorb" and self-manage certain functions previously performed by K12, and noted the potential financial impact of the Agora transition. MTD at 11-13.

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	DATE & SOURCE	CHALLENGED STATEMENT¹	REASON(S) NOT ACTIONABLE
		<p>“K12 ... today announced that it was awarded a three-year contract to provide the academic curriculum for Pennsylvania's Agora Cyber Charter School commencing in the 2015-2016 school year.</p> <p>Over the last several weeks, K12 has been working with the Agora School Board in a Request-for-Proposal (RFP) process for the services and products required to operate one of the state’s largest online public schools. During the RFP evaluation process, K12 was selected to be the content provider for the school year beginning September 2015. The nationally recognized K12 curriculum uses a combination of online lessons and traditional materials to provide an innovative learning platform for students. The online lessons blend text, photos, illustration, animation, audio, and interactivity, giving students an engaging educational experience.</p> <p>The Agora Board previously announced that it would absorb the school’s general administrative services and certain human resources functions as well as name vendors for select services which are currently provided by K12. Using the actual FY2014 enrollment volumes and reported financial results, the Company believes this new contract would have delivered approximately 25% of the revenue and 50% of the internal financial contribution when compared to K12’s current contract with the Agora Board. Internal contribution is defined as revenue less direct costs for delivering the contracted services. Direct costs exclude all corporate, product, promotional, and other costs shared across all schools. The internal contribution impact in future periods may vary depending on actual student enrollment levels and the breadth of K12 curriculum services the school utilizes versus self-developed curriculum.</p> <p>K12 will continue to support the school’s charter renewal submission to the Pennsylvania Department of Education and looks forward to working with the students and families at Agora for many years.”</p>	

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	DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
10.	<p>October 30, 2014 Conference Call</p> <p>(Ex. E)</p> <p>Speaker: Davis</p> <p>AC ¶ 218</p>	<p><u>As Alleged in the AC:</u></p> <p>“In the question and answer session of the October 30, 2014 earnings call, in responding to a question, Davis explained that there ‘is always a risk that a school can decide to go self-manage’ but that ‘[t]he good news is, what we found is that when they made those changes they have stayed with the K12 curriculum which is the highest margin part of the business for us, and the part of the business that we believe is the core of the services we provide.’”</p> <p><u>Actual Language:</u></p> <p>“Nick Nikitas – Robert W. Baird: ... You mentioned the potential new schools in North Carolina and Maine. If those were approved, are you expecting them to be managed, or non-managed? And then just in general can you talk more about the trend you’re seeing there with any existing schools outside of Agora?”</p> <p>Nate Davis: Yes. So the Maine school and the North Carolina School we are working with the charter board and the charter boards are actually the ones who made the application and did the interviews and are working with the state to get their charters approved. Once their charter is approved we have, I mean you file for charter, you generally file with a management contract attached to it. And so our management contract has already been attached to it for the authorization. So those will be managed schools if they are approved to answer your first question. In terms of schools that are - that could be at risk, we have this year about six schools that are up for some kind of contract renewal and charter renewals. And while I don’t see it being a massive trend like Agora, I think Agora was an outlier. There is always a risk that a school can decide to go self-managed. The economics might change for them, they might have a change in the board leadership. And so if those things happen, we could see a change there. But the good news is what we found is that when they made those changes they have stayed with K12</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that K12 partner schools deciding to become self-managed do not typically continue using the K12 curriculum, or that curriculum sales is not the highest margin or “core” component of the services K12 provides. MTD at 16-18. • The challenged statement—read in context—addressed a question regarding the general “trend” among “existing schools <i>outside of</i> Agora.” • The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at least October 2014. <i>See</i> AC ¶ 150. MTD at 16-18.

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	DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
		curriculum which is the highest margin part of the business for us and the part of the business that we believe it is a core of the services we provide. The lower margin businesses where we may provide financial services and technology service, they are important and they drive revenue but the core of our business is curriculum. So I don't think there is huge risk for the other state but I got to admit, there is always a state that can make -- a school board that can make that decisions."	
11.	1Q2015 10-Q (Ex. R) AC ¶ 219	<p><u>As Alleged in the AC:</u></p> <p>"In Note 14, 'Subsequent Event,' to the Financial Statements, of the 1Q2015 stated: 'On October 9, 2014, the Company entered into a three year contract to provide academic curriculum to Agora for a reduced scope of services that will include the academic curriculum beginning in the 2015-16 school year.'"</p> <p><u>Actual Language:</u></p> <p>"During the three months ended September 30, 2014 and 2013, the Company had a contract with Agora that represented approximately 12% of revenues and which expires on June 30, 2015. In lat fiscal year 2014, Agora commenced a request for proposal process for the services and products required to operate the school after the 2014-15 school year in connection with its charter renewal application. Agora had previously announced that it would absorb its general administrative services and certain human resources functions as well as name vendors for select services which are currently provided by the Company. On October 9, 2014, the Company entered into a three year contract to provide academic curriculum to Agora for a reduced scope of services that will include the academic curriculum beginning in the 2015-16 school year.</p>	<ul style="list-style-type: none"> The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year "reduced scope" curriculum contract starting in the 2015-16 school year. The Agora Board's alleged intention to "simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option" is not to the contrary, and had been public knowledge since at least October 2014. See AC ¶ 150. MTD at 16-18.
12.	January 29, 2015	<u>As Alleged in the AC:</u>	<ul style="list-style-type: none"> Forward-Looking. MTD at 11-12.

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	Conference Call (Ex. S) Speaker: Davis AC ¶ 220	<p>“On the January 29, 2015 earnings call, after Rhyu responded to a request for financial guidance on the Agora impact, Davis chimed in to add ‘more information for you’ regarding Agora, stating ‘They’re still going to use the K12 curriculum and that is the highest-margin business we have.’”</p> <p><u>Actual Language:</u></p> <p>“I’m going to add one more piece of information for you, which I hope doesn’t confuse you, but it’s important to understand. And that is, when we talk about the high margin business primarily we are talking about the curriculum, we are still going to use the K12 curriculum. And that is the highest margin business we have. However, you have to remember that that would depend on a number of students. And we simply don’t know that number of students. Now, if Agora maintains the number of students they have [times our] [ph] rate in our curriculum then we don’t lose as much money. If Agora shrinks its school, which they may well decide to do. I mean we no longer manage so we don’t know what they are going to do. But, if they were to shrink the school, then we would see additional shrinkage in revenue. And that’s why James is hesitant to give you a specific number, he is more giving you a range because it is depending upon the enrollments next year, which they may or may not shrink.”</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that the Agora Board did not intend to use the K12 curriculum even after absorbing certain previously outsourced services. Nor does AC allege particularized facts showing that standalone curriculum sales are not the highest profit margin component of K12’s business. MTD at 16-18. • The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at least October 2014. <i>See</i> AC ¶ 150. MTD at 17-18.
13.	2Q2015 10-Q (Ex. T.) 3Q2015 10-Q (Ex. U) AC ¶ 221	<p><u>As Alleged in the AC:</u></p> <p>“In each of the Company’s 2Q2015 and 3Q2015 10-Q [sic], the Company’s discussion of revenue recognition included: ‘On October 9, 2014, the Company entered into a three year contract with Agora for a reduced scope of services that will include providing the academic curriculum to Agora beginning in the 2015-16 school year.’”</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year “reduced scope” curriculum contract starting in the 2015-16 school year. The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at

