DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Court Address: 1437 Bannock St., Denver, CO 80202	DATE FILED: August 21, 2020 4:46 AM CASE NUMBER: 2014CV34530
STATE OF COLORADO, EX. REL. CYNTHIA H. COFFMAN, ATTORNEY GENERAL, AND JULIE MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, **Plaintiffs,** **v.** **CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC., a not-for-profit company; COLLEGEAMERICA DENVER, INC. and COLLEGEAMERICA ARIZONA, INC., divisions thereof, d/b/a COLLEGEAMERICA; STEVENS-HENEGAR COLLEGE, INC., a division thereof, d/b/a STEVENS-HENEGAR COLLEGE; COLLEGEAMERICA SERVICES, INC., a division thereof; CARL BARNEY, Chairman; and ERIC JUHLIN, Chief Executive Officer** **Defendants**	▲ COURT USE ONLY ▲ Case Number: 14CV34530 Ctrm: 275

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

THIS MATTER came on for a trial to the court during the period October 16, 2017 through November 9, 2017, with closing arguments on November 17, 2017. The State was represented by Jay Simonson, Olivia D. Webster, Mark T Bailey, Benjamin J. Saver, Hannah Harris, and Alissa Gardenswartz. Defendants were represented by Charles W. Steese, IJay Palansky, William M. Ojile, Jr., and Douglas N. Marsh of Armstrong Teasdale, LLP.

CONTENTS

INTRODUCTION

This is an enforcement action, brought by the Attorney General under the Colorado Consumer Protection Act ("CCPA") and by the Administrator of the Uniform Consumer Credit Code ("UCCC") under that statute. After an intense two-year investigation, the lawsuit was initiated in late 2014. The case proceeded to a preliminary injunction hearing in the spring of 2015. After two and half additional years of intense discovery, involving dozens of depositions and tens of thousands of pages of documents exchanged, the Attorney General and the Administrator seek injunctive relief, civil penalties, restitution, and disgorgement based upon unjust enrichment against Defendants, which this court will refer to collectively as "CollegeAmerica." In a nutshell, Plaintiffs contend that several aspects of CollegeAmerica's marketing and admissions operations amount to deceptive trade practices under the CCPA, and that its institutional loan program, known as EduPlan, is unconscionable under the UCCC.

In order to understand the voluminous evidence presented at trial, it is important to appreciate the overall regulatory context in which this case arises.

Proprietary, for-profit colleges such as CollegeAmerica are subject to a "triad" of regulatory functions and agencies, consisting of eligibility and certification by the federal Department of Education ("DOE"), accreditation by a DOE-designated accreditor, which in the case of CollegeAmerica is the Accrediting Commission of Career Schools and Colleges ("ACCSC") and licensure by the Colorado Division of Private Occupational Schools ("DPOS"). The DOE and ACCSC play the most prominent roles in this case.

At the highest policy level is the DOE. The DOE administers the Higher Education Act of 1965 ("HEA"), Title IV of which provides federal student financial aid to institutions of higher education. The HEA recognizes proprietary for-profit institutions of higher education as being eligible for participation in the federal student financial aid program under Title IV. Two

aspects of federal regulation play a prominent role in this case. First, in order to participate in Title IV programs, and enable its students to have access to federal student financial aid, proprietary institutions must derive at least 10% of their revenue from non-title IV funds. This is what is known as the "90/10 rule." It is, in effect, a market viability test for proprietary for-profit schools, based on the premise that if proprietary institutions are providing high-quality education, they should be able to attract a certain percentage of their total revenue from non-Title IV sources, which include, among other things, private scholarships, employer tuition reimbursement plans, third party loans, veterans benefits, and students' own private resources. Of particular interest in this case is the treatment of payments by students on "institutional loans", that is, loans made to the student by the school itself, for purposes of compliance with the 90/10 rule. Proprietary colleges are only able to count actual payments on such loans against the denominator "10" of the 90/10 rule.

The other federal regulations which play a prominent role in this case are the so called "gainful employment" rules. These were a set of regulations which, for the first time, defined for-profit colleges' obligation to "provide gainful employment in a recognized occupation," as required by Section 102 of the HEA. This is an extremely complex set of regulations, an oversimplification of which is that it allowed the DOE to monitor the earnings and the cohort default rates of graduates of for-profit colleges on their federal student loans three years after entering repayment. If a college's graduates failed a debt to earnings (D/E) rates measure, the college was obligated to warn prospective students that it was in danger of losing eligibility to participate in the Title IV federal student aid program, and chronic failure could result in losing eligibility. At the time of the trial of this case, the DOE was in the process of calculating CollegeAmerica's D/E rate, and the median earnings of its graduates, from information available through other federal agencies, which CollegeAmerica would then be required to post on its website in a standard template format. As it turned out, however, shortly after the trial, the DOE, now under a new administration, did not provide the number and template that CollegeAmerica had been anticipating, after all. In fact, the gainful employment regulations have now been rescinded.

CollegeAmerica's accreditor, ACCSC, monitors many aspects of its operations, including its graduation rates and employment placement data, pursuant to its Standards of Accreditation. CollegeAmerica reports its graduation rates and employment placement data in chart form to ACCSC on an annual basis. These graduation and employment charts are required to be available on CollegeAmerica's website. A significant amount of the evidence in this case addressed the accuracy of the information which CollegeAmerica has reported to its accreditor.

Importantly, however, this case is not brought pursuant to any federal law or regulation, or any accrediting standard, but rather under two of Colorado's consumer protection statutes, the CCPA and the UCCC. Thus, this case is to the overall regulation of for-profit colleges what the Battle of Glorieta Pass in 1862 was to the Gettysburgs and Chancellorsvilles of the larger American Civil War, largely fought east of the Mississippi. Although the munitions and tactics were similar, the battle of Glorieta Pass was fought at high-altitude, among the scrub oak and arid box canyons of northern New Mexico, in blustery winter weather, rather than in the low-lying river valleys and fertile farmland of the hot, humid east. Ultimately, the outcome of this battle, like Glorieta, is dictated by the terrain of the two Colorado statutes.

PROCEDURAL BACKGROUND

On December 1, 2014, the State filed this civil law enforcement action against Center for Excellence in Higher Education ("CEHE"), a not-for-profit company; CollegeAmerica Denver, Inc. and CollegeAmerica Arizona, Inc., each of which is a division of CEHE, d/b/a CollegeAmerica; Stevens-Heneager College, Inc., also a division of CEHE, d/b/a Stevens Henager College; College America Services, Inc., also a division of CEHE; the Carl Barney Living Trust; Carl Barney, Chairman; and Eric Juhlin, Chief Executive Officer (collectively "Defendants" or "CollegeAmerica"), for violations of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 *et seq*., and the Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq*.

Contemporaneously with its Complaint, the State filed a motion for preliminary injunction against the Defendants. A hearing was held from April 20 through April 24, 2015, with closing arguments on May 8, 2015.

On July 16, 2015, the Court, per Judge R. Michael Mullins, denied the motion. Judge Mullins found a reasonable probability that the State would succeed on the merits with regard to the State's representations regarding wages, but not otherwise. *See Court's Order Re: Preliminary Injunction*, July 16, 2015.

A four-week trial to the Court was conducted from October 16 through November 9, 2017, with closing arguments on November 17, 2017. The parties submitted proposed Findings of Fact and Conclusions of Law on December 4, 2017 and December 5, 2017, with Supplemental Findings of Fact and Conclusions of Law filed on January 8, 2018 and January 26, 2018. Following the amendment of the CCPA in HB 19-1289, the State filed a Motion for Determination of Question of Law on June 25, 2019, to which Defendants Responded on July 23, 2019, and the State Replied on August 2, 2019.

FINDINGS OF FACT

The Court makes the following findings of fact based upon the weight of the competent, credible evidence received at trial. It has applied the same factors regarding the credibility of witnesses in this case as a jury is instructed to pursuant to CJI-Civ. 3:16. The court has adopted some of each party's proposed findings of fact, but only after careful and independent review of the evidence.

I. Overview of CollegeAmerica and its Students

A. Background on CEHE's Colorado Operations

1. Defendant Carl Barney founded CollegeAmerica Denver, Inc. as a for-profit entity in the early 1990s. Ex. H at 6:16-25, *testimony of Carl Barney*.[1]

2. Around the same time, Barney founded or purchased several other for-profit colleges: CollegeAmerica Arizona, Inc., Stevens-Henager, and California Colleges, Inc. *Id.* at 8:7-17. Barney also owned CollegeAmerica Services, Inc. ("CASI"), which provided senior management oversight and support services to the for-profit colleges. *Id*. at 9:9-19.

3. Barney owned and controlled the for-profit colleges and CASI through the Carl Barney Living Trust (the "Trust"), which was the sole shareholder of each entity. *Id*. at 7:11-13; *see also* Ex. 528 at 1. Carl Barney is both the trustee and the beneficiary of the Trust. Ex. H at 108:12-14, *testimony of Carl Barney*.

4. In 2012, the for-profit entities controlled by Carl Barney merged with the non-profit entity Center for Excellence in Education ("CEHE"). *Id.* at 107:23-25; *see generally* Ex. 528. The purpose of the merger was to convert the colleges to non-profit, tax-exempt entities. Ex. 528 at 2.[2]

5. Defendants currently operate three campuses in Colorado with locations in Denver, Colorado Springs, and Fort Collins. Ex. H at 7:14-19, *testimony of Carl Barney*. At one time, Defendants operated a fourth campus in Colorado, located in South Colorado Springs. *Id*. at 7:25-8:1.

6. Between 2006 and 2016, CollegeAmerica enrolled approximately 10,879 students in Colorado. Ex. 748; *see also* Ex. S at 22:6-9, *testimony of Eric Juhlin*.

B. CollegeAmerica Students

7. The demographics of CollegeAmerica students differs from the demographics at many colleges. The average age of a CollegeAmerica student is 29. Ex. F at 86:1-9, *testimony of Ed Harvey.*

8. CollegeAmerica has a "much larger ethnic and minority population" than traditional universities. Ex. S at 23:22-25, *testimony of Eric Juhlin*. Forty percent of CollegeAmerica's students identify as members of a racial or ethnic minority, primarily African American and Hispanic. *See* Ex. 3400 (demonstrative exhibit). Sixty-eight percent (68%) of them are women, *Id.*, many of whom are single mothers with children and dependents. Ex. S at 24:19-20, *testimony of Eric Juhlin*.

9. CollegeAmerica students are "typically [from] a much lower socioeconomic status than the traditional college student." Ex. S at 25:1-3, *testimony of Eric Juhlin*. In the Denver

[1] Trial exhibits were marked exclusively with numerals, with the States' exhibits numbered between 1 and 1000, and CEHE's exhibits numbered 2001 and higher. The State also filed exhibits A through U with its Proposed Findings of Fact and Conclusions of Law, on December 5, 2017, consisting primarily of the transcripts of the trial. Because all of these exhbits are of record in the register of actipons in CES, this Order will simply refer to trial exhibits as Ex. [#] and volumes of the transcipts as Ex. [letter].

[2] Page references within exhibits are to the page in the *electronic* version of the exhibit, which often is not the same as any page numbers appearing on the hard copies of the documents.

campus, 74% of enrollees have a family income of less than $40,000. Ex. 865. In the Colorado Springs campus the figure is 80%, and in the Fort Collins campus it is 74%. Ex. 866.1; Ex. 867.1. Approximately 80% receive Pell Grants, which are available based on financial need. Ex. 2626

10. Eric Juhlin testified that CollegeAmerica students have generally "been dealt a very challenging hand" and that they are "not folks that have had a relatively easy course in their life." *Id.* at 24:11-14.

11. Sixty percent to two-thirds of students who enroll at CollegeAmerica do not graduate. Ex. F at 22:13-20, *testimony of Ed Harvey*.

12. Of those CollegeAmerica students who graduate, 76% receive an associate degree. *See* Ex. 748. Medical Specialties A.A.S. is the most popular degree, making up 54% of all graduates. *Id*. The second most popular degree is Healthcare Administration B.S., which accounts for 13% of graduates. *Id*.

13. Three years after leaving CollegeAmerica, only 16% of CollegeAmerica students have paid down one dollar or more of the principal on their federal loans. *See* Ex. D at 142:21-144:19, *testimony of Rohit Chopra*; Exs. 865.1, 866.1, 867.1; *see also* Ex. F at 40:11-41:13, *testimony of Ed Harvey*. This number is significantly lower than the national average of 46%. *See* Ex. 865.1, 866.1, 867.1.

C. Regulatory Environment of CollegeAmerica

14. CollegeAmerica, which is considered a for-profit school by the U.S. Department of Education, is regulated by federal and state agencies as well an accreditor, in what is referred to as "the triad," or the three-legged stool. *See Michale McComis Deposition Designation* at 42:10-43:12. Each of these agencies has a distinct role to play even though there tends to be some overlap. *Id.*

15. The U.S. Department of Education enforces the Higher Education Act of 1965 (Public Law 89-329) and promulgates rules tied to CollegeAmerica's eligibility to receive Title IV funds. *Id.* at 43:6-10. Relevant regulations include the 90/10 Rule. 20 U.S.C. § 1094(a)(24), 34 C.F.R. 668.14(b)(16), Ex. D at 93:8-95:16, *testimony of Rohit Chopra.* Other relevant regulations include restrictions on Cohort Default Rates, and a set of regulations pertaining to "Gainful Employment." *See, e.g.* 34 C.F.R. §§ 668.6, 668.412.

16. In addition, Defendants are regulated by the Colorado Division of Private Occupational Schools ("DPOS"). *See* Ex. 3420. DPOS's authority to regulate occupational schools like CollegeAmerica originates from the Private Occupational Education Act of 1981. *See* §§ 12-59-101 *et seq.*, C.R.S.

17. The third leg of the triad is accreditation. The Accrediting Commission of Career Schools and Colleges ("ACCSC") is the accrediting body for Defendants' Colorado schools. Ex. G at 12:21-24, *testimony of Greg Regan*; Ex. I at 293:16-22, *testimony of Eric Juhlin.*

18. The purpose of accrediting agencies such as ACCSC is to provide an independent third-party peer review process to assess the quality of education and institutional compliance

with an established set of standards promulgated by the accrediting body. *See Michale McComis Deposition Designation* at 28:9-30:1.

19. ACCSC is not responsible for determining whether its accredited institutions are in compliance with federal programs, *Id.* at 43:6-12, and ACCSC does not enforce state or federal law. *Id.* at 309:14-17.

D. The Campus's Merger Into CEHE and Application for Non-Profit Recognition by ACCSC

20. The merger between the for-profit colleges and CEHE was seller-financed by the Trust. Ex. H at 108:9-11, *testimony of Carl Barney*. In order to effectuate the merger, CEHE accepted two loans from the Trust in the amounts of $200,000,000 and $231,000,000. *Id*. at 122:12-23.

21. CEHE has made regular principle and interest payments to the Trust since 2012. Ex. H at 126:7-19, *testimony of Carl Barney*. Since 2012, CEHE has paid the Trust $29,303,260 in principal and interest on the two loan notes. *See* Ex. 729.

22. Payments made by CEHE for the loan notes are derived from profits obtained from the operation of all of the colleges, including CollegeAmerica. Ex. H at 128:8-13, *testimony of Carl Barney.*

23. In January of 2013, CEHE submitted a change of ownership application to the Department of Education in order to maintain eligibility to participate in Title IV funding. Ex. J at 45:1-4, *testimony of Eric Juhlin*; *see also* Ex. 912 at 1. Due to CEHE's non-profit status, acceptance of this change of ownership also entailed a conversion of the for-profit colleges to non-profit status under U.S. Department of Education regulations. Ex. 912 at 2.

24. Schools which are considered for-profit by the Department of Education are subject to the "90/10 rule." *See* Ex. D at 108:2-109:1, *testimony of Rohit Chopra.* In order to comply with the 90/10 rule, a school cannot receive more than 90% of its revenue from federal student aid. In other words, it must receive at least 10% of its revenue from sources other than federal student aid, such as cash, third party loans, VA funds, etc. *See* Ex. D at 108:2-109:17, *testimony of Rohit Chopra.* This regulation is designed to demonstrate the commercial viability of the receiving entity. *Id.* at 122:21-124:24.

25. The Department of Education denied CEHE's application to be treated as a nonprofit institution for the purposes of Title IV programs. *See* Ex. 912 at 2. The Department of Education determined that CEHE was not operated as a nonprofit entity because "the Trust retained the benefit of a continued stream of Title IV revenues and Mr. Barney obtained significant control of CEHE, and by extension, retained control of the Colleges." *Id*. at 3. The Department of Education determined that "the payments made under the [loan notes], which are contingent on CEHE 'making money,' are essentially profit distributions to the Trust – substantially the same as it received when it was the sole shareholder of the Companies." *Id*. at 8.

E. CEHE's High Revenues and Profits

26. Almost all of CEHE's revenues come from tuition and fees. *See* Ex. D at 57:10-23, *testimony of Rohit Chopra;* Ex. 750 at 1. Between 2006 and 2014, the Colorado campuses received $232,918,669 from students in the form of tuition and fees. *See* Ex. 750 at 1.

27. Eighty-five percent of CEHE's core revenue came from a single source, the U.S. Department of Education's Title IV federal student aid program. *See* Ex. D at 93:8-94:5, *testimony of Rohit Chopra*.

28. According to Mr. Chopra's review of CEHE's audited financial statements, CEHE spends far more on admissions and marketing than on instruction. This is true for CollegeAmerica's Colorado campuses and CEHE, system-wide. Ex. 750. The State's student lending expert, Rohit Chopra, who has a finance background and previously was involved in regulating schools' institutional lending practices, testified that among other for-profit schools, the relative difference between marketing and admissions expenses as compared to instruction is typically not as wide as CollegeAmerica's. *See* Ex. D at 89:16-90:3, *testimony of Rohit Chopra*.

29. Mr. Barney countered that CEHE, along with all private career colleges, is required to report its financials in the format it does, but that the instruction line item refers only to faculty salaries, and does not include deans, associate deans, librarians, tutors, supplies, computers or software, which totoal about 36%. Significantly more than is spent on advising and admissions. Ex. I at 121:9-122:10, *testimony of Carl Barney*.

30. CollegeAmerica's profit margin is also higher than what Mr. Chopra has observed among other for-profit institutions. *See id.* at 89:16-90:10. From 2008 to 2009, there was an increase from approximately $18 million to approximately $34 million in revenues for the Colorado campuses. Ex. 750; *See* Ex. D at 57:10-23, *testimony of Rohit Chopra*. These increases occurred during the recession, which spanned from late 2008 through 2010. *See* Ex. D at 284:11-21, *testimony of Rohit Chopra.*

31. Between 2009 and 2011 the Colorado campuses also realized a dramatic increase in revenues. Ex. 750; s*ee* Ex. D at 57:10-23, *testimony of Rohit Chopra*.

32. In 2010 and 2012, Defendant Barney awarded six-figure bonuses to executives and campus directors, including Rozann Kunstle, the director of the Colorado Springs campus. *See* Ex. K at 125:9-126:6, *testimony of Rozann Kunstle.*

II. The Sales Process

33. The State focused on several aspects of how CollegeAmerica recruits and enrolls students in order to prove their claim of a violation of the CCPA, including principally its advertising campaigns, admissions and financial aid processes.

A. Advertising Campaigns

34. CollegeAmerica Denver, Inc., which includes all of the Colorado campuses and a small campus in Cheyenne, Wyoming, spent an average of $7,530,241 per year on admissions and marketing between 2007 and 2014. *See* Ex. 750 at 1.

35. CollegeAmerica advertises in a number of different media, including mailers, television and radio advertisements, billboards, and over the Internet. A 2010 year-end presentation made by one of CEHE's marketing vendors indicates that advertisements ran in 73 different newspaper publications and on nine publication websites. Ex. 653 at 4. Additionally, advertising inserts were included in 35 publications. *Id*. The presentation does not indicate how many of these are Colorado publications, but Colorado consumers would have been exposed to the Denver Post and the websites, at a minimum. *Id*. at 5.

36. From 2006 until 2017, Defendants used consistent messaging in their advertising which featured the prospect of higher salaries as a result of obtaining a CollegeAmerica degree. *See* Exs. 425, 608, 678, 679, 425, 920.

37. Defendant Barney created an advertising checklist which was issued as procedure directive in 2008 and reissued in 2010. *See* Ex. 425; Ex. H at 24:9-25:1, *testimony of Carl Barney*. The checklist provides that headlines must include "higher pay, more money, or higher salary; better job or great career and faster." Ex. 425 at 4. Barney testified that these headlines were used "frequently." Ex. H at 27:7-19, *testimony of Carl Barney*. The checklist asks "does [the advertisement] constantly write about benefits?" and "does it mention… higher salary… often enough?" Ex. 425 at 7 (emphasis in original).

38. Defendants consistently ran advertisements with headlines and statements that emphasize how CollegeAmerica will increase earnings, often using first-person pronouns to refer to CollegeAmerica ("we" and "us"), and second person pronouns to refer to its audience, prospective students ("you" and "your"). Some examples are the following:

    a. "Higher education means higher earnings!" Ex. 678 at 8; Ex. 678 at 15, 40, 63; Ex. 608 at 10; Ex. 679 at 5, 13, 71.

    b. "Education is essential in getting a high-paying job." Ex. 608 at 9; Ex. 678 at 8, 15, 21, 62; Ex. 679 at 5, 71.

    c. "We make is easy to start your career faster and make more money sooner!" Ex. 678 at 7.

    d. "With tuition assistance you can save money as you prepare for a future where you could earn significantly more money – up to $1 million more over your lifetime!" Ex. 678 at 5, 43.

    e. "You could make more money and have a real career with the right degree." Ex. 608 at 10; Ex. 678 at 16, 63.

f. "Think about what a bigger paycheck could mean for your future." Ex. 608 at 10; *see also* Ex. 678 at 8, 22, 40; Ex. 679 at 13, 21, 71.

g. "Without a degree you could be **losing $2,000 every month in potential earnings**. How would an extra $2,000 change your life? Call [number] for faster service." Ex. 678 at 5 (emphasis in original); Ex. 678 at 7, 21, 23, 39, 43; Ex. 679 at 69, 71.

39. Defendants' advertisements consistently make reference to what is known as the "million dollar promise": the fact that college graduates on average earn $1,000,000 more than non-degree holders over the course of their lifetime. Ex. R at 232:3-5, 22-23, *testimony of Diane Jones*; Ex. 678 at 5, 21, 23, 39, 43; Ex. 679 at 69, 71. This assertion is made frequently by numerous sources within the education industry, including by the DOE on the College Scorecard website.

40. In a number of ads, Defendants subtly draw a link between this general proposition based on national averages and the education offered by CollegeAmerica with language such as "You could earn over a million dollars more over your lifetime if you hold the right degree. You can make more money and have a real career with a higher degree. Let us show you how." *See* Ex. 608 at 10; Ex. 678 at 8, 15, 40, 63; Ex. 679 at 5, 13, 21, 71.

41. Defendants' advertisements consistently connect statements about the value of education generally with the value of a CollegeAmerica degree, again often utilizing first-person pronouns to refer to CollegeAmerica and second person pronouns to refer to prospective students. Examples include:

a. "You already know that the right degree means more money and a better life. Here's why you should get a degree from CollegeAmerica." Ex. 678 at 8, 40; *see also* Ex. 679 at 5, 13, 21, 71.

b. Call [number] and you can have a better paying job sooner than you think!" Ex. 608 at 10; Ex. 678 at 16, 63; Ex. 679 at 6, 14, 22.

c. "Choose your [career] field and start today to potentially earn more tomorrow. How? Call [number] and have your temporary ID card ready. Call today!" Ex. 678 at 21, 39.

d. "You can make more money and have a real career with a higher degree. Let us show you how easy it is to get started." Ex. 679 at 6, 14, 22.

e. "Your student identification card could be your ticket to the future… a future filled with higher earnings and a successful, satisfying career" coupled with a CollegeAmerica student ID card. Ex. 678 at 21.

42. Defendants consistently included specific salary figures, including both averages and starting salaries, in their advertisements. *See* Ex. 678. All salary figures were based on national data, some of which comes from government sources, some of which comes from private sources. *Id*.

43. Most frequently, Defendants depict salaries in the form of a bar or block chart with salary figures separated by degree level, an upward-swooping arrow in the background, and occasionally including an hourly wage equivalent, with the heading "Education Pays Off" or "the More you Learn the More you Earn." Ex. 230 at 90; Ex. 231 at 97; Ex. 608 at 10; Ex. 2003 at 34; Ex. 2055 at 34; Ex. 2058 at 71; Ex. 678 at 8, 15, 22, 40, 63; Ex. 679 at 5, 13, 21, 72.

44. The salary bar chart was introduced in 2008 and was still being used in the admissions slideshow and on CollegeAmerica's website as of the time of trial. *See* Ex. 501; Ex. 2003 at 34; Ex. 920 at 2. The formatting of the bar or block chart varied over time, and the salary figures were updated periodically. *See* Ex. 230 at 90; Ex. 231 at 97; Ex. 608 at 10; Ex. 2003 at 34; Ex. 2055 at 34; Ex. 2058 at 71; Ex. 678 at 8, 15, 22, 40, 63; Ex. 679 at 5, 13, 21, 72.

45. Kirk Bowden, the former Director of Internet Advertising for CEHE, testified that similar content concerning earning potential was featured on the CollegeAmerica website during his tenure between 2009 and 2012. *See Kirk Bowden Deposition Designation* at 91:18-93:6; 47:18-22; 93:14-16.

46. Some of Defendants' print advertisements were delivered to consumers in the form of mailed packets with multiple pages of materials. *See generally* Exs. 608, 678, and 679. Each of these mailers contains one or more of the above-referenced statements concerning money and earnings. *Id*. One such mailer contains 15 references to prospective students' ability to make more money. *See* Ex. 678 at 19-34.

47. As of the time of the trial, the "Tuition and Fees" page of the CollegeAmerica website stated, in bold letters, "You Can Afford Your College Degree." This statement is supported by national data indicating that individuals with a bachelor's degree earn $57,616 per year, $23,764 more than individuals with a high school diploma. Ex. 920 at 1.

48. The same page states, "Americans with four-year college degrees made 98 percent more an hour on average in 2013 then people without a degree." It also contains a graphic showing specific "median weekly earnings by degree." *Id.* at 1, 2.

B. Defendants' Expert Howard Beales

49. CollegeAmerica presented the testimony of Howard Beales, the former Director of the Bureau of Consumer Protection at the Federal Trade Commission from 2001 to 2004, and other posts within the FTC. He is currently a professor of Strategic Management and Public Policy in the George Washington Graduate School of Business, where he teaches about business and government relations, and researches consumer protection policy, with a particular emphasis on advertising regulation. Ex. M, 76:18-78:12. He has a doctorate in economics. *Id,* 78:15-19. While at the FTC, he oversaw staff work on the development of the FTC's Policy Statement on Deception which still is at the core of the FTC's current practice and procedure. *Id*, 84:2-13; Ex. 942. Dr. Beales reviewed the CollegeAmerica "Education Pays Off" and "The More you Learn the More you Earn" advertising, and offered his opinion regarding whether they were deceptive. His

testimony was based upon his knowledge and experience from his time at the FTC, and was based upon federal law and procedures, not the CCPA. *Id*., 87:12-92:6.

50. Dr. Beales offered the opinion that CollegeAmerica advertisements that mention national average wages are not misleading, even assuming CollegeAmerica graduates wages are significantly lower than those national average numbers. That is the nature of an average, as there are going to be people who are below average and those that are going to be above average. *Id*., 94:21-95:13. It is common to use national averages in advertising because they are often the available data. He analogized to the EPA's gas mileage numbers in national ads about fuel economy standards, noting that those figures are compiled by a particular mix of city and highway driving, how well inflated the vehicle's tires are, etc. However, because the numbers computed in the same way for every car, it is potentially useful in comparisons for customers who are trying to find the most fuel-efficient car. *Id*., 96:3-20. However, "if you use the national average… and say 'This is what you will get,' and that's not [the] case, that's clearly misleading." *Id*., 98:1-5. Dr. Beales testified that the message of the CollegeAmerica advertisements is that "Education is good. Education pays. There's a return to investment in education. And we provide education." *Id*., 106:4-14. He observed that the advertisements talk about things which are unrelated to earnings, including convenience, financial aid, shorter than other programs, free laptops, and don't make the connection to the national averages. *Id*., 106: 15-22. "But they don't… say "Come to CollegeAmerica because CollegeAmerica will improve your earnings." *Id*., 106:15-25.

51. Dr. Beales testified that he believes it is appropriate to apply a reasonable person standard in analyzing advertisements. "The problem in thinking about whether a message is deceptive is that whatever the message, and however straightforward it may seem, there's almost always some people who misunderstand that message." *Id*., 107:13-16. He characterizes this as "background noise." *Id.*, 108:2-8. Ultimately, the reasonable consumer standard is an empirical test, which in many cases can be answered by simply reading the advertisement because it is clear what it says, and in other cases "the only way to know what message consumers got is to ask consumers." *Id*., 109:7-16. The standard way to do so is what is known as a "copy test," where you show the advertisement that is suspected of making a misleading claim to a group of people and ask them what claims they see in the ad, and compare those responses to those to a "control ad." *Id.*, 112:4-15. Implied claims range from the "nearly irresistible to the barely discernible," and if it's an inference that almost everybody is likely to make, you likely don't need a copy test, but if the inference is more remote and less connected to what the advertisement actually says, you're moving towards the barely discernible end of the spectrum where a copy test is essential. *Id*., 115:2-14. When he was the director of the Bureau of Consumer Protection, when someone came to him with an investigation but no consumer witness who is going to say they understood the ad in the way that would support the case, his reaction would be to say "bring me a copy test or close this investigation." *Id*., 115:15- 116:4.

52. Dr. Beales review of the "Education Pays Off" ad was that it made no connection between a degree from CollegeAmerica and the escalating bar graph of wages based on national averages. *Id*., 120:6-17; 123:12-16; Ex. 608. It is important that consumers get

this type of information, so that they understand the returns on education, especially for CollegeAmerica students, who are pretty far removed from high school teachers and guidance counselors. *Id*., 124:5-20. In light of the fact that there is no connection to the national wage data, it is unnecessary for CollegeAmerica to disclose its own graduate-specific wage outcomes. *Id*., 126:16-127:11. In short, the logic of the ad is that "Education is good. We sell education." *Id*., 127:19-24. Dr. Beales opined that it would be problematic to provide CollegeAmerica-specific results for a variety of reasons, including that it does not take into account the things that would affect income variability, including location, degree, how good the professor was, economic conditions, how hard the student works and is focused on learning the material, demographic characteristics, and the small size of the cohorts. *Id*., 129:14-130:13.

53. Dr. Beales did not review any CollegeAmerica policies and procedures, nor the admissions PowerPoint presentation. *Id*, 139:17-19; 140:9-11. Although he knew that there was more to this than just the ad and a consumer signing up after seeing the ad, he did not review the admissions process or the financial aid process. *Id.*, 141:3-12. Under the FTC policy on deception, it is in general important to consider the entire advertisement, transaction or course of dealing. *Id*, 146:16-24. Dr. Beales did not look into what CollegeAmerica intended to convey in its advertising. *Id*., 162:6-11. He did not review documents pertaining to advertising content, including Ex. 570, authored by Carl Barney, which says "Our big promise. A better job making more money. This is why people go to college," *Id*, 163:21-165:14, nor Ex. 907, in which Barney asserts that the "basic value equation … is tuition costs equals quality job, pride, security, professionalism, higher income for the good life." *Id*, 166:15-167:22. He noted "there's a claim here that CollegeAmerica delivers an education, and it delivers an education with a return that is comparable to the return that's illustrated by the national averages. But that's very different from a claim that you're going to make $57,026 a year…" *Id*, 165:18-24.

C. Intent Behind Ads Related to Earnings and Employment

54. Defendant Barney and other members of CollegeAmerica management created a large number of policies governing CollegeAmerica operations, designated "Information Letters," "Procedure Directives," "Data Letters", and "Management Memos," many of which are contained in various operations manuals. In 1994, Defendant Barney created and distributed an Information Letter entitled "WHAT OUR STUDENTS BUY." The letter, which was revised in 2006 and 2011, asks "what are the central things/values our students buy? THEY 'BUY' A MUCH BETTER JOB AND A HIGHER SALARY." Ex. 907 (emphasis and all caps in original). The letter states that "[t]he benefits of our colleges equate to: a <u>quality</u> job and higher <u>income</u> with benefits." *Id*. (emphasis in original).

54. In the letter, Barney explains what he calls the "basic value equation" of CollegeAmerica: in exchange for the "high tuition" costs, students receive a "**higher income**" and "much **more money** to help them pay for their hopes and dreams." Ex. 907 (emphasis in original). The letter includes a chart that compares the income and

expenses of an individual student before and after they obtain a degree. *Id*. There is no indication where the salary figures in the chart were obtained, but the chart indicates that the individual will earn more money after obtaining a degree. *Id*. The letter goes on to state that "prospective students need to see this arithmetic, and [financial planners] must pencil it out for them just like this." *Id*.

55. The letter was distributed to all admissions staff as a high priority memo. Ex. 907; Ex. H at 49:21-50:1, *testimony of Carl Barney*. The letter appears in all admissions consultant manuals between 2006 and 2015 with the earnings chart. Ex. 907; Ex.198 at 22; Ex. 230 at 25; Ex.231 at 24; Ex. 808 at 28.

56. In a 2008 Data Letter, Defendants' Director of Marketing Communications wrote, "Salary information related to increased education is the most important and compelling thing that you can provide to a prospective student. After all, what's the primary reason that people go to college? More money." Ex. 501 at 1.

57. The letter goes on to state that "Our colleges use government-provided, statistically-relevant salary information or salary data from credible professional associations," and instructs advertising staff to use a bar chart depicting salaries based on U.S. Census data in "various ads and promo materials." Ex. 501; Ex. H at 35:1-16, *Testimony of Carl Barney*. As noted, various iterations of this bar chart became ubiquitous in Defendants' advertising in the following years. *See* Ex. 230 at 90; Ex. 231 at 97; Ex. 608 at 10; Ex. 678 at 8, 15, 22, 40, 63; Ex. 679 at 5, 13, 21, 72.

