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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BRIDGEPOINT EDUCATION, INC.,
ANDREW S. CLARK, KEVIN
ROYAL, and JOSEPH D'AMICO,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Bridgepoint Education, Inc.

1 (“Bridgepoint” or the “Company”), analysts’ reports and advisories about the
2 Company, and information readily obtainable on the Internet. Plaintiff believes that
3 substantial evidentiary support will exist for the allegations set forth herein after a
4 reasonable opportunity for discovery.

5 NATURE OF THE ACTION

6 1. This is a federal securities class action on behalf of a class consisting
7 of all persons and entities other than Defendants who purchased or otherwise
8 acquired the publicly traded securities of Bridgepoint from March 8, 2017 through
9 March 6, 2019, both dates inclusive (the “Class Period”). Plaintiff seeks to recover
10 compensable damages caused by Defendants’ violations of the federal securities
11 laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities
12 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated
13 thereunder.

14 JURISDICTION AND VENUE

15 2. The claims asserted herein arise under and pursuant to §§10(b) and
16 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5
17 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

18 3. This Court has jurisdiction over the subject matter of this action under
19 28 U.S.C. §1331 and §27 of the Exchange Act.

20 4. Venue is proper in this judicial district pursuant to §27 of the Exchange
21 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company’s business has had
22 an effect in this judicial district, and the alleged misstatements entered, and
23 subsequent damages occurred, in this district.

24 5. In connection with the acts, conduct and other wrongs alleged in this
25 Complaint, Defendants, directly or indirectly, used the means and instrumentalities
26 of interstate commerce, including but not limited to, the United States mail,
27 interstate telephone communications and the facilities of the national securities
28 exchange.

1 **PARTIES**

2 6. Plaintiff, as set forth in the accompanying Certification, purchased the
3 Company's securities at artificially inflated prices during the Class Period and was
4 damaged upon the revelation of the alleged corrective disclosure.

5 7. Defendant Bridgepoint purports to provide postsecondary education
6 services in the United States. The Company is incorporated in Delaware and
7 conducts substantial business in California through its properties located there. The
8 Company's securities are traded on the New York Stock Exchange ("NYSE") under
9 the ticker symbol "BPI."

10 8. Defendant Andrew S. Clark ("Clark") co-founded Bridgepoint in 2003
11 and has served as its Chief Executive Officer ("CEO") since November 2003.

12 9. Defendant Joseph D'Amico ("D'Amico") served as the Company's
13 Interim Chief Financial Officer ("CFO") from October 2017 until April 16, 2018.

14 10. Defendant Kevin Royal ("Royal") has served as the Company's
15 Executive Vice President and CFO from October 1, 2015 until October 13, 2017,
16 and again since April 16, 2018.

17 11. Defendants Clark, D'Amico, and Royal are sometimes referred to
18 herein as the "Individual Defendants."

19 12. Each of the Individual Defendants:

20 (a) directly participated in the management of the Company;

21 (b) was directly involved in the day-to-day operations of the Company at
22 the highest levels;

23 (c) was privy to confidential proprietary information concerning the
24 Company and its business and operations;

25 (d) was directly or indirectly involved in drafting, producing, reviewing
26 and/or disseminating the false and misleading statements and
27 information alleged herein;

- 1 (e) was directly or indirectly involved in the oversight or implementation
2 of the Company's internal controls;
- 3 (f) was aware of or recklessly disregarded the fact that the false and
4 misleading statements were being issued concerning the Company;
5 and/or
- 6 (g) approved or ratified these statements in violation of the federal
7 securities laws.

8 13. The Company is liable for the acts of the Individual Defendants and its
9 employees under the doctrine of *respondeat superior* and common law principles
10 of agency because all of the wrongful acts complained of herein were carried out
11 within the scope of their employment.

12 14. The scienter of the Individual Defendants and other employees and
13 agents of the Company is similarly imputed to the Company under *respondeat*
14 *superior* and agency principles.