Statements Concerning Agora			
	DATE & SOURCE	CHALLENGED STATEMENT¹	REASON(S) NOT ACTIONABLE
		<p><u>Actual Language:</u></p> <p>2Q2015 10-Q: “In late fiscal year 2014, Agora commenced a request for proposal process for the services and products required to operate the school after the 2014-15 school year in connection with its charter renewal application. Agora had previously announced that it would absorb its general administrative services and certain human resources functions as well as name vendors for select services which are currently provided by the Company. On October 9, 2014, the Company entered into a three year contract with Agora for a reduced scope of services that will include providing the academic curriculum to Agora beginning in the 2015-16 school year.”</p> <p>3Q2015 10-Q : “In late fiscal year 2014, Agora commenced a request for proposal process for the services and products required to operate the school after the 2014-15 school year in connection with its charter renewal application. Agora had previously announced that it would absorb its general administrative services and certain human resources functions as well as name vendors for select services which are currently provided by the Company. On October 9, 2014, the Company entered into a three year contract with Agora for a reduced scope of services that will include academic curriculum to Agora beginning in the 2015-16 school year, consistent with its charter renewal.”</p>	<p>least October 2014. <i>See</i> AC ¶ 150. MTD at 16-18.</p>
14.	<p>2Q2015 10-Q</p> <p>(Ex. T)</p> <p>AC ¶ 221</p>	<p><u>As Alleged in the AC:</u></p> <p>“Additionally, both the Executive Summaries of Management’s Discussion and Analysis of Financial Condition and Results of Operation also discussed Agora: ‘Agora Cyber Charter School recently renegotiated its service agreement at renewal and entered into a three-year contract with us to provide Agora students with the K12 curriculum starting in the 2015-2016 school year[.]’”</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year contract for the provision of curriculum starting in the 2015-16 school year. The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at

Statements Concerning Agora			
	DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
		<p><u>Actual Language:</u></p> <p>“[T]he governing boards of the virtual charter schools that contract with us are exercising their independent authority to modify their approach to virtual education depending upon their own charter school goals. This in turn may alter the nature of the agreements we have with those boards and the level of management services that meet their needs. For example, the Agora Cyber Charter School recently renegotiated its service agreement at renewal and entered into a three-year contract with us to provide Agora students with the K12 curriculum starting in the 2015-2016 school year, and with the school board deciding to self-manage its operations.”</p>	<p>least October 2014. <i>See</i> AC ¶ 150. MTD at 16-18.</p>
15.	<p>FY2015 10-K (Ex. V) AC ¶ 222(a)</p>	<p><u>As Alleged in the AC:</u></p> <p>“Under the heading ‘Risks Related to our Business and Our Industry,’ the FY2015 10-K stated: ‘in fiscal year 2015, the Agora Cyber Charter School (“Agora”) renegotiated its service agreement and entered into a three-year contract with us to purchase our curriculum[.]”</p> <p><u>Actual Language:</u></p> <p>“Our contracts with the managed public schools we serve are subject to periodic renewal, and each year several of these agreements are set to expire. If we are unable to renew several such contracts or if a single significant contract expires during a given year, our business, financial condition, results of operations and cash flow could be adversely affected.</p> <p>In fiscal year 2015 we had contracts with 75 Managed Programs to provide our full range of products and services in 32 states and the District of Columbia. Some of these contracts are scheduled to expire in any given year and may not be renewed or may be renewed on terms much less favorable to us. Due to significant advance</p>	<ul style="list-style-type: none"> The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year contract for the provision of curriculum starting in the 2015-16 school year. The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at least October 2014. <i>See</i> AC ¶ 150. MTD at 16-18.

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	DATE & SOURCE	CHALLENGED STATEMENT ¹	REASON(S) NOT ACTIONABLE
		notice provisions or on the request of a school's charter authority, we usually begin to engage in renewal negotiations before and during the final year of these contracts and any renewed contract could involve a restructuring of our services and management arrangements that could lower our revenue or even change how revenue and expenses are recognized. For example, in fiscal year 2015, the Agora Cyber Charter School ('Agora') renegotiated its service agreement and entered into a three-year contract with us to purchase our curriculum and certain technology services, while the school board assumed the daily operational responsibilities, including its charter renewal process and marketing and enrollment activities. If we are unable to renew contracts or if contract renewals have significantly less favorable terms or unbundle previously provided services, our business, financial condition, results of operations and cash flow could be adversely affected."	
16.	FY2015 10-K (Ex. V) AC ¶ 222(b)	<p><u>As Alleged in the AC:</u></p> <p>"Under the subheading describing the 'Public School Programs' as part of 'Management's Discussion and Analysis of Financial Condition and Results of Operations,' the FY2015 10-K stated: 'In fiscal year 2015, Agora renegotiated its service agreement and entered into a three-year contract with us to purchase our curriculum and certain technology services[.]'"</p> <p><u>Actual Language:</u></p> <p>"In fiscal year 2015, Agora renegotiated its service agreement and entered into a three-year contract with us to purchase our curriculum and certain technology services, while the school board assumed daily operational responsibilities, including its charter renewal process and marketing and enrollment activities."</p>	<ul style="list-style-type: none"> The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year contract for the provision of curriculum and certain technology services. The Agora Board's alleged intention to "simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option" is not to the contrary, and had been public knowledge since at least October 2014. See AC ¶ 150. MTD at 16-18.
17.	FY2015 10-K	<u>As Alleged in the AC:</u>	<ul style="list-style-type: none"> The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a

Statements Concerning Agora			
	DATE & SOURCE	CHALLENGED STATEMENT¹	REASON(S) NOT ACTIONABLE
	(Ex. V) AC ¶ 222(c)	<p>“In the Summary of Significant Accounting Policies to the ‘Notes to the Consolidated Financial Statements,’ the FY2015 10-K stated: ‘In fiscal year 2015, Agora renegotiated its service agreement and entered into a three-year contract with the Company to purchase the Company’s curriculum and certain technology services[.]’”</p> <p><u>Actual Language:</u></p> <p>“In fiscal year 2015, Agora renegotiated its service agreement and entered into a three-year contract with the Company to purchase the Company’s curriculum and certain technology services, while the school board assumed daily operational responsibilities, including its charter renewal process and marketing and enrollment activities.”</p>	<p>three-year contract for the provision of curriculum and certain technology services. The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at least October 2014. <i>See</i> AC ¶ 150. MTD at 16-18.</p>
18.	1Q2016 10-Q (Ex. W) AC ¶ 223	<p><u>As Alleged in the AC:</u></p> <p>“In the 1Q2016 10-Q, the Company’s discussion of revenue recognition included: ‘In fiscal year 2015, the Agora Cyber Charter School (“Agora”) renegotiated its service agreement and entered into a three-year contract with the Company to purchase the Company’s curriculum and certain technology services[.]’”</p> <p><u>Actual Language:</u></p> <p>“In fiscal year 2015, the Agora Cyber Charter School (‘Agora’) renegotiated its service agreement and entered into a three-year contract with the Company to purchase the Company’s curriculum and certain technology services and the school board assumed daily operational responsibilities, including its charter renewal process and marketing and enrollment activities.”</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that the Agora Board and K12 had not entered into a three-year contract for the provision of curriculum and certain technology services. The Agora Board’s alleged intention to “simultaneously continue using K12 curriculum and begin the process of building [its] own and offering it to parents and students as an option” is not to the contrary, and had been public knowledge since at least October 2014. <i>See</i> AC ¶ 150. MTD at 16-18.