58. In January of 2009, in an Information Letter entitled "Advertising Concepts 2009," addressed to Advertising Executives, Directors of Admissions and Admissions Consultants, Mr. Barney outlined advertising concepts to be used in "direct mail, newspaper, TV, yellow page and internet advertising" in an Information Letter. Ex. 570; *see also* Ex. H at 12:6-25, *testimony of Carl Barney*. The advertising directive lays out the "theme" of Defendants' advertising: "we have **solutions** to the recession, to unemployment, to job insecurity. We will present **positives** and **hope**." Ex. 570 (emphasis in original). The directive also identifies "Our big promise" which Defendants intend to convey in advertising: "*a better job making more money* – this is why people go to college." *Id*. (emphasis in original). Commenting on this memo at trial, Carl Barney testified that it is "common sense" that people go to college in order to make more money. Ex. H at 14:20-24, *testimony of Carl Barney*.

59. Kirk Bowden, the former Director of Internet Advertising for CEHE, acknowledged that information about earning potential was posted on CollegeAmerica's website in order to "attract students" to enroll at CollegeAmerica. *See Kirk Bowden Deposition Designation* at 121:3-21. Bowden testified that the purpose of including that information on the website was to "help [prospective students] understand who we are" and "what value there would be in doing business with us." *Id*. at 123:4-18.

D. Admissions: Enroll the Prospective Student - Today

60. All prospective CollegeAmerica students visit an admissions office, where they are uniformly referred to as "Honored Guests." Admissions Counselors and Financial Aid Consultants essentially work together to "package" a prospective student for enrollment and a financial aid package. *See* Ex. A at 222:22-223:5, *testimony of Andrea Orendorff*; s*ee* also Ex. B at 213:7-8, 230:8-16, *testimony of Cristi Brougham;* Ex. C at 213:2-13, *testimony of Laura Goldhammer*. The only academic requirement for admission to CollegeAmerica is having a high school diploma or GED. There are no entrance exams, such as the SAT.

61. The company's standardized processes are outlined in written policies and procedures in the admissions manuals, which are central to the admissions process. *See* Ex. B at 301:1-19, *testimony of Mary Gordy.* Admissions consultants are required, as a condition of employment, to follow the admissions system as written in the manuals. *See* Ex. 198 at 9; Ex. 230 at 12; Ex. 231 at 11; Ex. 808 at 12; Ex. 809 at 13.

62. The admissions process is standardized and has been in place for years – at least since 2006. Exs. 198, 230, 231, 808, 809. The system is called the "16 Steps." Ex. 230 at 68-69.

63. The 16 Steps created consistency in the admissions process and encompassed everything from reviewing the career questionnaire to getting the prospective student to sign the enrollment agreement. *See* Ex. A at 235:20-236:11, *testimony of Andrea Orendorff.*

64. One of the 16 Steps is called the "Admissions Interview" and involves a written guide that the admissions consultant uses to understand more about the prospective student's possible objections to enrollment. Ex. 230 at 68, 75-76; s*ee also* Ex. A at 237:10-23, *testimony of Andrea Orendorff*.

65. When students first arrive for an admissions interview, the receptionist gives them a career questionnaire to fill out. The completed form provides the admissions consultant information about the student, such as where the prospective student is employed and the type of education he or she has had thus far. *See* Ex. A at 230:6-16, *testimony of Andrea Orendorff*; Ex. 230 at 73.

66. The career questionnaire also asks prospective students to identify their obstacles to training and motivations for education. Ex. 230, 73. Admissions consultants use the information in the questionnaire to "peel the onion" and ask pointed questions about the obstacles identified by the prospective student. *See* Ex. A at 230:17-231:23, *testimony of Andrea Orendorff.*

67. Admissions consultants use the Admissions Interview form to "find [prospective students'] pain, find their hopes and dreams." Ex. B at 233:6-21, *testimony of Cristi*

Brougham; Ex. 230 at 75-76. A student's "pain" is any obstacle which would prevent them from enrolling at CollegeAmerica, such as a lack of money, childcare or transportation. *See* Ex. B at 233:22-25, *testimony of Cristi Brougham*.

68. Similarly, the admissions consultant uses the motivations for education identified by the student to probe the student's emotions, identify what in the prospective student's world is not right and "to try to tap into that and understand where that emotional motivation came from so as to highlight the value of what an education can bring them." *See* Ex. A at 232:16-233:5, *testimony of Andrea Orendorff*; Ex. 230 at 73.

69. If a student identified "money" as an obstacle in the career questionnaire or during the admissions interview, CollegeAmerica admissions consultants would communicate positively about how it "won't be a big deal to afford college." *See id.* at 241:7-242:6.

70. Another step in the 16 Steps, entitled "PowerPoint Presentation," involved admissions consultants reciting scripted language while showing the slides to the prospective students. Ex. 230 at 77-90; Ex. A at 243:17-24:3, *testimony of Andrea Orendorff*. The PowerPoint has been a required step of the admissions process since at least 2006. Exs. 198, 230, 231, 808, 809; Ex. B at 307:1-308:1, *testimony of Mary Gordy*.

71. In addition to the programs of study, including skills, certifications and jobs that the programs are designed to lead to, the PowerPoint presentation also discussed the benefits of a CollegeAmerica degree in terms of money. Ex. 230 at 79-90; *See* Ex. A at 244:9-245:5, *testimony of Andrea Orendorff*.

72. Since at least 2006 The PowerPoint has included a slide that depicts national average wage data. *See* Ex. B at 308:2-4, *testimony of Mary Gordy*. From 2006-2008, the slide with national average wage data cited to the U.S. Census, while in subsequent years it cited to the Bureau of Labor Statistics ("BLS"). *See* Ex. B at 308:9-312:12, *testimony of Mary Gordy*; Exs. 198, 230, 231, 808, 809, 2055.

73. Discussions about wages in the PowerPoint would trigger prospective students to ask about money and how much they could make and the types of salaries earned. *See* Ex. A at 245:6-10, *testimony of Andrea Orendorff*.

74. In fact, prospective students frequently asked about potential wages and job placement. *See id.* at 245:25-248:5. But, admissions consultants were not provided with any information about actual CollegeAmerica graduates' wages and jobs and therefore did not provide this information to prospective students. *See id.* at 248:6-14. Instead, admissions consultants were trained to provide national or regional wage data and to direct prospective students to the campus's career services department for CollegeAmerica-specific information. *See id.* at 245:25-248:5.

75. The state's investigator, Vicki Barber, conducted an undercover investigation, including an in-poerson admissions interview at the Denver campus. The admissions consultant showed Ms. Barber the PowerPoint slide depicting the wage chart. *See* Ex. N at 263:2-10, 274:1-24, *testimony of Vicky Barber*. Ms. Barber testified that even though she knew the figures in the chart were not CollegeAmerica-specific, she understood the chart to be an advertising tool used by CollegeAmerica to suggest what graduates of CollegeAmerica could make. *See Id.* at 264:2-20 ("Well, they were there to advertise what you could get if you had a degree through CollegeAmerica.").

76. The 16 Steps of Admissions includes a step where the prospective student meets with a financial aid planner. Ex. 230 at 62 (Step 9). The financial aid planners also follow a scripted process in which they help the prospective student complete a Free Application for Federal Student Aid ("FAFSA"), review a financial aid worksheet, the federal government's master promissory note, and gap funding documentation. *See* Ex. A at 250:12-252:1, *testimony of Andrea Orendorff*.

77. Financial aid planners follow a Financial Planner Manual, *see* Ex. 235, which describes how financial aid planners' performance is measured. "The primary measurement of a financial planner is percentage of enrollment agreements fully packaged." *Id.* at 37; *see also* Ex. A at 257:11-23, *testimony of Andrea Orendorff*. This is understood to mean the ratio between the initial financial aid package divided by the number of students that actually started the program. *See* Ex. A at 257:24-258:4, *testimony of Andrea Orendorff*.

78. The admissions process ultimately leads to "Step 11 Enroll," in which the prospective student reads and signs a 6-page enrollment agreement and disclosures. Ex. 230 at 69.

79. The State contends that CollegeAmerica conducts its admissions process in a rushed manner, with the objective of enrolling and "packaging" a prospective student with a financial package in a single day. The Court finds that a preponderance of the evidence, in both CollegeAmerica's documents and the testimony of its admissions counselors and financial planners, supports this contention.

80. CollegeAmerica trains admissions consultants to complete the following steps in one day: "a warm welcome by reception, a personal, probing, friendly interview by the admissions consultant, a slide presentation of the benefits of our college, a tour of the campus, and a personal financial assistance plan." *See* Ex. A at 225:17-227:2, *testimony of Andrea Orendorff*; Ex. 230 at 67. The "goal of the admissions experience is **to enroll the honored guest --today**." *See* Ex. A at 227:19-228:3, *testimony of Andrea Orendorff*; Ex. 230 at 67 (emphasis original).

81. Admissions consultants and financial aid planners worked together when enrolling a student to get them enrolled and "packaged" on the same day. *See* Ex. A at 222:22-

223:5, *testimony of Andrea Orendorff*; *See* also Ex. B at 213:7-8, 230:8-16, *testimony of Cristi Brougham;* Ex. C at 213:2-13, *testimony of Laura Goldhammer*.

82. Speed is important in financial aid because it leads to a higher success rate of packaged students. *See* Ex. A at 262:8-12, *testimony of Andrea Orendorff*. The whole process takes about an hour and a half to two hours. *See id.* at 223:16-224:4.

83. Admissions consultants are charged with interviewing students on a regular basis, scheduling a financial aid appointment for the same day and enrolling them quickly. *See id.* at 221:11-24; Ex. B at 228:12-23, *testimony of Cristi Brougham*; Ex. 230 at 123.

84. The admission consultant manual is used to train admissions consultants. Ex. N at 176:1-3, *testimony of Kristy McNear*. The manual states that a student's financial packaging should be completed "right away because the more days that go by, the less chance there is of the prospective student keeping the financial aid appointment." Ex. 230 at 123.

85. Ms. Brougham testified that same-day enrollment packaging was "highly encouraged" because "if they don't get them done on the same day, there was a good chance that we'd lose the student enrolling." Ex. B at 229:17-19, *testimony of Cristi Brougham*.

86. Financial aid planners are expected to package a prospective student with financial aid on the same day as enrollment. If the planner detects any doubts or reservations, they are to immediately contact the admissions consultant in person or by e-mail. Ex. 235 at 37. The admissions consultant would then try to save the enrollment. *See* Ex. A at 262:20-263:8, *testimony of Andrea Orendorff*.

87. Financial aid planners understand that if they cannot get the packaging done the same day or within 24 hours, it gives the prospective student time to be influenced by other people or to think through the possible obstacles they had identified. *See id.* at 261:24-262:7.

88. In fact, admissions consultants are directed to "inoculate" prospective students "against negative influences and buyer's remorse" in order to increase enrollments. Ex. 203 at 2. One way admissions consultants inoculate consumers is by "[i]ntroduc[ing] the idea that there may be people in their life who are unsupportive or who do not understand our College." *Id*.

E. Overcoming Students' "Objections"

89. CollegeAmerica trained its admissions and financial aid staff to move through the admissions process quickly and counteract prospective students' objections to starting school. *See* Ex. A at 224:5-15, *testimony of Andrea Orendorff*.

90. Overcoming prospective students' objections, in particular money objections, has been part of the Admissions Manual since at least 2006 and is part of the 2017 manual. Exs. 198, 230, 231, 808, 809. The Admissions Manual states:

> Problems and objections can indicate a **pressing need** of the HG [Honored Guest]. When you handle that pressing need, the HG will want to enroll. For instance, you hear, I can't afford it. What does that say? I have a pressing need for money. Or, I am afraid of taking out a loan. Since **this need for more money** is one of the main reasons for going to college, this problem presents a perfect opening to show how going to college will satisfy the need.

Ex. 198 at 97 (emphasis original). Ms. Gordy testified to following the manual's procedures to overcome prospective students'' objections during admissions interviews. *See* Ex. C at 17:9-20:2, *testimony of Mary Gordy.*

91. Ms. Gordy trained her admissions department on overcoming objections and closing the sale. Exs. 308, 314. Ms. Gordy's training presentations from two different admissions meetings at the Denver campus included the following slide:

> **I can't afford it! It's way too much money!**
>
> **Issue: $**
>
> **Agree:** "Yes, it is a lot of money to attend college, especially since you are working, have a family, etc. Money seems to be a big issue with you. That's understandable. Everyone is worried about money. You need to make more money. That's why you are here today, right?
>
> **Answer:** Show the HG how their earnings will add up and how they will be able to afford their loan payment after graduation. Show them their additional monthly income.

Ex. 314 at 8 (emphasis original).

92. Ms. Gordy's trainings also included approaches to overcoming common objections. One of her training slides is entitled **"Common Objections to Enrollment"** and goes on to list the following objections: "I want to check out other colleges! I want to think about it! I can't afford it! It's way too much money! Community college is cheaper!" Ex. 314 at 5; Ex. C at 30:24-31:7, *testimony of Mary Gordy.*

93. Ms. Brougham testified to using the scripts and the role-playing scenarios in the admissions consultant manual to overcome student objections to enrolling at CollegeAmerica. Ex B at 234:1-5, *testimony of Cristi Brougham.* In response to objections such as "I can't afford it!" Ms. Brougham would talk about graduates earning higher wages and then pencil out the earnings before and after college. Ex. 230 at 99; Ex. B at 236:11-13, *testimony of Cristi Brougham*.

94. Admissions consultant Sharrie Maple also testified that students have expressed concern to her about affording the tuition at CollegeAmerica. Ex. O at 135:2-7; 136:6-137:1, *testimony of Sharrie Maple*. Ms. Maple does not provide any other information about wages other than national wage data. *Id*. She has never told a student that CollegeAmerica wages are lower because she does not have actual wage data for CollegeAmerica graduates. *Id*.

95. If CollegeAmerica is not the right fit for a prospective student, the Admissions Consultant will tell the student so, and will also try to help the prospective student find another school that would be a better fit. Ex. 2023; Ex. C, 83:17–84:6, *testimony of Mary Gordy*; Ex. N, 102:11 – 103:21, *testimony of Kristi McNear*; Ex. O, 15:21–16:6, *testimony of Sharrie Maple.* In one report, CollegeAmerica's accreditor, ACCSC, noted that it "observed many instances where the school did not recommend candidates for admission based on a thorough discussion of their skill level and ability to obtain meaningful employment." Ex. 2093 (June 28, 2012 Team ACCSC Summary Report) at 9.

F. Closing the Sale

96. Defendants train admissions and financial aid consultants that "[a] close is the point in the sales interview when an admissions consultant asks, suggests, or tells a prospective student to apply for enrollment and starts filling out an agreement." Ex. 230 at 97. It is "an easy, gentle statement and action of starting the paperwork," and "should be a smooth, step-by-step process where the student never feels pressured." Ex. 2002, at 104, 120. Ms. Orendorff testified that it was important to get a student to sign an enrollment agreement because doing so "ultimately initially solidified their commitment to enroll as a student." *See* Ex. A at 318:18-319:24, *testimony of Andrea Orendorff*.

97. The Admissions Manual also states in connection with "closing" techniques: "We never hard-sell or high pressure, never." Ex. 230 at 97. CollegeAmerica also demands that its staff be scrupulously honest and requires its Admissions Consultants and Financial Planners to promise in writing, on an annual basis, to follow CollegeAmerica's strict code of ethics. The Admissions Consultant Manual states: "as a matter of policy this company requires 100% honesty from all staff at all times. 99.99% doesn't cut it; it is 100%." Ex. 2001, at 22. It goes on to state: "All staff are charged with the responsibility of providing completely accurate information to students." *Id.*

98. However, Ms. Orendorff testified that when she worked in admissions, she felt "regardless of any of those outside objections, that it was my obligation to enroll that student in order to meet the quota that was projected by my boss." *See* Ex. A at 319:25-320:18, *testimony of Andrea Orendorff*. Even when the objection was money. *Id*.

99. The Admissions Manual's section on "closing techniques" urges a closing even over objection:

> **Close even after resistance:** When a prospective student says ”no” his or her mind is temporarily closed and off balance, but a close is still possible. By resolving the problem or answering the question, you can close after resistance. Ask: “What's preventing you from enrolling today?” Overcome objections and close again.

Ex. 198, at 95 (emphasis original). “Closing techniques” continue to be part of the Admissions Manual and training. *See* Ex. 230 at 97-98; *see also* Exs. 231, 808, 809, 314; *see also* Ex. C at 26:9-27:11; 27:21-24, *testimony of Mary Gordy.* The substance of Ms. Gordy’s training presentations tracks the Admissions Manuals. *See* Ex. C at 28:24-29:17, *testimony of Mary Gordy.* CollegeAmerica characterizes the “close” and “handling objections” as benign sales practices used at colleges and universities throughout the state, and that its admissions process is one in which its consultants are secure and scrupulously honest.

100. Admissions consultants are trained to “assume and expect that the honored guest came to the campus to enroll…all the way through the admissions experience, assume they will enroll.” Ex. 230 at 67. Ms. Orendorff specifically remembers being trained on the “assumptive close” and the “take-away close”, which are discussed in the Admissions Manual and were demonstrated to Ms. Orendorff by other admissions consultants. *See* Ex. A at 266:20-267:15; 268:4-20, *testimony of Andrea Orendorff*.

101. Indeed, Ms. Gordy trained admissions consultants to try early in every interview for a close, to watch for “buying signals,” and to “close even after resistance.” If there is something that is preventing the prospective student from enrolling “today,” the admissions consultant is to overcome the objections and try closing again. Ex. 314 at 4; Ex. C at 29:21-30:21, *testimony of Mary Gordy.*

102. Ms. Orendorff characterized the assumptive closing technique this way: “[A] type of closing, sales pitch, I guess you could say. We were asked to follow the steps. There were steps for admissions consultants, as well as for financial aid planners. And we were not to do anything outside of these steps, and we were always to assume that they were going to start that day, as that was our primary goal was to enroll them that day.” Ex. A at 228:7-229:2, *testimony of Andrea Orendorff*.

103. The take-away close involved pulling all of the documentation that was on the desk in front of the prospective student back to the admissions consultant’s side of the desk, sitting back, and telling the prospective student that maybe school is not the best fit for them or maybe a college education is better suited at a different time. *See id.* at 335:25-337:12. Ms. Orendorff testified that the take-away close was fairly effective for her. *Id.*

104. CollegeAmerica trained admissions consultants to “gain the trust” of the prospective student in order to close. Ex. 230 at 98. In order to gain prospective students’ trust, the admissions consultants’ job was “to connect, to build a foundation, to interview, to probe, and to eventually create a relationship where the student then trusts you.” *See* Ex. A at 269:23-370:4, *testimony of Andrea Orendorff.*

105. Admissions Consultants received training and coaching on an ongoing basis, during weekly regional meetings held telephonically, weekly in-person campus meetings, and semi-annual corporation-wide conferences held in Las Vegas which lasted for multiple days. *See* Ex. B at 208:4-21, *testimony of Cristi Brougham*. The agenda and the training materials for the semi-annual training conference in Las Vegas was developed by corporate executives. *See id.* at 209:8-18.

106. Defendants provide an admissions binder to all prospective students during the admissions interview. *See* Ex. I at 63:8-11, *testimony of Carl Barney*; Ex. M at 338:7-12, *testimony of Joel Scimeca*. The second page of the admissions binder contains detailed text and graphics showing the amounts earned by college graduates and high school graduates. *See* Exs. 188, 489.

III. Defendants' Disclosures and Disclaimers

A. Enrollment Agreement

107. Defendants require all enrolling students to sign a six-to-seven page, single spaced enrollment agreement. *See, e.g.,* Ex. 3293. The top portion of the first page includes eight statements that incoming students are required to initial. These disclosures include that "the college does not guarantee employment in a job nor represent how much salary I will earn," and "certifications may require additional study and cost." Ex. 2030 at 1.

108. There are no written instructions in the admissions manual on how to present and what to say about the enrollment agreement and disclosures to prospective students. This is not an area in which Defendants provide admissions training. *See* Ex. C at 34:10-22, *testimony of Mary Gordy;* Ex. A at 249:23-250:2, *testimony of Andrea Orendorff*.

109. Although filling out the top portion of the first page of the enrollment agreement took some time, Andrea Orendorff, who worked in financial aid and admissions at the Fort Collins campus between July 2009 and May 2012, testified that she took several seconds to go over the disclosures on the first page of the enrollment agreement. *See* Ex. A at 220:19-221:10, 298:12-301:24, *testimony of Andrea Orendorff*; Ex. 2030.

110. It was Ms. Orendorff's observation that students did not take the time themselves to go through the entire enrollment agreement and disclosures themselves. She observed the students going "through six pages of fine print, which would take most of us a while to read through, again, like I said, that process was only a couple of minutes long." Ex. A at 317:24-318:15, *testimony of Andrea Orendorff*.

111. On the last page of the enrollment agreement and disclosures there is a provision that reads: "If any oral statement has been made which is inconsistent or contradicts these disclosures and conditions of enrollment, write it below. If none, write 'none.'" Ex. 230 at 166. Former admissions consultants testified that they would go over this with prospective students in a light-hearted, joking manner, indicating "If

I've lied to you in any way, let me know. If not, write 'none.'" *See* Ex. A at 266:5-17, *testimony of Andrea Orendorff*.

112. Ms. Brougham would simply instruct students to write the word "none" on the line provided for this clause. Ex. B at 246:25-247:7, *testimony of Cristi Brougham*.

113. Ms. Brougham was trained to provide a "quick synopsis" of each section in the enrollment agreement to students. Ex. B at 244:6-14, *testimony of Cristi Brougham*. Ms. Brougham did not receive training on the meaning of the clauses in the enrollment agreement. *Id.* at 244:25-2.

114. Current admissions consultant Sharrie Maple testified that she would turn the enrollment agreement to face the prospective student and summarize each page. Ms. Maple testified that she has done thousands of admissions interviews, and no student has ever noted a contradiction between her summary of the agreement and the language of the agreement. Nor, according to Ms. Maple, has any student expressed confusion about the enrollment agreement. Ex. O at 150:5-152:5, *testimony of Sharrie Maple*.

115. Former admissions consultants testified that they took a few minutes to go over the enrollment agreement while current employees testified to a more fulsome review. *See* Ex. A at 264:23-265:19, *testimony of Andrea Orendorff*.

116. No version of the enrollment agreement includes a disclosure indicating to students that the wages and jobs shown and described to them in advertisements and during the admissions process were not representative of actual outcomes. *See* Exs. 3293, 3215, 3159, 3133, 3077, 2802, 2800.

B. Other Disclosures and Disclaimers

117. Each enrolled student receives a CollegeAmerica course catalog. Ex. H at 91:11-16, *testimony of Carl Barney*; Ex. 208 at 1. The catalog does not disclose the fact the wages and jobs shown and described to them in advertisements and during the admissions process were not representative of actual outcomes. *See, e.g.*, Ex. 234.

118. After enrollment, new students attend an orientation. *See* Ex. C at 230:9-13, *testimony of Laura Goldhammer*. This occurs the Thursday before a new "mod" begins, and the student begins classes. Joel Scimeca, the executive director of the Fort Collins campus, described the orientation as an opportunity to meet him, the staff, and the faculty. The students are given a true-or-false quiz which reviews some of the disclosures. Ex. M, 284:3 – 290:19, Ex. 2028.

119. New-student orientation lasts approximately one hour, twelve minutes of which is a video containing testimonials from former students about how their income increased after attending CollegeAmerica. Ex. N at 188:18-189:9, *testimony of Kristy McNear*.

120. Ms. Goldhammer led the post-admission orientation at the Denver campus for three years. *See* Ex. C at 230:20-22, *testimony of Laura Goldhammer*. The enrollment agreement was not explained to students during orientation. *Id.* at 231:19-22.

121. During orientation, students are not given information about the jobs obtained by actual CollegeAmerica graduates, or their earnings. *Id.* at 231:23-232:5.

122. During orientation, students are not given information about the loan repayment rate of students who enrolled in CollegeAmerica. *Id.* at 234:10-235:8.

IV. Defendants Enroll Students They Know Likely Will Not Benefit from CollegeAmerica

A. Defendants Train and Compensate Admissions Consultants to Enroll as Many Students as Possible

123. It was the responsibility of the admission consultant to "enroll every student" who interviewed. Ex. B at 205:14-15; 215:13-25, *testimony of Cristi Brougham*; Ex. 230 at 21. Ms. Orendorff testified that according to her training, the objective was not to enroll students who would likely graduate; the goal was simply to enroll. *See* Ex. A at 296:3-14, *testimony of Andrea Orendorff.*

124. Even if a prospective student enrolls but eventually drops, CollegeAmerica still receives revenue from that student's enrollment. *See* Ex. C at 68:7-14, *testimony of Mary Gordy.* Admissions consultants received financial bonuses for each student they enrolled if the student completed 36 credit hours. Ex. B at 227:8-18, 279:15-23, *testimony of Cristi Brougham*.

125. Ms. Brougham testified that there was only one limitation to enrolling a prospective student at CollegeAmerica, and that is the lack of a GED or high school diploma. *Id.* at 214:16-24. As a result, she enrolled students whom she felt would "really struggle in school" because of the directive to enroll every student. *Id.* at 216:1-5.

126. CollegeAmerica does not require entrance exams. Ex. O at 129:7-10, *testimony of Sharrie Maple*.

127. Defendants know that the typical prospective student who walks into a CollegeAmerica admissions interview is unsophisticated in problem solving and requires hand-holding. Admissions Consultants are admonished: "Remember, our guests are not often skilled in problem-solving and life. Guide them." Ex. 314 at 10; *see also* Ex. C at 33:8-14, *testimony of Mary Gordy.*

128. CollegeAmerica has enrolled students who are living in homeless shelters. *See* Ex. C at 134:4-8, *testimony of Mary Gordy.* Ms. Gordy testified that local community colleges also enroll the homeless, although there was no direct evidence of such colleges enrollment policies and practices.

129. Jasmine Valencia, who worked in career services in Colorado Springs from 2011 to 2013, observed students whom she believed should not be at CollegeAmerica because they did not have the intellectual capacity to benefit from the school or because they were homeless. Ex. F at 278:9-17, *testimony of Jasmine Valencia*.

130. Ms. Valencia raised the issue of homeless students and students who did not have the intellectual capacity to be at CollegeAmerica with her superiors, but was told this was not her problem. *See id.* at 278:25-280:17.

131. Even after a student drops, admissions consultants are encouraged to reach out the student – especially if they have been out for at least 6 months – in order to reenroll the student. Ex. 203. A student's federal loans go into repayment 6 months after leaving school. *See* Ex. O at 259:21-24, *testimony of Janna Davis*.

132. As noted, Ms. Gordy testified that Admissions Consultants are to make sure the prospective student is a good "fit" for the school. She testified to commonly encountering students who need special accommodations for learning deficits and determining if CollegeAmerica can accommodate their needs. *See* Ex. C at 82:23-84:22, *testimony of Mary Gordy*.

133. The Court heard testimony from a former CollegeAmerica student whom the Court will refer to as "A.G.," and whose testimony the court found particularly compelling on the issue of "fit." A.G. was enrolled and packaged with $59,500 of student loans to attend CollegeAmerica's Colorado Springs campus. Ex. C at 343:14-21, 354:17-19, *testimony of A.G.* However, A.G. has a learning disability, "which basically means that if I am given either a task or if somebody's asking me a question, I forget it real easy in a second." *Id.* at 343:18-21. He saw a television commercial for CollegeAmerica "and it says that -- that I can make certain -- X amount of money for that by going to school and getting a degree, whether it be in computer programming, computer animation, healthcare." *Id.* at 344:7-11. He likes computers, and it was his dream to work in animation at Walt Disney. *Id*. at 346: 1-5. He went to the Colorado Springs campus on two occasions in June and August, 2007, and met with an admissions counselor, whom he came to like and trust. *Id.* at 356:22 - 357: 7. He indicated his main reason for wanting to go to CollegeAmerica was "I want more money and a better job." *Id.* at 59: 5-6. He signed up for a B.S. program, but did not know the tuition was going to be $59,500, and does not remember anyone going over it with him. *Id.* at 354: 14-25. He acknowledges signing loan documentation, but did not understand what an annual percentage rate or interest rate was, and his only understanding of the amount financed and the total sales price was, "That's a lot of money." *Id.* at 362: 1-19. He signed up without telling his mother, because he wanted it to be a surprise for her. *Id*. at 353: 2-5.

134. A.G. characterized his academic experience at CollegeAmerica as "rough", receiving six F's and at least two D's. *Id*. at 364: 5-12; 380:12-15. He had to retake several classes, and his grade point average hovered around 2.00. *Id*. at 365:11-17; 367:3 – 368:23. He and others were given the opportunity to earn extra credit by volunteering to have their blood drawn by CollegeAmerica phlebotomy students, which he did on three or four occasions. *Id.* at 366: 1-21. He asked for a tutor, but one never showed. *Id.* at 385: 12-16. Eventually, he was called to a meeting in the Dean's Office and given an opportunity to "graduate early" with an associate degree, since he had enough credits. He was told that if he did not agree to do so, he would be kicked out of school. *Id.* at 370: 20 – 371:17. He called his mother, hoping to

surprise her, and wanting her to come to his "graduation," but he "neglected to tell her where I was and so she kind of missed it." *Id*. at 371: 19-25.

135. When his mother found out, she and A.G. had a meeting with the Dean. She was very upset, and A.G. describes her as "like a volcano erupting." *Id.*, 372: 10 – 373: 5. With his authorization, she filed a complaint with ACCSC, CollegeAmerica's accreditor. *Id*., 373:7 – 374:21; Ex. 598. A.G. acknowledges that he got some leads from CollegeAmerica's career services department, but did not follow up on them because "I wasn't really ready and I was nervous." *Id*., 389: 1-12. He returned to the restaurant he had worked at before going to CollegeAmerica because he needed a job. *Id*., 391: 11-14. He acknowledged that he had not called upon CollegeAmerica's lifetime career services option to help him find a job in computers, although he first learned of such a benefit when he was asked about it at trial. *Id.*, 391: 15-25; 398: 21 – 399: 3. He received letters and phone calls about paying his student loan bill after he graduated but couldn't make any payments. *Id.*, 375: 8-18. Eventually, as of June 25, 2015, his liability for both loans from CollegeAmerica and the federal government was discharged on the basis of the conclusion that he had a total and permanent disability. Ex. 673. A.G. has never gotten a job on the basis of his CollegeAmerica Associate's degree, and is currently employed by a company which employs people with disabilities, washing dishes at Fort Carson. Ex. C, 343:1-13.

136. The admissions consultant who enrolled A.G. is still employed at the Colorado Springs campus and there have been no additions to the admissions manual or training focused on handling situations with prospective students who, like A.G., can't protect their own interests. *See* Ex. O at 126:2-127:19, *testimony of Sharrie Maple*.

137. Sharrie Maple, a current admissions consultant who has worked at CollegeAmerica since 2008, also testified that she routinely turns away prospective students because they are not a good fit. *Id.* at 16:7-13.

138. However, Ms. Maple has been rewarded and promoted and given large raises multiple times for her ability to enroll a large number of students and exceed the campus' intconversion rate. *Id.* at 78:25-83:4; Ex. 950. She attributes her raises to her being a "great AC." Ex. O at 83:16-19, *testimony of Sharrie Maple*. Ms. Maple is a current, long-time employee who has been described by her supervisor as "very loyal to the company." Ex. 952. She also received free tuition from CEHE in order to get a business degree at Stevens-Henegar. Ex. O at 77:13-78:20, *testimony of Sharrie Maple*.

B. Admissions Consultants and Financial Planners Must Meet Enrollment Benchmarks

139. There was substantial evidence that the job performance of CollegeAmerica Admissions Consultants is measured on the number or percentage of prospective students whom they interview who end up enrolling. CollegeAmerica tracks the

percentage of interviewees who start school, which is known internally as "intconversion" or "IntCon." IntCon quotas were established monthly for each campus, and the progress of each Admissions Consultant and campus with respect to that metric were discussed during weekly regional telephone meetings. Ex. B at 218:6-15, 219:13-25; 223:19-23, *testimony of Christi Brougham*. According to Admissions Director Gordy, the IntCon metric is tied to whether the admissions department is enrolling students who can benefit from a CollegeAmerica education. Ex. C at 150:1-18, *testimony of Mary Gordy*. It is also tied to financial projections for the campuses and ensuring a sufficient number of enrollments and revenue. Ex. C at 150:1-18, *testimony of Mary Gordy*; Les Marstella CID Designation at 25:11-28:10; 28:23-29:20. According to Andrea Orendorff, admissions departments were expected to enroll and start between 60% and 70% of the prospective students who came in for an interview each month, and admissions consultants and financial aid planners had different stipulations that would lead to a bonus. Ex. A at 331:24-335:3. Ms. McNair testified that the IntCon goal for her Fort Collins campus was 35% at the time of trial. Ex. N at 105:3-6, *testimony of Kristy McNear*.

140. Several former admissions consultants testified that they felt pressure to meet IntCon quota goals. According to Christi Brougham, if an Admissions Consultant did not reach their quota, they could be put on disciplinary action and eventually put on a "freeze," which meant that the admission consultant would no longer receive campus-directed leads, and "[y]ou were all on your own to come up with your numbers." Ms. Brown testified that once you were on a freeze "you had probably had two to three months left before you were gone." Ex. B at 224:12-19, 225:4-19, *testimony of Christi Brougham*. Ms. Brougham testified that she personally had been put on a freeze at one point. *Id.*, at 288: - 289:9. Andrea Orendorff, who had the lowest start rate out of her admissions office team at the Fort Collins campus at one point, was approached more than once by her boss, Kristi McNear, about her low numbers. Ex. A, at 339:22-340:11, *testimony of Andrea Orendorff*. Sharrie Maple was put on a performance improvement plan (PIP) for not "performing in accordance with what is expected of an admissions consultant." Ex. 949. The PIP required that she show improvement by obtaining "a minimum of six starts," "5 CGI's [campus generated interviews]," and "spend the majority of your day on the telephone if not in an appointment. Ex. O at 94:6-97:24, *testimony of Sherry Maple*.