15 15. The Company and the Individual Defendants are referred to herein,
16 collectively, as the "Defendants."

17 **SUBSTANTIVE ALLEGATIONS**

18 **Materially False and Misleading Statements**

19 16. On March 7, 2017, after market hours, the Company filed a Form 10-
20 K for the fiscal year ended December 31, 2016 (the "2016 10-K") with the SEC,
21 which provided the Company's year-end financial results and position. The 2016
22 10-K was signed by Defendants Clark and Royal. The 1Q 2018 10-Q contained
23 signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by
24 Defendants Clark and Royal attesting to the accuracy of financial reporting, the
25 disclosure of any material changes to the Company's internal controls over financial
26 reporting, and the disclosure of all fraud.

27 17. The 2016 10-K stated the following concerning the Company's
28 internal control over financial reporting for the period:

1 internal control over financial reporting was effective as of December
2 31, 2017.

* * *

3 **Changes in Internal Control Over Financial Reporting**

4 We continually assess the adequacy of our internal control over
5 financial reporting and make improvements as deemed appropriate.
6 There have been no changes to our internal control over financial
7 reporting during the three months ended December 31, 2017 that have
8 materially affected, or are reasonably likely to materially affect, our
9 internal control over financial reporting.

10 20. On November 8, 2018, the Company filed a Form 10-Q for the quarter
11 ended September 30, 2018 (the “3Q 2018 10-Q”) with the SEC, which provided the
12 Company’s third quarter financial results and position. The 3Q 2018 10-Q was
13 signed by Defendant Royal. The 3Q 2018 10-Q contained signed SOX certifications
14 by Defendants Clark and Royal attesting to the accuracy of financial reporting, the
15 disclosure of any material changes to the Company’s internal controls over financial
16 reporting, and the disclosure of all fraud.

17 21. The 3Q 2018 10-Q stated the following concerning the Company’s
18 internal control over financial reporting:

19 **Changes in Internal Control Over Financial Reporting**

20 We continually assess the adequacy of our internal control over
21 financial reporting and make improvements as deemed appropriate.
22 There were no changes in internal control over financial reporting,
23 during the three months ended September 30, 2018 that have
24 materially affected, or are reasonably likely to materially affect, our
25 internal control over financial reporting.

26 22. The Company’s 3Q 2018 10-Q stated its net income was \$23,833,000
27 for the nine months ended September 30, 2018.

28 23. The statements referenced in ¶¶16-22 above were materially false
and/or misleading because they misrepresented and failed to disclose the following
adverse facts pertaining to the Company’s business, operational and financial

1 results, which were known to Defendants or recklessly disregarded by them.
2 Specifically, Defendants made false and/or misleading statements and/or failed to
3 disclose that: (1) Bridgepoint had undisclosed material weaknesses in its internal
4 controls over financial reporting which primarily related to its accounting for
5 revenue for the Full Tuition program portion of student contracts; (2) consequently,
6 Bridgepoint announced that its financial results for the three and nine months ended
7 September 30, 2018 had overstated revenue and net income and could no longer be
8 relied upon, and that Bridgepoint had identified similar accounting errors for the
9 years ended December 31, 2016 and 2017 (and related quarterly periods therein),
10 as well as the first and second quarters of 2018; and (3) as a result, Bridgepoint's
11 public statements were materially false and misleading at all relevant times.

12 **The Truth Begins to Emerge**

13 24. On March 7, 2019, the Company announced it had identified material
14 weaknesses in its internal control over financial reporting, that its financial
15 statements for the three and nine months ended September 30, 2018 should no
16 longer be relied upon due to material accounting errors, and that the Company had
17 identified similar accounting errors in its financial statements for the years ended
18 December 31, 2016 and 2017 (and related quarterly periods therein), as well as the
19 first and second quarters of 2018. The Company's announcement stated, in relevant
20 part:

21 On March 6, 2019, the Audit Committee of the Board of Directors
22 (the "Audit Committee") of Bridgepoint Education, Inc. (the
23 "Company") concluded that the Company's previously issued
24 unaudited condensed consolidated financial statements for the three and
25 nine months ended September 30, 2018 (the "Restated Periods"),
26 should no longer be relied upon because of errors. Additionally, the
27 Company's earnings and press releases and similar communications to
28 the extent that they relate to our financial statements for the Restated
Periods should no longer be relied upon.