Statements Concerning Student Academic and Scantron Results			
	DATE & SOURCE	CHALLENGED STATEMENT ²	REASON(S) NOT ACTIONABLE
19.	<p>November 7, 2013 Conference Call</p> <p>(Ex. X)</p> <p>Speaker: Packard</p> <p>AC ¶ 225</p>	<p><u>As Alleged in the AC:</u></p> <p>“During the November 7, 2013 earning conference call, . . . Packard explained to investors and analysts that in many of the schools K12 serves, a majority of students come to K12 at behind grade level and that:</p> <p>‘To ascertain that the students were performing adequately, we adopted an adaptive test from Scantron that was designed to measure student learning gains and it showed that our students were learning at [national] norm levels. However, given the large number of new students who enter our schools each year, these schools would not obtain state averages despite these learning gains.</p> <p>* * *</p> <p>While we felt and still believe the gains from the adaptive tests designed to measure gains are far better than state tests that impute gains from non-scaled CRT tests that were not designed to measure gains, we understood that it was necessary to do well on both tests.’”</p> <p><u>Actual Language:</u></p> <p>“In many of the schools we serve, the majority of the students who come to us are significantly behind grade level. Therefore, it was not surprising that school scores began to drop below state averages. Few, if any, schools can bring students who start significantly behind grade level up to proficiency in the first year. Our goal with everything we do is to maximize the learning efficiency ratio.</p> <p>To ascertain if the students were performing adequately, we adopted a test from Scantron that was designed to measure student learning</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts establishing that, as of November 2013, students at K12-supported schools had not achieved Scantron gain scores showing that the students were “learning at national norm levels.” MTD at 18-19. • Opinion. MTD at 16 n.19.

² All alterations appear in the Amended Complaint (“AC”).

Statements Concerning Student Academic and Scantron Results			
	DATE & SOURCE	CHALLENGED STATEMENT ²	REASON(S) NOT ACTIONABLE
		<p>gains and it showed that our students were learning at national norm levels. However, given the large number of new students who enter our schools each year, these schools would not attain state averages despite these learning gains. We are proud, however, of the fact that on average, the longer students are with us, the better they perform.</p> <p>In addition to the Scantron test, we also received acceptable scores on the state gains test that were starting to be used in several states. In the fall of 2011, however, a few of the schools we serve received state gains test that were not positive. Unfortunately, these scores came in too late for us to implement changes for the 2011-2012 school year.</p> <p>While we felt and still believe the gains from an adaptive test designed to measure gains are far better than state tests that impute gains from non-scale CRT tests that were not designed to measure gains, we understood it was necessary to do well in both tests.”</p>	
20.	<p>February 4, 2014 Conference Call (Ex. L) Speaker: Murray AC ¶ 227</p>	<p><u>As Alleged in the AC:</u></p> <p>“On the February 4, 2014 earnings call, in the opening remarks, Murray noted that: ‘We also focused this fall on improving the participation in are Scantron testing, and I’m happy to report that we improved student participation from 85% last fall to 95% this fall. By working to ensure that the vast majority of students complete the Scantron exams in the fall, we are on track to have an even more accurate picture of academic gains across all types of students for the 2013/2014 school year.”</p> <p><u>Actual Language:</u></p> <p>“We also focused this fall in [sic] improving the participation in our Scantron testing, and I’m happy to report that we’ve improved student participation from 85% last fall to 95% this fall. By working to ensure that the vast majority of students complete the Scantron</p>	<ul style="list-style-type: none"> • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts establishing that K12 had not, as of February 2014, increased the rate of student participation in the Fall Scantron test at the start of the school year from 85% in 2012 (at the beginning of the 2012-13 cycle) to 95% in 2013 (at the beginning of the 2013-14 cycle). Nor does the AC allege particularized facts showing that increased student participation rate would not have provided a “more accurate picture of academic gains across all types of students” for the 2013-14 school year. MTD at 18-19.

Statements Concerning Student Academic and Scantron Results			
	DATE & SOURCE	CHALLENGED STATEMENT ²	REASON(S) NOT ACTIONABLE
		exams in the fall, we are on track to have an even more accurate picture of academic gains across all types of students for the 2013-14 school year.”	
21.	March 20, 2014 Press Release (Ex. Y) AC ¶ 229	<p><u>As Alleged in the AC:</u></p> <p>“On March 20, 2014, in a press release available on K12’s website, K12 announced the results of its 2014 Academic Report. In this release, K12 listed the ‘key findings’ of the 2014 Academic Report:</p> <ul style="list-style-type: none"> • On Scantron assessments, students in K12-managed public schools overall outperformed the mean norm group gain in both Reading and Mathematics. • In the 2012-2013 school year, on Scantron assessments K12-managed public schools achieved 125 percent norm group gain in Reading across all grades and 102 percent norm group gain in Mathematics across all grades.” <p><u>Actual Language:</u></p> <p>“Over the past four years, students in K12-managed schools have generally demonstrated gains very close to or above the Scantron mean norm group gains in both Reading and Mathematics.</p> <p>On Scantron assessments, students in K12-managed public schools overall outperformed the mean norm group gain in both Reading and Mathematics.</p> <p>In the 2012-2013 school year, on Scantron assessments K12-managed public schools achieved 125 percent norm group gain in Reading across all grades and 102 percent norm group gain in Mathematics across all grades.”</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts establishing that students at K12-supported schools did not achieve gains between the fall and spring Scantron tests in 2012-13 amounting to 125 and 102 percent, respectively, of the Scantron national norm group gain in Reading and Mathematics, and thus “outperform[] the mean norm group gain” in both subjects for that period. MTD at 18-19.
22.	2014 Academic	“The Executive Overview of the 2014 Academic Report included ‘Scantron Highlights’: ‘We believe the Scantron assessments	<ul style="list-style-type: none"> • The AC alleges no particularized facts establishing