141. Ms. Gordy testified that she has never fired any Admissions Consultant for missing their IntCon goals. Ex. C at 154:2-4. However, Executive Team Meeting Minutes from October 1, 2013 indicates that Kody Larsen of the CollegeAmerica Denver campus "sensed that intconversion has become more than a management tool and is creating a sense of paranoia for job security." Ex. 432, at 1

142. After a prospective student met with an Admissions Consultant and completed the Enrollment Agreement, they would then be seen by a Financial Planner. Financial Planners performance also was based on the percentage of students enrolled and "packaged" with the financial aid plan on the same day because the "highest same days have higher conversion rates." Ex. 306; Ex. C at 77:4-25, *testimony of Mary*

Gordy. This was possible because Financial Aid Planners were able to link the prospective student's taxes from the IRS in order to complete the FAFSA, which is the first step in determining the financial aid package. Thus, prospective students did not need to bring their tax forms with them to the admissions and financial aid appointment. Ex. E, at 92:19-93:2, *testimony of Krista Jackl*.

143. The performance of Financial Planners also appears to have been tied closely to enrollments. According to Krista Jackal, who worked as a financial planner from August, 2012 through September, 2016, her performance was based on the percentage of prospective students she would meet in financial aid who would then enroll and start school. Ex. E, at 70:10-72:9; Ex. 317. In 2014, the compensation structure of Admissions Consultants and Financial Planners was changed, which resulted in Ms. Jackal's yearly compensation jumping by 50%. *Id.* at 73:18-24. Ms. Gordy, the director of admissions, told Ms. Jackal that, as a financial planner, she would have to achieve nine enrollments every mod, three referrals, and 90% fully package students. *Id*. at 74:2-75:21. Ms. Jackal testified that she would meet with, at most, 15 prospective students per month, and sometimes no more than five. *Id*. at 126:24-127:14. Ms. Jackal felt the pressure: "we were told that we would need to - we couldn't have three consecutive months of missing these goals or guidelines. And that would be termination after three consecutive months." *Id*. at 78:9-17. However, she did miss her goals in three consecutive months, and testified to feeling "nervous," but attributed the fact that she was not terminated to the campus not receiving many appointments. *Id*. at 78:18-79:11. In terms of the effect on her, Ms. Jackal testified that "I would be more inclined to want them to start right away, as opposed to allowing them to think about it or do research." *Id*. at 79:12-22.

144. The state's expert on student loans, Rohit Chopra, characterized the Financial Aid Planners at CollegeAmerica as "an integral part of the sales process … they had a key role in closing enrollments." Ex. D at 171:5-17, *testimony of Rohit Chopra*. Mr. Chopra also noted that there was no "cooling off" period at CollegeAmerica, and that the integration of financial aid into the sales process and the lack of such a cooling-off period are "extremely rare" in his experience, even at for-profit schools. *Id*. at 173:20-174:2; 292:14-293:18.

V. Misrepresentations Regarding Earning and Employment Potential

A. Defendants' Knowledge of Actual Graduate Wage Data

145. For approximately 20 years, Defendants gathered, tracked, maintained, and regularly analized salary data gathered from CollegeAmerica graduates and their employers. *See e.g.*, Exs. 499, 500, 811, 2370; Ex. H at 43:14-22, *testimony of Carl Barney*.

146. A chart prepared by the State summarizing the starting salary records maintained by Defendants for CollegeAmerica graduates between 2006 and 2013 indicates that the average annual earnings for all employed graduates with an Associate's degree was $24,149 annually. Ex. 749. Assuming graduates were employed for 40 hours a week, 52 weeks per year, this would amount to an hourly wage of $11.61 per hour.

Id.; Ex. A, 131:11-25, *testimony of LeAnn Lopez*. The average annual salary for employed graduates with a Bachelor's degree was $29,241, or $14.06 per hour. Ex. 749. The average annual earnings for Medical Specialties graduates, CollegeAmerica's most popular program, were $24,441 or $11.10 per hour.

147. Information about the starting salaries for CollegeAmerica graduates was summarized and distributed to executives and career services staff on an annual basis via data letters. *See* Ex. 499, 500, 811. Eric Juhlin had access to graduate salary data. *See* Ex. I at 213:15-23, *testimony of Eric Juhlin*. Carl Barney regularly received information about the starting salaries of CollegeAmerica graduates. Ex. H at 43:23-44:2, *testimony of Carl Barney*. Barney also received an analysis of student starting salaries organized by campus in regular OPS reports. Ex. I at 162:25-5, 164:2-14, 166:10-13, *testimony of Carl Barney*; Ex. 2370.

148. A Data Letter sent on behalf of Carl Barney in 2008 indicates that executives were aware of the low starting salaries being obtained by CollegeAmerica graduates. *See* Ex. 499. The data letter states, "Medical Specialists are starting at much lower salaries - $19,000 to $25,000. We should get much higher salaries for our [Medical Specialties] graduates – they have much more knowledge and skills than Medical Assistants." *Id*.

149. The 2008 Data Letter, which reflects salaries from 2007, showed that the average salaries for medical specialties graduates at the Colorado campuses ranged from $22,797 to $25,834. Ex. 499 at 2; Ex. I at 268:8-15, *testimony of Eric Juhlin*. Salaries for graduates of the Healthcare Administration program at the Colorado campuses ranged from $23,525 to $28,163. Ex. 499 at 2.

150. Similarly, in a 2011 Data Letter, Carl Barney wrote to his executive team and career services staff that "some salaries, for some fields, are far too low." Ex. 500.

151. During a meeting in 2014, CollegeAmerica's Program Advisory Committee discussed salaries for students who were reported to ACCSC in the 2012 annual report. *See* Ex. 898 at 3. Graduates of the Medical Specialties program, CollegeAmerica's most popular program, were earning less than $21,000 per year on average. *Id*. Graduates from the Healthcare administration program were earning $28,163 per year on average. *Id*.

152. Graduate salary data collected by CollegeAmerica was used for management purposes, but not for advertising. Ex I at 163:3-10, *testimony of Carl Barney*. Data Letters containing information about graduate salaries were not distributed to admissions or financial planning staff. *See* Exs. 499, 500, 811; Ex. H at 46:1-10, 48:2-4, *testimony of Carl Barney*.

153. In June of 2017, Mr. Juhlin argued to ACCSC that it was improper to compare the outcomes of CollegeAmerica's Denver campus graduates to national averages because the nationwide data was "not corrected for race, geography, or program . . . .

This clearly is an error." Ex. 202 at 2. Despite this knowledge, Defendants consistently elected to use national salary data in advertisements and in the admissions presentation.

154. In January of 2014, Carl Barney issued a Data Letter directing staff to use average national BLS salary data in CollegeAmerica's advertisements for the following year. Ex. 503 at 1.

155. Prior to running ads that spoke of specific starting salaries for graduates with certain degrees, Defendants did not take any steps to determine whether or not the statements reflected likely results for graduates from Defendants' Colorado Campuses. Ex. I at 279:18-280:20, *testimony of Eric Juhlin*.

156. Prior to running ads that had the statement "You can earn about a million dollars more," Defendants took no steps to determine if this statement accurately reflected a likely or possible result for graduates of Defendants' Colorado campuses. *Id.* at 278:20-279:1. In fact, Defendants' expert, Dr. Guryan, calculated that the average lifetime earnings for CollegeAmerica bachelors graduates was approximately $490,000 higher than those of a high school graduate, and the average lifetime earnings for associates graduates was approximately $180,000 higher than those of a high school graduate.

157. Defendants instead elected to include a disclaimer in advertisements with wage data which read "salaries will vary by location and may be higher or lower than salaries listed." Ex. 425 at 12; Ex. H 30:24-31:10, *testimony of Carl Barney*. Carl Barney testified that the disclaimers which accompany Defendants' salary ads appear in a font smaller than the text of the ad. Ex. H at 33:20-23; 34:18-20, *testimony of Carl Barney*.

158. The national salary data which Carl Barney selected for use in advertisements in 2014 is also significantly higher than the earnings of CollegeAmerica graduates which are reflected in Defendant's records. *Compare* Ex. 503 at 2 *with* Ex. 749. The advertised salary for associate degree holders is 38% higher than the salary for CollegeAmerica associates degree graduates. *Id.* The advertised salary for bachelor's degree holders is 48% higher than the salary for CollegeAmerica bachelor's graduates. *Id.*

B. Defendants' Use of National Starting Salary Data In Written Advertisements

159. Some of Defendants' advertisements make representations regarding starting salaries which have figures much higher than the salaries which CollegeAmerica graduates earn. *See* Exs. 608, 678.

160. For example, one advertisement which ran in 2014 states that "You Could Make More Money and Have a Real Career with the Right Degree," and states that "starting offers for graduates with a bachelor's degree in computer science averaged $60,473." Ex. 890; Ex. A at 133:9-15, *testimony of LeAnn Lopez*. After reciting

"starting offers" for two other fields, in the small print at the bottom of the ad (the Court needed to use a magnifying glass to read it on the 8 ½ x 11 trial exhibit) it says:

> Source: U. S. Bureau of Labor and Statistics, "Occupational Outlook Handbook, 2010-11 Edition: Computer Systems Analyst, "Web. http://www.bls.gov/oco/ocos287.htm The actual salary may be higher or lower.

161. Defendants' records indicate that the average starting salary for graduates of CollegeAmerica's computer science bachelor's program was $31,870, approximately $28,000 lower than the advertised salary. Ex 890; Ex. A at 137:8-15, *testimony of LeAnn Lopez*.

162. The same advertisement states that "the median starting salary for graduates with a bachelor's degree in accounting was $44,700." Ex. 889; Ex. A at 133:9-15, *testimony of LeAnn Lopez*. The advertisement goes on to state that "[s]alary ranges for graduates with a degree in accounting in 2010 were from $38,940 (the lowest 10%) to $106,880 (the top 10%)." Ex. 889. At the bottom of that column, again in significantly smaller print, is the following:

> Source: 1) 2011-2012 Pay scale Salary Report<http//www.payscale.com/best-collegesdegrees.asp> 2) U.S. Bureau of Labor and Statistics, "Occupational Outlook Handbook, 2010-11 Edition: Accountants and Auditors." Web. <http: // www.bls.gov./ooh/Business-and-Financial/Accountants-and-auditors.htm> the actual salary may be higher or lower.

163. Defendants' records indicate that the average starting salary for graduates of CollegeAmerica's accounting bachelor's program was $27,040, approximately $17,000 lower than the advertised salary. Ex. 889; Ex. A at 139:5-9, *testimony of LeAnn Lopez*.

164. In the 2013-2014 timeframe, Defendants provided students an admissions binder that listed starting salaries of $38,000-$45,000 for graphic arts graduates, even though they knew the median earnings of their graduates was less than $16,000. Ex. 490 at 47; Ex. 749.

C. Defendants' Use of Wage Data During Admissions Interviews

165. The primary objective of prospective students at CollegeAmerica was to earn high wages and find a better job. *See* Ex. C at 256:19-257:4, *testimony of Laura Goldhammer*. According to Ms. McNear, "Making more money is a big deal" for CollegeAmerica students. Ex. N at 131:10-132:4, 217:24-25, *testimony of Kristy McNear*. When asked if the desire to "make more money" was universal among prospective students, Ms. Maple testified that "I've never, that I can recall, interviewed anyone who didn't say they came there to get a career, make more money, change their life." Ex. O at 31:13-20, *testimony of Sharrie Maple*.

166. Admissions consultants are aware that CollegeAmerica collects wage and job information about graduates, but Defendants do not provide them information on the jobs and wages that graduates are obtaining. *See* Ex. B at 232:16-24, *testimony of*

Cristi Brougham; see also Ex. C at 211:21-213:1, *testimony of Laura Goldhammer*; Ex. N at 15-19, *testimony of Kristy McNear*. Even Kristy McNear – the regional admissions director – has not reviewed earnings information about CollegeAmerica graduates. Ex. N at 175:19-23, *testimony of Kristy McNear*.

167. Instead, CollegeAmerica trained admissions to use the PowerPoint presentation to show prospective students national wage data, such as the BLS and U.S. Census Bureau data.

168. Defendants regularly record admissions and financial aid interviews for training purposes, which are reviewed by the Director of Admissions. *See* Ex. C at 34:23-35:2, *testimony of Mary Gordy.*

169. The State played a number of recordings during the trial, which ranged from 13 seconds to 90 seconds in duration, and represented a small percentage of the total number of hours of video produced by Defendant to the AG. Exs. 760.2, 764.1, 764.5, 766.1, 771.3, and 775.4, 777.1, 777.2, 777.3, 778.2, 781.4, 781.5, 785.1, 785.2, 786.7, 787.1, 787.2, 788.2, 788.3, and 790.1. The Defendants played no portions of the videotapes.

170. The state played a number of recordings involving Laura Goldhammer, one of the Denver campus's top admissions consultants. In fact, Ms. Goldhammer was promoted to lead admission consultant in August 2014. Ex. C at 200:24-201:7, 245:23-246:1, *testimony of Laura Goldhammer*.

171. In the admissions interviews, Ms. Goldhammer routinely assured prospective students that their post-CollegeAmerica earnings would reach specific levels. In a May 2013 admissions recording, Ms. Goldhammer stated:

> But something like this is going to open up a lot of doors for you. . . . And I'm guessing you'd be doubling or tripling what your income potential would be with a degree like that. Am I correct? Are you motivated by money at all? Ex. 788.2.

Ms. Goldhammer could not recall being disciplined for saying this or something like this. Ex. C at 265:2-8, *testimony of Laura Goldhammer*. She went on to say to the prospective student: ". . . this would be a great way for you to climb the ladder wherever you're working or make a career change and start making some big bucks." Ex. 788.3.

172. In another admissions interview that took place in March 2014, Ms. Goldhammer had the following exchange with a prospective student:

Ms. Goldhammer:	"What's the most money an hour you've earned at a job?"
Consumer:	"Um, I used to, well the most was 8.25."

Ms. Goldhammer:	"How would you like to triple that right out of school?"
Consumer:	"Yeah, that's what I'm hoping for. At least make $10 an hour.
Ms. Goldhammer:	"No, don't even settle for that."

Ex. 790.1. Again, Ms. Goldhammer was never disciplined for saying the forgoing statements or anything like them. Ex. C at 266:11-17, *testimony of Laura Goldhammer*.

173. In another admissions interview in March 2014, Ms. Goldhammer gave wage figures to a prospective student who was interested in the medical specialties associates degree, which is marketed as leading to multiple certifications in allied health fields.

> "You could get certified for medical billing and coding. Lab tech assistant. They start out about 18-20 bucks an hour. EKG techs start out about $23-24 an hour, and we certify for that."

Ex. 766.1. Again, Ms. Goldhammer could not recall being disciplined for saying this or anything like it. Ex. C at 267:19-25, *testimony of Laura Goldhammer*.

174. In October 2015, Ms. Goldhammer told another prospective student that the student would be able to quickly recoup the cost of their associate's degree because of the high wages the student would earn after graduation. "And you can't beat that. Because if you can get an associate's degree for around 20 to 25 thousand, but you can make 40 to 50 in your first year, would you say it's worth it?" Ex. 771.3[3]

175. In a recording dated March 2, 2015, Ms. Goldhammer told a prospective student that they will make a lot more than a teacher. "And you can get there making that money quicker." Ex. 777.2. Later in the admissions interview, Ms. Goldhammer encourages the student to transfer into a bachelor's degree at CollegeAmerica in order to earn even more money. "So you could go on even further. Median wage for those two bachelor's degrees is $88,000 a year." Ex. 777.3.

176. Ms. Goldhammer could not recall being disciplined for saying this or anything like it. Ex. C at 269:6-13, *testimony of Laura Goldhammer*.

177. In fact, Ms. Goldhammer continued this approach for years, telling prospective students that they would make their money back because of the high wages they would earn with a CollegeAmerica degree. In August 2016, Ms. Goldhammer told a prospective student:

> I mean you're never going to get a free degree. But, you know, if you can get your money back, in your first year, then you've made a wise, smart choice. . . .

[3] While Ex. 771 and 771.3 were admitted into evidence, due to a technical malfunction, Ex. 771.3 did not play in its entirety during Ms. Goldhammer's testimony. *See* Ex. C at 272:8-21, *testimony of Laura Goldhammer*.

> Anything IT, graphic design, programming, anything like that, even business degrees – you will get your money back in your first year.

Ex. 781.5.

178. Notwithstanding these recordings, Ms. Goldhammer, when asked if she ever "provid[ed] prospective students with information about their earning potential," answered, "Not specific earnings, not dollars and cents, no." Ex. C at 257:15-19, *testimony of Laura Goldhammer*.

179. Ms. Goldhammer testified that when she used BLS data, she "would always explain, some might make more because they've been in the business longer, some less. This is not indicative of what you would earn when you graduate from us. It's just to give you an idea of what the potential is in particular field." *Id.* at 258:5-10. Defendants presented no videotape evidence of Ms. Goldhammer telling consumers that the BLS data was not indicative of what the prospective student would earn after graduating from CollegeAmerica.

180. Like the other admissions consultants – including the Director of Admissions, Ms. Gordy – Ms. Goldhammer used national survey wage data to assure students they would recoup their investment in a CollegeAmerica degree, or double or triple that investment, in their first year after graduating. In a May 2013 admissions interview, Ms. Goldhmmer told a prospective student:

> So this is the Occupational Outlook Handbook. It's a government site. It's done by the Bureau of Labor Statistics. It's a really good site to do research. You know, because, you know, if you're going to invest time and money into a degree you darn well better know what you're going to get when you're done. Well, ideally you want to make your initial investment back in your first year if not double or triple it.

Ex. 785.2 at timestamp 1:55.

181. Ms. Goldhammer directed another prospective student in May 2013 to the BLS web site as well and told the prospective student:

> . . . So now what I want to show you – because you know from talking to me, I'm a big believer, if you're going to invest time and money in a degree, you darn well better know what you're going to get when you're done, right? OK? Here's the deal: You want to get your initial investment back – the grants, don't worry about them, that's free money, right – but whatever student loan money, you want to get that amount back in your first year of employment, or double. That's what you want, OK? So this is a website that I've used for years, and I'll print out a few pages for you of this. But it's called the Occupational Outlook Handbook, and it's a government site, it's done by the Bureau of Labor Statistics, so it's not just me telling you this stuff, right? OK, so let's just put graphic artist. And this is so cool. That's the median wage for the whole United States.

Ex. 786.7. She did the same thing again later that month. *See* Ex. 788.2.

182. The Court heard evidence of other admissions consultants also using national wage data during interviews. In a recording from March 2015, an admissions consultant at the Denver campus directed a prospective student to the wage chart on the PowerPoint presentation (which references the BLS wage data) and said, "This is the kind of money you can make in one year…the average yearly salary of what a person can make in, with an associate's degree, a bachelor's degree or masters degree." Ex. 775.4. Although the admissions consultant does tell the prospective student that it depends on the area he goes into, she does not provide specifics. Ex. 775.4.

183. In the same March 2015 recording, the admissions consultant also directs the prospective student to the BLS web site, Occupational Outlook Handbook and runs a search for marketing, which is the prospective student's area of interest, and pulls up information dated 2012. Ex. 775.4. The admissions consultant says: "This is what people in this position can make with a bachelor's degree, they can make up to $50.22/hour." Ex. 775.4. Although she does say that it's national data, she only qualifies the listed wage with "They have to have a bachelor's degree." Ex. 775.4. She then says in a low voice: "So is this the kind of money you want to make?" When the prospective student sees the wage on the BLS site, he says, "This right here would be awesome to be making that." Ex. 775.4.

184. Ms. Gordy testified that the recording from March 2015, as depicted in Ex. 775.4, complies with CollegeAmerica's admissions procedures. *See* Ex. C at 45:24-46:4; 47:10-49:19, *testimony of Mary Gordy.*

185. Ms. Goldhammer admitted in her testimony that it was a mistake for her to have said some of the things she said in recordings played during the trial. Exhibit C, 309:24-310:24, *testimony of Laura Goldhammer.* After failing to correct her behavior following a performance improvement plan, additional coaching, and training, she was terminated. Exhibit C, 145:6-148:10, *testimony of Mary Gordy*. From Ms. Goldhammer's perspective, she believes she was terminated "because of this trial, and they couldn't take any chances with the videos being watched that anything I might have said could have been misinterpreted." Ex. C at 236:24-237:4, *testimony of Laura Goldhammer*.

186. Ms. Goldhammer also testified that Suzanne Scales, the Denver Campus Director, explained her termination as follows: "Because the videos had been turned over to the AG, there could be some statements that were made, not only by me, but other employees, that they couldn't take a chance . . . ." *Id*. at 283:11-20.

187. Federal regulations pertaining to "gainful employment" required that proprietary schools such as CollegeAmerica provide prospective students with a link "to occupational profiles on O*NET (www.onetonline.org) or its successor site." 34 C.F.R §§668.6(b)(1)(i), 668.412(a)(1). However, no federal regulation, effective before or after July 1, 2017, required CollegeAmerica admissions staff to

affirmatively take prospective students to BLS wage data. *See* Ex. R at 335:15-336:22, *testimony of Diane Jones;* Ex. 973.

188. Ms. Gordy testified that she knew of no federal regulation prior to July 1, 2017 that required her to affirmatively take prospective students to BLS wage data – the DOE-required O*NET link notwithstanding. *See* Ex. C at 176:17-21, *testimony of Mary Gordy*; Ex. 2518.

189. Ms. McNear, the Regional Director of Admissions, had not heard of O*NET until the months immediately preceding the trial in this matter. Ex. N at 194:1-5, *testimony of Kristy McNear*. Ms. Orendorff, who worked at CollegeAmeria through 2012, had never heard of O*NET either. Ex. A at 220:24-221:1, 247:14-18, *testimony of Andrea Orendorff.*

190. Because CollegeAmerica does not inform admissions consultants of the earnings of CollegeAmerica graduates, the admissions consultants in the recorded admission interviews did not provide any actual wage data about CollegeAmerica graduates. *See* Ex. C at 50:22-51:8, *testimony of Mary Gordy.*

D. Disclosure of Earnings of CollegeAmerica Graduates

191. There was a conflict in the testimony regarding whether CollegeAmerica-specific earnings information was shared with prospective students during the admissions process. Ms. Gordy testified that the school maintains actual wage and job information in the career services office at the campus. "We just walked them a few steps down the hall to career services if someone wanted that information. It changes frequently, so we want to give them the most accurate information." *See* Ex. C at 50:22-51:13; 183:5-15, *testimony of Mary Gordy.* Ms. Gordy also testified that a student, if they asked for it, could get information about CollegeAmerica graduates' wages and jobs during a tour of the school, when they stop by career services. *See id.* at 55:24-56:6. However, Ms. Gordy remembers only doing so a handful of times. "We just… don't get that question very often." *Id.* at 185:18-23. Admissions consultants do not have access to starting salary information on their computers. Ms. Gordy does not know why they do not, and has never asked. *Id.* at 183: 5-25.

192. Ms. Goldhammer testified that when she took prospective students on the tour, salaries were never discussed when they stopped at the career services department. *See* Ex. C at 223:3-11, *testimony of Laura Goldhammer*.

193. Kristy McNear testified that she would take potential students to career services if they asked specifically about the earnings of CollegeAmerica graduates. However, she has no idea what information Career Services provides to prospective students. Ex. N at 131:8-13, 133:24-134:1, *testimony of Kristy McNear*.

194. Somewhat in contrast to these three employees who worked in admissions, Defendant Juhlin testified that Defendants never even considered disclosing the earnings of CollegeAmerica graduates. Ex. S at 58:25-59:21, *testimony of Eric*

Juhlin. Mr. Juhlin also testified that there was no way to do so without subjecting the school to litigation risk. Ex. J at 83:19-85:19, *testimony of Eric Juhlin*.

195. Mr. Barney testified that he had drafted Procedure Directive 48R in 1995, revised in 2011, which was designed to meaure the increase in salary which CollegeAmerica students experienced. Ex. 3343. When that Procedure Directive was last revised, Mr. Barney also revised Procedure Directive 89R that had existed since 1999, which stated as follows:

> In the past, the average increase in salaries is 30 to 50 percent over what students were making in the year prior to attending our colleges. Benefits and raises would add considerably to this. This is a significant gain for our students, and it is something of which we can be justly proud.

Mr. Barney testified that he was the first person in private education to ever do this. Ex. I, 79:5-83:19.

196. Testimony from former employees showed that, while career services may have had CollegeAmerica-specific earnings information, it was not routinely provided to consumers who asked for it.

197. Krista Jakl, a financial planner, testified that if a student asked about their earning potential, "usually we would get admissions involved in that as well. They were the ones that mostly discussed, if they did discuss, how much they could potentially make." Ex. E at 130:7-133:11, *testimony of Krista Jakl*.

198. The only career services employee who testified at trial was Jasmine Valencia. Ms. Valencia was a career services advisor and then Director of Career Services at the Colorado Springs campus from July 2011 to July 2013. Ex. F at 269:12-25, 271:21-272:15, *testimony of Jasmine Valencia.* She testified that potential students sometimes asked her about earnings potential during the admissions process, *Id.* at 274:3-6, but she never gave prospective students salaries of actual CollegeAmerica graduates. *Id.* at 275:14-16. Instead, Ms. Valencia was instructed to give students a flyer with median salaries for prospective positions – the source of which she did not know – and to direct them to publicly available websites such as salary.com or payrate.com. *Id.* at 274:3-276:6.

VI. Defendants' Representations that Degree Programs Lead to Certain Careers

199. Ms. Brougham, who worked at CollegeAmerica from May 2010 through February 2011, was trained to tell prospective students during the Power Point presentation that the slide for each academic program depicted "what type of job you can get with this type of degree." Ex. B at 204:14-24; 238:7-12, 239:10-22, *testimony of Cristi Brougham*; Ex. 230 at 85, slides 38-39. When discussing the types of jobs a graduate of the healthcare administration program could expect, Ms. Brougham was trained to ask "Do you want to work in a hospital or run a hospital?" *Id*. at 240:2-14.

200. In Ex. 787, the Court heard an admissions interview that took place in May 2013. The admissions consultant asks the female prospective student how much she currently makes and then shows her national wage data about pharmacy technicians, which is one of the certifications a student can sit for. *Id*. The admission consultant says, "You can start making more money. What are you making now?" Ex. 787.1. The prospective student responds, "Ten." *Id*. The Consultant goes on, "Ten, ok. Let's see what some of these jobs make…we go to the Bureau of Labor Statistics... ." *Id*. He shows her what a lab tech makes, which is $22.44/hour. *Id*. "So," he says, "double." *Id*. Later in the same recording, the admissions consultant shows the prospective student wages she could make if she got her bachelor's in healthcare administration. Ex. 787.2. He says:

> You ready to see this? Look at that income potential. This isn't nursing. This is healthcare administration…a lot of people seek nursing for different reasons, like oh they make good money. They do, but these people make more. So if you like money, here's another option for you.

Id.

201. Then the admissions consultant tells the prospective student what a healthcare administrator does. "You would be right below the doctor…and run the facility for him." *Id*. "You're in charge of the people who got the associates degree." *Id*. "…[Y]ou get to make more money." *Id*.

202. Ms. Gordy agrees that the admissions consultant in Ex. 787 complied with the training at CollegeAmerica. *See* Ex. C at 50:18-21, *testimony of Mary Gordy*.

203. In career services, Ms. Valencia encountered graduates of the healthcare administration bachelor degree program who expected to get jobs as administrators at healthcare facilities or hospitals. Ex. F at 280:22-281:10, 299:20-23, *testimony of Jasmine Valencia*. They expected to get jobs above an entry-level position, to receive mid-career salaries in excess of $45,000, and get hired upon graduation as a healthcare administrator. *Id.* at 282:2-25. However, Ms. Valencia would explain to the graduates that they would have to start out at entry-level positions such as receptionists, medical assistants, or certified nursing assistants. *Id.* at 281:11-282:1. In fact, Ms. Valencia was not able to place healthcare administration graduates in entry-level management and accounting positions, which was the description for the healthcare administration bachelor's degree program in the course catalog for many years. *See id.* at 316:10-18; Ex. 234 at 13; 286 at 15; Ex. 2043 at 18; Ex. 372 at 46.

204. Ms. Valencia told the admissions department about these students' expectation. *See* Ex. F at 283:1-25, *testimony of Jasmine Valencia*. There is no evidence that anything changed in terms of Defendants' description of the healthcare administration degree program in the catalog and PowerPoint presentation.

205. Defendants knew the types of jobs that graduates of the Healthcare Administration program were obtaining because ACCSC requires CollegeAmerica to collect and

report graduate employment information about each program of study. *See* Exs. 812-816. Graduates were not in fact obtaining jobs running hospitals or the other types of jobs mentioned in the admissions slide show or outlined in the course catalog. *Id.*

206. Defendants were aware that their Healthcare Administration program was not going to help graduates secure a position in healthcare administration at all. Ex. 452 at 2. In fact, CEHE's vice president of academic affairs, Michael Maki, admitted that this was not truly a Healthcare Administration program. *Id.*

207. Similarly, Jeremy Nanney from the graphic arts degree program expected to find a job in that field upon graduation and earn more money. Ex. F at 325:9-19, 327:5-25, *testimony of Jeremy Nanney*; Ex. 840 at 7. However, after graduating, Mr. Nanney never earned any money as a graphic artist despite applying to at least 500 graphic arts jobs. Ex. F at 336:15-22.

208. Ms. Valencia testified that she was not able to help graphic arts graduates because there simply were no jobs for graphic designers in Colorado Springs and they were not plentiful in general throughout Colorado. Ex. F at 284:22-285:7, *testimony of Jasmine Valencia*.

209. When Ms. Valencia told admissions consultants that there were not any jobs available for graphic arts students they would reply that the students could do freelance work. Ex. F at 285:13-24, *testimony of Jasmine Valencia*.

VII. Defendants Did Not Accurately Report their Employment Rates to the ACCSC or to Students

A. Defendants were Required to Follow ACCSC Standards for Calculating Employment Rates

210. CollegeAmerica's accreditor, ACCSC, assesses whether its member schools are complying with its standards of accreditation through, in part, their annual reports. Ex. G at 38:2-23, *testimony of Greg Regan*; *see also* Ex. 17 at 93. These annual reports include outcomes metrics, which focus on the individual degree programs offered by the school, and include the percentage of graduates who found employment in a training related field. Ex. G at 38:2-23; Ex. 17 at 93.

211. In its Standards of Accreditation, ACCSC places a high level of reliance on information, data, and statements provided to the Commission by a school. Ex. 13 at 9; Ex. 17 at 9. Defendants were required to "maintain verifiable records of each graduate's initial employment for five years. Any statement regarding the percentage of graduate employment, e.g., annual employment rates of graduates, must be based upon these verifiable records." Ex. 13 at 95; Ex. 17 at 91.

212. This backup documentation is not typically submitted to ACCSC when Defendants report their employment rate. *See* Ex. G at 44:19-46:2, *testimony of Greg Regan*. While ACCSC "employs its own fact-finding methods to determine a school's compliance with accrediting standards such as on-site evaluation teams . . . the

burden rests with the school to establish it is meeting the standards." Ex. 13 at 9; Ex. 17 at 9. These or substantially similar statements have been part of ACCSC's Standards since 2009. *See* Ex. G at 35:23-37:9, *testimony of Greg Regan*.

213. Since at least 2009, ACCSC has required that schools' employment placement rates be supported by the school's verifiable records of initial employment of its graduates, or other verifiable documentation. Ex. 17 at 93. ACCSC has also emphasized that if a graduate's job title itself does not make clear that the occupation is in a training related field, a school must be able to explain how the employment is training related. Ex. G at 59:18-60:14, *testimony of Greg Regan*.

214. On January 5, 2011, ACCSC issued an "Accreditation Alert" which included Guidelines for Employment Classification ("Acredidation Alert" or "Guidelines") that provided further detail to accredited institutions about what type of documentation is necessary to report graduates as "employed in field." *See* Ex. G at 64:14-66:14, *testimony of Greg Regan*; Ex. 5. These Guidelines are only two pages long, *see* Ex. 5 at 2; Ex. 2133 at 125-126, and ACCSC refers to the Guidelines as the "blueprint" that third parties should follow to assess the documentation and the verification of employed in field criteria. Ex. G at 67:9-20, *testimony of Greg Regan*. The Accredidation Alert became Appendix VII to the ACCSC's Standards of Accreditation as they were reissued on July 1, 2011. Ex. 13 at 115-116.

215. ACCSC's Guidelines set forth different documentation requirements for different types of employment. *See* Ex. 5 at 2. For example, in order to report a self-employed graduate as employed in field, Defendants were required to obtain a signed statement from the graduate acknowledging, *inter alia*, that the graduate was earning training related income. *Id.*

216. With respect to a graduate who was already employed in a training related field at the time of graduation, Defendant was nonetheless able to count them as "employed in field" if they obtained written documentation from the employer or graduate sufficient to demonstrate that the training at CollegeAmerica either allowed the graduate to maintain their employment position or supported the graduate's ability to be eligible or qualified for advancement. *Id.* This type of graduate placement is referred to as "career advancement."

217. In October or November of each year, CollegeAmerica submits an annual report to ACCSC that includes each campus's employment rates. Ex. G at 39:2-40:2, *testimony of Greg Regan*; Ex. Q at 145:6-8, *testimony of Susie Reed*. These reports each pertain to a cohort consisting of graduates who started and completed their education at CollegeAmerica several years before. The method of determining which graduates were included in a given year's cohort is set forth in a Procedure Directive entitled "Determining Graduation and Employment Rates for ACCSC Annual Report," dated July 11, 2013. Exhibit 253. At any given time, CollegeAmerica's compliance department is actually tracking three cohorts, to be reported in the next three annual reports, which involve as many as 9000 students in all of CEHE's schools. Ms. Reed testified that the way in which ACCSC calculates

cohorts is unique in the industry, and a "nightmare" to manage. Ex. Q at 144:10-149:7.

218. If Defendants failed to consistently meet ACCSC's benchmarks for employment rates for one of their programs of studies, Defendants risked losing accreditation to offer that program. *See* Ex. E at 295:7-296:21, *Testimony of Jasmine Valencia*. If the program is not accredited, students cannot obtain federal student aid to finance their tuition.