Specifically, during the preparation of the 2018 annual
consolidated financial statements, the Company determined that the

1 process used for recording the revenue for the Full Tuition Grant
2 program portion of our student contracts and the related judgments and
3 estimates were not designed with sufficient precision. As a result, the
4 Company identified errors, relating to revenue, provision for bad debts,
5 accounts receivable and deferred revenue, which resulted in the
6 overstatement of revenue and expenses for the Restated Periods. The
7 errors described above were material to the Restated Periods and will
8 be corrected in the restatement of our financial statements for the
9 Restated Periods.

10 The Company plans to restate its unaudited condensed
11 consolidated financial statements for the Restated Periods discussed
12 above by filing an amended Form 10-Q for the period ended September
13 30, 2018 (the “Amended Form 10-Q”). As similar errors described
14 above existed in earlier periods, but were not considered material, the
15 Company plans to reflect the correction of such immaterial errors for
16 the years ended December 31, 2016 and 2017 (and related quarterly
17 periods therein), as well as the first and second quarters of 2018 (the
18 “Revised Periods”), in the Amended Form 10-Q and prospectively as it
19 issues subsequent filings. Adjustments prior to December 31, 2015 will
20 be adjusted through the retained earnings balance as of January 1, 2016,
21 as the adjustments in those periods were not considered material.

22 In addition, the Company has subsequently identified two material
23 weaknesses in internal control over financial reporting related to 1)
24 control design in the accounting for revenue related to the Full Tuition
25 Grant program and 2) operation of review controls over unusual or non-
26 recurring and significant transactions.

27 Our management has re-evaluated its assessment of our disclosure
28 controls and procedures and internal control over financial reporting as
of September 30, 2018 and concluded that each was ineffective as of
that date due to the existence of the material weaknesses. As part of our
Amended Form 10-Q, we will update and reflect the restatement of our
financial statements for the Restated Periods and the change in
management’s conclusion regarding the effectiveness of our disclosure
controls and procedures and internal control over financial reporting as
of September 30, 2018. As a result, we will not file our Form 10-K for
the year ended December 31, 2018 (the “Form 10-K”) until after the
filing of the Amended Form 10-Q.

We expect that certain amounts in the condensed consolidated
financial statements for the Restated Periods, which will be included in

1 the Amended Form 10-Q, to differ from the amounts reported in the
2 original filing. Revenue, as restated, for the nine month period ended
3 September 30, 2018 is expected to be in a range of approximately
4 \$347.2 million to \$348.7 million. Net income, as restated, for the nine
5 month period ended September 30, 2018 is expected to be in a range of
6 approximately \$17.6 million to \$18.1 million. However, the
7 restatement effects discussed herein are preliminary and subject to
8 further assessment prior to the filing of the Amended Form 10-Q. We
9 do not anticipate any material changes to our financial statements for
10 the Revised Periods.

11 The Audit Committee has discussed these matters with its
12 independent registered public accounting firm.

13 (Emphasis added.)

14 25. On this news, shares of Bridgepoint fell sharply during intraday trading
15 on March 7, 2019, reaching an intraday low of \$5.915 per share or down \$3.515 per
16 share or 37%, thereby damaging investors.

17 26. As a result of Defendants' wrongful acts and omissions, and the
18 precipitous decline in the market value of the Company's securities, Plaintiff and
19 other Class members have suffered significant losses and damages.