Statements Concerning Student Academic and Scantron Results			
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	Report AC ¶ 230	<p>provide a better indicator of student growth than what is being used in many states today.</p> <ul style="list-style-type: none"> • Over the past four years, K12 students have generally demonstrated gains very close to or above the Scantron mean norm group gains in both Reading and Mathematics. • Students in K12-managed public schools overall outperformed the mean norm group gain in both Reading and Mathematics. • K12-managed public schools achieved 125 percent norm group gain in Reading across all grades in the 2012–2013 school year. • K12-managed public schools achieved 102 percent norm group gain in Mathematics across all grades in the 2012–2013 school year.” 	<p>that students at K12-supported schools did not achieve gains between the fall and spring Scantron tests in 2012-13 amounting to 125 and 102 percent, respectively, of the Scantron national norm group gain in Reading and Mathematics, and thus “outperform[] the mean norm group gain” in both subjects for that period. MTD at 18-19.</p>
23.	2014 Academic Report AC ¶ 231	<p>“The 2014 Academic Report next discussed the ‘Scantron Performance Series® Assessment Results for 2012-2013’ noting: ‘In 2012-2013, even with an increase in the number of K12-managed public schools and students, the Scantron results showed improvement in growth for both Reading and Mathematics. For the 2012-2013 school year, students overall in K12-managed public schools achieved 125 percent of Scantron norm group gain in Reading and 102 percent norm group gain in Mathematics.’”</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that K12’s Scantron results for the 2012-2013 school year did not reflect an improvement—as compared to prior years—in Reading and Mathematics. Nor does the AC allege particularized facts contradicting the numerical results that K12 published, relative to the Scantron norm group gain, for the same year. MTD at 18-19.
24.	FY2014 10-K (Ex. K) AC ¶ 232	<p><u>As Alleged in the AC:</u></p> <p>“Under the subheading, ‘Academic Performance’ of K12’s description of its products and services, the Company’s FY2014 10-K: ‘As we reported in our 2014 Academic Report, pre- and post-test data from the Scantron Performance Series adaptive assessment system showed that, in aggregate, students in the managed public schools we serve achieved greater academic growth than the norm group in both mathematics and reading for the 2012-2013 school</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts establishing that students at K12-supported schools did not achieve gains between the fall and spring Scantron tests in 2012-13 that exceeded the mean norm group gain in both Reading and Mathematics for that period. MTD at 18-19.

Statements Concerning Student Academic and Scantron Results			
	DATE & SOURCE	CHALLENGED STATEMENT ²	REASON(S) NOT ACTIONABLE
		<p>year.”</p> <p><u>Actual Language:</u></p> <p>“As we reported in our 2014 Academic Report, pre- and post-test data from the Scantron Performance Series adaptive assessment system showed that, in aggregate, students in the managed public schools we serve achieved greater academic growth than the norm group in both mathematics and reading for the 2012-2013 school year. In addition to measuring a student's academic growth over the course of the school year, the Scantron testing results provide teachers, families and curriculum developers with insights on areas to improve a student's academic growth during a school year.”</p>	
25.	<p>October 30, 2014 Conference Call (Ex. E) Speaker: Davis AC ¶ 234</p>	<p><u>As Alleged in the AC:</u></p> <p>“Davis discussed K12’s Scantron Test results for the 2013-14 school year in his opening remarks on the October 30, 2014 earnings call: ‘Because state-administered tests vary widely in their standards, students in K12-managed virtual academies also take Scantron performance series tests in reading and mathematics, because we want a national comparison on gain. This testing is to measure the students’ gains over their school year. For the 2013 to 2014 school year, students in K12 virtual academies exceeded the national norm mean gain, that’s the mean gain measured by Scantron, in tests for both reading and mathematics, and they did it in all grades tested. For reading in 2013-2014, across grades 3 to 10, K12 students not only exceed the national norm group gain, but more than doubled it in grades 6, 7 and 9.</p> <p>For math in the same school year, across grades 3 to 10 again, K12 students exceed the national norm group gain, more than doubling it in grade 9. These results are evidence that the investments we continue to make in our programs to focus on academic achievement</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that students at K12-supported schools did not achieve gains exceeding the Scantron national norm group mean’s gains in both math and reading for the 2013-14 testing cycle. MTD at 18-19.

Statements Concerning Student Academic and Scantron Results			
	DATE & SOURCE	CHALLENGED STATEMENT ²	REASON(S) NOT ACTIONABLE
		<p>which we internally call Students First, are beginning to bear fruit.”</p> <p><u>Actual Language:</u></p> <p>“Because state administrative test vary widely on the standards, students in K12 managed virtual academies also take Scantron performance series tests, in reading and mathematics for -- because we want a national comparison on gains. This testing is to measure the student gains over the school year. For the 2013 to 2014 school year students in K12 virtual academies exceeded the national norm mean gain measured by Scantron in tests for both reading and mathematics, and they did it in all grades tested. For reading in 2013-14 across grades three to 10, K12’s student not only exceed the national norm group gain, but more than doubled it in Grade 6, 7 and 9. For math in the same school year across Grades 3 to 10 again, K12 students exceeded the national norm group gain more than doubling it in Grade 9. These results are evidence that the investments we continue to make in our programs to focus on academic achievement, which we internal cost to disperse are beginning to bear fruit.”</p>	
26.	<p>May 4, 2015 Press Release</p> <p>(Ex. Z)</p> <p>Speaker: Davis</p> <p>AC ¶ 235</p>	<p>“On May 4, 2015, K12 announced via a press release that it had published the 2015 Academic Report. In this press release, Davis, in discussing the data released in the 2015 Academic report, stated: ‘This data is not just a broad scale report card of our students’ progress, it is proof positive of the headway we’ve made as a company in recognizing the issues we face and building upon them to be transparent and provide the finest education to our students.’ The press release also highlighted key findings of the 2015 Academic Report, including: ‘On Scantron assessments, students in K12 managed public schools overall outperformed the mean norm group gain in both Reading and Mathematics.’”</p>	<ul style="list-style-type: none"> • Puffery (e.g., “proof positive of the headway we’ve made,” “provide the finest education”). MTD at 15-16. • The AC alleges no particularized facts showing that students at K12-supported schools did not achieve gains that, overall, exceeded the Scantron national norm group mean’s gains in both reading and math for the 2013-14 testing cycle. MTD at 18-19.
27.	2015 Academic	<p>“The 2015 Academic Report included a letter from Davis, and an Executive Overview that highlighted Scantron Results, including:</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that students at K12-supported schools did not achieve

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	Report AC ¶ 238	<p>‘In the 2013-2014 school year, in grades 3-10, students in K12-managed public schools exceeded the Scantron national norm group mean gain in both Reading and Mathematics. (See Figure 3.)</p> <ul style="list-style-type: none"> • In Reading, in all grades tested (3-10), K12 students overall outperformed the norm group mean gain by 161%. • In Mathematics, in all grades tested (3-10), K12 students overall outperformed the norm group mean gain by 145%.’” 	gains that, overall, exceeded the Scantron national norm group mean’s gains in both reading and math for the 2013-14 testing cycle. MTD at 18-19.
28.	2015 Academic Report AC ¶ 239	“The 2015 Academic Report next presented an ‘Aggregate Analysis of Student Test Data’ and noted that ‘In the 2013-2014 school year, in grades 3-10, students in K12-managed public schools exceeded the Scantron national norm group mean gain both in Reading and Mathematics.[.]’”	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that students at K12-supported schools did not achieve gains that, overall, exceeded the Scantron national norm group mean’s gains in both reading and math for the 2013-14 testing cycle. MTD at 18-19.
29.	2015 Academic Report AC ¶ 240	“The 2015 Academic Report then presented Scantron Test results, highlighting: ‘As reported in Figure 16 and Table 11, in Reading, in all grades tested (3-10), K12 students exceeded the norm group gain from fall to spring. Overall, K12 students outperformed the norm group mean gain in Reading by 161%.’ And: ‘As reported in Figure 17 and Table 12, in Mathematics, in all grades tested (3-10), K12 students exceeded the norm group gain from fall to spring. Overall, K12 students outperformed the norm group mean gain in Mathematics by 145%.’”	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that students at K12-supported schools did not achieve gains that, overall, exceeded the Scantron national norm group mean’s gains in both reading and math for the 2013-14 testing cycle. MTD at 18-19.