219. Ms. Valencia, and other members of the career services department would receive bonuses if they met certain employed in field rates. Ex. F at 298:6-20, *testimony of Jasmine Valencia*; Ex. 0457. Ms. Reed, CEHE's corporate Director of Compliance, also received bonuses when Defendants met certain employed in field rates. Ex. Q at 272:19-273:6, *Testimony of Susie Reed*.

B. Greg Regan's Audit of CollegeAmerica's Employment Rates

220. The State retained Greg Regan to audit Defendants' backup documentation that ostensibly supported the employment rates Defendants reported to ACCSC in the years 2009 to 2012 and 2015 to determine whether Defendants reported their employment rates in accordance with ACCSC's Standards. Ex. G at 10:25-11:10, 32:22-33:8, *testimony of Greg Regan*. Defendants called their Director of Compliance, Susie Reed, to respond to and rebut Mr. Regan's analysis.

221. Mr. Regan is a licensed CPA, certified in financial forensics, and as a fraud examiner by the Association of Certified Fraud Examiners. *Id.* at 10:5-24. ACCSC identifies CPA's as parties that are qualified to perform independent employment verification audits, *Id.* at 14:21-15:6, although Defendants presented some evidence that the associate executive director of ACCSC regards CPAs as less qualified third-party analysts than those with experience in the for-profit school industry.

222. Mr. Regan had previously assisted the California Attorney General and the Department of Education to analyze whether another group of for-profit colleges, Corinthian Colleges, overstated the employment rates it disclosed to students. *Id.* at 11:22-12:14. Like Defendants, Corinthian Colleges had several programs that were accredited by ACCSC. *Id.* at 12:15-24. The Department of Education ultimately published the data embodied in Mr. Regan's analysis as part of its findings that Corinthian Colleges misstated its employment rates to prospective students. *Id.* at 13:1-8. The court finds that the Department of Education's reliance on Mr. Regan's previous analysis in the Corinthian Colleges case is significant in that the Department of Education is the agency that authorizes ACCSC to regulate and accredit colleges. *Id.* at 29:6-8.

223. Mr. Regan has also been retained by the Federal Trade Commission to determine whether or not DeVry College's underlying documentation was consistent with DeVry's disclosures regarding employment rates. *Id.* at 13:9-14:20.

224. The Court found Mr. Regan's analysis credible and helpful to an understanding of the accuracy of CollegeAmerica's reporting of its graduation and employment rates,

especially the charts on which his results were depicted relative to CollegeAmerica's calculations and the ACCSC's benchmarks. Exhibit 988 at 55-61.

C. The Results of Mr. Regan's Audit

225. Based upon his review of Defendants backup documentation, Mr. Regan disagreed with CollegeAmerica's calculations, and recalculated the actual employment rate for Defendants' different programs from 2009-2012 and 2015. Ex. G at 194:23-195:18197:12-198:4, 198:13-199:1, 200:23-201:8, 203:18-204:3, 205:18-206:22, *testimony of Greg Regan*; *see also* Ex. 988 at 55-61 (demonstrative exhibit).

226. Mr. Regan concluded that the methodology Defendants applied to report their employment rates was inconsistent with ACCSC's Standards and the Guidelines set forth in the Accreditation Alert of January 5, 2011, and that as a result, Defendants actual rates were lower than what they reported to ACCSC and ultimately disclosed to consumers. Ex. G at 33:11-23, *testimony of Greg Regan*.

227. The court pauses to note that CollegeAmerica strongly disagrees with Mr. Regan's methodology, which was a principal focus of both his own and Ms. Reed's testimony. Specifically, CollegeAmerica contends that the Accreditation Alert of January 5, 2011 amounted to a fundamental seachange in the way they were required to document their "employed in field" determinations, the actual enforcement of which was actually delayed several additional years. They make two arguments. First, that the phraseology of the Accreditation Alert was such that it was only to be applied prospectively, and that they therefore were not required to return to matters they had already verified and reverify them. Second, CollegeAmerica contends that, for several years following the issuance of the Accreditation Alert, and its inclusion as Appendix VII in the newly-issued Standards of Accreditation in July, 2011, ACCSC nevertheless did not strictly enforce its terms, including in the form of ACCSC site review teams not finding fault with CollegeAmerica's documentation (or in some cases, lack thereof) regarding their "employed in field" determinations, including those made on some species of verbal verification. In fact, CollegeAmerica contends that it was not until mid-2016 when it became evident to them that ACCSC was "tightening the reins" on employment verifications. *See* Ex. 2207 at 1.

228. The court finds, based upon its review of the Accreditation Alert, and the deposition testimony of ACCSC Executive Director Michale McComis, that the Accreditation Alert was intended to apply beginning immediately upon its issuance, including to its member schools' 2011 annual reports, even if that would require a certain amount of re-verification of placements which member schools had already verified by the date of its issuance. In CollegeAmerica's case, that would presumably have involved approximately seven months worth of verifications that had taken place between the beginning date of the period covered by the 2011 report (June 30, 2010) and the issuance of the Accreditation Alert (January 5, 2011). With respect to its application to student's files verified prior to that time, Mr. Regan testified that it only affected 36 of the total of 250 exceptions he had with CollegeAmerica

following the date of the Accreditation Alert of January 5, 2011, and did not have a significant impact on his analysis.

229. Furthermore, the court finds implausible that CollegeAmerica actually misunderstood its obligation to properly document its employment placement decisions for over five years between January, 2011 and mid-2016. The Accreditation Alert stated rather unequivocally that "[o]f crucial importance is that the school is responsible for justifying, *with documentation*, every graduate classified as employed." Ex. 5, 1 (emphasis supplied). The Guidelines themselves, with respect to each of the categories of regular employment, self-employment, and career advancement, used the phrase "written documentation" or "such documentation" with reference to the requisite proof no less than six separate times. As noted, these Guidelines, which first became available January 5, 2011, eventually became Appendix VII to ACCSC's Standards of Accreditation when it was reissued on July 1, 2011. Accordingly, the Court analyzes the evidence in this case based upon the factual conclusion that the Accreditation Alert of January 5, 2011 applied to every annual report due after its issuance, including the 2011 report.

230. Mr. Regan concluded that Defendants uniformly overstated the employment rate of the Healthcare Administration program at all of their Colorado campuses. *See Id.* at 194:23-195:18; Ex. 988 at 55 (demonstrative exhibit).

231. For example, in 2010 Defendants' Denver campus reported an employment rate of over 90% for its Healthcare Administration program, but Mr. Regan determined that Defendants' actual employment rate for this program was under 30%. At the time, ACCSC's benchmark was 70%. Ex. 988 at 55 (demonstrative exhibit). In 2011 Defendants' Denver campus reported an employment rate of roughly 75% for this same program, but Mr. Regan determined the actual employment rate was roughly 15%, again compared to ACCSC's benchmark of 70%. *Id.* In 2012, Defendants reported an employment rate of roughly 90% for Denver's Healthcare Administration program, but Mr. Regan calculated the actual employment rate was under 20%, against ACCSC's recession-adjusted benchmark of 66%. *Id.* In 2015 Defendants reported an employment rate of roughly 70% for the Denver's Healthcare Administration, but Mr. Regan calculated an employment rate slightly below 40%, again against a recession-adjusted ACCSC benchmark of 68%. *Id.* Similar disparities were also present for Defendants' Fort Collins and Colorado Springs' Healthcare Administration programs, with the exception of 2009, when Mr. Regan agreed that ACCSC had achieved 100% placement, against the ACCSC benchmark of 70%. *See id.*

232. Similarly, Mr. Regan concluded that, with one exception, Defendants overstated the employment rate for the Graphic Arts program at all of their Colorado campuses. *See* Ex. G at 197:12-198:4, *testimony of Greg Regan*; Ex. 988 at 56 (demonstrative exhibit). Of the five reporting years he analyzed, for each of CollegeAmerica's three Colorado campuses (a total of 15 reports), CollegeAmerica had reported exceeding ACCSC's benchmark seven times, but Mr. Regan's analysis demonstrated that, in fact, they had never exceeded the benchmark, and often fell well short. In 2011, Mr.

Regan's analysis concluded that the Denver campus had actually come closer to the ACCSC benchmark than it had reported, roughly 38% to 32%.

233. Mr. Regan also concluded that Defendants uniformly overstated the employment rate for the Medical Specialties program at all of their Colorado campuses. *See* Ex. G at 198:13-199:1, *testimony of Greg Regan*; Ex. 988 at 57 (demonstrative exhibit). Again, CollegeAmerica reported that it had met or exceeded ACCSC benchmarks in 11 of the 15 reports it submitted, but Mr. Regan concluded that it had only come close to the benchmark on one occasion, at the Colorado Springs campus in 2009, and otherwise had fallen well short.

234. Perhaps most dramatically, Mr. Regan concluded that Defendants overstated the employment rate for the Business Administration program at all of their Colorado campuses in each of the 15 reports submitted. In fact, in eight of those reports, CollegeAmerica had asserted that 100% of its graduates had become employed in field, but Mr. Regan concluded that the real employment rate had ranged between roughly 26% and 67%, and uniformly below benchmark. *See* Ex. G at 200:23-201:8, *testimony of Greg Regan*; Ex. 988 at 58 (demonstrative exhibit).

235. Mr. Regan concluded that Defendants overstated the employment rate for the Business Management and Accounting Associates degree program at all of their Colorado campuses, when in fact they were uniformly below benchmark. *See* Ex. G at 203:18-204:3, *testimony of Greg Regan*; Ex. 988 at 59 (demonstrative exhibit).

236. Mr. Regan concluded that, with one exception, Defendants overstated the employment rate for graduates of the Computer Science Bachelor's Degree program at all of their Colorado campuses, and, with two exceptions, were uniformly below benchmark. *See* Ex. G at 205:18-206:6, *testimony of Greg Regan*, Ex. 988 at 60 (demonstrative exhibit).

237. These six programs comprise over 90% of the graduates Mr. Regan tested. Ex. G at 54:2-54:23; *see also* Ex. 988 at 13 (demonstrative exhibit). On an aggregated basis, in 2009, CollegeAmerica reported employment rates slightly in excess of 80%, while Mr. Regan calculated slightly more than 50%; in 2010, CollegeAmerica reported employment rates just shy of 80%, and Mr. Regan calculated approximately 38%; in 2011, CollegeAmerica reported employment rates of roughly 71%, but Mr. Regan calculated approximately 38%; in 2012, CollegeAmerica reported employment rates right at the recession-adjusted ACCSC benchmark of 66%, while Mr. Regan calculated approximately 42%; and in 2015, CollegeAmerica reported employment rates right at the recession-adjusted benchmark of 68%, while Mr. Regan calculated roughly 46%. Ex. 788, at 61.

238. In total, Mr. Regan reviewed the placement status of 1,524 CollegeAmerica graduates. Ex. G at 32:22-33:8, *testimony of Greg Regan*; *see also* Ex. 988 at 12 (demonstrative exhibit). He created a spreadsheet of his analysis, reciting with respect to each graduate, CollegeAmerica's conclusion regarding employed in field, his own conclusion, and the basis therefor. Mr. Regan disagreed with Defendants'

employment classification for 470 of the graduates. *Id.* at 75:21-76:5; *see also* Ex. 988 at 22 (demonstrative exhibit).

239. Of these 1,524 graduates, Defendants reported 925 as employed in field. Ex. G at 52:24-53:10, *testimony of Greg Regan*; *see also* Ex. 988 at 12 (demonstrative exhibit.). Mr. Regan took exception with Defendants' classification of 326 of these graduates. Ex. G at 76:21-77:3, *testimony of Greg Regan*; *see also* Ex. 988 at 22 (demonstrative exhibit). Thus, Mr. Regan disagreed with 35% of Defendants' employed in field classifications.

240. Of the 1,524 graduates Mr. Regan reviewed, Defendants reported 186 as exempt/unavailable for employment. *See* Ex. G at 182:1-183:19, *testimony of Greg Regan*; *see also* Ex. 988 at 12 (demonstrative exhibit). Mr. Regan took exception with Defendants' classification of eighty-six of these graduates. Ex. G at 182:1-183:19, *testimony of Greg Regan*; *see also* Ex. 988 at 22 (demonstrative exhibit). Thus, Mr. Regan disagreed with 46% of Defendants' exempt/unavailable for employment classifications.

241. Of the 1,524 graduates Mr. Regan reviewed, Mr. Regan could not determine how Defendants reported approximately fifty-eight of the graduates. Ex. G at 75:21-76:5, *testimony of Greg Regan*; *see also* Ex. 988 at 12, 22 (demonstrative exhibit).

242. The remaining graduates Defendants classified as not employed in field. *See* Ex. 988 at 12 (demonstrative exhibit).

243. Mr. Regan concluded that there were generally four different reasons why he believed that the 326 graduates whom Defendants reported as employed in field should not have been reported that way: (1) because Defendants lacked sufficient documentation or information to have reported that graduate as employed in field (lacks sufficient documentation/information), (2) that graduate was employed in an occupation that was not related to their field of study (unrelated occupations), (3) Defendants did not maintain any documentation to support the graduate's employment classification (unknown/no documentation), and (4) the graduate was either unemployed at the time of verification or the employment was not sustainable (unemployed). Ex. G at 76:21-77:21,177:5-181:23, *testimony of Greg Regan*; *see also* Ex. 988 at 24 (demonstrative exhibit).

244. The first two categories encompassed the largest number of graduates. Ex. G at 76:21-77:15, *testimony of Greg Regan*; *see also* Ex. 988 at 24 (demonstrative exhibit).

245. Out of the 326 graduates whom Mr. Regan concluded had been wrongly reported as employed in field, 151 fell into the category of lacks sufficient data. *See generally* Exs. 740, 744; *see also* Ex. 988 at 24 (demonstrative exhibit).

246. Out of the 326 graduates wrongly reported as employed in field, 139 fell into the category of unrelated occupations. *See generally* Ex. 740, 744; *see also* Ex. 988 at 24 (demonstrative exhibit).

247. Out of the 326 graduates wrongly reported as employed in field, approximately 8% (26 graduates) fell into the unknown/no documentation category. Ex. G at 77:16-21, *testimony of Greg Regan*; *see also* Exs. 740, 744; Ex. 988 at 24 (demonstrative exhibit).

1. Career Advancement Criteria

248. ACCSC's Standards require that when a graduate is already employed in a training related field at the time of graduation, Defendants can only report this graduate as employed in field if they obtain written documentation from the graduate or employer that the training at CollegeAmerica allowed the graduate to maintain the employment position or supported the graduate's ability to be eligible or qualified for advancement. Ex. 13 at 115.

249. Mr. Regan determined that a student whose initials were K.E. should not have been reported as employed in field because K.E. obtained her employment over two years before graduation yet Defendants failed to obtain documentation to meet the career advancement criteria outlined in ACCSC's Guidelines for Employment Classification. Ex. G at 119:25-122:14, *testimony of Greg Regan*; Ex. 563.

250. Based upon the backup documentation and the language found in ACCSC's Guidelines for Employment Classification, the Court agrees that Defendants documentation was insufficient to report this and similarly situated graduates as employed in field. *See* Ex. 5 at 2; *see also* Ex. G at 125:1-127:11, *Testimony of Greg Regan*.

251. In total, Mr. Regan found that fifty-two graduates were reported as employed in field when Defendants did not have verifiable documentation for those graduates that satisfied the career advancement criteria. *See* Ex. 740 at Control #s 283, 287, 290, 318, 325, 327, 331, 332, 339, 344, 401, 402, 403, 430, 436, 452, 493, 500, 512, 514, 523, 524, 531, 571, 576, 594, 595, 676, 677, 689, 706, 729, 807, 808, 1363, 1366, 1368, 1370, 1371, 1375, 1377, 1379, 1387, 1402, 1405, 1407, 1430; Ex. 744 at Control #s 901, 914, 1137, 1276, 1280, 1313, 1324.

252. The Court finds that Mr. Regan appropriately concluded that these graduates should not have been reported as employed in field pursuant to ACCSC's Standards.

253. Additionally, the Court finds that the different requirements in ACCSC's Guidelines for Employment Classification are cumulative in that in order to report a graduate as employed in field who falls under the career advancement criteria, an institution must first show, *inter alia*, that the employment is directly related to the program from which the individual graduated, aligns with a majority of the educational and training objectives of the program, and is a paid position. Ex. G at 67:9-69:20, 329:7-330:2, *testimony of Greg Regan*; *see also* Ex. 5 at 2.

254. The Court is not persuaded by Ms. Reed's testimony to the contrary. Ms. Reed testified that until 2017 she believed that it was appropriate to classify graduates as employed in field under the career advancement criteria so long as they obtained their job before graduation and their education made them eligible for advancement,

even if the graduate was not currently working a job that was employed in field. *See* Ex. Q at 303:12-16, *testimony of Susie Reed*. Ms. Reed's testimony conflicts with the plain language of ACCSC's guidelines, which requires a graduate to be employed in field for the career advancement criteria to apply. *See* Ex. 5 at 2.

255. Her testimony also conflicts with that of Dr. McComis and other members of Ms. Reed's compliance team who testified that employment must be in field in addition to meeting the verification requirements in paragraph 4 of ACCSC's Guidelines for Employment Classification. *See Michale McComis Deposition Designation* at 276:18-22; *Nisha Nelson Deposition Designation* at 93:1-95:21; *Nisha Nelson Deposition* Ex. 1 at 11-12.

256. Finally, Ms. Reed's testimony conflicts with Defendants own internal guidance which demonstrates that Defendants knew that a graduate must first be employed in a training related field in order for the career advancement criteria to apply. Ex. 435 at 4; Ex. 253 at 2.

2. Self-Employment

257. ACCSC 's Standards require Defendants to have a signed statement from a self-employed graduate attesting that the graduate was earning training related income in order to report that graduate as employed in field. *See* Ex. 13 at 115; Ex. 2133 at 125; Ex. F at 290:11-291:7, *testimony of Jasmine Valencia*.

258. However, Ms. Valencia, the former director of career services at Defendants' Colorado Springs campus, would report self-employed graduates as employed in field even if the only backup documentation she had was a statement of trade name because this is what she was trained to do at CollegeAmerica. Ex. F at 292:7-293:6, 294:2-10, *testimony of Jasmine Valencia*. It is clear that the mere filing of a tradename affidavit with the Secretary of State's office is precious little evidence of actually earning training related income. Ex. G, 113:18-116:4, *testimony of Greg Regan*; Ex. 345, at 2 (tradename affidavit filed by graphics art graduate YK 10 minutes after Denver campus career services representative signed off on employment verification document).

259. Ms. Reed admits that she would count self-employed students as employed in field even when Defendants did not meet the documentation requirements in the ACCSC's guidelines for employment classification. *See* Ex. R at 10:23-11:7, *testimony of Susie Reed*.

260. Mr. Regan's conclusion that Defendants erred when they reported self-employed graduates as employed in field when Defendants had not met the documentation requirements found in ACCSC's Guidelines is consistent with the clear and unambiguous language in ACCSC's Guidelines. *See* Ex. 13 at 115.

261. In total, Mr. Regan found that eleven graduates were reported as employed in field when Defendants did not have verifiable documentation for those graduates that satisfied the self-employment criteria. *See* Ex. 740 at Control #s 360, 382, 691, 705, 1369; Ex. 744 at Control #s 968, 975, 1151, 1154, 1328, 1331.

3. Unrelated Occupations

262. Mr. Regan also opined that in addition to failing to meet documentation requirements, Defendants reported graduates as employed in field when the graduates' jobs were not related to their training at CollegeAmerica (unrelated occupations).

263. For example, Mr. Regan determined that Defendants inappropriately classified a graduate of the Business Administration bachelor's degree as employed in field for her employment as a produce clerk at King Soopers. Ex. G at 201:14-203:16, *testimony of Greg Regan;* Ex. 346. Ms. Reed, on the other hand, persisted in her defense of that decision, both on the career advancement and unrelated occupations issues. Ex. Q, 308:22-315:25, *testimony of Susie Reed*; Ex. 346.

264. The Court finds that Mr. Regan correctly concluded that Defendants failed to follow ACCSC Standards when they reported this graduate as employed in field because Defendants have not demonstrated how employment as a produce clerk is directly related to and aligns with a majority of the educational and training objectives of the Business Administration program, which is designed to lead to employment in "entry-level to mid-level positions as an office manager, account manager, small business developer, human resource assistant, or sales manager. *See* Ex. 173 at 11.

265. Mr. Regan also concluded that it was inappropriate for Defendants to classify a graduate of the Medical Specialties program as employed in field for her job as "wait staff." Ex. G at 199:4-200:22, *testimony of Greg Regan;* Ex. 564.

266. Mr. Regan correctly concluded that Defendants failed to follow ACCSC's Standards when they reported this graduate as employed in field because Defendants have not demonstrated how employment as a waiter is directly related to and aligns with a majority of the educational and training objectives of the Medical Specialties program, which is designed to lead to "entry-level employment as medical assistants with practical radiology, billing/coding, and laboratory skills . . . [as well as] a career as an entry-level pharmacy technician, nursing assistant, home health aid, and as a medical receivables and coding professional." *See* Ex. 173 at 32.

267. Mr. Regan determined that Defendants inappropriately classified a graduate of the Business Management and Accounting program as employed in field for her job as counter help at a Panda Express restaurant. Ex. G at 204:21-205:17, *testimony of Greg Regan*; Ex. 550.

268. The Court finds that Mr. Regan correctly concluded that Defendants failed to follow ACCSC Standards when they reported this graduate as employed in field because Defendants have not demonstrated how employment as counter help at a Panda Express is directly related to and aligns with a majority of the educational and training objectives of the Business Management and Accounting program, which is designed to employ graduates "in entry-level positions as bookkeepers, clerical assistants, and personal property professionals." *See* Ex. 173 at 30.

269. The Court finds that Mr. Regan appropriately found that graduates of Defendants' Healthcare Administration program who were certified nursing assistants, medical assistants, or held other similar low level medical jobs, were not employed in field. *See* Ex. G at 139:11-149:4, 151:3-157:9, 195:22-197:11, *testimony of Greg Regan;* Exs. 812-816; Ex. 342.

270. Mr. Regan's opinion is supported by ACCSC correspondence with Defendants. *See, e.g.,* Ex. 277 at 5-6. Further, Defendants' course catalogs indicate that the objectives of this program is to prepare graduates for entry level management and accounting positions, *see, e.g.*, Ex. 234 at 13, not lower level medical positions that do not even require a degree. *See* Ex. 19 at 5 (ACCSC reasoning that "to classify graduates as employed in the field of study when the training itself may not be necessary or required for entry level employment does not provide an accurate picture of the rate at which graduates are being recognized as being successful").

271. The Court does not find Ms. Reed's testimony to the contrary to be credible. *See* Ex. Q at 234:21-239:23, *testimony of Susie Reed*. The evidence demonstrates that after ACCSC called into question Defendants' practice of classifying low level medical jobs, such as certified nursing assistants, as employed in field, *see* Ex. 277 at 5-6, Defendants' response indicated that they agreed that these positions were not in fact employed in field as evidenced by Defendants' representation to ACCSC that a graduate who was employed as a certified nursing assistant was not employed in field. *See* Ex. 3513 at 94.

272. Mr. Regan concluded that sixty-four of the graduates of the Healthcare Administration program that Defendants classified as employed in field were actually employed in unrelated occupations. *See* Ex. 740 at Control #s 55, 60, 65, 66, 69, 108, 114, 118, 119, 120, 122, 197, 199, 200, 205, 206, 207, 210, 292, 295, 301, 306, 308, 309, 312, 314, 315, 411, 412, 413, 414, 416, 526, 529, 532, 535, 539, 540, 542, 543, 544, 545, 654, 655, 660, 662, 1403, 1523, 1524, 1525; Ex. 744 at Control #s 927, 933, 934, 938, 1088, 1089, 1092, 1098, 113, 114, 1296, 1300, 1301, 1307.

273. The Court finds that Mr. Regan appropriately concluded these graduates should not have been reported as employed in field pursuant to ACCSC's Standards.

274. Ms. Reed testified that for the 2015 reporting year, it was appropriate to classify certified nursing assistants as employed in field for the medical specialties program, *see* Ex. Q at 257:23-258:12, *testimony of Susie Reed*, despite the fact that ACCSC has conclusively spoken on this issue and stated that it was not appropriate for Defendants to classify certified nursing assistants as employed in field for the medical specialties program in the 2015 annual report. *See* Ex. 19 at 3-5, 8.

275. Defendants knew as far back as June of 2014 that ACCSC would not consider a certified nursing assistant as employed in field for the Medical Specialties Program in the future. Ex. 220 at 4.

276. The Court finds that in 2015, Defendants erroneously reported graduates of the Medical Specialties program who obtained jobs as certified nursing assistants,

personal caregivers, or home health aides as being employed in field. Ex. 19 at 3-5, 8; *see also* Ex. 740, 744. The Court also finds that prior to 2015, Defendants knew that it would be inappropriate to classify these types of jobs as employed in field. *See* Ex. 48 at 2-3; Ex. 220 at 4.

277. In total, Mr. Regan found that 139 different graduates were reported as employed in field when in fact they worked in unrelated occupations. *See* Ex. 740, 744; *see also* Ex. 988 at 24 (demonstrative exhibit).

278. Based upon Mr. Regan's trial testimony and the evidence in this case, the Court finds that Defendants' knowingly violated ACCSC Standard's when they reported these graduates as employed in field.

4. Exempt/Unavailable for Employment Graduates

279. Mr. Regan also reviewed approximately 190 of the 1,524 graduates who Defendants had classified as "unavailable for employment." Ex. G at 182:1-183:19, *testimony of Greg Regan*.

280. Mr. Regan concluded that 86 of these graduates were in fact available for employment, which would have the effect of lowering Defendants' employed in field rates. *Id.* at 182:1-183:19. In reaching this conclusion, Mr. Regan relied on ACCSC Standards and the testimony of Dr. McComis on how to properly apply ACCSC Standards. *Id.* at 183:20-185:15.

281. The Court finds that Mr. Regan properly applied ACCSC's Standards in reaching his conclusions. *See id.* at 185:18-194:20.

5. Defendants' Independent Audits of their Employment Rates

282. Defendants rely on two independent audits of Defendants' 2011 and 2015 employment rates to argue that their employment rates were previously verified by third parties.

283. The first such audit was completed by Shaw Mumford in December of 2011. Ex. 2259 at 2. Shaw did not conclude that Defendants employed in field rates were presented fairly in all material respects; rather, after reviewing the schedule of graduation and employment rates, Shaw only concluded that Defendants' graduation rates were presented fairly in all material respects. Ex. G at 323:12-324:8, t*estimony of Greg Regan*; Ex. 2259 at 2.

284. Moreover, Shaw only attempted to contact 29 graduates from Defendants' Colorado campuses and only verified that 15 of these graduates were employed. *See* Ex. R at 15:21-17:15, *testimony of Susie Reed*; Ex. 970. This hardly constitutes a comprehensive audit of Defendants' 2011 employment rates, and the Court finds it less helpful than Mr. Regan's audit.

285. Defendants also rely on an audit performed by MMI of CollegeAmerica's Colorado Springs 2015 employment rates. However, MMI did not apply ACCSC Standards during their audit; instead, MMI was simply calling graduates and employers to

determine if the graduates had the job that Defendants said the graduate had. Ex. G at 324:11-326:12, *testimony of Greg Regan*. In any event, MMI's audit results are not binding on this Court, especially in lieu of the fact that ACCSC disagreed with MMI's results for numerous graduates. *Compare* Exs. 965 and 967 with Ex. 22 at 14.

6. Mr. Regan's methodology is consistent with ACCSC Standards

286. Mr. Regan concluded that when Defendants backup documentation did not include the information required by ACCSC 's Standards, such as job titles, job duties, or other information necessary to make a determination about whether a student was in a training related field, that graduate should not have been reported as employed in field. Ex. G at 76:21-77:21, *testimony of Greg Regan*

287. The Court finds that Mr. Regan's approach is consistent with ACCSC's Standards which state that Defendants were required to "maintain verifiable records of each graduate's initial employment for five years. Any statement regarding the percentage of graduate employment, e.g., annual employment rates of graduates, must be based upon these verifiable records." Ex. 13 at 95, 115.

288. Mr. Regan's methodology is further supported by ACCSC's methodology, as illustrated by correspondence from ACCSC to Defendants where the accreditor questioned Defendants' placements when the backup documentation was missing information. Ex. 279 at 8.

289. Moreover, Mr. Regan's methodology is also consistent with Defendants' own internal audit procedures which articulate that if a campus cannot provide appropriate verification documentation to support a placement, the compliance team would not allow that graduate to be reported as employed in field to ACCSC. Ex. G at 167:18-168:21, *testimony of Greg Regan; see also* Ex. 988 at 40 (demonstrative exhibit).

D. Ms. Reed's Response to Mr. Regan's Audit

290. As noted, Defendants' Vice President of Compliance, Susie Reed, testified as an expert and fact witness for the defense. Ms. Reed had 29 years of experience in the proprietary college area, and had vast experience with a wide range of accreditors, primarily as a representative of a school, but also as a site review team member under the auspices of another accreditor, ACCET. However, the court found Ms. Reed's testimony to be, quite naturally, somewhat biased in favor of her longtime employer CollegeAmerica, and somewhat incredible on several key points.

291. First, she acknowledged exchanging drafts of her expert report with counsel for CollegeAmerica before finalizing her opinions. Ex. Q at 274:10-275:6, *Testimony of Susie Reed*. Although the report itself was not introduced into evidence, except with respect to her rebuttal to Mr. Regan's findings, counsel's involvement with composing an expert's report raises questions as to the authenticity of the opinions expressed by the expert, and the dividing line between her opinions and counsels'.

292. Second, Ms. Reed seemed to hold some views regarding ACCSC and the accreditation process in general which suggested something of an adversarial frame of mind. For instance, she testified that she does not believe Dr. McComis's testimony on the meaning of ACCSC's Standards is important to understanding those standards. *Id.* at 276:22-25. In fact, Ms. Reed believes that members of the site team have a better understanding of ACCSC standards than does Dr. McComis, the executive director of ACCSC who testified on behalf of ACCSC in this matter. *See id.* at 277:1-5; *Michale McComis Deposition Designation* at 1:5-8. She acknowledges, however, that it is the Commission, not the site visit team, that is the final decision-maker on what ACCSC's Standards mean. *See* Ex. Q at 279:15-18, *testimony of Susie Reed*.

293. Third, Ms. Reed's position is that if an ACCSC site visit team looks over Defendants' backup documentation and makes no comment, its silence means that Defendants are meeting ACCSC's Standards. *Id*. at 165:6-16, 174:13-20. In fact, Ms. Reed testified that, as of June 2016, "[b]ased on the visits and their approving our placements, we knew we were in compliance." *Id.* at 182:25-183:6, 300:22-301:3.

294. Ms. Reed's testimony is not consistent with Dr. McComis's testimony or ACCSC's correspondence with Defendants. *See Michale McComis Deposition Designation* at 352:21-353:9 (explaining that the site visit process is "not an infallible process"); Ex. 19 at 5 ("The Commission reminds CA-Colorado Springs that no employment position can be characterized as 'approved by ACCSC.' Further, the Commission is not persuaded that a history of classifying graduates as 'employed in field' in positions that do not require the skills of a specialized associate's degree constitutes tacit acceptance or approval of the practice, or justification for continuing to do so.").

295. Given the limited amount of time an ACCSC site review team has to review voluminous documentation pertaining to all aspects of a college's operations during a site visit (typically, two days), the court finds that it is impractical to expect that they would necessarily discover all information relevant to their determinations among the documents of another entity, especially regarding violations of the Accredation standards. Beyond the practical aspects, such a position strikes the court as fundamentally at odds with ACCSC's admonition, in its Standards of Accreditation that "[a] high level of reliance is placed upon information, data and statements provided to the commission by a school. The integrity and honesty of a school are fundamental and critical to the process," Exhibit 13 at 9, and its statement in the January 5, 2011 Accreditation Alert, that "[o]f crucial importance is that the school is responsible for justifying, with documentation, every graduate classified as employed." Ex. 5, at 1.

296. While Ms. Reed testified that site visit teams review 100% of the backup documentation of employment rates when they visit, Ex. Q at 165:17-166:22, *testimony of Susie Reed*, Dr. McComis testified that during onsite visits the team would only review a sample of Defendants backup documentation. *See Michale McComis Deposition Designation* at 225:16-226:2; 228:15-231. Dr. McComis's

testimony is consistent with that of Ms. Valencia, who testified that during the one site visit she witnessed at the Colorado Springs campus, the site visit team only reviewed a sample of the backup documentation. Ex. F at 312:1-17, *testimony of Jasmine Valencia*.

297. On at least a limited number of occasions, after ACCSC had conclusively determined that certain types of jobs were not employed in field for certain degree programs, Ms. Reed appears to have ignored ACCSC's prior determination. For example, Ms. Reed testified that a sales associate at Ross Dress for Less is employed in field for the Associates in Business Management and Accounting program, despite the fact that ACCSC had previously told Defendants that a sales representative at JC Penny was not employed in field for that same program of study. *See* Ex. R at 13:19-15:20, *testimony of Susie Reed*; Ex. 347; Ex. 621 at 3.

298. Although Ms. Reed testified that her compliance team is "ferocious when it comes to following [ACCSC] standards," Ex. Q at 160:3-9, *testimony of Susie Reed*, and acknowledging that it is Defendants' responsibility to report employment rates in accordance with ACCSC's written standards, Ex. R at 52:16-19, t*estimony of Susie Reed*, nonetheless, her department failed to implement the document creation and retention policies essential to allow CollegeAmerica to comply with the Accreditation Alert of January 5, 2011, which made constant reference to required "written documentation." Ex. 5, at 2. Her protestation that it would have been "basically impossible" to go back and reverify the information her team had generated prior to receipt of the Accreditation Alert, which she stated in support of her position in this litigation that the Accreditation Alert was intended to be prospective only, Ex. Q, 169:11-16, is at odds with a passage from notes reflecting a weekly call with career services representatives of CollegeAmerica which occurred on June 30, 2016, Ex. 2207. After explaining that ACCSC is "tightening the reins" in the area of placement verification, the notes reflect "Action item: go back through placements already recorded for 2016 and 'shore up' any verbal verifications (both verbals from the graduate or the employer)."