20 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

21 27. Plaintiff brings this action as a class action pursuant to Federal Rule of
22 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
23 purchased or otherwise acquired the publicly traded securities of Bridgepoint during
24 the Class Period (the "Class") and were damaged upon the revelation of the alleged
25 corrective disclosure. Excluded from the Class are Defendants herein, the officers
26 and directors of the Company, at all relevant times, members of their immediate
27 families and their legal representatives, heirs, successors or assigns and any entity
28 in which Defendants have or had a controlling interest.

29 28. The members of the Class are so numerous that joinder of all members
is impracticable. Throughout the Class Period, the Company's securities were
actively traded on the NYSE. While the exact number of Class members is unknown

1 to Plaintiff at this time and can be ascertained only through appropriate discovery,
2 Plaintiff believes that there are hundreds or thousands of members in the proposed
3 Class. Record owners and other members of the Class may be identified from
4 records maintained by the Company or its transfer agent and may be notified of the
5 pendency of this action by mail, using the form of notice similar to that customarily
6 used in securities class actions.

7 29. Plaintiff's claims are typical of the claims of the members of the Class
8 as all members of the Class are similarly affected by Defendants' wrongful conduct
9 in violation of federal law that is complained of herein.

10 30. Plaintiff will fairly and adequately protect the interests of the members
11 of the Class and has retained counsel competent and experienced in class and
12 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those
13 of the Class.

14 31. Common questions of law and fact exist as to all members of the Class
15 and predominate over any questions solely affecting individual members of the
16 Class. Among the questions of law and fact common to the Class are:

- 17 (a) whether Defendants' acts as alleged violated the federal securities
18 laws;
- 19 (b) whether Defendants' statements to the investing public during the
20 Class Period misrepresented material facts about the financial
21 condition, business, operations, and management of the Company;
- 22 (c) whether Defendants' statements to the investing public during the
23 Class Period omitted material facts necessary to make the statements
24 made, in light of the circumstances under which they were made, not
25 misleading;
- 26 (d) whether the Individual Defendants caused the Company to issue false
27 and misleading SEC filings and public statements during the Class
28 Period;

- 1 (e) whether Defendants acted knowingly or recklessly in issuing false and
2 misleading SEC filings and public statements during the Class Period;
3 (f) whether the prices of the Company's securities during the Class Period
4 were artificially inflated because of the Defendants' conduct
5 complained of herein; and
6 (g) whether the members of the Class have sustained damages and, if so,
7 what is the proper measure of damages.

8 32. A class action is superior to all other available methods for the fair and
9 efficient adjudication of this controversy since joinder of all members is
10 impracticable. Furthermore, as the damages suffered by individual Class members
11 may be relatively small, the expense and burden of individual litigation make it
12 impossible for members of the Class to individually redress the wrongs done to
13 them. There will be no difficulty in the management of this action as a class action.

14 33. Plaintiff will rely, in part, upon the presumption of reliance established
15 by the fraud-on-the-market doctrine in that:

- 16 (a) Defendants made public misrepresentations or failed to disclose
17 material facts during the Class Period;
18 (b) the omissions and misrepresentations were material;
19 (c) the Company's securities are traded in efficient markets;
20 (d) the Company's securities were liquid and traded with moderate to
21 heavy volume during the Class Period;
22 (e) the Company traded on the NYSE, and was covered by multiple
23 analysts;
24 (f) the misrepresentations and omissions alleged would tend to induce a
25 reasonable investor to misjudge the value of the Company's securities;
26 Plaintiff and members of the Class purchased and/or sold the
27 Company's securities between the time the Defendants failed to
28 disclose or misrepresented material facts and the time the true facts

1 were disclosed, without knowledge of the omitted or misrepresented
2 facts; and

3 (g) Unexpected material news about the Company was rapidly reflected
4 in and incorporated into the Company's stock price during the Class
5 Period.

6 34. Based upon the foregoing, Plaintiff and the members of the Class are
7 entitled to a presumption of reliance upon the integrity of the market.

8 35. Alternatively, Plaintiff and the members of the Class are entitled to the
9 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
10 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
11 Defendants omitted material information in their Class Period statements in
12 violation of a duty to disclose such information, as detailed above.