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT³	REASON(S) NOT ACTIONABLE
30.	<p>March 20, 2014 Press Release</p> <p>(Ex. Y)</p> <p>AC ¶ 243</p>	<p>“On March 20, 2014, in a press release available on K12’s website, K12 announced the release of its 2014 Academic Report. In this release, K12 listed the ‘key findings’ of the 2014 Academic Report:</p> <ul style="list-style-type: none"> • Persistence makes a difference. Data confirm that students perform better on state proficiency tests the longer they stay with the K12 program. Students enrolled three or more years in K12-managed public schools achieve higher percentages at or above proficiency compared to students enrolled less than one year: 17 percent higher in Reading, 22 percent higher in English Language Arts, and 11 percent higher in Mathematics. • In K12-managed public schools, as in most public schools, lower income students – those eligible for free or reduced-price lunch – do not perform as well as students not eligible for federal meal subsidies. • Compared to most public schools, K12-managed public schools serve a significantly higher percentage of students who qualify for free or reduced-price lunch: 63 percent in K12-managed schools compared with a national average of 49 percent.” 	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that students at K12-supported schools do not “perform better on state proficiency tests the longer they stay with the K12 program.” Nor does the AC dispute the accuracy of the specific percentages cited in the statement. MTD at 19-21. • The AC likewise fails to allege particularized facts establishing that K12-supported schools do not serve a higher percentage of students qualifying for free or reduced-price lunch (“FRPL”), relative to the national average for public schools. Nor does the AC allege specific facts showing that such lower income students generally “do not perform as well” academically, relative to their non-FRPL-eligible peers. MTD at 19-21.
31.	<p>April 29, 2014 Conference Call</p> <p>(Ex. O)</p> <p>Speaker: Davis</p> <p>AC ¶ 245</p>	<p><u>As Alleged in the AC:</u></p> <p>“On the April 29, 2014 earnings call with investors and analysis, in his opening comments, Davis highlighted the key findings shared at K12’s Academic Day held the previous month: ‘First, a higher percentage of K12 students are eligible for free or reduced lunches than most schools. In fact, 63% of our students are eligible for free and reduced lunches compared to 49% nationally. As is true across the nation, students who are eligible for meal subsidies tend to academically underperform those who are not eligible. This translates into academic performance of students at K12-managed</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts establishing that K12-supported schools do not serve a higher percentage of FRPL-eligible students, relative to the national average for public schools. Nor does the AC allege specific facts showing that such lower income students at K12-supported schools—and “across the nation”—generally “underperform” their non-FRPL-eligible peers. MTD at 19-21. • Nor does the AC plead particularized facts showing that students at K12-supported schools do not

³ All alterations appear in the Amended Complaint (“AC”).

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT³	REASON(S) NOT ACTIONABLE
		<p>schools that are generally below the performance of students in traditional schools.</p> <p>* * *</p> <p>And third, perhaps the most important on the effectiveness of our program, persistence makes a difference. Data confirms that students perform better on state assessment tests the longer they stay with the K12 program. Students enrolled three or more years in K12 managed public schools achieved higher proficiency compared to students enrolled less than one year, and in fact, 17% higher in reading, they were 19% higher in English language arts, and 22% higher in mathematics if they stayed three years.”</p> <p><u>Actual Language:</u></p> <p>“I now want to say a few words about our core mission helping student to achieve the best possible academic outcomes. Last month we were proud to host our second academic day where our teachers and school leaders shared our progress, our challenges and our approaches to educating students. The data we shared was also published in our latest academic report. The key findings they shared were as follows.</p> <p>First, a higher percent of K12 students are eligible for free and reduced lunches in low [sic] schools. In fact, 63% of our students are eligible for free and reduced lunches compared to 49% nationally. As it's true across the nation, students who are eligible for meal subsidies tend to academically underperform those who are not eligible. This translates into academic performance for students at K12 managed schools that are generally below the performance of students at traditional schools.</p> <p>* * *</p> <p>And third, perhaps most important on the effectiveness of our</p>	<p>“perform[] better” on state tests “the longer they stay with the K12 program.” MTD at 19-21.</p>

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		program persistence makes the difference. Data confirms that students performed better on the state assessment tests, but [sic] longer they stay with the K12 program. Students enrolled three or more years in K12 managed public schools achieved higher proficiency compared to students enrolled less than one year. In fact 17% are higher in reading they were 19% higher in English language arts and 22% higher in mathematics if they stay three years.”	
32.	April 29, 2014 Conference Call (Ex. O) Speaker: Davis AC ¶ 247	<p><u>As Alleged in the AC:</u></p> <p>“During the question and answer session of the April 29, 2014 earnings call, Davis responded to a question on whether special education would be a continued focus for the Company. Davis responded: ‘Absolutely. We have talked many times about as a public school we take on all kids who apply, make it through the process and the parents decide this really is a good program for them. And to the extent they are special education students, if they get through that process, we want to serve them. We think they are an important market, and so we will continue. I don’t think the number is going to decline in percent. I think you may see it actually go up a little bit or stay flat. But yes, it will remain a key focus for us.’”</p> <p><u>Actual Language:</u></p> <p>“Jeff Silber – BMO Capital Markets: ... Is [special education] going to be a continued focus for the company?</p> <p>Nate Davis: Absolutely. We – as we’ve talked many times about as a public school we take on all kids who apply who make it through the process and if parents decide this really is a good program for them and to the extent that special education students make into that process we want to serve them. We think they are an important market and so we will continue. I don’t think the numbers going to decline in percent, I think you may see it actually go up a little bit or</p>	<ul style="list-style-type: none"> • Puffery (“important market” and “key focus”). MTD at 15-16. • Forward-Looking. MTD at 11-12. • The AC alleges no particularized facts showing that the public schools K12 supports do not “take on all kids who apply.” MTD at 19-21. • Nor does the AC allege particularized facts showing that K12’s partner schools do not “want to serve” special education students. Likewise, the AC fails to allege specific facts establishing that Davis did not believe as of April 2014 that the percentage of enrolled students at K12-supported schools qualifying for special education services would “go up a little bit or stay flat” in future school years. MTD at 19-21.