299. Finally, although Ms. Reed testified that there is a difference between ACCSC's Standards of Accreditation and ACCSC's Guidelines for Employment Classification, and that the Guidelines are the "next level down," *see* Ex. Q at 161:2-17, *testimony of Susie Reed*, the Court finds this is a distinction without a difference. The Guidelines are mandatory, not permissive, as made clear by the first sentence, which reads "the school *must* be able to justify the classification of each graduate as employed using the following guidelines:" Ex. 5 at 2 (emphasis supplied). Further, as Dr. McComis indicated they would in his cover memorandum, the Guidelines were included as Appendix VII to the Standards of Accreditation when they were reissued on July 1, 2011. Ex. 13 at 115. In any event, Ms. Reed admitted that Defendants were required to follow the Guidelines. Ex. Q at 297:15-21, *testimony of Susie Reed*.

E. Effect of CollegeAmerica's Determination of its Employment Rates

300. Ms. Reed's Compliance Department's annual reports to ACCSC regarding CollegeAmerica graduates' employment in their fields of training appear to have some practical effect on Colorado consumers.

301. At the Fort Collins campus, Graduation and Employment charts are displayed in the hallway outside of the Career Services office and in the student lounge. Ex. N at 141:23-142:7, *testimony of Kristy McNear*. The Graduation and Employment charts are presented to prospective students during their tour of the campus. *Id.*

302. In one of Investigator Barber's undercover calls to CollegeAmerica in 2012, she was given placement rates when she asked about the school's "success rate." Ex. 914 at timestamp 4:40-4:55.

> Ms. Barber: Okay. Do you have – what is your success rate like?
>
> CollegeAmerica: It depends on the program. There's some programs that are really high. They are, like, 80, 95 percentile. It really depends on the program. They are all really high, though, compared to other schools.

Id.; *see* Ex. N at 234:25-235:5, *testimony of Vicky Barber*. In its 2011 annual report, which would have been available in 2012, on an aggregate basis, CollegeAmerica reported graduate employment in field at just slightly above the ACCSC benchmark of 70%. Mr. Regan calculated it at approximately 38%. Exhibit 744, at 61.

303. In a recorded admissions interview from February 2015, an admissions consultant told a prospective student that the school has "typically we have anywhere from a 70% to 100% placement rate." Ex. 760.2. Ms. Gordy testified that the admissions consultant in the recording in Exhibit 760.2 complied with CollegeAmerica training. *See* Ex. C at 65:11-66:4, *testimony of Mary Gordy*.

304. Although CollegeAmerica makes placement and graduation rates available to admission consultants, it does not give them access to the actual wages and the types of jobs graduates are getting. *See* Ex. C at 187:4-14, *testimony of Mary Gordy*; *see also* Ex. B at 282:7-11; 283:2-5, *testimony of Cristi Brougham*.

305. Effective July 1, 2011, federal regulations required Defendants to disclose the employment rates it reported to ACCSC to prospective students, typically on their website. Ex. G at 40:7-12, *testimony of Greg Regan*. Defendants posted employment rates on their website and included a footnote that the job placement rate is calculated pursuant to the job employment rate calculation methodology of ACCSC. *Id.* at 51:2-52:21; Ex. 988 at 11 (demonstrative exhibit).

306. 307. Defendants posted their employment rates on their website and on flyers and TV screens at Defendants' Colorado Campuses. *See* Ex. Q at 266:14-23,

testimony of Susie Reed. Defendants posted these numbers at their Colorado campuses in 2012 and 2013, and possibly in later years as well. *Id.* at 267:13-268:17.

VIII. Misrepresentations About X-Ray, EMT, and Sonography Training

A. Limited Scope X-Ray Certification

307. CollegeAmerica's most popular program is its Associates degree in medical specialties. This is a program which was created by Chairman Carl Barney in approximately the early 2000's. The idea was to create a single course of study which blended the functions and skill sets of "front office medical assistants" with those of "back office medical assistants." It was Mr. Barney's theory that it would be a versatile degree which would prepare CollegeAmerica graduates for a variety of jobs in the medical field, and give them more job options. He faced resistance from his own faculty, accreditor, and competitors, but the program has survived for 15 years or so, and is now the most popular one. One employer characterized it as the "super medical-assisting program." Ex. I, 67:18-71:9, testimony of Carl Barney.

308. According to Christine Irving, a radiation compliance specialist at the Colorado Department of Public Health and Environment ("CDPHE"), the requirements to become a Limited Scope x-ray operator in Colorado changed in 2005. Ex. J, 257:14-21, *testimony of Christine Irving.* Before the change, all one had to do to become a Limited Scope x-ray operator was to pass the Limited Scope exam. *Id.* at 257:14-21. After the change, to be eligible to sit for the exam, an applicant must first complete 80 hours of didactic instruction, 480 hours of clinical experience, no more than 160 hours of which can be in a school laboratory, and perform 80 imaging procedures. *Id*. at 256:23-13.

309. Starting in May of 2005 and continuing for another six months, CDPHE held several meetings with local schools to help them understand the new requirements. *Id*. at 258:15-259:6. Ms. Irving specifically remembers that CollegeAmerica representatives attended the meetings where CDPHE explained the new requirements to sit for the Limited Scope exam. *Id.* at 259:10-260:3.

310. CDPHE's expectation was that the schools who prepared students for the Limited Scope exam would maintain files establishing the didactic and clinical training hours completed by the students. *Id*. at 264:1-9.

311. In discovery in this case, the State served an Interrogatory that requested Defendant CEHE to identify all CollegeAmerica students who obtained 480, 160, 120, or 60 hours of clinical training during the course of their radiology training at CollegeAmerica. This Interrogatory also requested CEHE to identify all CollegeAmerica students who performed 80 imaging procedures during the course of their enrollment at CollegeAmerica. Defendants did not identify any specific students and responded, in part, "CEHE . . . did not track the specific numbers of

externship hours each student had obtained in radiology." *See* Ex. I at 231:17-236:2, *testimony of Eric Juhlin*; Ex. 908 at 30-31 (Interrogatory 18).

312. After being presented with their Interrogatory response at trial, Defendant Juhlin identified one student who obtained clinical hours during the course of her training at CollegeAmerica. That was Jessica McCart, whose testimony was presented in this case via designation. Ex. J at 25:6-25, *testimony of Eric Juhlin*. Ms. McCart found her externship without the assistance of CollegeAmerica. *Jessica McCart Arbitration Designation* at 47:18-48:20.

313. In October of 2014, Ms. Irving reviewed 2,000 files of people who had been approved to sit for the Limited Scope exam between 2005 and October 2014 to determine how many of them had attended CollegeAmerica. Ex. J at 263:10-22, 264:17-20, *testimony of Christine Irving*. Out of the 2,000 files, Ms. Irving found seventeen or eighteen applicants whose applications indicated that they had attended CollegeAmerica. *Id*. at 264:21-265:22, 273:3-7. Sometime after she had done this review, one other former student of CollegeAmerica also applied to take the LSO exam and his application indicated that he met the requirements to sit for the exam. *Id*. at 276:20-277:7, 280:25-281:4. In her review, Ms. Irving found that just one CollegeAmerica student passed the Limited Scope exam between January 1, 2005 and October 2014. *Id*. at 264:17-20, 265:23-25.

1. CollegeAmerica's Written Representations

314. In a November 2009 email, Defendant Barney noted that the Medical Specialties program "provides **multiple advertising** opportunities. When we advertise the Medical Specialties program, we list/advertise . . . X-Ray Tech (Ltd scope) . . . ." Ex. H at 16:25-18:5, *testimony of Carl Barney*; Ex. 376 at 1.

315. Kirk Bowden, who held the positions of Manager of Internet Advertising, Associate Director of Internet Advertising, and Director of Internet Advertising for CollegeAmerica from January 2009 through mid-2012, testified that Defendants used "key word marketing" to direct consumers interested in x-ray training to CollegeAmerica's website. When consumers conducted Internet searches for x-ray training, they would be directed to CollegeAmerica's website. *Id.* at 43:25-44:11, 77:25-78:13.

316. In the 2008-2009 timeframe, and as late as 2011, Defendants featured "X-Ray (limited scope)" in a TV commercial that described Defendants' Medical Specialties Program. *See* Ex. E at 143:21-144:5, *testimony of Krystal Neeley*; Ex. I at 219:1-14, *testimony of Eric Juhlin*; Ex. 167.

317. CollegeAmerica mailers made claims about the growing need for x-ray technicians in the job market. *See, e.g.*, Ex. 678 at 6, 16. X-ray was also featured in newspaper articles. *See Jessica McCart Arbitration Designations* at 17:9-18:22; *McCart Arbitration* Ex. 52.

318. From 2006 through 2011, the CollegeAmerica course catalog stated that the Medical Specialties program at CollegeAmerica would "prepare students for possible

certification or licensing (Note: radiology courses are limited scope, not an RRT certification) in the various medical specialties." Ex. 2037 at 53, Ex. 2041 at 21, Ex. 2042 at 29. Although the catalog was specific to the three Colorado campuses and the single campus in Cheyenne, Wyoming, the catalog did not disclose the fact that CollegeAmerica's training did not meet the clinical-hour requirements to sit for the Limited Scope exam in Colorado. *Id.*; *see also* Ex. I at 222:21-223:3, *testimony of Eric Juhlin.*

319. The Admissions Consultant Manual provided responses to questions potential students might ask. In the versions of the Admissions Consultant Manual dated 2006-2008, 2011, and 2012, if a potential student asked whether CollegeAmerica's x-ray courses result in AART certification, the admissions consultants were directed to respond, in part, "No. AART certification is a specific certification and requires that you take a full program. Our courses lead to a limited scope licensure by the State." *See* Ex. 2008 at 20, Ex. 230 at 23, Ex. 2479 at 22; Ex. I at 229:5-15, 226:8-15, 230:7-15, *testimony of Eric Juhlin*. The scripted response to this question did not specifically disclose the fact that CollegeAmerica's training did not meet the clinical-hour requirements to sit for limited scope certification. Ex. 2008 at 20, Ex. 230 at 23, Ex. 2479 at 22. In a scripted response to the question, "Can I get certifications/licenses when I finish my studies," the Admissions Consultant Manual instructed admissions consultants to say, "Yes, however we do not guarantee that our programs will necessarily be sufficient to obtain any certification or license issued by a public or private agency." Ex. 2008 at 20, Ex. 230 at 23, Ex. 2479 at 22. The scripted response continues, "Certifications and/or licenses may require additional study and cost." *Id.* These statements are in conflict with the course catalog's description of the Medical Specialties program.

320. On the first page of the Enrollment Agreement, each student must initial next to ten statements, including one that includes, as a third sentence following two addressing the issue of the transferability of CollegeAmerica credits, that "I understand certifications and licenses may require additional study and cost." Ex. 2030. The Enrollment Agreement elsewhere provides as follows:

> **Certifications and Licenses:** The college's educational programs lead to knowledge and skills for a stated major**. We do not guarantee that our educational programs will necessarily be sufficient to obtain any certification or license issued by a public or private agency. Completion of some of our programs may qualify you to sit for certain certification and license examinations. Attainment of such certifications and licenses will likely require additional study and/or cost. A third party may administer the examination and further study and a fee will be required. The college may reimburse you for the examination fee.**

Id., at 3 (standard and boldface font as in original). This point is repeated in the catalog, Ex. 2046 (2015 catalog), at 35 ("students should be aware that in most cases additional

training and/or clinical experience will be required to sit for certain certification or license or examinations.").

321. An admissions binder that Defendants provided to potential students, current as of 2010, contained a page that bore the heading "Medical Specialties with Emphasis in Radiography," and listed Limited Scope X-ray Technician as a possible certification. *See* Ex. I at 224:9-225:2, *testimony of Eric Juhlin*; Ex. 489 at 19.

2. Consumer Complaints and Testimony

322. As early as March 2008, Defendants were on notice that consumers were being misled about the availability of x-ray certification through the Medical Specialties program.

323. On March 19, 2008, ACCSC sent Rozanne Kunstle, then the Executive Director of the Colorado Springs campus, ACCSC's report from a site visit conducted in August 2007. Ex. J at 283:9-12, 289:6-20 *testimony of Rozann Kunstle*; Ex. 267.

324. The report included feedback from students for each program. For the Medical Specialties program, one student wrote that "[w]hen I first got here, Brook had liked [*sic*] about a few things. She said I can get certification in X-Ray, but then everyone is telling me I can't." Ex. 267 at 32 (sixth bullet point from the top). Ms. Kunstle reviewed this student complaint when she received the report in 2008. Ex. J at 298:2-7, *testimony of Rozanne Kunstle*.

325. Several consumers testified about being misled about whether and when the Medical Specialties program would prepare them to sit for the Limited Scope exam.

326. Krystal Neeley enrolled in the Fort Collins campus in or around January 2009. Ex. E at 161:22-162:10, *testimony of Krystal Neeley*; Ex. 3077.

327. In late 2008 or early 2009, Ms. Neeley saw a CollegeAmerica TV commercial that said students could get certified as radiology technicians through CollegeAmerica. Ex. E at 143:21-144:5, *testimony of Krystal Neeley*. In her admissions interview, the admissions consultant, Dustan Dailey, led Ms. Neeley to believe that she would be eligible to sit for her LSO certification exam when she finished the Medical Specialties program. *Id*. at 145:12-147:6. Mr. Dailey did not tell Ms. Neeley that additional clinical hours would be required for Ms. Neeley to sit for the Limited Scope exam. *Id.* at 147:7-10.

328. At her orientation, Ms. Neeley was provided a binder of materials that listed "Limited Scope X-Ray Technician" under the heading "Possible Certifications or Licenses." *Id*. at 148:14-149:5; Ex. 188 at 19. A footnote stated, "Certifications or licenses usually require additional cost and study for the examination," but did not disclose the additional clinical hours required to sit for the Limited Scope exam.

329. In October 2009, about halfway through her program, Ms. Neeley's radiology instructor informed the class that they would not be able to sit for the Limited Scope exam through CollegeAmerica because CollegeAmerica did not offer the required clinical hours. Ex. E at 151:6-15, *testimony of Krystal Neeley*.

330. Ms. Neeley confronted Mr. Dailey about his misrepresentations and he denied misleading her. *Id*. at 151:12-24. Ms. Neeley considered dropping out of CollegeAmerica at that point but she continued with her degree because she was already obligated for 75% of the tuition. *Id.* at 151:25-152:16.

331. Stacey Potts enrolled in the Colorado Springs campus in or around March 2009. Ex. B at 140:9-12, 142:23-24, *testimony of Stacey Potts*. Ms. Potts' Admissions Consultant was Sharrie Maple. *See id*. at 142:25-143:6. During the admissions interview, Ms. Maple provided Ms. Potts a flyer that bore the heading, "Check out the certification and licensure training CollegeAmerica has to offer!" *See id*. at 144:10-25; Ex. 3157. Among other things, the flyer listed "Limited Scope Radiology Technician (LSO)." At the bottom, the flyer stated, "All of this in one program, plus a college degree!" Ex. 3157. The flyer provided no information about the additional training required by the State to sit for the Limited Scope exam. *See id*.

332. Ms. Maple did not inform Ms. Potts that she would require additional training after graduating from CollegeAmerica in order to sit for the Limited Scope exam. Ex. B at 146:13-17, *testimony of Stacey Potts*.

333. Shawndel Sievert enrolled in the Colorado Springs campus in or around August 2009. *See* Ex. B at 15:3-5, *testimony of Shawndel Sievert*.

334. In Ms. Sievert's admissions interview, the Admissions Consultant, Kiersten, told Ms. Sievert that the Medical Specialties program prepared students for various certifications, including Limited Scope x-ray. *Id*. at 18:15-19:21. Kiersten told Ms. Sievert that "Everything we'd learn in the classes would lead us to the point where we'd be qualified to take the certification test." *Id.* at 19:17-21. Ms. Sievert left the admissions interview believing that no additional training would be needed to sit for the various certifications. *Id.* at 20:1-4.

335. During her coursework, an instructor told Ms. Sievert and other students that the Medical Specialties program "was just kind of a beginning class" and that they would need to apply to a different program if they wanted "to do anything in radiology." *Id*. at 33:14-25. One student cried when the instructor made this announcement to the class. *Id.* at 35:7-11.

336. Jessica McCart was drawn to CollegeAmerica through a newspaper advertisement that advertised courses and preparation for certification/licenses in a number of medical fields, including "X-Ray Technology (Ltd. Scope)." *Jessica McCart Arbitration Designations* at 17:9-18:22; *McCart Arbitration* Ex. 52.

337. Ms. McCart interviewed with Colorado Springs Admissions Consultant Donna Wilcox on March 22, 2010, and signed her enrollment agreement that same day. *Jessica McCart Arbitration Designations* at 19:25-20:8, 28:15-21, 30:12-31:2; *McCart Arbitration* Ex. 13.

338. Ms. McCart discussed x-ray certification with Ms. Wilcox. Ms. Wilcox told Ms. McCart that "we would complete four classes and it was just like all the others, we

would be able to certify in whichever classes we completed . . . ." *Jessica McCart Arbitration Designations* at 23:14-22.

339. Ms. Wilcox did not inform Ms. McCart that she would need additional clinical hours in order to sit for the LSO exam. *Id.* at 26:6-11, 26:20-27:3, 34:16-20.

340. When Ms. McCart began searching for her externship, she informed CollegeAmerica that her first choice would be an externship in radiology. CollegeAmerica informed her that they did not have a radiology site to offer her. *Id.* at 49:4-25; Arbitration Ex. 18. Ms. McCart found her own externship. *Id.* 47:18-48:20.

341. After Ms. McCart found her externship, CollegeAmerica externship coordinator Kelly Fazzone provided Ms. McCart with a written information about the clinical hour requirements for the Limited Scope exam. This was the first time Ms. McCart became aware of the requirements. *Jessica McCart Arbitration Designations* at 51:22-52:24; *McCart Arbitration* Ex. 10.

342. Robin Moreno interviewed and enrolled in the Colorado Springs campus in early 2010. *Robin Moreno Deposition Designations* at 68:20-69:2, 72:23-73:25, 82:22-83:2, 83:15-84:5, 85:11-19, *Moreno Deposition* Ex. 4. Ms. Moreno testified that CollegeAmerica "offered me a certification for Limited Scope Radiology." *Id.* at 25:3-24. Ms. Moreno told her admissions consultant that she wanted to work in radiology and the admissions consultant told her she could get certified in limited scope x-ray. *Id.* at 129:24-131:13.

343. CollegeAmerica acknowledges having received complaints from a total of eight students alleging that it failed to disclose that students needed 480 experiential hours to sit for the LSO exam. Those complainants are listed on Exhibit 3427. On May 14, 2010, two days after he learned of the first student complaint, Mr. Barney personally drafted and sent out a Data Letter addressing the certification requirements for virtually all of CollegeAmerica's programs, including the requirements for LSO licensure in Colorado. Exhibit 2012; Ex. I, 72:19-75:21, *testimony of Carl Barney*.

344. Defendants claim that no student who enrolled after the May 14, 2010 Data Letter has ever complained about LSO. Exhibit 3427; exhibit I, 75:22-77:9, *testimony of Carl Barney*; exhibit J, 33:22-31:19, *Testimony of Eric Juhlin*. However, on September 1, 2011, Rozann Kunstle, President of CollegeAmerica-Colorado Springs, received a letter from ACCSC, which contained anonymous student comments, including the following:

a. "They should be honest about what programs you can be certified in because a lot of people wanted to do limited radiology and it's not available," Ex. 601 at 31, fifth bullet item.

b. "I was led to believe that I could obtain a radiology certification and found out in the middle of my education that information was untrue," Ex. 601 at 32, fourth bullet item.

Because the authors of those comments are unidentified, the court is unable to determine whether these were complaints from students other than those listed in Defendants' Ex. 3427.

3. Employee Testimony

345. Oonah Mankin worked at the Fort Collins campus from 2004 until 2010. Ex. S at 193:2-7, *testimony of Oonah Mankin*.

346. Ms. Mankin was an instructor in the Medical Specialties program, an externship coordinator, and a student advisor. *Id*. at 193:8-20.

347. In 2009-2010, Ms. Mankin had "constant issues" with students complaining that they understood that they would be able to get radiology and EMT certification and did not learn until late in their academic program that this was not possible. *Id*. at 205:17-20; 206:12-22.

348. Ms. Mankin and several other faculty members shared student complaints concerning EMT and radiology certifications with admissions director Kristy McNear and campus president Joel Scimeca during faculty meetings. *Id*. at 205:17-206:1.

349. On a number of occasions, Ms. Mankin and other faculty members spoke with admissions staff about the misrepresentations being made to students concerning EMT and radiology certifications. *Id*. at 206:23-208:10. Admissions staff were dismissive of Ms. Mankins concerns and responded that "students hear what they want to hear." *Id*.

350. Ms. Mankin recalled by name five students who complained to her regarding misrepresentations about the availability of an EMT certification. *Id*. at 212:9-213:8. Ms. Mankin testified that "numerous" other students complained and she was not able to recall all of their names. *Id*.

351. Ms. Mankin recalled by name several students who complained to her about misrepresentations concerning the availability of the LSO certification. *Id*. at 215:216:12.

352. Laura Goldhammer, who began working as an admissions consultant at the Denver campus in September 2011, testified about what she told potential students about x-ray certification. Ex. C at 200:21-201:1, *testimony of Laura Goldhammer*. Her understanding was that the Medical Specialties program prepared students to sit for certifications and licensure in various medical fields, and that students took certification and licensing examinations upon completion of the coursework relevant to the certification(s) or licensure(s) the student chose to pursue. Ex. C at 227:16-228:1, *testimony of Laura Goldhammer*.

353. On direct examination, Ms. Goldhammer's understanding seemed to be that students took the Limited Scope exam prior to graduation, at the time they finished their radiology courses at CollegeAmerica. *Id*. at 229:2-15. This is what Ms. Goldhammer told potential students. *Id.* at 229:16-18. However, on cross-

examination by CollegeAmerica's counsel, she was asked, "And you testified that you thought that they could test and sit right *at graduation*. That's what you told students, correct?" Ex. C at 319:14-25, *testimony of Laura Goldhammer* (emphasis added). Ms. Goldhammer answered, "Correct, except for the national certification." *Id*. at 319:21-25. Defense counsel then asked if it was "possible that you just don't remember the requirements of limited scope operator and whether or not you could sit –" Ms. Goldhammer responded, "I don't. I don't. It was a long time ago," and agreed that she "really [didn't] remember one way or the other." *Id*. at 320:1-10, 319:14-320:10. While her testimony was less than optimally clear, on cross examination, she did not contradict her direct testimony that "I didn't think they had to wait until they completed the entire program to take that particular certification." *Id.* at 228:20-229:4.

354. In her testimony, Ms. Goldhammer showed no awareness whatsoever of the fact that additional training was required outside of CollegeAmerica in order to sit for Limited Scope exam. Nor did she indicate that she would inform students of the additional training. In fact, she testified without equivocation that "I can tell you that there was one certification that the students needed to complete the program, just one, prior to taking that certification, and that was to become a certified medical assistant." Ex. C at 227:16-19, testimony of *Laura Goldhammer*.

4. Defendants' Disclosures

355. At different points in time, each of CollegeAmerica's Colorado campuses appears to have created its own disclosure protocols pertaining to LSO licensure. However, this did not occur until years after the 2005 rules change, and the disclosure protocols were either inadequate or misleading in themselves.

356. Defendant Juhlin testified that a flyer was "posted on the wall" in the Denver campus "sometime around 2010 and after." Ex. J at 33:3-15, *testimony of Eric Juhlin*; Ex. 2325. This flyer inaccurately stated that the only "Prerequisite[] for testing was "Completion of all courses including externship." Ex. 2325. As such, to the extent it was seen by consumers, it likely confirmed the misimpression created by Defendants' advertising, and perhaps also by its admissions consultants.

357. Kristy McNear, the Director of Admissions at the Fort Collins campus, testified that starting in September 2010, the Fort Collins admissions consultants provided consumers interested in the Medical Specialties program with a document that listed the Limited Scope requirements. Ex. N at 158:2-9, 160: 12-16, *testimony of Kristy McNear*; Ex. 2332. The document indicated that students would get 160 of the required hours through CollegeAmerica. *Id.* However, the Fort Collins campus had no basis for its representation that any student secured 160 hours of x-ray training through the Medical Specialties externship. *See* Ex. I at 231:17-236:2, *testimony of Eric Juhlin*; Ex. 908 at 30-31 (Interrogatory 18).

358. The misrepresentation on the flyer is consistent with Laura Goldhammer's practice of telling students they could sit for the Limited Scope exam upon completion of the radiology coursework. *See* Ex. C at 229:2-18, *testimony of Laura Goldhammer*.

359. Rozann Kunstle testified that the externship coordinator of the Colorado Springs campus, Kelly Fazzone, had a packet of information that set forth the Limited Scope requirements. However, Ms. Kunstle admitted that students were already a year into the program before they began looking for their externship. Ex. K at 122:13-123:1, *testimony of Rozann Kunstle*.

360. The testimony of Jessica McCart demonstrated how the externship coordinator's possession of this information resulted in disclosure many months after enrollment, when students have invested large amounts of time and money into CollegeAmerica. *Jessica McCart Arbitration Designations* at 51:22-52:24; *McCart Arbitration* Ex. 10.

361. Ms. Kunstle also admitted that although she supervised the admissions department, she never provided the informational packet to the admissions department or inquired to see if they had it. *Ex. K* at 123:2-17, *testimony of Rozann Kunstle*.

362. Ms. Maple, an Admissions Consultant at the Colorado Springs campus, confirmed that she did not have information about the hours needed to sit for the Limited Scope exam in Colorado. In some instances, she would refer students to the catalog. Ex. O at 140:2-141:22, *testimony of Sharrie Maple*. The catalog stated that Medical Specialties prepared students for certification in Limited Scope x-ray. Ex. 2037 at 53, Ex. 2041 at 21, Ex. 2042 at 29.

363. Although Ms. Maple testified that she was always straightforward and honest with consumers, Stacey Potts testified that Ms. Maple provided her with a flyer that said that CollegeAmerica offered certification training in Limited Scope X-ray, but did not tell her about the additional training required for the certification. *See* Ex. B at 144:10-25, 146:8-17, *testimony of Stacey Potts*; Ex. 3157.

364. Dr. Celestino Garcia actually instructed students to research the Limited Scope requirements as part of their coursework at the Colorado Springs campus. *See* Ex. P at 16:22-17:3, *testimony of Celestino Garcia*.

365. In 2011, DPOS interviewed thirteen students in the Medical Specialties program as part of an investigation into a consumer complaint. Ex. 922 at 1; Ex. K at 82:16-22, 140:7-19, *testimony of Rozann Kunstle*. The thirteen were part of a group of thirty-nine students whom DPOS attempted to contact after CollegeAmerica represented to DPOS that the thirty-nine students had received radiology-related externships at CollegeAmerica. Ex. 922 at 1; Ex. K at 80:11-82:9, *testimony of Rozann Kunstle*.

366. In part, DPOS's report about the interviews concluded that "a number had enrolled believing like the Complainant that completion would qualify them to sit for a limited scope operator certification exam; that of an EMT; or would apply towards CNA certification, only to learn differently after having completed much of the program." Ex. 922 at 1.

B. EMT Training

367. Defendants never offered any Emergency Medical Technician (EMT) courses at their Colorado campuses. Ex. J at 21-25, Ex. I at 237:3-5, *testimony of Eric Juhlin*; *see also* Ex. M at 313:10-12, *Testimony of Joel Scimeca.*

367. Between 2006 and 2010, Defendants advertised the ability to earn an EMT certification to Colorado consumers in a variety of ways, including the course catalog, in a flyer, in admissions binders, on the website, and during admissions interviews. *See* Exs. 2037 at 53; 615 at 1; 188 at 19.

368. During her admissions interview, consumer Megan Posey discussed her goal of getting an EMT certification with a CollegeAmerica admissions consultant. Ex. H at 185:2-186:22; 222:16-21, *testimony of Megan Posey*. The admissions consultant told Ms. Posey that she would be able to get an EMT certification after she completed the Medical Specialties program and took the relevant state exam. *Id*. The admissions consultant told Ms. Posey that there were no other requirements to obtaining an EMT certification. *Id*.

369. Based on these representations, Ms. Posey signed an enrollment agreement. Ex. 3133. Ms. Posey's enrollment agreement included a clause indicating that "the only programs that the college offers are those contained in the catalog." *Id*.

370. The 2006-2008 course catalog, which Ms. Posey received at the time of her admission, was specific to the Colorado and Wyoming campuses. It included the "EMT option" as an academic emphasis offered through the Medical Specialties Program. Ex. 2037 at 53; *see also* Ex. H at 212:12-214:6, *testimony of Megan Posey*. The catalog lists courses entitled EMT 101, EMT basic concepts, EMT 202, Respiratory Care and Patient Assessment, and EMT 302, Emergencies and Trauma, compiling a total of 11 credit hours. Ex. 2037, at 53. The catalog also states that, of the total of 90 credits required for the Medical Specialties degree, "[s]tudents must complete a minimum of 10 credits from the following list of courses:… EMT 101, EMT 202, EMT 302…" *Id.*, suggesting that the EMT courses actually constituted part of the "core" of the medical specialities curriculum. Apparently, however, no such courses were ever offered at a CollegeAmerica campus in Colorado, and no CollegeAmerica student ever took them.

371. A disclaimer in the course catalog indicates that "[t]he EMT option may not be available at all campuses. Students must get approval for these courses with the Dean of the Medical Department prior to registering. EMT courses replace three non-core courses." *Id.* Ms. Posey acknowledges that she did not get approval from the Medical Dean to take EMT courses. Ex. H, 214:22 - 215:12, *testimony of Megan Posey.*

372. Ms. Posey testified that, during her admissions interview, she was provided with the flyer depicting a choice between the EMT certification and a CNA certification. Ex. H at 186:23-187:23, *testimony of Megan Posey*. Ms. Posey indicated her preference

for the EMT certification on the flyer and returned it to the Admissions Consultant. *Id*. By doing so, Ms. Posey understood that she was selecting the EMT certification and emphasis in the program which was being offered to her at the CollegeAmerica campus in Colorado Springs. *Id*. Other than Ms. Posey's testimony about it, however, there was no evidence at trial of any such flyer.

373. A year after enrolling at CollegeAmerica, the Medical Dean, Clay Goodwin, came into Ms. Posey's class and explained that CollegeAmerica did not have the proper authorization to offer an EMT certification program. *Id*. at 190:13-191:7.

374. Ms. Posey was upset to learn that the certification which she had enrolled to obtain was not offered by CollegeAmerica. *Id*. at 191:14-20. Having completed approximately a year of classes, Ms. Posey was financially responsible for a sizeable amount of the tuition for her degree. *Id*. at 191:21-192:9. Even though she would not be able to achieve her initial goals, Ms. Posey felt that she had no choice but to complete her degree with CollegeAmerica. *Id*.

375. In March of 2008, CollegeAmerica received a team visit summary report from ACCSC, which contained student responses to a survey regarding the Medical Specialties program. Ex. 267 at 30-33. One student stated "this is one of the worst mistakes I've made… EMT was promised, some of us changed our curriculum to fit EMT. Now being close to graduation EMT is still not here and I am now taking filler classes." *Id*. at 32.

376. In the 2009 version of the admissions binder, EMT certification was included in a list of "Possible Certifications and Licenses" that could be obtained through the Medical Specialties Program. Ex. 188 at 19; *see also* Ex. E at 148:14-25, *testimony of Krystal Neeley*. The same admissions binder was distributed to students at CollegeAmerica campuses across Colorado. Ex. I at 241:4-7, *testimony of Eric Juhlin*; Ex. M at 322:5-19, *testimony of Joel Scimeca*. CollegeAmerica could have chosen to provide students with admissions binders that only had the courses of study and training that were available in Colorado, but elected not to do so. Ex. I at 241:15-21, 245:17-22, *testimony of Eric Juhlin*.

377. Shawndel Sievert enrolled in CollegeAmerica's Medical Specialties program in August of 2009. *See* Ex. B at 15:3-5, *testimony of Shawndel Sievert*. During her admissions interview, an admissions consultant told Ms. Sievert that she would be able to receive a number of certifications, including EMT, through the Medical Specialties program. *Id*. at 18:17-19:11. The EMT certification was listed in a brochure that the admissions consultant showed to Ms. Sievert during the interview. *Id*.

378. The admissions consultant explained to Ms. Sievert that the Medical Specialties program would prepare her to take the examinations for the certifications listed in the brochure. *Id*. at 19:17-21. Based on the interview, Ms. Sievert understood that there would be no other requirements for her to take the EMT certification exam. *Id*. at 20:1-4.

379. As noted in the Court's previous discussion of x-ray misrepresentations, former employee Oonah Mankin put Defendants on further notice of EMT misrepresentations in 2009 and 2010.

380. As of August of 2010, Defendants were still listing EMT as one of the possible certifications for the Medical Specialties program on its Colorado-Wyoming specific webpage. *See* Ex. 615; Ex. I at 239:9-240:1, *Testimony of Eric Juhlin*. Mr. Juhlin acknowledged that this was an error. Ex. J, 42:22 - 43:12, *testimony of Eric Juhlin.*

381. There are no specific disclosures about the lack of an EMT program in the enrollment agreement, the student handbook, the admissions slideshow, or in the admissions consultant manual. *See generally*, Ex. 208, 187, 198, 230, 231, 808, 809.

382. A 2011 report by DPOS regarding the Colorado Springs campus concluded that a number of former CollegeAmerica students which it interviewed "had enrolled believing … that completion would qualify them to sit for a limited scope operator certification exam; that of an EMT; or would apply towards CNA certification, only to learn differently after having completed much of the program" Ex. 922 at 1. Thus, the witnesses whom the state presented with respect to LSO and EMT did not reach unique conclusions.

C. Sonography Program

383. In late 2009, a career college called Mile High Medical Academy closed its doors. That school had had a sonography program, and several of its students were left without a way to finish their studies.