13 COUNT I

14 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5** 15 **Against All Defendants**

16 36. Plaintiff repeats and realleges each and every allegation contained
17 above as if fully set forth herein.

18 37. This Count is asserted against the Company and the Individual
19 Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. §
20 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

21 38. During the Class Period, the Company and the Individual Defendants,
22 individually and in concert, directly or indirectly, disseminated or approved the
23 false statements specified above, which they knew or deliberately disregarded were
24 misleading in that they contained misrepresentations and failed to disclose material
25 facts necessary in order to make the statements made, in light of the circumstances
26 under which they were made, not misleading.

27 39. The Company and the Individual Defendants violated §10(b) of the
28 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to

1 defraud; made untrue statements of material facts or omitted to state material facts
2 necessary in order to make the statements made, in light of the circumstances under
3 which they were made, not misleading; and/or engaged in acts, practices and a
4 course of business that operated as a fraud or deceit upon plaintiff and others
5 similarly situated in connection with their purchases of the Company's securities
6 during the Class Period.

7 40. The Company and the Individual Defendants acted with scienter in that
8 they knew that the public documents and statements issued or disseminated in the
9 name of the Company were materially false and misleading; knew that such
10 statements or documents would be issued or disseminated to the investing public;
11 and knowingly and substantially participated, or acquiesced in the issuance or
12 dissemination of such statements or documents as primary violations of the
13 securities laws. These defendants by virtue of their receipt of information reflecting
14 the true facts of the Company, their control over, and/or receipt and/or modification
15 of the Company's allegedly materially misleading statements, and/or their
16 associations with the Company which made them privy to confidential proprietary
17 information concerning the Company, participated in the fraudulent scheme alleged
18 herein.

19 41. Individual Defendants, who are the senior officers and/or directors of
20 the Company, had actual knowledge of the material omissions and/or the falsity of
21 the material statements set forth above, and intended to deceive Plaintiff and the
22 other members of the Class, or, in the alternative, acted with reckless disregard for
23 the truth when they failed to ascertain and disclose the true facts in the statements
24 made by them or other personnel of the Company to members of the investing
25 public, including Plaintiff and the Class.

26 42. As a result of the foregoing, the market price of the Company's
27 securities was artificially inflated during the Class Period. In ignorance of the falsity
28 of the Company's and the Individual Defendants' statements, Plaintiff and the other

1 members of the Class relied on the statements described above and/or the integrity
2 of the market price of the Company's securities during the Class Period in
3 purchasing the Company's securities at prices that were artificially inflated as a
4 result of the Company's and the Individual Defendants' false and misleading
5 statements.

6 43. Had Plaintiff and the other members of the Class been aware that the
7 market price of the Company's securities had been artificially and falsely inflated
8 by the Company's and the Individual Defendants' misleading statements and by the
9 material adverse information which the Company's and the Individual Defendants
10 did not disclose, they would not have purchased the Company's securities at the
11 artificially inflated prices that they did, or at all.

12 44. As a result of the wrongful conduct alleged herein, Plaintiff and other
13 members of the Class have suffered damages in an amount to be established at trial.

14 45. By reason of the foregoing, the Company and the Individual
15 Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5
16 promulgated thereunder and are liable to the Plaintiff and the other members of the
17 Class for substantial damages which they suffered in connection with their
18 purchases of the Company's securities during the Class Period.

19 **COUNT II**

20 **Violation of Section 20(a) of The Exchange Act**
21 **Against The Individual Defendants**

22 46. Plaintiff repeats and realleges each and every allegation contained in
23 the foregoing paragraphs as if fully set forth herein.

24 47. During the Class Period, the Individual Defendants participated in the
25 operation and management of the Company, and conducted and participated,
26 directly and indirectly, in the conduct of the Company's business affairs. Because
27 of their senior positions, they knew the adverse non-public information regarding
28 the Company's business practices.