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		stay flat, but yes it will remain a key focus for us.”	
33.	<p>April 29, 2014 Conference Call</p> <p>(Ex. O)</p> <p>Speaker: Murray</p> <p>AC ¶ 249</p>	<p><u>As Alleged in the AC:</u></p> <p>“Also on the April 29, 2014 earnings call, Murray responded to a request to ‘spend a minute on the NCAA situation[::]’ ‘We are working very, very hard with the NCAA to work with them to shape the policies for them to be able to ensure that their mission of ensuring eligibility for the schools that they regulate can be implemented in an online model. It was unfortunate that they took the action they recently did. In terms of the impact on us, to be honest with you, it’s not great in terms of absolute numbers of students, but from a marketing perspective, we would prefer not to be signaled out as a company who can support those kinds of students, even though it is a small number of students for us. So it’s not as much about a financial impact. It is more about us being able to serve the students that really do need our model, including those students who want to go on to Division 1 or Division 2 athletic programs.’”</p> <p><u>Actual Language:</u></p> <p>“Jerry Herman – Stifel: As I just want [sic] if you spend a minute on the NCAA situation and what sort of impact that might have on volume?</p> <p>Tim Murray: ... We’re working very, very hard with the NCAA to work with them to shape the policies for them to be able to ensure that their mission of ensuring eligibility for the schools that they regulate can be implemented in an online model. It was unfortunate that they took the action they recently did. In terms of the impact on us to be honest with you it’s not great in terms of absolute numbers of students, but from a marketing perspective we would prefer not to be singled out as a company who can support those kinds of students even though it’s a small number of students for us. So it’s not as</p>	<ul style="list-style-type: none"> • Puffery (“working very, very hard,” “not great”). MTD at 15-16. • Forward-Looking. MTD at 11-12. • The AC fails to allege with particularity any material facts that contradicted or were omitted from the challenged statement. MTD at 19-21.

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	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		much about a financial impact, it's more about us being able to serve the students that really do need our model including our students who want the Division 1 or Division 2 athletic programs."	
34.	<p>August 14, 2014 Conference Call</p> <p>(Ex. D)</p> <p>Speaker: Davis</p> <p>AC ¶ 251</p>	<p><u>As Alleged in the AC:</u></p> <p>"During the question and answer session of the August 14, 2014 earnings call, Davis responded to a question about K12's in-house services and if that was a developing trend. Although not a direct answer to the question, Davis commented that: 'The strength of our program is in our curriculum. We think that's one of the great assets we have.'"</p> <p><u>Actual Language:</u></p> <p>"Jerry Herman – Stifel: Thanks. Good morning, everybody. Nate, I wanted to start with sort of a high level question. You are helpful in terms of explaining some of the changes in transitions and shifts in the business. There has been couple of examples where your partner have talked about taking some of the services that you provided house, i.e. Kansas City, Pennsylvania. Do you see that as a developing trend in some way? And if so, how do you think it sort of impacts the business model over time."</p> <p>Nate Davis: Very interesting, I think some positive and some negatives from that. I don't know if I can say it's a trend but I will just give you some facts. Over May of 2006, I believe in PAVCS decided that they will going to be self managed and go in-house. At the same time, we established another school that we're working with called Agora. And Agora is from dramatically in PAVCS which has been a good school staying at the same size.</p> <p>Since that time, yes, Colorado and we've disclosed Colorado and Hawaii have done a same thing. But we've got other schools in Colorado. So I think you will see that we continue to pursue second,</p>	<ul style="list-style-type: none"> • Puffery ("strength of our program" and "one of the great assets we have"). MTD at 15-16. • The AC alleges no particularized facts showing that K12's curriculum was not the "strength of [the Company's] program" as of August 2014, or that Davis did not believe it to be "one of [K12's] great assets." MTD at 19-21.

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	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		<p>third schools in the state, both for academic risk and for other reasons including CTE. So when you look at that, there is some balance.</p> <p>In terms of the business model and how it changes the business model, remember that there's a lot of expense associated with managing a school. So if the board decides to take that work on themselves, that expense comes out of our P&L. We were the curriculum provider for PAVCS. We hope to be the curriculum provider for Colorado and we hope to be the curriculum provider for anybody who decides to go self managed.</p> <p>The strength of our program is in our curriculum and we think that's the one of the great assets we have. So I think there will be some change where cost come out of the P&L, revenue comes out P&L but we still continue, but I would consider it a very good margin curriculum business, and I think it changes."</p>	
35.	FY2014 10-K (Ex. K) AC ¶ 253	<p><u>As Alleged in the AC:</u></p> <p>"In describing K12's services as part of the discussion on K12's business, the 2014 Form 10-K stated: 'We believe that our learning systems are able to effectively address the educational needs of both advanced and special education students because they employ flexible teaching methods and students can use them at their own pace. For students requiring special attention, we employ a national director who is an expert on the delivery of special education services in a virtual or blended public school environment and who oversees the special education programs at the schools we serve. We direct and facilitate the development and implementation of 'individualized education plans' for students with special needs, and each school's special education program is designed to be compliant with the federal Individuals with Disabilities Education Act and all state special education</p>	<ul style="list-style-type: none"> • Puffery ("effectively address the educational needs," "flexible teaching methods"). MTD at 15-16. • The AC alleges no particularized facts showing that the flexibility in K12's online program and the ability for students to learn at their own pace do not effectively address the educational needs of students qualifying for special education and/or requiring special attention. Nor does the AC allege specific facts establishing the K12 does not direct and facilitate the development and implementation of individualized education plans for students with special needs. MTD at 19-21.

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		<p>requirements.”</p> <p><u>Actual Language:</u></p> <p>“Advanced and Special Education Services. We believe that our learning systems are able to effectively address the educational needs of both advanced and special education students because they employ flexible teaching methods and students can use them at their own pace. For students requiring special attention, we employ a national director who is an expert on the delivery of special education services in a virtual or blended public school environment and who oversees the special education programs at the schools we serve. We direct and facilitate the development and implementation of ‘individualized education plans’ for students with special needs, and each school’s special education program is designed to be compliant with the federal Individuals with Disabilities Education Act and all state special education requirements. Each special needs student is assigned a certified special education teacher and the school arranges for any required ancillary services, including speech and occupational therapy, and any required assistive technologies, such as special computer displays or speech recognition software. We support advanced and talented students through our advanced learner program. Advanced learners are able to participate in a wide variety of enrichment seminars, clubs, and mentoring opportunities. Advanced students are connected to each other across state boundaries through learning circles, book clubs, and other special-interest activities.”</p>	
36.	September 18, 2014 Press Release (Ex. M)	<p><u>As Alleged in the AC:</u></p> <p>“On September 18, 2014, K12 published a press release entitled ‘University of California Grants “A-G” approval of 95 Fuel Education Courses.’ K12 reported that it:</p> <p>‘[T]oday announced that the University of California ‘a-g’ review</p>	<ul style="list-style-type: none"> The AC alleges no particularized facts to establish that K12—through its Fuel Education affiliate—did not achieve approval of 95 courses in connection with the University of California’s “a-g” program. Nor does the AC allege specific facts showing that any other online and blended provider offered a greater number of approved courses at of September