384. According to Eric Juhlin, the DPOS "reached out to us to see if we could consider offering the program." J, 12:7-9. He was approached by the CollegeAmerica campus director in Denver, and that was the genesis of the movement to create a sonography program at CollegeAmerica. *Id.*, 12:3-6, 14:22-24.

385. In March of 2010, CollegeAmerica contacted consumer Ashley Barksdale about a meeting CollegeAmerica was holding later that month for former students of Mile High Medical Academy. *See* Ex. E at 21:10-21:24, *testimony of Ashley Barksdale*.

386. In total, there were fifteen or more former students of Mile High Medical Academy at this March 2010 meeting. *Id.* at 21:25-22:10.

387. CollegeAmerica representatives Nathan Larson and Mary Gordy ran the meeting and told prospective students that CollegeAmerica would be launching a Sonography program in a few months. *Id.* at 22:11-23. Mr. Larson and Ms. Gordy informed the prospective students that in the meantime, they could sign up for the Healthcare Administration program where they could take classes that would correspond with the classes in the forthcoming Sonography program. *Id.*

388. During the March 2010 meeting, neither Mr. Larson nor Ms. Gordy told the prospective students that there was a possibility that the Sonography program would not be launching. *Id.* at 23:11-18. Based upon Defendants' representations during

this meeting, Ms. Barksdale understood that Defendants would be launching a Sonography program within a few months. *Id.* at 23:19-23.

389. In May of 2010, Ms. Barksdale had an admissions interview with Ms. Gordy where Ms. Gordy showed her a course outline for the Sonography program and explained to her which classes from the Healthcare Administration program would correspond with the forthcoming Sonography program. *Id.* at 23:24-24:24, 25:7-14. Ms. Barksdale assumed that since Ms. Gordy showed her a course outline for the Sonography program that this outline had come from Defendants' course catalog. *Id.* at 27:5-28:1.

390. During the admissions meeting, Ms. Gordy did not say that there was a possibility the Sonography program would not be launching. *Id.* at 25:15-18. If Ms. Barksdale knew that there was a chance the Sonography program would not be launching she would not have enrolled at CollegeAmerica. *See id.* at 28:4-14.

391. In June of 2010 Alicia Zeller went to speak with Nathan Larson at CollegeAmerica. Ex. J at 218:1-219:1, *testimony of Alicia Zeller*. When Ms. Zeller told Mr. Larson she was interested in sonography, he was very encouraging and said that there was going to be a Sonography program at the CollegeAmerica's Denver campus. *Id.* at 219:12-17. Based on her conversation with Mr. Larson, Ms. Zeller understood that the Sonography program would be launching within a year. *Id.* at 219:21-24. During this meeting, Mr. Larson did not tell her there was a possibility that CollegeAmerica Denver would not be offering the Sonography program. *Id.* at 220:1-4.

392. According to Ms. Zeller, it was "basically a hush-hush basis until it was official," and "we weren't supposed to talk about the program with other students until it was going to be launched." *Id.* at 220:5-16.

393. Mr. Larson suggested that Ms. Zeller enroll in the bachelors in Healthcare Administration program for the time being because the prerequisites of that program lined up the best with the forthcoming Sonography program. *Id.* at 221:4-8, 221:16-20.

394. After speaking with Mr. Larson, Ms. Zeller enrolled in CollegeAmerica Denver's Healthcare Administration program. *Id.* at 220:21-22; Ex. 3293. During her admissions interview, Ms. Zeller told the admissions consultant that she was interested in a program that would be opening soon. Ex. J at 222:10-14, *testimony of Alicia Zeller*. The admissions consultant gave Ms. Zeller "this look, like, another program?," but did not ask any questions about it. *Id.* at 222:15-20. If Ms. Zeller had known that there was a chance the Sonography program would not be launching she would not have enrolled at CollegeAmerica. *Id.* at 225:25-226:16.

395. After enrolling, both Ms. Barksdale and Ms. Zeller inquired multiple times with Mr. Larson about the status of the Sonography program, to which he responded that the program was in the works or would be launching in the next few months. *See* Ex. E at 28:22-29:3, 29:7-30:7 *testimony of Ashley Barksdale*; Ex. J at 225:16-24, *testimony of Alicia Zeller.* In response to these inquiries, Mr. Larson never said that

there was a possibility that Defendants would not be launching the Sonography program. Ex. E at 29:22-24, *testimony of Ashley Barksdale*; Ex. J at 225:25-226:2, *testimony of Alicia Zeller.*

396. While attending CollegeAmerica, Ms. Zeller was allowed to take classes from the nursing program because these classes would transfer into the forthcoming Sonography program. *See* Ex. J at 226:24-230:40, *testimony of Alicia Zeller*; Ex. 534. The Court finds that this special accommodation of Ms. Zeller lends credibility to her testimony regarding Defendants' representations that the Sonography program was forthcoming.

397. Ms. Barksdale and Ms. Zeller left CollegeAmerica in August or September 2011, because the Sonography program had not yet launched and they had run out of classes they could take that would correspond to the forthcoming Sonography program. Ex. E at 31:11-18, *testimony of Ashley Barksdale*; Ex. J at 230:22-231:1, *testimony of Alicia Zeller.*

398. Over a year and half after the initial meeting with the displaced students of Mile High Medical Academy, and because CollegeAmerica wanted to expedite the approval of several programs in advance of changes to be implemented July 1, 2012 within the DOE which they feared would slow the process of getting DOE approval to add to their list of eligible programs for students to receive Title IV federal financial aid, CollegeAmerica decided to move forward with an application to the ACCSC. Ex. J, at 12:10-13:14, *testimony of Eric Juhlin*. They submitted an application to the ACCSC for approval of bachelors degree programs in echocardiography sonography, sonography, and web design and development in an application dated October 20, 2011. Ex. 2303. ACCSC approved that application in a letter dated January 6, 2012. Ex. 2311.

399. With the ACCSC approval in hand, CollegeAmerica placed the Echocardiography Sonography and Sonography bachelor's degree programs in their catalogs beginning in March 2012, indicating that it was available at the Colorado campuses. Ex. 173, at 4, 15 and 28. The Sonography degree listed 31 separate classes, in addition to 12 general education courses, for total credits of 185.5 hours. Some of the classes were entitled Ultrasound Theory and Instrumentation, Ultrasound Physics I, Ultrasound Physics II, Abdominal Sonography Principles 1 and 2 and Clinical School Labs 1 and 2, OB/GYN Sonography Principles 1 and 2 and Clinical School Labs 1 and 2, Vascular Sonography Principles 1 and 2 and Clinical School Lab 1 and 2, Abdominal Sonography Principles 3 and 4 and Clinical School Lab 3 and 4, neonatal sonography, OB/GYN Sonography Principles 3 and Clinical School Lab 3, Vascular Sonography Principles 3 and Clinical School Lab, and Sonography Practicum I, II and III. *Id.* at 28.

400. In October 2012, over two and a half years after the meeting with the Mile High Medical Academy students, CollegeAmerica finally conducted a market survey regarding the demand for sonographers in the Denver/Aurora area. Ex. 2309. The market survey demonstrated that, although the earnings were quite high, there was what Mr. Juhlin regarded as a very low rate of growth in the industry, 2.8%, a

modest number of job openings, and already one Associates degree program and two certificate programs in the marketplace. This market survey was "an important factor in the evaluation and analysis of the work that we did over a period of time to then finally come to our decision that we should not start this program." Ex. J, at 20:3 – 21:10.

401. On March 25, 2013, ACCSC sent Defendants a complaint it had received regarding Defendants' Sonography program. *See* Ex. 320. The complainant stated that after she picked up a course catalog at the Fort Collins campus, her daughter became interested in Defendants' Sonography program. *Id.* at 3. When the complainant called Defendants' 800 number the representative she spoke with said that Defendants offered the Sonography program. *Id.* When the complainant and her daughter went in to meet with an enrollment counselor, they were told that Defendants did not offer the Sonography program at Fort Collins. The enrollment counselor then called the Denver campus and told the complainant to go there. *Id.* When the complainant and her daughter arrived at the Denver campus they were told the Denver campus did not have the equipment for the Sonography program and instead tried to sell them on the Medical Specialties program. *Id.*

402. On March 29, 2013, Joel Scimeca sent an email to Kody Larson, the Vice President of Defendants' call centers, noting that "one of the problems is that we don't tell people when we don't have the program, we just book them for an appointment, and say talk with a Representative at the campus. That's when the student comes in with the assumption that we do offer a program that we don't." Ex. 412 at 2-3. In that same email Mr. Scimeca referred to an attachment that included students who were told by the call center that Defendants had a Sonography program. *Id; see also* Ex. 414. From March 2012 to March 2013 there were at least nineteen prospective students who had contacted Defendants looking for a Sonography program. *See* Ex. 414.

403. On June 3, 2013, Tresban Rivera, the Dean of Education at CollegeAmerica Fort Collins, emailed Michael Maki, the vice president of academic affairs, and Susie Reed stating that "We have inquiries frequently [about the Sonography program], but can't offer it and I find that a little unsettling with potential students. They all follow-up with well why does it say you have it in the catalog." Ex. 398.

404. Notwithstanding this unfulfilled consumer demand, and the market survey of October, 2012, during a meeting on October 1, 2013, the executive team, including Erich Juhlin, Susie Reed, and Michael Maki, decided to leave the Sonography program in the course catalog. *See* Ex. 432 at 2. It remained in Defendants course catalog at least until April of 2014. Ex. 372 at 2, 52-53.

405. Defendants continued to list the Sonography program as available at all of their Colorado campuses in their course catalog even after Defendants submitted an application to ACCSC on January 21, 2014, to discontinue the Sonography program at the Denver and Fort Collins campuses. *See* Ex. 2304; Ex. 372 at 52-53.

406. CollegeAmerica has never offered a Sonography program at its Colorado campuses. Ex. I at 246:15-19, *testimony of Eric Juhlin.* In fact, CollegeAmerica's Colorado campuses never obtained the equipment required to offer sonography training, never hired instructors for any Sonography program, and never made any arrangements with externship facilities for sonography students. *See id.* at 246:24-247:10. Again, as with the "EMT Option" within the Medical Specialties program, apparently no CollegeAmerica student ever took a course in sonography at any Colorado campus.

IX. EduPlan

A. Creation of EduPlan

407. Compared to community colleges, which share a similar student demographic, CollegeAmerica's tuition is much higher. Ex. 2024; Ex. I at 153:7-14, *testimony of Carl Barney.* Defendants have increased tuition over the years, including when the merger to a non-profit took place in 2012-2013. Ex. I at 162:5-15, *testimony of Carl Barney*; Ex. 693 at 4-5.

408. During the period at issue in this case, CollegeAmerica routinely raised its tuition in virtually all of its programs twice a year by an average of approximately 2.8%. Ex. 693. For example, in its most popular program, the Associates degree in Medical Specialties, the tuition went from $36,400 as of January 19, 2009 to $44,575 as of July 15, 2013, an increase of approximately 22.4% over 4 ½ years. *Id.* Similar increases occurred in other programs. For instance, the tuition for the bachelor's degree in accounting went from $64,200 on January 19, 22,009 two $78,570 on July 15, 2013, an increase of 22.38%. *Id*. With respect to the most expensive program, the bachelor's degree in Respiratory Therapy, the increase over the same period was from $70,400 to $86,170, an increase of 22.4%. *Id.*

409. Between 71% and 81% of CollegeAmerica's students in Colorado receive student financial aid through Title IV of the Higher Education Act. Ex. 865.1, 866.1, and 867.1, Screenshots from the College Scorecard. In order to qualify for and receive federal student aid, a student must complete a FAFSA, which is a government form that requests and analyzes information about the student that largely relates to his or her assets, and need for federal assistance to attend college. *See id.* at 36:23-37:11. Based on the FAFSA information, the schools then present a financial aid offer to the student, which includes an "expected family contribution." *See id.* at 36:23-38:3.

410. CollegeAmerica's tuition is so high that federal student aid typically does not cover the entire cost. The difference between CollegeAmerica's tuition and the amount of federal aid available to the student is referred to as the "gap" Ex. B at 251:17-23, 253:22-254:4, *testimony of Cristie Brougham;* Ex. E at 80:18-22, 94:12-23, *testimony of Krista Jakl*; Ex. D at 254:21-255:8, *testimony of Rohit Chopra.* With respect to this gap, the student may have some options, including a private loan such as from Sallie Mae or Wells Fargo. Ex. D., at 39:25-40:23, *testimony of Rohit Chopra.*

411. For a number of years, CollegeAmerica worked with Sallie Mae and other lenders to provide gap funding for their students. However, Mr. Barney concluded that such funding was not very student friendly, including that there were relatively high interest rates, they required credit checks, and the process took a long time. Ex. I at 116:3 – 117:13, *testimony of Carl Barney*. Accordingly, he created the gap-funding mechanism called EduPlan in 2002, which he characterizes as "the most positive, the most friendly institutional financing program in the country." *Id.* at 117:14-20. The interest rate was set at 7%, in conformity with the rate on federal student loans *Id.* at 117:21-24. According to Mr. Barney, the purpose of EduPlan is to make it simple and easy for students to afford college. Ex. H, 96:8-11, *testimony of Carl Barney*.

412. Mr. Barney drafted and has twice revised Procedure Directive 109R pertaining to EduPlan. Ex. 236. In it, he admonishes CollegeAmerica Financial Planners to create a budget for the prospective student on an attached form to determine what payments they can make while in college, and to ask the prospective student "how much per month can you contribute to your education?" *Id.* They were to accept nothing less than a minimum payment of $10 per month. *Id*. at 1-2. He admonished "**the payment amount will be reviewed each academic year (AY) and will hopefully be increased.**" *Id.* (emphasis original). PD 109R also admonishes that EduPlan was to be used "when needed, but only when needed," and that financial planners were to "[e]ncourage students to pay any balance (gap) in full in cash or by credit card." Id. It further admonishes **"[i]n all cases, request that the student agree to automatic payments** from a bank account, savings account, or credit card." Id., at 3 (emphasis original). Interest charges were to begin accruing 90 days after graduation, or 30 days from the date of a drop. *Id,* at 2. Payment terms from two years to 10 years were available, depending upon the amount of the balance of the loan. Id., at 2.

413. Michelle Bollig, who has administered the EduPlan program at the Denver campus for over a decade, acknowledged that, although PD 109R, Ex. 236, indicates that financial planners are to encourage students to come up with other funds, including credit cards, etc., to pay their gap, and that EduPlan is to be a last resort, in fact for a long time "we go straight to an EduPlan loan." Ex. H, 308:7-309:18.

B. Advertising related to EduPlan

414. Since at least 2010, Defendants have advertised EduPlan as a reason why consumers should get a degree from CollegeAmerica, as a means to make college more affordable, and to help re-establish credit. Ex. 678 at 8, 15, 24, 27, 40, 45, 47, 62; Ex. 679 at 7, 13, 15, 21, 23, 28, 37, 45, 53, 60, 72; *see also* Ex. I at 216:23-217:7, *testimony of Eric Juhlin*.

415. Defendants' advertisements featuring EduPlan include headlines and statements such as:

> "Here's why you should get a degree from CollegeAmerica: ... Tuition Assistance: EduPlan loans are available regardless of your credit history." Ex. 678 at 8, 15, 40, 62; Ex. 679 at 13, 21, 72; Ex 678 at 24.

"Our financial planners help you get the student loans and grants that you may qualify for – college is affordable." Ex. 678 at 27, 45.

"You can afford college." Ex. 679 at 15, 23, 28, 45, 60; *see also* Ex. 679 at 37, 53.

"Why wait? …You may be surprised by how easy it is to afford college." Ex. 679 at 15, 23, 28, 37, 45, 53, 60.

416. Some of Defendant's advertisements indicate that EduPlan provides benefits in addition to allowing students to pay tuition with statements such as, "EduPlan loans, which can help you pay for college and help re-establish your credit." Ex. 678 at 47; Ex. 679 at 7, 15, 23, 28, 37, 45, 53, 60.

417. The CollegeAmerica web site currently includes the representation "You can afford your college degree" on the landing page for tuition and fees. Ex. 920; Ex. R at 366:14-19, *testimony of Diane Jones*.

418. After a consumer came in for an admissions interview, and said they didn't have enough money to attend CollegeAmerica, Ms. Jakl would tell students that EduPlan can help make college affordable. *See* Ex. E at 98:11-25, *testimony of Krista Jakl.*

419. During Ms. Barber's undercover admissions interview, the admissions consultant said in response to Ms. Barber's concerns about the high cost compared to community colleges:

> I broke down everything, and it was an $8,000 difference. Now, with that $8,000, it's significant, obviously, but it's -- is it worth your time? And you have to remember, the quicker you get out, the more money you are going to make, and the faster you are going to be able to pay back your student loans.

Ex. 918 at timestamp 22:15-22:37. When Ms. Barber asked about how to afford attending CollegeAmerica, the admissions consultant stated:

> CollegeAmerica: So what we do also is that everybody -- every student has some type of monthly payment while they are in school. It can be anywhere from $10 to -- it really depends -- to $200. The lady that I had yesterday, they were able to get her down to a $10-a-month payment while in school.
>
> Ms. Barber: Because I would have to get a loan, obviously.
>
> CollegeAmerica: Well, then –
>
> Ms. Barber: Or grants.
>
> CollegeAmerica: Keep that in mind. You have -- you have a payment while you are in school. I'm not guaranteeing that it would be $10, but I'm saying, in her financial situation we were able to get her down to a $10-a-month payment.

Ex. 918 at timestamp 36:20-36:55. The admissions consultant goes on to discuss repaying student loans and tells Ms. Barber, "And once you have a job, you're going to be making more money." *Id*.

C. EduPlan and the 90/10 Rule

420. Plaintiff's expert, Rohit Chopra, has vast experience with issues pertaining to student financial aid on the federal level, and the court found his testimony particularly helpful in understanding the relationship between EduPlan and the federal regulatory environment. As Mr. Chopra explained, the primary source of government aid for students is administered through the DOE's Title IV student financial aid program. *See* Ex. D at 34:14-35:3, *testimony of Rohit Chopra*. Students can also receive funds through programs administered through the Department of Veterans Affairs, and through military tuition assistance administered by the Department of Defense. *See id.* at 36:7-18.

421. As a proprietary college whose students receive federal financial aid, CollegeAmerica is required to comply with the DOE's "90/10" rule. The 90/10 rule requires CollegeAmerica to generate at least 10% of its education-related revenue from non-federal student aid sources. 34 C.F.R. § 668.14(b)(16). In order for CollegeAmerica to participate in the federal student aid program, it must show through this market viability test that it can attract students who are willing to pay tuition through means other than borrowing via the federal student aid program. *See* Ex. D at 93:8-94:5, *testimony of Rohit Chopra.*

422. When a student receives funding from a third party like Sallie Mae or Wells Fargo, the school can immediately count all of the money it receives on behalf of that student toward the 10% of the 90/10 rule. *See id.* at 122:21-124:7; 34 C.F.R. § 668.14(b)(16). However, with respect to an institutional loan such as EduPlan, only the actual payments made under the loan count against the institution's obligation to generate 10% of its revenue from a source other than the federal student aid program. Ex. D, 122:21-124:7.

423. According to Mr. Chopra, it would have been difficult for a CollegeAmerica student to qualify for private student loans. Unlike credit card companies and mortgage lenders who are interested in whether a given borrower is creditworthy now, private student loan lenders' underwriting decisions are driven primarily by a borrower's future income and future ability to repay. *See id.* at 126:3-131:3.

424. In addition to the individual borrower's financial background – which is often limited due to a student's age – private student lenders will look at the school and any publically available data about the school's outcomes. *See id.* at 126:3-131:3. They consider school data available on the Integrated Postsecondary Education Data System (IPEDS), the National Post-Secondary Aid Survey (NPSAS), and the College Scorecard. *See id.* at 132:18-133:20.

425. The College Scorecard only reflects wage data about students who receive federal student aid. Although the court heard evidence suggesting that the data underlying the College Scorecard is problematic in various respects, nevertheless it appears to

be the most appropriate available data set at least with respect to this particular issue. In view of the fact that CollegeAmerica has a much higher proportion of students who receive financial aid than most institutions, running between 71% and 81% on its Colorado campuses, it stands to reason that College Scorecard is more reflective of CollegeAmerica's student population as a whole than it might be of other schools which have fewer federal student aid recipients. In any event, the court concludes that it is the most meaningful data set presented at trial. *See id.* at134:20-136:22, 144:20 – 145:5, *testimony of Rohit Chopra;* Exs. 865.1, 866.1, 867.1.

426. The College Scorecard reflects a "repayment rate," which measures the percentage of students within a given cohort that have paid down their debt by at least $1 within three years of entering repayment. *See* Ex. D at 142:21-144:19, *testimony of Rohit Chopra;* Exs. 865.1, 866.1, 867.1. Thus, the repayment rate looks at the student's initial balance versus the balance at the end of the time period. For CollegeAmerica, only 16% of its students who entered repayment had paid down at least a dollar of their loan balance after three years, which means 84% saw their loan balances rise. Exs. 865.1, 866.1 and 867.1.

427. The Scorecard's repayment rate measurement does not take into consideration whether a borrower is in forbearance, deferment or income-based repayment. *See* Ex. D at 142:21-144:19, *testimony of Rohit Chopra*, Exs. 865.1, 866.1, 867.1. "So repayment rate is reflective of the overall repayment distress or repayment success of a group of students." *See* Ex. D at 142:21-144:19, *testimony of Rohit Chopra;* Exs. 865.1, 866.1, 867.1.

428. Mr. Chopra testified that many students will pay their federal loan before any private loan. If the Scorecard's repayment rate is low, a private lender might not lend because it is less likely the student will repay the private loan. *See* Ex. D at 146:9-147:20, *testimony of Rohit Chopra;* Exs. 865.1, 866.1 and 867.1.

429. Prior to the recession, CollegeAmerica offered EduPlan to students to help finance their education. In those pre-recession years of 2003 through the beginning of 2007, private lenders were freely lending to students. *See* Ex. D at 156:16-157:6, *testimony of Rohit Chopra.*

430. Private student lenders were also lending to low-income minorities because there are laws that protect against discrimination and because low-income minorities attend a wide range of schools, both high-cost and low-cost. *See id.* at 160:24-161:10.

431. In order to comply with 90/10 Rule, CollegeAmerica ramped up revenue from sources other than federal student aid. Mr. Chopra testified that in his review of CollegeAmerica's internal policies and procedures tied to financial aid and EduPlan, he observed that "EduPlan appeared to be a key part of this for 90/10 compliance and for its overall sales revenue and profitability." *Id.* at 121:15-122:20. Mr. Chopra found it "very weird," based upon his experience in dealing with institutions' compliance with the 90/10 Rule, that the same person who was in charge of approving the in-school payment and other terms of EduPlan was also in charge of 90/10 compliance. Ex. D, 175:19 – 176:6.

432. Ms. Bollig testified that when she received word from Central Financial Aid at CEHE that cash receipts were less than 10%, she would send out emails and letters to students who were delinquent (as she claims to do routinely anyway), and would meet with first year financial planners and ask them to encourage new students to make down payments on their EduPlan loans in order to increase cash collections which were important to meet the 90/10 Rule ratio, although receipts from students' in-school payments constituted a "very small" portion of the 10%. Ex. H, 282:2-283:9; 305:10-306:21, *testimony of Michelle Bollig.* Between 2009 and 2011, there was a bonus plan for business officers like Ms. Bollig and financial aid planners at the Denver campus which was 1% of cash collected on a monthly basis. She and several financial planners shared several bonuses under that program. *Id*, 285:19 – 290:12

433. At times Defendants have used EduPlan debt as a way to generate cash. CollegeAmerica Denver sold $449,641 in EduPlan debt to a third-party entity called EFS in exchange for cash. Ex. H at 106:3-3-6, *testimony of Carl Barney*; *see* Ex. 722. Following the sale, EFS had the right to collect on EduPlan loans owed by CollegeAmerica students. Ex. H at 106:17-19, *testimony of Carl Barney*.

434. CEHE also used $1,464,399 in accounts receivable as collateral for a loan from a third-party credit agency in 2013. Ex. 177 at 13; Ex. H at 139:16-24, *testimony of Carl Barney*.

435. As Mr. Chopra concluded, while carrying significant financial benefits to Defendants, EduPlan has financially harmed the majority of student borrowers. *See* Ex. D at 31:20-32:20, *testimony of Rohit Chopra.*

D. EduPlan did not Make College More Affordable for the Vast Majority of Students

436. CollegeAmerica is the creditor of EduPlan. *See Les Marstella Deposition Designation* at 19:4-14.

437. Mr. Chopra testified that EduPlan loans are not cash transactions. Instead, they are noncash credits that are essentially turned into a loan. *See* Ex. D at 213:11-215:19, *testimony of Rohit Chopra.* CollegeAmerica backs EduPlan loans. *Les Marstella CID Designation* at 93:20-94:1. Mr. Barney apparently agrees with Mr. Chopra's characterization. In Data Letter 61R entitled "EduPlan Results," dated November 11, 2002, in reviewing the effectiveness of EduPlan after it had been in place for six months, he put the word "loaned" in quotes, stating that he "expected to collect 70% or more of the amount 'loaned.'" Ex. 3493, at 1.

438. When a private lender like Sallie Mae or Wells Fargo offers a loan, they stand to get hurt if borrowers do not repay. When EduPlan borrowers default, there is no actual money that CollegeAmerica loses because the loan is not actually sending real cash to students. *See* Ex. D at 213:11-215:19, *testimony of Rohit Chopra.*

439. EduPlan is different in several key respects from a federal student loan. The federal loan program offers extended repayment periods whereas EduPlan does not; the

federal loan program does not require payments while the borrower is enrolled, whereas EduPlan does require in-school payments; federal loans can be deferred if a borrower enrolls at a different school, whereas EduPlan payments can only be deferred if a student reenrolls at a CEHE school. *See id.* at 165:18-167:3.

440. The repayment terms of EduPlan are structured to essentially accelerate cash collections. *See id.* at 165:18-167:3. Because of the varying repayment terms tied to the balance amount, a borrower ends up being required to pay higher monthly payments. This means the EduPlan repayment amount is significantly higher than what would typically be required on a loan that was over a ten-year period. *See id.* at 167:10-170:4.

441. EduPlan goes into repayment approximately 90 days after a student graduates or drops from school. Ex. 236. Payments typically go up after a student leaves school and interest starts accruing. *Id.* EduPlan allows a ten-year repayment term. *Id.* However, planners are to encourage students to pay the balance in the shortest time possible. *Id.*

442. CollegeAmerica has hired a number of servicers over the years; however, AR Management has been the servicer of EduPlan since approximately 2010. EduPlan loans are often referred to as ARM loans. *See* Ex. H at 236:11-13, 244:6-11, *testimony of Michelle Bollig.*

443. In 2014, Les Marstella, who works in CEHE's corporate offices, directed financial aid and business officers that payments on EduPlan should begin as soon as possible including down payments from students at the time they are packaged with EduPlan agreements in the admissions office. *See id.* at 234:14-236:19, *testimony of Michelle Bollig*; Ex. 478.

444. If a student's gap increases while she is enrolled, CollegeAmerica can repackage the student with a larger EduPlan loan, which subsumes the first loan. At no point does a student have more than one EduPlan loan. *See* Ex. H at 243:1-14, *testimony of Michelle Bollig.*

445. In some instances when a student first starts school, the student may not have a gap and therefore does not need an EduPlan loan. *See id.* at 241:13-242:3. However, if the student loses a scholarship or fails and retakes a class, the student may have an uncovered gap by the time the student either graduates or drops. *See id.* at 241:13-242:25.

446. Even though Ms. Bollig testified that CollegeAmerica's practice is to accept very low payments from former students, such as a $5 payment where $60 is due for the month, CollegeAmerica still charged late fees on 80% of EduPlan accounts between 2010 and 2016. *See* Ex. H at 311:25-312:23, *testimony of Michelle Bollig; See* Ex. D at 178:11-24, *testimony of Rohit Chopra.* "So that's a real indicia of immediate distress when you have that level of late fee assessment," Chopra testified. *See* Ex. D at 178:11-24, *testimony of Rohit Chopra.*

447. In the private student lending world, when a borrower is 120 days past due, the lender declares the borrower in default. In the federal student lending world, a borrower is in default after 270 days of non-payment. A lender uses the accounting term "write-off" internally to signify a default. However, a lender can still collect on a written off loan. *See id.* at 179:8-180:22.

448. Mr. Chopra reviewed a sample of EduPlan loan records from 2003 through 2006. He identified the loans where Defendants wrote-off the loan after only twelve months of non-payment from the borrower. Using this conservative definition of default, Mr. Chopra found that 70% of the EduPlan borrowers defaulted between 2003 and 2006. *See id.* at 181:1-183:16; Ex. 986 at 15.

449. If a private lender had the types of performance statistics that EduPlan had, the lender would fold. *See* Ex. D at 197:1-12, *testimony of Rohit Chopra.*

E. Defendants Minimize Students' Obligations Under EduPlan

450. Financial planners routinely refer to EduPlan as a "payment plan" when explaining it to prospective students. *See* Ex. H at 229:24-231:25, *testimony of Michelle Bollig;* Ex. E at 81:24-82:5, *testimony of Krista Jakl;* Ex. A at 313:24-314:3, *testimony of Andrea Orendorff*.

451. In a recorded financial aid session from August 2016, a financial planner refers to EduPlan as the "the monthly payment to the school," "a simple payment plan," and "not even a loan." Ex. 778.2. The planner says "you're not borrowing any money from anyone, you're just doing a payment plan to us." *Id*. Upon hearing this recording, Ms. Gordy would not say whether it complied with CollegeAmerica's training.

452. When asked whether she was aware other financial planners were referring to EduPlan as a payment plan rather than a loan, Ms. Gordy responded, in part, "I think as long as it's made clear that it's something that needs to be repaid, that's the most important thing." *See* Ex. C at 60:6-61:13, *testimony of Mary Gordy.* In fact EduPlan is commonly referred to as a payment plan and a loan when talking with prospective students. *See id.* at 61:14-25. Mr. Barney himself, when analyzing the effectivenss of EduPlan after six months noted, "In some cases, EduPlan simply replaced in-school payments." Ex. 3493.

453. In a February 2014 recorded admissions interview, Ms. Gordy was the admissions consultant in the recording. Ex. 764. Here, she talks with a returning student who says he wants to come back to CollegeAmerica because he's tired of earning minimum wage. Ex. 764. He admits that he doesn't really have money for college. Ex. 764.1. Ms. Gordy asks him, "Do you think you can pay .67 cents a day?" *Id.* This is in reference to the in-school payments tied to EduPlan. *See* Ex. C at 57:18-58:3, *testimony of Mary Gordy.* The prospective student explains that he lives with his little brother who just quit his job. He says "right now doesn't seem so good." Ex. 764.1. Ms. Gordy persists, and brings up the .67 cents a day again and asks him if he can just throw change into a can every day. *Id*. She then tells him about the free laptop that students receive to further entice him to re-enroll. *Id*.

454. Ms. Gordy goes on to tell the prospective student how much he could make with a degree from CollegeAmerica. Ex. 764.5. She tells him that before he pays off his student loans he should be able to make more money. *Id*. If he gets his bachelors in business, for example, Hertz will start him out at $20/hour, and "that's just short of triple of what you're making now," Gordy says. *Id*.

455. Ms. Gordy testified that her statements in the clips played from Ex. 764 comply with her training at CollegeAmerica. *See* Ex. C at 59:4-12, *testimony of Mary Gordy.*

F. Defendants Know that Students are Confused and Concerned About EduPlan

456. Financial aid planners presented at least 25 pages of financial aid documents to a prospective student during a typical meeting. See Ex. E at 81:2-18, *testimony of Krista Jakl*. EduPlan documents are presented at the end of the appointment. *See id.* at 81:19-23.

457. The bulk of the time in financial aid is spent completing the FAFSA and the master promissory note for federal loans. Ms. Jakl observed that prospective students were given a lot of information at once and they were often tired by the time she explained EduPlan. *See id.* at 117:3-119:9.

458. Ms. Jakl testified that she and other financial aid planners referred to EduPlan as an "in-house financing payment plan" with students. *See id.* at 81:24-82:5.

459. Ms. Jakl spent about 15 minutes explaining the EduPlan paperwork. *See id.* at 82:13-83:1; Ex. 2880. As a financial aid planner, Ms. Orendorff testified that she spent "a minute to two minutes" reviewing the monthly payment plan and whether or not the payments were affordable. *See* Ex. A at 314:4-10, *testimony of Andrea Orendorff*.

460. Ms. Jakl testified that she encountered active students who would come back after enrollment confused about why they were being asked to make monthly payments. "There was a lot of confusion about what the ARM loan was." Ex. E at 83:2-18, *testimony of Krista Jakl*. Ms. Jakl discussed with her supervisor the amount of students coming to financial aid confused about the payment plan. *See id.* at 83:2-18. She testified that she observed confusion about EduPlan about 25% to 30% of the students who came in. *See id.* at 134:8-25.

461. Ms. Jakl also testified that students who had dropped would come in confused about why they were sent to collections on money owed to CollegeAmerica. *See id.* at 89:7-15.

462. CollegeAmerica received feedback from financial aid that prospective students did not want to take out loans. The training to financial aid planners was to still give the student an estimate to see if it changes their mind. Ex. O at 131:8-14, *testimony of Sharrie Maple*; Ex. 294 at 2. CollegeAmerica was also aware that prospective students were "overloaded with all information getting on same day." Ex. 294 at 2.

463. When former students who had not made payments on their EduPlan loans would come in to financial aid, Ms. Jakl would get the admissions consultant involved "because the admissions consultant would usually encourage the student to start school again, let them know that we can take them out of collections, which I would do if a student would reenroll." *See* Ex. E at 89:16-25, *testimony of Krista Jakl.*

464. In 2016, just before Ms. Jakl left CollegeAmerica, a new disclosure document was added to the EduPlan paperwork. The new document stated: "This information is for your institutional loan. This is separate from any federal loan you may have. It is your responsibility to pay both loans." *See id.* at 83:24-86:15; Ex. 3347 at 12.