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DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
AC ¶ 255	<p>board approved 95 of its online and blended courses, more approved courses than those of any other online and blended provider.</p> <p>Through its “a-g” requirements, the University of California verifies that enrolling students have an appropriate experience of 15 college-preparatory courses in history/social science, English, math, a lab science, a language other than English, the visual and performing arts, and a college-preparatory elective. California students who take Fuel Education courses are assured that they are certified by the University of California as meeting the subject requirement for enrollment. . . . For more information about the University of California’s “a-g” requirements, visit ucop.edu.”</p> <p><u>Actual Language:</u></p> <p>“Personalized learning solutions provider Fuel Education today announced that the University of California ‘a-g’ review board approved 95 of its online and blended courses, more approved courses than those of any other online and blended provider.</p> <p>Through its ‘a-g’ requirements, the University of California verifies that enrolling students have an appropriate experience of 15 college-preparatory courses in history/social science, English, math, a lab science, a language other than English, the visual and performing arts, and a college-preparatory elective. California students who take Fuel Education courses are assured that they are certified by the University of California as meeting the subject requirement for enrollment.</p> <p>For online courses, the University of California ‘aims to ensure that students have access to a broad range of high-quality online courses that maintain the “human touch” and integrity of assessment.’ All courses are reviewed by one of the university’s subject area analysts to verify that the content meets the university’s standards for</p>	<p>2014. MTD at 20-21.</p> <ul style="list-style-type: none"> • Plaintiffs omit from the AC a portion of the press release expressly identifying the six specific subject areas of K12’s approved courses, including social studies, English, math, science, world language, and elective courses—but not laboratory science or visual and performing arts—and providing links both to the University of California’s “a-g” website and to a “complete list of [K12’s] approved courses.” MTD at 20-21.

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	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		<p>college-preparatory coursework.</p> <p>* * *</p> <p>In the required subject areas, the University of California approved:</p> <ul style="list-style-type: none"> • 11 social studies courses; • 15 English courses; • 19 math courses; • 11 science courses; • 17 world language courses, including Chinese, French, German, Latin, and Spanish; and • 22 elective courses. <p>Click here for the complete list of approved courses. For more information about the University of California’s ‘a-g’ requirements, visit ucop.edu.”</p>	
37.	<p>October 30, 2014 Conference Call</p> <p>(Ex. E)</p> <p>Speaker: Davis</p> <p>AC ¶ 257</p>	<p><u>As Alleged in the AC:</u></p> <p>“In his opening remarks on the October 30, 2014 earnings call Davis noted: ‘When you have a high percentage of students who traditionally underperform in their schools before joining K12, our average static test scores are bound to be lower than traditional schools. But even with these high percentage of students who are often considered at risk, in many instances our academic performance is now better than school districts with light characteristics[.]’”</p> <p><u>Actual Language:</u></p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts undermining the statement that the concentrated population of students entering K12-supported schools after underperforming academically in brick-and-mortar public schools would yield overall relatively low average scores on state tests. Nor does the AC allege specific facts showing that K12-supported schools with high ratios of academically “at-risk” students in many instances achieve better results than schools with lower percentages of such students. MTD at 19-21.

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	DATE & SOURCE	CHALLENGED STATEMENT³	REASON(S) NOT ACTIONABLE
		<p>“K12’s partner schools continue to have a higher percentage of students that were eligible for free of these lunches compared to the national average. In fact 62% of our students are eligible for free or reduced price lunches compared to 49% nationally. Again this is important because students who were eligible for meal subsidies tend to academically underperform those who were not eligible. This is true across the nation. When you have a high percentage of students who traditionally underperformed in their schools before joining K12 our average static test scores are bound to be lower than traditional schools.</p> <p>But even with this higher percentage of students who are often considered at risk, in many instances our academic performance is now better than school districts with light characteristics as I mentioned earlier. We are very proud of our results and proud of our students and teachers.”</p>	
38.	<p>October 30, 2014 Conference Call (Ex. E) Speaker: Murray AC ¶ 259</p>	<p><u>As Alleged in the AC:</u></p> <p>“Also during the opening remarks on the October 30, 2014 earnings call, Murray stated: ‘[W]e gained approval for 95 courses from the University of California which audits course requirements to ensure that students have attained a body of general knowledge that will provide the breadth and perspective to enable success for more advanced study in the California university system. K12 now has 30% more courses approved in California than any other provider.’”</p> <p><u>Actual Language:</u></p> <p>“From a product perspective, we gained approval for 95 courses from the University of California which audits course requirements to ensure the students have attained a body of general knowledge that will provide a breadth and perspective to enable success for more advanced study in the California University system. K12 now has 30% more courses approved in California than any other</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts contradicting Murray’s description of the basic nature of the University of California’s “a-g” program or the number of K12 courses approved relative to other California providers. MTD at 20.

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	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
		provider.”	
39.	<p>October 30, 2014 Conference Call (Ex. E) Speaker: Davis AC ¶ 261</p>	<p><u>As Alleged in the AC:</u></p> <p>“During the question and answer session of the October 30, 2014 earnings call, Davis responded to the following question:</p> <p>‘JASON ANDERSON, ANALYST, STIFEL NICOLAUS: ...could you talk about maybe over the last couple years, kind of the sentiment from the departments of ed, by states, or the Federal, their I guess buy-in on how your results are presented, and are they better recognizing the improvement you’ve shown?</p> <p>* * *</p> <p>NATE DAVIS: .. I’d start by saying, I’m still disappointed that there’s not enough recognition for the good work that we’re doing, so no, I don’t think that there’s been recognition of the work. But, I will also admit that I don’t think that the change has been long-term change, yet. In other words, if you’re an administrator of a department of education and you look back at virtual charter schools and you question, you’re just beginning to understand this whole issue of free and reduced lunch [mix], the amount of mobility in our program, just begin to understand the dynamics of an online school program. They’ve always compared us, for example, to the state averages, and not to the demographics and schools that are like our schools.”</p> <p><u>Actual Language:</u></p> <p>“Jason Anderson - Stifel</p> <p>Thanks for the commentary on academics and the results and seeing improvement there, but I know in various schools you’ve seen improvement and maybe not as broadly as you’re seeing now, but could you talk about maybe over the last couple years, kind of the</p>	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that federal, state, and local regulators were not “just beginning” as of October 2014 to understand the “dynamics” of online education—including the implications of having relatively high percentages of mobile and/or FRPL-eligible students in such virtual programs. MTD at 19-21.

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	DATE & SOURCE	CHALLENGED STATEMENT³	REASON(S) NOT ACTIONABLE
		<p>sentiment from the departments divided by states, or the Federal, their I guess buy in on how your results are presented, and are they better recognizing the improvement you've shown? And kind of along with that, have you made the adjustments, you feel like you've fully made the adjustments you need to make to show I guess the right metrics? I mean, I know you've talked about that at length in the past, but just maybe getting an update on that?"</p> <p>Nate Davis</p> <p>Good morning Jason. So I'll start by saying I am still disappointed that there is not enough recognition for the good work that we are doing. So no I don't think if there has been recognition of the work but I will also admit that, I don't think that change has been a long term change yet. In other words, you are an administrator of department of education you look back at virtual chartered schools and you question, you're just beginning to understand that whole issue of free reduced lunch mix, the amount of mobility in our program, just begin to understand the dynamics of an online school program. They've always compared us for example to the state averages and not to the demographics at schools that are like our schools. Graduation rate is another issue, a student comes to us in the 10th grade but it is really only operating at the 8th or 9th grade level, they still expect us to graduate that student in three years to take it in their four year cohort group. Well that student is already operating at a five year graduation rate and we are supposed to graduate him in three years. So there are still those kind of issues that we face that still need to work to explain the regulators and we're out doing that work towards the federal and state level.</p> <p>But I think there is greater recognition but it's not where I wanted to be yet, I want to be honest with you about that. We need continue to talk about it, we need to continue to exposed and have full disclosure with regulators and I think they will eventually get there."</p>	

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT³	REASON(S) NOT ACTIONABLE
40.	<p>May 4, 2015 Press Release</p> <p>(Ex. Z)</p> <p>AC ¶ 263</p>	<p><u>As Alleged in the AC:</u></p> <p>“On May 4, 2015, K12 announced via a press release it [sic] 2015 Academic Report. The press release highlighted key findings of the 2015 Academic Report, including:</p> <ul style="list-style-type: none"> • Persistence continues to be a key factor to success. Data confirms that student performance on state proficiency tests increases the longer they stay with the K12 program. In grades 3-8, students enrolled three or more years in K12 managed public schools achieve higher percentages at or above proficiency: 14 percentage points higher in Reading and 19 percentage points higher in Mathematics. • The trend noted in grades 3-8—that students consistently perform better in Reading than in Mathematics—continues in high school.” <p><u>Actual Language:</u></p> <p>“Grades 3-8:</p> <p>* * *</p> <ul style="list-style-type: none"> • Persistence continues to be a key factor to success. Data confirms that student performance on state proficiency tests increases the longer they stay with the K12 program. In grades 3-8, students enrolled three or more years in K12 managed public schools achieve higher percentages at or above proficiency: 14 percentage points higher in Reading and 19 percentage points higher in Mathematics. • The trend noted in grades 3-8—that students consistently perform better in Reading than in Mathematics—continues in high school.” 	<ul style="list-style-type: none"> • The AC alleges no particularized facts showing that students at K12-supported schools do not perform better on state proficiency tests the longer they remain enrolled in the K12 program. Nor does the AC dispute the accuracy of the specific percentages cited in the statement. MTD at 19-21.
41.	<p>August 4, 2015 Conference Call</p>	<p><u>As Alleged in the AC:</u></p> <p>“On the August 4, 2015 earnings call, Davis highlighted in his opening remarks that ‘the University of California expanded the</p>	<ul style="list-style-type: none"> • Puffery (e.g., “especially valuable” and “informal seal of approval”). MTD at 15-16. • The AC alleges no particularized facts that

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT ³	REASON(S) NOT ACTIONABLE
	(Ex. G) Speaker: Davis AC ¶ 265	number of courses approved for the state by 40%. . . . This is especially valuable because many other states and school districts view California's endorsement as sort of an informal seal of approval." <u>Actual Language:</u> "In addition the University of California expanded the number of courses approved for the state by 40%. FuelEd has more than -- more approved courses than any other online or blended provider in California. This is especially valuable because many other states and school districts view California's endorsement as sort of an informal seal of approval."	contradict Davis's description of the number of K12 courses approved by the University of California relative to other in-state providers. MTD at 20-21.
42.	FY2015 10-K (Ex. V) AC ¶ 267	<u>As Alleged in the AC:</u> "In describing K12's services as part of the discussion on K12's business, the 2015 Form 10-K stated: 'We believe that our learning systems are able to effectively address the educational needs of both advanced and special education students because they employ flexible teaching methods and students can use them at their own pace. For students requiring special attention , we employ a national director who is an expert on the delivery of special education services in a virtual or blended public school environment and who oversees the special education programs at the schools we serve. We assist and facilitate the development and implementation of "individualized education plans" for students with special needs , and each school's special education program is designed to be compliant with the federal Individuals with Disabilities Education Act and all state special education requirements." <u>Actual Language:</u> "Advanced and Special Education Services. We believe that our	<ul style="list-style-type: none"> • Puffery ("effectively address the educational needs," "flexible teaching methods"). MTD at 15-16. • The AC alleges no particularized facts showing that the flexibility in K12's online program and the ability for students to learn at their own pace do not effectively address the educational needs of students qualifying for special education and/or requiring special attention. Nor does the AC allege specific facts establishing the K12 does not direct and facilitate the development and implementation of individualized education plans for students with special needs. MTD at 19-21.

Statements Concerning K12's Academic Services and Offerings			
	DATE & SOURCE	CHALLENGED STATEMENT³	REASON(S) NOT ACTIONABLE
		<p>learning systems are able to effectively address the educational needs of both advanced and special education students because they employ flexible teaching methods and students can use them at their own pace. For students requiring special attention, we employ a national director who is an expert on the delivery of special education services in a virtual or blended public school environment and who oversees the special education programs at the schools we serve. We assist and facilitate the development and implementation of 'individualized education plans' for students with special needs, and each school's special education program is designed to be compliant with the federal Individuals with Disabilities Education Act and all state special education requirements. Each special needs student is assigned a certified special education teacher and the school arranges for any required ancillary services, including speech and occupational therapy, and any required assistive technologies, such as special computer displays or speech recognition software. We support advanced and talented students through our advanced learner program. Advanced learners are able to participate in a wide variety of enrichment seminars, clubs, and mentoring opportunities. Advanced students are connected to each other across state boundaries through learning circles, book clubs, and other special-interest activities. In addition, for students needing English language learning assistance ('ELL Students'), we work with the schools and parents to advise on these programs, including with translation services in our enrollment centers."</p>	

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10 *Davis, Timothy L. Murray, and James J. Rhyu*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND JUDICIAL DISTRICT**

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18 IN RE K12 INC. SECURITIES LITIGATION
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Master File No. 4:16-cv-04069-PJH

CLASS ACTION

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
THE CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT**

Hearing Date: April 19, 2017
Time: 9:30 a.m.
Place: Ronald V. Dellums Federal Building,
Oakland, Courtroom 3
Judge: Hon. Phyllis J. Hamilton

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[PROPOSED] ORDER

This matter is before the Court on the Motion to Dismiss the Consolidated Amended Class Action Complaint (the “Motion”), filed by Defendants K12 Inc., Nathaniel A. Davis, Timothy L. Murray, Ronald J. Packard, and James J. Rhyu (collectively, “Defendants”). Defendants’ Motion came up on hearing on April 19, 2017. All parties were represented by counsel. This Court, having considered the papers submitted and the oral arguments presented by counsel, HEREBY ORDERS THAT:

For the reasons set forth in the moving papers, the Motion is GRANTED and the Consolidated Amended Class Action Complaint is dismissed with prejudice. All claims for relief against Defendants, and each of them, are hereby DISMISSED with prejudice and without leave to amend.

IT IS SO ORDERED.

Dated: _____

Hon. Phyllis J. Hamilton
United States District Court Judge