465. At times, Ms. Orendorff felt that a student would not be able to afford attending CollegeAmerica. In those situations she would talk to admissions about not enrolling the student. Her recommendations were not well received. "I mean, there was conversation that was had. But in the end it was the admission consultant's job to push forward with the enrollment." This meant the student was enrolled and packaged even though there were indications the student couldn't afford the loans. *See* Ex. A at 314:11-315:6, *testimony of Andrea Orendorff.*

466. Prospective students would tell Ms. Jakl that they were concerned about affording the cost of tuition at CollegeAmerica, which ranged between $42,000 and $74,000. *See* Ex. E at 86:18-87:6, *testimony of Krista Jakl*. They also expressed concern about their ability to repay their loans. In those situations, Ms. Jakl would tell students that CollegeAmerica would help them enroll into income-based repayment on their federal loans, and to "think of the big picture, that they could be potentially making more money." *Id.* at 88:5-15.

467. Ms. Orendorff testified that she was concerned that the students couldn't afford the monthly in-school payments, and she expressed her concerns to her colleagues in admissions:

> "To me it was concerning that the demographic that we served, oftentimes underemployed, unemployed. It always struck me, you know, that you're asking this person to possibly put themselves in a position where they can't afford it. I was aware of what would happen if they were, you know, to disburse a federal loan and they couldn't pay it back. And also just the demographic of that population…you know, there was – there was no--- nothing to define whether or not they would be a good candidate for education in general. And between that information and seeing the lack of ability to pay for their education, yes, I would go to my colleagues and boss and discuss that concern."

See Ex. A at 315:7-316:8, *testimony of Andrea Orendorff.*

468. Ms. Orendorff would talk with students after they enrolled and were subject to making monthly EduPlan payments. If a student couldn't make the payments, Ms. Orendorff would tell them it might behoove them to think twice whether now was the appropriate time to be in school. However, she would not tell her supervisor, Kristy McNear, given her objective to enroll and "close." There was pressure within

admissions to keep students enrolled even after they started because there were bonuses if admissions kept a student enrolled for a certain amount of time. *See id.* at 316:9-317:23.

469. Sometimes Ms. Jakl would get prospective students who would persist and ask for more explanation about graduate wage data. Ms. Jakl did not have graduate wage information on hand; it was career services that had that information. *See* Ex. E at 120:5-12, *testimony of Krista Jakl.*

470. When prospective students asked for more information about wages, Ms. Jakl would first get admissions involved since "they were the ones that mostly discussed, if they did discuss, how much they could potentially make." *See id.* at 130:7-133:11. Then, she would ask the director of career services, Nathan Mizell, to come to her office. She does not know, however, what Mr. Mizell would tell students because she would leave her office while he met with them. *See id.* at 130:7-133:11.

G. Defendants Know that Students Will Not Be Able to Repay Their EduPlan Loans

471. CollegeAmerica writes off student debt as uncollectable when a student has not made a payment in one year. *See Les Marstella CID Designation* at 43:16-44:15. But this does not mean CollegeAmerica has ceased collecting on the debt. In fact, CollegeAmerica continues to pursue collections on accounts it has written off. Ex. I at 274:7-15, 274:22-25, *testimony of Eric Juhlin*; *Les Marstella Deposition Designation* at 207:4-19; Ex. D at 179:8-180:22, *testimony of Rohit Chopra.* A write-off is simply an accounting term that signifies a default. *See* Ex. D at 179:8-180:22, *testimony of Rohit Chopra.* Defendants have never forgiven a large group of EduPlan accounts and simply forgiven the debt. Ex. I at 276:12-277:7, *testimony of Eric Juhlin.*

472. Based on CollegeAmerica's 2013 accounts receivable write-off report, the school projected that 40% of student balances would be uncollectible after one year. This suggests that there were major problems with EduPlan and CollegeAmerica predicted it very early in the loan process. *See* Ex. D at 178:11-179:7, *testimony of Rohit Chopra.*

473. Even the campuses knew that students were not repaying on their EduPlan loans. During weekly meetings at the Denver campus, Ms. Jakl was told that "we were having, you know, issues with students not making those payments." Michelle Bollig, along with Ms. Gordy, were present at those meetings. *See* Ex. E at 88:16-89:6, *testimony of Krista Jakl.*

474. Ms. Jakl also recalls being told quite often that CollegeAmerica was close to losing access to federal student aid because of a high federal loan default rate. *See id.* at 90:6-14. She also recalls in 2013 Ms. Gordy instructing her and another financial aid planner to go to former students' homes and ask them to sign forbearance forms to postpone payments to avoid going into default. "She told us that we were so close to the default rates that we could lose our Title IV funding, so it was very crucial that

we avoided those potential students that were close to hitting default." *Id.* at 90:15-91:7.

475. Notwithstanding, Ms. Jakl did not disclose that former students were close to defaulting on their federal loans and struggling to make payments on their EduPlan loans. *See id.* at 119:10-25. This is because CollegeAmerica did not instruct her to disclose this information. *See id.* at 120:1-4.

476. AR Management, the servicer of EduPlan, provides CollegeAmerica's financial aid and business officers access to a web site that allows financial planners to view EduPlan loans and review student borrowers' ledgers. *See* Ex. H at 244:19-246:5, *testimony of Michelle Bollig.*

477. AR Management emails lists of delinquent EduPlan borrowers to business officers, such as Michelle Bollig, on a monthly basis. *See id.* at 246:6-249:22. The emails include lists of active students who are delinquent and lists of former students who are delinquent. *See id.* at 246:6-249:22; Exs. 472, 754.

478. Through at least 2012, CollegeAmerica sent over 1,400 delinquent EduPlan borrowers in Colorado to collection agencies, including Aurora Collections. *See* Ex. H at 251:5-253:19; 258:16-24, *testimony of Michelle Bollig;* Ex. 747.

H. Defendants Created Some EduPlan Loans Without Students' Consent

479. When a student drops out of CollegeAmerica, Ms. Bollig sends out an exit letter to the student. *See* Ex. H at 259:7-260:12, *testimony of Michelle Bollig.* The exit letters inform the students if they have an outstanding balance owed to the school and state: "If payment has not been received and payment arrangement not been made by that date, your account will be sent to a collections agency, which may result in negative impact on your credit rating." Ex. 182; Ex. H at 262:11-15, *testimony of Michelle Bollig.*

480. Students who drop sometimes do not respond to exit letters or attend exit interviews at the school. *See* Ex. H at 277:9-280:10, *testimony of Michelle Bollig.*

481. In situations where a dropped student has never signed an EduPlan agreement but still owes a balance to the school, Ms. Bollig's practice is to "waive" the students' signature, meaning, she creates an EduPlan loan in order to collect on the balance. *See id.* at 272:13-274:6,.

482. In order to create the loan, she uses Procedure Directive 109. *See id.* at 302:2-14; Ex. 236. This means the student becomes subject to the obligations of the loan and all of the terms of the loan without having ever reviewed or agreed to those terms. *See* Ex. H at 299:17-301:23, 336:15-338:6, *testimony of Michelle Bollig*; Ex. 184 at 28.

483. This has been Ms. Bollig's practice since at least 2010. She received training from corporate and other campuses on this procedure. *See* Ex. H at 275:25-276:18, *testimony of Michelle Bollig.*

484. Not surprisingly, Ms. Bollig has encountered former students who did not realize they had taken out a loan with CollegeAmerica. *See id.* at 274:8-275:17.

485. There was no evidence regarding the total cash CollegeAmerica currently collects solely from EduPlan. *See id.* at 313:9-21; 339:11-341:4, 341:17-25. When calculating the "10" denominator of the 90/10 ratio, CollegeAmerica lumps together cash received from EduPlan with cash received from other sources, such as third-party loans, scholarships, Veterans Administration (VA) funds, and employer reimbursements. *See id.* at 313:9-21, 339:11-341:4, 341:17-25.

486. Mr. Chopra concluded that Defendants do not expect borrowers to repay the loans in full, but they use the loans to collect cash when needed to meet 90/10 and increase their receipt of federal student aid revenue. *See* Ex. D at 31:20-32:20, *testimony of Rohit Chopra.*

487. Given how profitable CEHE is, the only reason Mr. Chopra could see that the school offered the loan was to ensure short-term profitability was not sacrificed. "[E]ven though borrowers wouldn't be able to repay it, it did allow high short-term profitability to continue year after year." *Id.* at 213:11-215:19.

X. Defendants' Conduct Has Substantially Harmed Colorado Consumers

488. Defendants' various misrepresentations caused harm to consumers by inducing consumers to attend CollegeAmerica and accumulate large amounts of debt they are unable to pay off.

A. Consumers Who Attend CollegeAmerica End Up Worse Off Financially

489. The state presented the testimony of Edward Harvey, an economist who had performed an analysis of data available on the College Scorecard, as well as a survey that was conducted at his direction of CollegeAmerica graduates. He was asked to explore what kind of jobs CollegeAmerica graduates got, what were their expected earnings, what was the prospect of repayment of their student loans, and whether they view themselves as better off or worse off financially, having gone to CollegeAmerica. Ex. F, 19:12-20:2, *testimony of Ed Harvey.*

490. Mr. Harvey determined that roughly 60% to two thirds of enrollees at CollegeAmerica never graduated. Id., 22:7-20. He also determined that of the students who graduated from CollegeAmerica, roughly 20 to 25% were unemployed. However, he acknowledged that he did not differentiate between those who were able to work and actively looking for work, but had been unable to find work, on the one hand, and those who, for whatever reason, were unable to work, or were not actively looking for work. He explained that he did not make this differentiation because CollegeAmerica students had come to school to get certain training and meet certain requirements to be able to get a job. Id., 22:21-23:3; 33:13-34:3 He also determined that the earnings of CollegeAmerica graduates did not even come close to the earnings that were suggested or indicated in various CollegeAmerica advertisements. Id., 23:9-13. He concluded that, in view of the fact that two thirds of those who enrolled at CollegeAmerica did not graduate, and 25% of those who did

graduate were unemployed (in the sense described above), it did not seem reasonable to expect CollegeAmerica students to repay their loans that they incurred in order to attend. Id., 23:18-24:2. Finally, his survey indicated that the bulk of CollegeAmerica enrollees and graduates were not better off financially for having attended CollegeAmerica. 24:4-15.

491. Mr. Harvey relied upon the College Scorecard for some of the data he relied upon. With respect to the unemployment rate, the 20 to 24% unemployment rate of CollegeAmerica graduates, in the specialized sense referred to above, who were between four and seven years post graduate, compares to a little less than 15% for all U.S. colleges, and 17% for two-year degreed colleges. Id., 32:1-22; Harvey PowerPoint at 2.

492. With respect to earnings, CollegeAmerica students six to eight years after they enrolled ranged between $22,000 to almost $25,000 a year. In years 9 and 10, that level goes up to $32,000. Id., 35:1-22. This is much less and substantially different than average students in all other institutions of higher learning in the U.S., where they earn slightly less than $30,000 to approximately $37,000, and even those in two-year degreed colleges, where they earn between 28,000 and slightly less than 35,000 over those same time periods. Id., 36:6-11; Harvey PowerPoint, at 3;

493. According to the College Scorecard, among students who had completed CollegeAmerica, their median student loan debt incurred at CollegeAmerica, not including Eduplan loans, was $27,300. Again, that is very different from the median level of debt incurred by students attending all U.S. colleges, and even those attending two-year degree colleges, both of which were approximately $17,000. Id., 36:17 – 39:8; Harvey PowerPoint, at 4. With respect to the repayment of that debt, 25% of CollegeAmerica students had made payments of at least one dollar on their student loan balance within three years of leaving school. Again, this is considerably less than the national average, which is 60%, or even the average among students attending two-year degree colleges, which is approximately 54%. With respect to graduates only, the repayment rate is approximately 70% at all US colleges, and approximately 68% among two-year degree colleges, as compared to a little over 40% for CollegeAmerica graduates. Id., 38:21 - 42:11; Harvey PowerPoint, at 5.[4] In summary, the outcomes of attending CollegeAmerica were "quite different" and "substantially more adverse" than attending other U.S. colleges. Id., 42:17-21.

494. With respect to Mr. Harvey's survey, the target audience was the roughly 3,083 CollegeAmerica students who had graduated, out of approximately 10,900 students who had enrolled in CollegeAmerica between 2004 and 2016, since these students were most likely to realize the greatest benefit of having attended. The figure of 3,083 was derived after eliminating duplicates, students who enrolled at the Cheyenne, Wyoming branch, and students who had been contacted by the Attorney

[4] Mr. Harvey's data from the College Scorecard is somewhat different than that recited by another of the State's experts, Rohit Chopra, because Mr. Harvey downloaded the data in early 2017, whereas Mr. Chopra downloaded it closer in time to the trial, at which time it had been updated. Id., 40:25-41:13.

General's office. The survey was conducted by telephone, which increased the chances of reaching the students. The actual telephone calls were made by a survey firm out of California known as Davis Research. Mr. Harvey designed the questionnaire that guided the interview, with input from Davis Research and the Attorney General's office. Ex. 888. The survey was conducted in the fall of 2016. Nearly 12,500 total telephone calls were made, and the protocol followed by the survey firm was to make 12 different attempts to try to contact an individual student before giving up on reaching that particular student and asking them to participate in the survey. Of the ones contacted, a certain number did not wish to participate in the interview. The survey firm eventually completed 400 interviews, but 32 of the respondents needed be removed because they had, in fact, been contacted by the Attorney General's office at some point prior to the survey, and therefore their data was not tabulated. Accordingly, there were a total of 368 tabulated interviews. This represented a response rate of 12% which was sufficient, in Mr. Harvey's judgment, to extrapolate his findings to CollegeAmerica graduates as a whole. Id., 43:4-60:1; Harvey PowerPoint, at 6. Mr. Harvey testified that response rates of telephone surveys has been declining in recent years, and Pew Research has determined that the average response rate for telephone surveys is currently 9%, and that the reliability or utility of the survey is not diminished. Id., 238: 17-239:22.

495. Of the 368 College America graduates interviewed, 328 of them eventually provided information regarding their wages. In terms of a prototype, the age of the graduates interviewed was approximately 36 years old, 75% were female and 25% male, and 76% had graduated with associate's degrees and 24% had received bachelor's degrees. 70.9% of them had been employed six months after graduation, at an average annualized wage of $20,718. Eighty six of the respondents, or slightly less than 24%, were currently unemployed (to whom Mr. Harvey attributed zero earnings for purposes of his analysis), and 76.4% were currently employed, and there was an average annualized wage of $25,534 among the 328 respondents, including the 86 of them who were unemployed. Id., 60:11 - 70:9; Harvey PowerPoint, at 8. However, Mr. Harvey acknowledged that if the unemployed respondents were eliminated, the employed graduate's average hourly wages were $17.39, which annualized to over $35,000. Id., 108:11 – 112:1; Ex. 2615. He also acknowledged that, with respect to a survey question regarding wages six months after graduating, the average hourly wage among those employed at that time was $14.03, which annualized to about $29,000. Id., 112:2 – 113:19. These average earnings of CollegeAmerica graduates compare to those stated for high school graduates ($34,197), those with associate's degrees ($44,086), and those with bachelor's degrees ($57,026) portrayed in the "Education Pays Off" and the "More You Learn, the More You Earn" graphics which are ubiquitous among CollegeAmerica's advertisements and its admissions PowerPoint. See, e.g., Ex. 608, at 10 (advertisement from 2014).

496. The court has considered an acknowledged coverage error, an asserted nonresponse bias, the effect of the Great Recession, and some arguably awkward phraseology of the questionnaire which Defendants assert should minimize or eliminate the weight to be assigned Mr. Harvey's survey. The court is satisfied that the coverage error did

not amount to a coverage bias; that there was no nonresponse bias given the average response rate to telephone surveys and Mr. Harvey's ability to calculate a confidence interval; that the 12-year date range of his analysis (2004-2016), which includes periods of prosperity as well as the Great Recession, ameliorates the effects of the Great Recession on earnings; and that the phraseology of the questionnaire was not such that it likely led to unreliable results. The court found Mr. Harvey's testimony quite helpful, and relatively consistent with data contained in the College Scorecard.

497. Mr. Harvey reviewed census data on the earnings of individuals aged thirty-six in the year 2016. In 2016, the average earnings of high school graduates aged thirty-six was $39,750 – almost $4,000 per year more than the average CollegeAmerica graduate. Id. at 92:1-19. The average earnings for associate's degree graduates aged thirty-six in 2016 was $47,391, and the average earnings for bachelor's degree graduates aged thirty-six was $69,809. Id.

498. The final question in the survey asked CollegeAmerica graduates if they were better off, worse off, or about the same financially as a result of attending CollegeAmerica. Forty-nine and a half percent (49.5%) reported that they were worse off financially and 32% reported that they were about the same financially as a result of attending CollegeAmerica. Id. at 92:22-93:16; Ex. 987 at 13 (demonstrative exhibit). Only 18.5% responded that they were better off financially as a result of attending CollegeAmerica. Id.

B. The State Presented Representative Examples of Harmed Consumers

499. In 2011, Bradley Dean was unemployed, married, with a child, and in "a hopeless state" when he recalls seeing a CollegeAmerica TV commercial "having a heavy emphasis on a bright future, making more money." *See* Ex. B at 86:17-25, 87:1-12, t*estimony of Bradley Dean*.

500. During his CollegeAmerica admissions interview, Mr. Dean was shown "some sort of chart . . . a breakdown of people who have not attended college and their lifetime income and people who have attended college and graduated and their income levels." *Id.* at 89:8-20. Mr. Dean believed that the earning figures he was shown were the sort of earnings he could expect if he graduated from CollegeAmerica. *Id.* at 90:1-10.

501. After graduating, Mr. Dean attempted to find a graphic arts job by applying through Craigslist, Job.com, and other various job boards. He submitted his resume and portfolio to various design/print companies throughout the state. Mr. Dean estimates he applied for "about a hundred" jobs in the graphic arts field. *Id.* at 102:25, 103:1-13. Mr. Dean's job applications resulted in only one interview in 2017. *Id.* at 103:14-22.

502. Mr. Dean's wife attended CollegeAmerica's graphic arts program at the same time. She graduated and has not found a graphic arts job. *Id.* at 106:4-10.

503. Mr. Dean and his wife both took out federal loans to attend CollegeAmerica. *Id.* at 101:15-17; 106:20 – 107:6. Neither he nor his wife have been able to pay down any of the principal of their federal loans, *Id.* 106:4 -19, and Mr. Dean cannot afford to go back to school because the "funding is not there." *Id.* at 104:11-17.

504. Mr. Dean describes his and his wife's economic situation as "very poor" since graduating from CollegeAmerica. *Id.* at 10715-18. The Deans declared bankruptcy, but bankruptcy does not discharge student loan debt and CollegeAmerica continues to attempt collection against the Deans. *Id.* at 107:16-108:10.

505. Stacey Potts enrolled in the Medical Specialties program at CollegeAmerica in 2009 after seeing several television commercials featuring the program. *See* Ex. B at 141:2:7, *testimony of Stacey Potts*. Ms. Potts found the commercials appealing because they indicated that the medical field was "really employable" and Ms. Potts was struggling to find a job during the recession. *Id*. at 141:19-25.

506. Ms. Potts subsequently met with Ms. Sharrie Maple, an admissions consultant. *Id*. at 143:3-6. Ms. Maple told Ms. Potts that she would be able to achieve her goal of making more money and supporting her family with a degree from CollegeAmerica. *Id*. at 148:13-149:5.

507. Ms. Potts explained that she expected to earn at least $35,000 after graduating with a college degree and Ms. Maples assured her that a degree from CollegeAmerica would enable her to reach that goal. *Id*. at 167:16-168:2. This proposition played a "huge role" in Ms. Potts' decision to attend CollegeAmerica. *Id*. at 149:6-18; *see also* Ex. 3158 (indicating Ms. Potts motivation for attending CollegeAmerica was to make more money).

508. After graduating with a Medical Specialties degree, Ms. Potts found employment as a cashier at Walgreen's earning $8/hour. Ex. B at 153:19-21, *testimony of Stacey Potts*. Ms. Potts was eventually promoted to a pharmacy technician after completing a training program offered by Walgreen's. Ms. Potts received this training for free and she was not required to have a college degree in order to receive the training. *Id*. at 152:4-25. As a pharmacy technician, Ms. Potts earned $12 per hour, just one dollar more than her wages prior to enrolling at CollegeAmerica. *Id.* at 154:23-155:10.

509. Ms. Potts was disappointed with this outcome; it was not what she expected to achieve based on the representations made to her at her admissions interview. *Id.* at 155:8-22. Ms. Potts testified that making one dollar more an hour did not enable her to support her family after accounting for the debt which she took on to pay for her CollegeAmerica degree. *Id*. Ms. Potts was very surprised that, after putting forth great effort to succeed in school, she was "not able to make ends meet or pay the bill for tuition." *Id*. at 160:6-16.

510. Ms. Potts took out $28,000 in federal loans in order to pay for her CollegeAmerica degree. *Id.* at 154:2-16. She did not earn enough money to make payments on that loan while working in her field of study. *Id*. at 154:17-22.

511. When Jeremy Nanney went in for his admission interview at CollegeAmerica, he met with an admissions consultant named Mike who told him that he could possibly make upwards of $40,000 to $50,000 a year. *See* Ex. F at 325:23-326:21, t*estimony of Jeremy Nanney*. Mr. Nanney was interested in the graphic arts program and wanted to attend , school to "make more money." *Id.* at 325:9-19, 327:5-25; Ex. 840.

512. Mr. Nanney graduated from CollegeAmerica around September of 2012. Ex. F at 332:7-9, *testimony of Jeremy Nanney*.

513. Mr. Nanney never earned any money as a graphic artist despite applying for at least 500 graphic arts jobs. *Id.* at 336:15-22.

514. Mr. Nanney has been unable to may payments on the approximately $39,000 in federal student loans he took out to attend CollegeAmerica. *Id.* at 337:3-13.

515. Following her admissions counselor interview, Shawndell Sievert was left with the impression that with a CollegeAmerica degree she would be able to get a job that would pay her well enough that she would have no issues paying her loans. *See* Ex. B at 22:10-24, *Testimony of Shawndel Sievert*.

516. A CollegeAmerica admissions consultant, Kiersten, told Ms. Sievert that upon graduation she would be qualified to take any of the listed certifications which included EMT and Limited Scope Radiology. *See id.* at 18:24-20:4. One of the reasons Ms. Sievert attended CollegeAmerica was to obtain her certification as an EMT. *See* Ex. 3227.

517. Ms. Sievert does not make enough money to afford to make payments on the federal loans she took out to attend CollegeAmerica. Ex. B at 53:19-23, *testimony of Shawndel Sievert*. She feels like she is "financially in the hole" because of her student loans and that this is deterring her from going back to school because she cannot afford to take out any more loans. *Id.* at 53:24-54:6.

518. Megan Posey enrolled at CollegeAmerica after seeing television commercials which featured the claim that college graduates earn $1 million more over their lifetime than those without a degree. *See* Ex. H at 183:4-184:4, *testimony of Megan Posey*. Ms. Posey found the claims in the ad appealing and, after seeing it several times, scheduled an admissions interview at CollegeAmerica. *Id*. Ms. Posey indicated on her Career Questionnaire that she wanted to attend CollegeAmerica in order to "earn more money" and she discussed this with the admissions consultant. *Id.* at 189:3-190:6; Ex. 3136. After the admissions meeting, Ms. Posey understood that a degree from CollegeAmerica would better her family's financial situation and enable her to achieve the earnings which were depicted in the commercial. *See* Ex. H at 220:20-221:21, *testimony of Megan Posey*; Ex. 845.

519. Ms. Posey enrolled in the Medical Specialties program at CollegeAmerica in January of 2008 in order to obtain an EMT certification. *See* Ex. H at 185:2-15, *testimony of Megan Posey*. During her admissions interview, Ms. Posey discussed this goal with a CollegeAmerica admissions consultant. *Id*. at 185:16-186:22, 222:16-18. Ms. Posey testified that the admissions consultant represented that she would be able to

get the EMT certification after she completed her coursework and took the relevant state exam. *Id.* at 185:16-186:22.

520. A year after enrolling at CollegeAmerica, Ms. Posey learned that Defendants were not qualified to prepare students for the EMT certification, which was upsetting to her. *Id.* at 190:9-191:20. By the time she learned that she would not be able to get an EMT certification, Ms. Posey was financially responsible for a sizeable amount of the tuition for her degree. *Id*. at 191:21-192:9.

521. Ms. Posey is not on track to achieve the earnings which she expected from her CollegeAmerica degree. Ms. Posey was unemployed for six months following graduation, despite an active job search. *Id.* at 192:10-193:4. She ultimately found a job which paid $9.25/hour. *Id*. at 193:5-13. Ms. Posey has held several positions after graduating from CollegeAmerica, none of which required a college degree. *Id*. at 193:14-16; 195:23-197:2. The most Ms. Posey has earned since graduating from CollegeAmerica in 2009 is $12/hr. *Id*.

522. Ms. Posey took out student loans in order to pay for tuition. *Id.* at 197:3-10. Ms. Posey has over $60,000 in debt related to her CollegeAmerica education. *Id*. at 197:11-17. Due to her financial situation, Ms. Posey has only been able to make loan payments "off and on." *Id*. at 197:25-198:9. As a result, Ms. Posey's debt has doubled since graduation because of the added interest and fees. *Id*. at 197:18-21.

523. Ms. Posey testified that she is not better off financially for having attended CollegeAmerica due to the large amount of student debt she has as a result of attending CollegeAmerica. *Id*. at 198:10-16.

524. After Mile High Medical Academy shut down, Ms. Barksdale and Ms. Zeller enrolled in Defendants' Healthcare Administration program because Defendants told them that they would be launching a Sonography program soon and the classes in the Healthcare Administration would transfer to the new Sonography program. *See* Ex. E at 22:11-23, 23:19-24:24, 25:7-14, t*estimony of Ashley Barksdale*; Ex. J at 218:1-219:1, 219:12-17, 219:21-24, 221:4-8, 221:16-20, *testimony of Alicia Zeller*. However, CollegeAmerica never launched the sonography program.

525. Ms. Barksdale owes $25,000 in federal loans which she took out to attend CollegeAmerica. Ex. E at 36:12-21, t*estimony of Ashley Barksdale*. She has been unable to make payments on these loans. *Id.* at 36:22-37:6.

526. Ms. Zeller took out between $20,000 to $30,000 in federal student loans to attend CollegeAmerica. Ex. J at 231:2-8, *testimony of Alicia Zeller*. After leaving CollegeAmerica she was unable to make payments on those loans. *Id.* at 231:9-14.

C. Harm Caused by Defendants' Conduct Tied to EduPlan

527. Mr. Chopra reviewed a sample of EduPlan loan records from 2003 through 2006. He identified the loans where Defendants wrote-off the loan after twelve months of non-payment from the borrower. Using this conservative definition of default, Mr. Chopra found that 70% of the EduPlan borrowers defaulted between 2003 and 2006.

See Ex. D at 181:1-183:16, *testimony of Rohit Chopra*; Ex. 986 at 15 (demonstrative exhibit).

528. Even when CEHE "writes off" a debt, Defendants may continue to try to collect the debt from the student. Ex. I at 274:7-15, 274:22-25, *testimony of Eric Juhlin*.

529. CollegeAmerica has never looked at a group of EduPlan accounts, be it by time frame or otherwise, and forgiven that debt. *Id.* at 276:12-277:7

530. Based on Defendants' 2013 write-off report, they projected that 40% of the balances would be uncollectible after one year. This suggests that there were major problems with the loan and Defendants predicted it very early in the loan process. *See* Ex. D at 178:11-179:7, *testimony of Rohit Chopra.*

531. More than 80% of loan records between 2010 and 2016 showed late fee assessment. "So that's a real indicia of immediate distress when you have that level of late fee assessment." *See id.* at 178:11-24.

532. Based on the widespread inability to repay on EduPlan, Mr. Chopra concluded that a part of the population was significantly in financial distress. *See id.* at 201:24-202:12.

533. CollegeAmerica used third party collectors such as Aurora Collections to collect EduPlan debt; these third parties sued borrowers. *See id.* at 202:20-204:7; Ex. 747.

534. Since late 2012, Defendants have sent delinquent accounts to their internal collection agency, CASI-COL. *See* Ex. H at 258:25-259:6, *testimony of Michelle Bollig.*

535. Borrowers whom Defendants sent to collections through 2012 for non-payment were hit with interest and fees that caused their starting balances to balloon by more than 50%. Ex. 747. The primary collection agency used by Defendants, Aurora Collections, filed at least 1,356 legal actions to compel payment on EduPlan loans, yielding 871 court judgments. *Id.*

536. After 2012, Defendants did not ask Aurora Collections to return any accounts; thus Aurora is still collecting on pre-2012 EduPlan accounts. *See* Ex. H at 251:5-253:19, 258:16-24, *testimony of Michelle Bollig*; Ex. 747. Defendants are well aware that it is difficult to collect from EduPlan borrowers and, thus, legal action has often been necessary to garnish students' wages and attach their assets. *See* Ex. H at 253:16-258:15, *testimony of Michelle Bollig*; Ex. 747. Aurora Collections' tactics for Defendants have been aggressive. *See* Ex. 747.

537. Another very real harm to EduPlan borrowers is a situation where Defendants sell EduPlan current and written-off debt or use it as collateral for a loan from a third party. *See* Ex. D at 209:22-210:8, *testimony of Rohit Chopra.* In these scenarios, unpaid debt can actually continue to be transacted and have value even if it is uncollectable. *See id.* at 210:19-211:17.

538. The debt buyer seeks to maximize a return by conducting the collections activities through their own operations as well as third-party collectors. *See id.* at 209:22-

210:14. The debt buyer may very well use negative reporting and lawsuits to extract payment from EduPlan borrowers. *See id.* at 211:18-212:5.

539. This harm is not speculative as Defendant Barney authorized the sale of EduPlan debt in 2007 and again in 2012/2013. *See id.* at 210:19-211:17.

540. Private student loans like EduPlan are generally not dischargeable in bankruptcy. *See id.* at 212:6-24.

D. Defendants did not Rebut the State's Showing of Misrepresentation and Consumer Harm

1. Defendants' Expert Economist, Dr. Jonathan Guryan

541. CollegeAmerica presented the expert testimony of Dr. Jonathan Guryan, an economist from Northwestern University. Dr. Guryan testified generally regarding the value of a CollegeAmerica education. In summary, Dr. Guryan concluded, from his examination of 60% of CollegeAmerica graduates between the years of 2002 and 2017 (consisting of some 2365 students), that associate's graduates experienced a 30% increase in earnings at their first job relative to what they earned before attending CollegeAmerica, while bachelor's degree graduates experienced a 38% increase in their earnings, relative to what they earned before attending CollegeAmerica. Second, using age-earnings profiles, he extrapolated the earnings of associates graduates over their working life, and found that they would experience an accumulation of additional earnings in the amount of approximately $179,000 relative to high school graduates, and bachelor's degree recipients would accumulate approximately $491,000 additional dollars over what a high school graduate would earn over the course of their career. Ex. 3375. Third, Dr. Guryan calculated the net present value of a CollegeAmerica education in order to perform a cost-benefit analysis, and concluded that an average associate's graduate would earn between $64,000 and $79,000 more than the cost of their CollegeAmerica education, including tuition and the opportunity cost, and a bachelor's graduate would earn on the order of between $95,000 and $125,000 over and above all the costs. Fourth, Dr. Guryan noted that the benefits he calculated were monetary only, and did not account for nonmonetary benefits that have been shown to accrue to people as a result of going to college, including increased likelihood of being employed, of having better benefits when employed, and being less likely to have criminal trouble, being generally healthier and living longer, although he was unable to put a monetary value to them. Ex. L, 70:1 – 83:1, *testimony of Jonathan Guryan.*

542. Dr. Guryan utilized CollegeAmerica's "Diamond D" database for his analysis. With respect to that database, when a student was unemployed prior to enrolling, CollegeAmerica employees were instructed to input minimum wage into the college's database as a pre-enrollment wage. Ex. I at 163:11-16, *testimony of Carl Barney*. No such default value was input for students who are unemployed after graduation. *Id*. at 163:23-164:1. Wages were imputed for hundreds of students who were unemployed prior to attending CollegeAmerica. *See* Ex. L at 249:1-15, *testimony of Jonathan Guryan*; Ex. 909. Conversely, students who were

unemployed after graduation were eliminated from Dr. Guryan's data set. Id., 249:24-250:5. Approximately 25% of the pre-enrollment earnings records provided to Dr. Guryan were imputed wages for students who were actually unemployed. *Id.* at 253:4-23. Imputing minimum wage for unemployed students had the effect of artificially decreasing the pre-enrollment earnings figure – and thus inflating the earnings gain Dr. Guryan calculated for CollegeAmerica graduates. *Id.* at 258:25-259:4.

543. Although Dr. Guryan testified that "some" associates and bachelor's degree graduates could earn as much as a million additional dollars above and beyond what a high school graduate would earn over their lifetime, his analysis demonstrates that the "Million Dollar Promise," which is ubiquitous in CollegeAmerica's advertising and also common among other colleges and even government officials, is nevertheless essentially inapplicable to CollegeAmerica graduates during the 15 years from 2002 to 2017 which Dr. Guryan examined. The average CollegeAmerica bachelor's graduate, based upon Dr. Guryan's age-earnings profile analysis, is likely to earn something less than half that amount over and above what a high school graduate would earn, while an associate's graduate is likely to earn less than one fifth of that amount relative to a high school graduate. Although Dr. Guryan stated three times that at least "some" CollegeAmerica graduates would achieve that level of earnings, he provided no factual analysis demonstrating it, nor was the document he was testifying from entered into evidence. Id., 155:16-156:17; 282:7-283:1; Ex. 3375; Ex. 3080 (not received in evidence)

544. Dr. Guryan plotted the results of his age-earnings profile analysis for each of the years between 2004 and 2016. Ex. 3492. At the request of Defendant's counsel, he inserted dotted lines meant to depict, as he understood counsel's intention, the average earnings for associate's and bachelor's degree recipients as reflected in the BLS data upon which the "Education Pays Off" or "the More You Learn the More You Earn" advertisements which may have come to the attention of CollegeAmerica students of that vintage was based. *Id.* Of the 13 years of graduation cohorts plotted, Dr. Guryan's extrapolation predicts that only one graduation cohort of CollegeAmerica bachelor's degree recipients (2016), will exceed the national average at the peak of their earning years, while the other 12 years' cohorts (2004 – 2015) will fall between approximately $5,000 and $11,000 short at the peak of their earning years. *Id.* With respect to associate's degree recipients, four graduation cohorts (2004, 2006, 2008, and 2016) will, according to Dr. Guryan's extrapolations, exceed the national average reflected in the BLS data at the peak of their earning years, but in the other nine years, will fall short by perhaps a few hundred dollars and up to $5000. *Id*. Dr. Guryan acknowledged that the relatively small number of 2016 graduates available to him for his analysis suggested that the results for that graduation cohort, in particular, may be unreliable. *Id*.

545. To the extent Dr. Guryan's projections provide the Court with helpful information, they show that CollegeAmerica graduates are, in fact, highly unlikely to reach the earnings figures that Defendants advertise. This is illustrated by the State's demonstrative exhibits that compared the advertised earnings levels with Dr.

Guryan's projections for CollegeAmerica graduates at ages 45, 55, and at peak earning capacity. See Exs. 892-894; Ex. L at 278:3-281:25, *testimony of Jonathan Guryan*.

546. Based on Dr. Guryan's projections, the peak earnings of graduates with a bachelor's degree are 20% less than the advertised earnings. Ex. 894. Guryan projects that bachelor's graduates will earn only slightly more than the salary amount which CollegeAmerica advertises for associate's degree graduates. *Id*. According to Guryan's projections, graduates will not achieve these earnings until age 55. *Id*.

547. Based on Dr. Guryan's projections, the peak earnings of graduates with an associate's degree are 19% less than Defendant's advertised earnings. Ex. 894. Guryan projects that associate's graduates will earn only slightly more than the salary amount which CollegeAmerica advertises for people with a high school diploma. *Id.* According to Guryan's projections, graduates will not achieve these earnings until age 57. *Id*.

548. According to Dr. Guryan's projections, the average CollegeAmerica graduate will not earn a million dollars more than a high-school graduate over her lifetime. Ex. 3375; Ex. L at 282:7-283:1, *testimony of Jonathan Guryan.*

549. Dr. Guryan's net present value calculation was performed for the purpose of determining whether a CollegeAmerica education produces benefits which exceed its costs over the long term. He testified that the costs of a CollegeAmerica education are frontloaded in the first few years, while the benefits often are not derived until many years, even decades, later. The costs include tuition (reflected in student loan balances), interest on those student loans, and opportunity costs consisting of the wages a CollegeAmerica student has to forgo in order to attend school. By performing a net present value calculation, he analyzes both the costs and the benefits in present-day dollars. The bottom line of Dr. Guryan's analysis is that for all CollegeAmerica campuses in Colorado, assuming the student is unable to work while going to school, the net present value of an associate's degree is $64,253 and a bachelor's degree is $95,286. Ex. L, 123:1 – 127:2; Ex. 3377. Assuming the student is able to work half time while attending CollegeAmerica, which Dr. Guryan believes is the most realistic assumption, the net present value of a CollegeAmerica education is $79,030 for an associate's degree and $127,201 for a bachelor's degree. Id, 135:9-21. Exhibit 3377.

550. Dr. Guryan's net present value analysis had originally consisted of his examination of electronic data from CollegeAmerica's "Diamond D" databank. However, after being supplied additional paper documents in CollegeAmerica's possession regarding earnings for 328 randomly-selected students whose earnings records he had examined electronically, Dr. Guryan added any additional pre- and post-graduate earnings information derived from the paper records into his database consisting of electronic records, then ran a sensitivity analysis, which resulted in an adjusted net present value for an associate's degree, assuming no work during college, of $33,000, that is, less than half of the $64,000 figure he originally

calculated. With respect to bachelor's degree recipients, his sensitivity analysis following receipt of the additional earnings information went from approximately $95,000 to approximately $46,000, again less than half. Ex. L, 136:23- 147:5; 235:18- 248:3 Ex. 3377. Dr. Guryan concluded that, regardless of the significant reduction in his net present value figures, a CollegeAmerica education still represented a significant value to students.

2. Defendants' Consumer Witnesses

551. Consumers that Defendants called to testify at trial had very positive feelings about their CollegeAmerica experience, but nonetheless, most were also unable to make payments on their loans.

552. Joseph Chavez took out approximately $20,000 in federal loans for an associate's degree he describes as "pricey" when compared to other schools. *See* Ex. L at 28:1-10, 31:6-12, *testimony of Joseph Chavez.*

553. After graduating from CollegeAmerica, Mr. Chavez was on an income based student loan plan where he paid $0 per month until he was able to place his federal loans in deferment after enrolling at Independence University in August of 2017. *See id.* at 29:16-30:10.

554. Mr. Chavez also took out an $11,000 EduPlan loan from Defendants. He has only been making payments of $40 a month. *Id.* at 28:6-21.

555. Veronica Huerta graduated from CollegeAmerica in 2011. *See* Ex. L, 38:1-4, *testimony of Veronica Huerta*. She does not know how much she owes in student loans but estimates she owes $27,000. *Id.* at 57:16-24.

556. Since graduating from CollegeAmerica in 2011, Mr. Huerta has "been having trouble making payments" on her student loans. *Id.* at 61:24-62:3.

557. Ms. Huerta has not made a payment on her federal student loans in over a year due to her financial situation. *Id.* at 63:11-64:1.

558. Charlene Lowery also took out federal student loans to attend CollegeAmerica. *See* Ex. P at 121:13-17, *testimony of Charlene Lowery*. Ms. Lowery is on an income-based repayment plan where her monthly payments are zero. *Id.* 18-23.

559. Other consumers were in unique situations where they had help in paying back their loans.

560. For example, Camden DeJong incurred $75,000 in debt for attending CollegeAmerica but his loans were generously paid off by his uncle. *See* Ex. M at 248:4-9, 249:1-5, *testimony of Camden DeJong*.

561. Other students' tuition was paid by other third parties. For example, Lisa Lee's tuition was paid by the Veterans' Administration. *See* Exhibit P at 88:5-7, *Testimony of Lisa Lee*.

562. Brittany Rohr did not need to take out student loans as she received assistance paying for her tuition from her grandparents as well as from a fund set aside for her as a ward of the State. Ex. 3510 timestamp at 17:45-18:30 (*Brittany Rohr Deposition Designation*).

XI. Personal Liability of Defendant Eric Juhlin

A. Timeframe of Duties and Responsibilities

563. Defendant Eric Juhlin began working for CollegeAmerica in May of 2010, when he was hired as the Chief Executive Officer. *See* Ex. I at 209:2-6, t*estimony of Eric Juhlin*.

564. As part of the merger in 2012, Juhlin became the CEO and President of CEHE and a member of the Board of Directors, positions which he held at the time of trial. *See id.* at 209:23-210:4; Ex. 528 at 4.

B. Evidence of Conception, Authorization, Participation or Cooperation, Specific Direction, or Sanction of Deceptive Conduct

565. As CEO, Mr. Juhlin is responsible for reviewing and approving all of Defendants' advertisements. *See* Ex. I at 212:5-213:5, *Testimony of Eric Juhlin*. Juhlin took over responsibility for reviewing advertisements from Carl Barney sometime between mid-2011 to 2012. *Id.* Since 2010, 90% of Defendants' advertisements have been reviewed and approved by Juhlin or Carl Barney. *Id*. at 213:2-5.

566. A Procedure Directive dictates that all promotional items must be sent to the CEO, then Juhlin, or CMO, then Barney, for final approval. *See* Ex. 697 at 3. The directive goes on to state "[t]o make this absolutely clear: no promotional material of any nature or kind may be issued that does not comply with this procedure." *Id*. The directive was issued by Carl Barney in 2008 and revised and reissued by Juhlin in 2014. *Id*.

567. Juhlin received monthly operations reports, which included campus-level information about graduates' wages and employment placement rates. *See Les Marstella Deposition Designation* at 28:15-29:8, 34:23-35:5.

568. In 2015, CEHE conducted a "comprehensive review" of advertisements published between 2013 and 2014 in response to an inquiry from its accreditor ACCSC. *See* Ex. 6 at 1. CEHE prepared an "analysis of how the statements and claims in the ads are truthful and accurate." *Id*. Eric Juhlin personally attested to the accuracy of the information in the response and analysis. *Id*.

569. In June of 2017, Mr. Juhlin argued to ACCSC that it was improper to compare the outcomes of the Denver campus to national averages because the nationwide data was "not corrected for race, geography, or program. . . . This clearly is an error." *See* Ex. 202 at 2.

570. Juhlin attended the staff trainings held regularly in Las Vegas, where he spoke at some of the trainings for admissions staff. Ex. E at 115:5-10, *testimony of Krista Jakl*.

571. Juhlin has access to data concerning the earnings of CollegeAmerica graduates. Ex. I at 213:15-23, *testimony of Eric Juhlin*. Information about the starting salaries for CollegeAmerica graduates was summarized and distributed to the executive team on an annual basis via data letters. *See* Ex. 500.

572. Juhlin had knowledge that Defendants did not offer EMT or sonography training at the Colorado campuses. Ex. I at 237:3-5, 246:15-19, t*estimony of Eric Juhlin*.

XII. Personal Liability of Defendant Carl Barney

A. Timeframe of Duties and Responsibilities

573. Prior to the merger in 2012, Carl Barney was the president and CEO of CASI, which provided senior management oversight and support services to the for-profit colleges owned by Carl Barney. Ex. H at 9:9-19, *testimony of Carl Barney*. Carl Barney was the Chief Marketing Officer for CASI until 2010. *Id*. at 10:8-12.

574. As part of the merger, Carl Barney became the sole member and the Chairman of the Board of CEHE. *Id*. at 6:13-15; 169:4-6; Ex. 528 at 4. Through the Carl Barney Living Trust, Carl Barney is also CEHE's largest creditor. Ex. H at 122:12-123:6, *testimony of Carl Barney*.

575. Barney was the Chief Marketing Officer of CEHE from 2012 until 2014. *Id.* at 40:16-42:1.

B. Evidence of Conception, Authorization, Participation or Cooperation, Specific Direction, or Sanction of Deceptive Conduct

576. Under Carl Barney, CASI provided training, marketing, and accounting support to the for-profit colleges, including CollegeAmerica Denver, Inc. Ex. H at 9:9-10:7, *testimony of Carl Barney*. Carl Barney effectuated control over the day-to-day operations of the colleges through written policies and procedures. *Id*. at 10:13-22. Carl Barney personally authored the Information Letters, Management Memos, Data Letters, and Procedure Directives which bear his name. *Id*. at 11:3-8. Carl Barney expected the staff of CollegeAmerica to read and follow the policies and procedures outlined in his written directives. *Id*. at 11:9-11.

577. Carl Barney also exercised control over the operation of the colleges through detailed training manuals. *See* Exs. 198, 230, 231, 235, 808, 809. The Admissions Consultant and the Financial Planner Manual are both copy written by Carl Barney personally, not by CollegeAmerica or CEHE. Ex. H at 53:13-20, 85:4-8, *testimony of Carl Barney;* Ex. 230 at 2; Ex. 235 at 2. Much of the content in the manuals is derived from procedure directives authored by Barney. *See, e.g.*, Ex. 302.

578. As Chief Marketing Officer, Carl Barney issued a number of policies and directives concerning advertising. *See* Ex. 425, 570, 503, 697.

579. Carl Barney created a checklist for all advertising which was issued with a Procedure Directive in 2008 and republished in 2010. *See* Ex. 425; Ex. H at 24:9-25:1, *testimony of Carl Barney*. The advertising checklist includes instructions regarding which headlines to use, how to advertise limited scope radiology certifications, and instructs that disclaimers regarding certification should appear in "very small" print. Ex. 425 at 4. The directive states that "[n]o promotional material of any nature or kind may be issued that does not comply with this procedure" and that **"[f]ailure to follow with Procedure Directive will incur penalties up to and including termination of employment**." *Id*. at 2 (emphasis in original).

580. In 2009, Carl Barney issued an Information Letter to all Advertising Executives, Directors of Admissions, and Admissions Consultants with advertising concepts to be used in all media. Ex. H at 12:6-25, *testimony of Carl Barney*; Ex. 570. Carl Barney established an order of priority for the various messages to be conveyed in CollegeAmerica's advertising and also identified headlines to be used. Ex. 570. Carl Barney directed that these advertising messages be used in all media "so that we have consistent, integrated and coordinated advertising." *Id*.

581. In January of 2014, Carl Barney issued a Data Letter directing staff to use national BLS salary data in CollegeAmerica's advertisements for the following year. Ex. 503 at 1. The Data Letter identified specific figures to be used in advertisements. *Id*.

582. Carl Barney initiated the practice of gathering salary data from CollegeAmerica graduates. Ex. H at 43:14-22, *testimony of Carl Barney*. As CEO of CollegeAmerica and later as Chairman of the Board of CEHE, Carl Barney regularly received information about the starting salaries of CollegeAmerica graduates. *Id*. at 43:23-44:2. Information about the starting salaries for CollegeAmerica graduates was summarized and distributed to executives and career services staff on an annual basis via Data Letters, some of which were signed by Carl Barney. *See* Ex. 499, 500.

583. Carl Barney introduced the EduPlan loan program in a procedure directive he authored in 2002. *See* Ex. 236.

584. Carl Barney was aware that an annual write-off report was created which documented those EduPlan accounts which CollegeAmerica deemed uncollectible. Ex. H at 100:21-101:8, *testimony of Carl Barney*.

CONCLUSIONS OF LAW

I. COLORADO CONSUMER PROTECTION ACT

A. Governing Law

1. General Principles

The State asserts that CEHE engaged in deceptive trade practices, in violation of the following three provisions of the CCPA:

> **6-1-105. Unfair or deceptive trade practices.** (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:
>
> * * * * * *
>
> (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;[5]
>
> * * * * * * *
>
> (g) Represents that goods, food, services, or property are of a particular standard, quality or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
>
> * * * * * * *
>
> (u) Fails to disclose material information concerning the goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction[.]

The Colorado appellate courts have long recognized that "[t]he CCPA deters and punishes businesses which commit deceptive practices in their dealings with the public by providing prompt, economical, and readily available remedies against consumer fraud*." Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 146 (Colo. 2003) citing *Showpiece Homes, Corp. v. Assurance Co. of America*, 38 P.3d 47, 50–51 (Colo. 2001); *Martinez v. Lewis*, 969 P.2d 213, 222 (Colo. 1998); *Curragh Queensland Min. Ltd. v. Dresser Indus., Inc.*, 55 P.3d 235, 240–41 (Colo. App. 2002); *MacFarlane v. Albert Corp.*, 660 P.2d 1295, 1297; *See also, May Dept. Stores Co. v. State ex.rel. Woodard*, 863 P.2d 967, 973 (Colo. 1993); *Western Food Plan, Inc. v. District Court*, 198 Colo. 251, 256, 598 P.2d 1038, 1041 (Colo. 1979). Colorado courts broadly interpret the CCPA to serve these remedial and deterrent purposes. *See Hall v. Walter*, 969 P.2d 224, 230 (Colo. 1998) (recognizing the long history of

[5] Subsection (1)(e) was amended by H. B. 19-1289 to include "recklessly", in addition to "knowingly" as a culpable mental status. However, that section of the bill applies "to civil actions filed on or after the effective date of this act," which was May 23, 2019. Accordingly, the reckless mental state does not apply to this case.

giving the CCPA "a liberal construction" in accordance with its "broad remedial relief and deterrence purposes"); *Showpiece Homes Corp. v. Assurance Co. of Amer.*, 38 P.3d 47, 53 (Colo. 2001) (interpreting the CCPA broadly in accordance with its "strong and sweeping remedial purposes"); *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Linings, Inc.*, 62 P.3d 142, 146 (Colo. 2003) (recognizing that the CCPA "deters and punishes businesses which commit deceptive trade practices in their dealings with the public by providing prompt, economical, and readily available remedies against consumer fraud").

In *Hall v. Walter*, 969 P.2d 224, 230 (Colo. 1998), the supreme court noted that in *People ex. rel. Dunbar v. Gym of America, Inc.*, in upholding the constitutionality of the CCPA, the court had observed:

> The right to regulate in the name of the police power is especially clear when the legislative intent is to regulate commercial activities and practices which, because of their nature, may prove injurious, offensive, or dangerous to the public.

969 P.2d 224, 230, quoting *Dunbar*, 493 P.2d 660, 667 (Colo. 1972).

In *Hall*, the court adopted the following five-factor test for a private cause of action under the CCPA:

> [W]e now hold that for purposes of a private cause of action pursuant to section 6-1-113, 2 C.R.S. (1998), "any person" means a person… who establishes (1) that the defendant engaged in an unfair or deceptive trade practice; (2) that the challenged practice occurred in the course of the defendant's business, vocation, or occupation; (3) that it significantly impacts the public as actual or potential consumers of the defendant's goods, services or property; (4) that the plaintiff suffered injury in fact to a legally protected interest; and (5) that the challenged practice caused the plaintiff's injury.

969 P. 2d at 235. In doing so, the *Hall* Court harmonized its own CCPA jurisprudence with the Washington Supreme Court's conclusion in *Hangman Ridge Training Stables, Inc. v. Safeco Title Insurance Company*, 105 Wash. 2d 778, 719 P.2d 531 (Wash. 1986). 969 P.2d at 234-235. The *Hall* test has been followed consistently by the Colorado courts in the intervening years, the vast majority of reported cases arising in the context of private causes of action under the CCPA, rather than enforcement actions brought by the Attorney General. See, e.g., *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 150 (Colo. 2003); *Crowe v. Tull*, 126 P.3d 196, 208-209 (Colo. 2006); *Park Rise Homeowners Association, Inc. v. Resource Construction Co.*, 155 P.3d 427, 434-435 (Colo. App. 2006); *Colorado Coffee Bean, LLC v. Peaberry Coffey, Inc.*, 251 P.3d 9 (Colo. App. 2010); *General Steel Domestic Sales, LLC v. Hogan & Hartson, LLP*, 230 P.3d 1275, 1279 (Colo. App. 2010); *Hildebrand v. New Vista Homes II, LLC.*, 252 P.3d 1159, 1169-1170 (Colo. App. 2010); *One Creative Place, LLC v. Jet Center Partners, LLC*, 259 P.3d 1287, 1290 (Colo. App. 2011).

In evaluating claims under the CCPA, courts review advertisements "as a whole" to determine whether an advertisement is misleading. *State ex. rel. Suthers v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 12 (Colo. App. 2009); *see also Am. Homes Prods. Corp. v. F.T.C.*, 695 F.2d 681, 687 (3d Cir. 1982) ("'[T]he tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context.' The impression created by the advertising, not its literal truth or falsity, is the desideratum.") (internal citation omitted).

Furthermore, in civil enforcement actions, the State need not prove actual injury to any particular consumers, consistent with the CCPA's broad remedial and deterrent purposes. *See May Dep't Stores Co.*, 863 P.2d at 973; *see also People v. Shifrin*, 342 P.3d 506, 515 (Colo. App. 2014) (recognizing that the State need not prove actual consumer injury to establish a violation of the CCPA). The Colorado Supreme Court concluded that a false representation must either induce a party to act, refrain from acting, or have the capacity or tendency to attract consumers. *Rhino Linings*, 62 P.3d at 146. In *People ex rel. Dunbar*, the Supreme Court noted that deceptive trade practices can induce parties to act on the basis of false or misleading information:

> When consumers are induced to purchase inferior merchandise or services as a result of misleading solicitations, when the public is attracted to business concerns on the basis of statements falsely announcing the existence of products which are in fact non-existent, and when citizens discover that the product they have acquired carries with it a set of obligations which they did not intend to purchase, it is clear that the state's general and financial welfare is thereby aggrieved.

Dunbar, 493 P.2d at 667.

The *Rhino Linings* Court further held that a misrepresentation is actionable when it is made "either with knowledge of its untruth, or recklessly and willfully made without regard to its consequences, and with an intent to mislead and deceive the plaintiff." *Rhino Linings*, 62 P.3d at 146, citing *Parks v. Bucy*, 211 P. 638, 639 (1922). *See also Brown v. Linn*, 115 P. 906, 908 (1911) ("These misrepresentations related to the subject of the transaction, and were of such a character that they would naturally induce [plaintiff] to make the exchange, and were followed by the exchange.").

"[W]hen advertising is false, disclosures will not eliminate the underlying deception." *May Dep't. Stores Co.*, 863 P.2d at 979. As the *May* court reasoned, "Disclaimers can be ineffective and may be disregarded by a consumer who is confused by the disclosure." *Id.* Moreover, the problems caused by a false statement cannot be cured by providing a disclosure to the very consumers the advertiser attracted through the false statement because the false statement has succeeded in garnishing interest, "regardless of whether the [advertiser] later provides enough information for an astute [consumer] to detect its misstatement." *ZPR Investment Management Inc. v. S.E.C.*, 861 F.3d 1239, 1250 (11th Cir. 2017).

Even when every representation in an advertisement is technically true, the advertisement can nevertheless constitute a deceptive trade practice. *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 188 (1948) ("Advertisements as a whole may be completely misleading although every

sentence separately considered is literally true. This may be because things are omitted that should be said, or because advertisements are composed or purposefully printed in such a way as to mislead."); *Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 322 (7th Cir. 1992) ("[E]ven literally true statements can have misleading implications.").

In order to prove its subsection (u) claim, the State must show (1) that the Defendants failed to disclose information concerning goods, services or property to consumers; (2) that the defendant knew this information at the time of the advertisement or sale of the goods, services or property; (3) that the non-disclosed information was material; and (4) that the Defendant failed to disclose this information with the intent to induce the consumer to enter into a transaction. C.R.S. 6-1-105(1)(u); *Warner v. Ford Motor Co.*, 2008 WL 4452338 *10 (D. Colo. Sept. 30, 2008).

Non-disclosed information is material if the consumer would not have purchased the goods, services, or property if the information had been disclosed. *Warner*, 2008 WL 4452338 *11. And it can be inferred that, in withholding the information, a company did so intending to sell more goods, services, or property. *Id.* at *13.

"The term *puffery* is used to characterize those vague generalities that no reasonable person would rely on as assertions of particular facts." *Alpine Bank v. Hubbell*, 555 F.3d 1097, 1106 (10th Cir. 2009) (emphasis in original). "Mere statements of opinion such as puffing or praise of goods by seller is no warranty. But while sellers have the right to exalt the value or quality of their own property to the highest point credulity will bear, any statements of value or of quality may be made with the purpose of having them accepted as of fact, and if so should be treated as representations of fact." *Park Rise Homeowners Ass'n v. Resource Constr. Co.*, 155 P.3d 427, 435 (Colo. App. 2006) (internal citations and quotations omitted). Statements of "existing facts or specific attributes" are not puffery. *Id.* at 436. "In determining whether a statement is puffery, the context matters. The relative expertise of the speaker and the listener can be a critical factor." *Alpine Bank*, 555 F.3d at 1106.

Statements like "more money," "a higher paying job" and "you can afford college," which are used in CollegeAmerica's advertisements and during the admissions process, are subject to measure and calibration. Because context matters, statements about making more money juxtaposed with specific wage figures or even wage ranges offers a level of specificity distinguishable from the broad statements at issue in *Alpine Bank* and *Park Rise*. Statements about specific job titles and job responsibilities are also subject to measure and calibration. The same goes for statements about making college affordable coupled with offers of credit during the admissions process.

2. Exemption/Preemption/"Safe Zone"

First, the Court concludes that there is no legal basis for excluding CollegeAmerica from the purview of the CCPA simply because it is a school. To do so would frustrate the broad remedial purpose of the Act. *Showpiece Homes* 38 P.3d 47, 53 (Colo. 2001) ("[I]t should ordinarily be assumed that the CCPA applies to the conduct [at issue]. That assumption is appropriate because of the strong and sweeping remedial purposes of the CCPA"). As the supreme court has noted, "Our cases have consistently applied the CCPA to advertising and marketing practices that fit within its tenets based on the applicability of the Act to the actions

alleged and without regard to the occupational status of the defendant." *Crowe v. Tull*, 126 P.3d 196, 202 (Colo. 2006) (finding that CCPA applies to advertising by attorneys).

Courts in other jurisdictions that have specifically addressed whether consumer protection laws apply to schools have confirmed that "purchasers of educational services may be as much in need of protection against unfair or deceptive practices in their advertising and sale as are purchasers of any other service." *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 474-75 (Minn. Ct. App. 1999) (nothing in the Minnesota Consumer Fraud Act or case law precludes application of the act to educational services provided by an educational institution); *Malone v. Acad. of Ct. Reporting*, 582 N.E.2d 54, 59 (Ohio Ct. App. 1990) ("Defendants' contention that the [Ohio] Consumer Sales Practices Act is not applicable because the legislature never intended it to apply to regulated professional schools is not well taken. The statute is applicable by its own terms. The school supplied services to consumers in a consumer transaction and plaintiffs have alleged facts of unfair or deceptive acts or practices . . . .").

Defendants have also raised C.R.S. § 6-1-106, which excludes certain conduct from the CCPA. The Colorado Supreme Court has recognized that "[t]he plain meaning of the exclusion section of the CCPA is that conduct *in compliance* with other laws will not give rise to a cause of action under section 6-1-106(1)(a)." *Showpiece Homes Corp. v. Assurance Co. of America*, 38 P.3d 47, 56 (Colo. 2001). "Conduct amounting to deceptive or unfair trade practices, however, would not appear to be 'in compliance' with other laws." *Id.* Section 6-1-106 is intended to avoid conflict between laws, not to exclude from the CCPA's coverage every activity that is regulated by another statute or agency. *Id.*

The Court notes that "preemption should be applied sparingly, to preserve state law . . . as much as possible." *State of N.D. v. Merchs. Nat'l Bank & Trust Co., Fargo, N.D.*, 634 F.2d 368, 382 (8th Cir. 1980) ("The Supreme Court has noted that state law which is preempted solely because of conflict with federal law should be invalidated 'only to the extent necessary to protect the achievement of the aims of the federal act'").

As the Colorado Court of Appeals has held, "[t]hree types of preemption may apply when federal law preempts a particular state statute: (1) direct or conflict preemption, which occurs when a state statute directly conflicts with a federal statute; (2) statutory or express preemption, which occurs when a federal statute expressly states that it preempts state laws; and (3) field preemption, which occurs when federal law occupies a legislative field such that no room is left for state law to supplement it. *In re Marriage of Drexler & Bruce*, 315 P.3d 179, 182 (Colo. App. 2013).

"Under conflict preemption, a state law directly conflicts with [a federal law], and is thus preempted, when compliance with both state law and [the federal law] is impossible or when the state law stands as an obstacle to accomplishing the purposes and objectives of [the federal law]." *Id.* at 183 (citing *Boggs v. Boggs*, 520 U.S. 833, 844, (1997) ("In the face of [a] direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand.")).

Defendants contend that applying the CCPA to the misleading use of national wage data, *i.e.*, BLS averages, would conflict with 34 CFR § 668.6(b)(1)(i). That regulation provides, in relevant part, as follows:

> (1) For each program offered by an institution under this section, the institution must provide prospective students with—
>
> (i) The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site. If the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O*NET crosswalk at http://online.onetcenter.org/crosswalk/ is more than ten, the institution may provide Web links to a representative sample of the identified occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program.

34 CFR § 668.6(b)(1)(i).

Here, there simply is no conflict. Defendants can comply with section 668.6(b)(1)(i) and also comply with the CCPA by (1) providing a link to the O*NET website in accordance with the regulation, and (2) not advertising national wage data, i.e. BLS data, in a false and misleading manner. The State does not allege, nor does the Court find, that providing links to the O*NET website as required by federal regulations is a violation of the CCPA. Rather, separate and apart from making the disclosures required by federal law, Defendants advertise national survey wage data – including non-governmental survey data. *See* Ex. 608 at 10 (citing the National Association of Colleges and Employers); Ex. 490 at 32, 47 (citing payscale.com and AIGA Salary Survey).

In other words, Defendants' advertisements include information beyond what was required by federal law by including data from the BLS and other publicly available sources. *See, e.g. Giles v. Ford Motor Co.*, 24 F.Supp.3d 1039, 1050 (D. Colo. 2014) (finding C.R.S. § 6-1-106(1)(a) is inapplicable where "while Ford complied with federal law and regulations, it went further than that in its advertisements and made claims about the Escape's fuel economy without disclosing that such claims were based on the EPA estimates.").

Defense expert Diane Jones testified that use of national averages, specifically the BLS wage data, was the "safe zone" prior to the DOE's promulgation of the Gainful Employment regulations in 2014 that required for-profit schools, including CollegeAmerica, to disclose, on a program-level basis, the median wages of their schools' graduates (effective July 1, 2017). Ex. R at 342:19-25, *testimony of Diane Jones*. Even though the federal regulations required CollegeAmerica to disclose its graduates' median wages as calculated by the DOE, the court's attention has not been drawn to any law or regulation that prohibits a school from reporting any other wage figure. *Id.* at 344:10-12, *testimony of Diane Jones*. The Court did not find Ms. Jones' reliance on unidentified sub-regulations for an alternative explanation persuasive.

There was also no credible evidence that the DOE has ever required or preferred schools to use BLS data in their advertisements. In fact, in at least one context in evidence, the DOE has been critical of the use of BLS earnings to represent a degree program's outcomes, noting that

"BLS earnings data do not distinguish between graduates of excellent and low-performing programs offering similar credentials." Ex. 974 at 4.

The DOE's gainful employment regulations themselves recognized that government data can be used in a manner that is misleading. *See* 34 CFR § 668.74(e) ("Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning . . . Government job market statistics in relation to potential placement of its graduates."). Thus, the court concludes that there is no "safe harbor" as a matter of law for Defendants merely because their advertisements rely on government data.

The Court further concludes that neither the HEA nor the DOE's regulations expressly preempt state attorneys general from enforcing their state consumer protection laws and petitioning state courts for injunctive relief that may be more stringent than federal regulations. Nor is there field preemption in this case. In the official Comments to the rulemaking adopting the Gainful Employment Rules, the DOE stated:

> We agree with the commenters who believed that the States should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by some postsecondary institutions. For an institution to be considered to be legally authorized to offer postsecondary programs, a *State would be expected to handle complaints regarding not only laws related to licensure and approval to operate but also any other State laws including, for example, laws related to fraud or false advertising. We agree that a State may fulfill this role through a State agency or the State Attorney General as well as other appropriate State officials.*

Program Integrity Issues, 75 Fed. Reg. 66832, 66865 (Oct. 29, 2010) (emphasis added). [6]

The Court is also not persuaded that CollegeAmerica is exempt from liability under the CCPA because it is an educational institution that happens to be regulated and subject to review by the other two legs of the regulatory triad, ACCSC and DPOS.

An accrediting body is not an "arm of government." It is on "the same footing as any private corporation organized for profit or not" in terms of constitutional limits applicable to government. *Parsons Coll. v. North Cent. Asso. of Coll., etc.*, 271 F. Supp. 65, 70 (N.D. Ill. 1967). "[T]he overwhelming majority of courts who have considered the issue have found that accrediting agencies are not state actors." *Hiwassee College, Inc. v. S. Ass'n of Colleges & Sch.*,

[6] The regulations rescinding the Gainful Employment rules have continued this approach:

> The Department will continue to employ its usual fraud prevention mechanisms, such as program reviews, to identify institutions that are not abiding by the title IV rules and regulations. In addition, *it will continue to rely on States to execute their consumer protection functions* and accrediting agencies to evaluate program quality so that the regulatory triad will retain its importance and shared responsibility in the oversight of institutions of higher education.

Program Integrity: Gainful Employment, 84 Fed. Reg. 31392, 31403 (July 1, 2019)(emphasis supplied).

531 F.3d 1333, 1335 (11th Cir. 2008). ACCSC reviews the catalog and the enrollment agreement under its accreditation standards, not under state law. *See Michale McComis Deposition Designation* at 318:7-20. There is no evidence that ACCSC engages in any exercise to determine if these materials comply with state law. *See generally id.*

To the extent ACCSC did address conduct relevant to the Attorney General's claims, this Court need not afford ACCSC any deferential treatment when assessing whether CollegeAmerica violated state consumer protection laws. Dr. McComis testified that ACCSC does not enforce state or federal law and if a member school is found to be failing or out of compliance with federal or state law, ACCSC will consider those facts. *See Michale McComis Deposition Designation* at 309:14-310:15. He went on to state that in order for a school to maintain eligibility for accreditation, it must "[m]aintain all necessary authorizations from the state in which it operates. And maintain compliance with all applicable local, state, and federal requirements." *Id*.

While Defendants contend they relied on ACCSC's silence to represent tacit approval of their advertising and job placement classifications, there was no credible evidence of any basis for such reliance. Dr. McComis testified, "But just so we're clear, the absence of something in a team summary report is not always, or can't be construed in all instances a tacit finding of compliance." *Id.* at 320:3-6. And it seems that Defendants only relied on ACCSC's silence when it suited them. When the accreditor affirmatively identified problems, the correspondence from Defendants suggests the school continued to engage in the flagged behavior. *Compare* Ex. 6 at 14,17 *with* Ex. 920; *compare* Ex. 621 at 3 *with* Ex. 347 and Ex. R at 13:19-15:20, *testimony of Susie Reed*; *compare* Ex. 2087 at 9 *with* Ex. 222 at 2 and Ex. J at 173:1-174:8, *testimony of Eric Juhlin*. Importantly, the Court notes once again that ACCSC relies heavily on the information and data reported by CollegeAmerica. The accreditor sets out the standards and the burden rests with the school to demonstrate compliance. *Id.* at 113:5-115:2. ACCSC has not conducted any secret shopping of CollegeAmerica's admissions or financial aid processes. *Id*. at 311:11-16.

With respect to the DPOS, the Private Occupational Schools Act of 1981, through which the DPOS was created (C.R.S. § 12-59-101 *et. seq*), contemplates that DPOS-regulated schools must abide by other state laws. See § 12-59-106(1)(j) ("…[T]he board shall observe and require compliance with at least the following minimum standards for all schools: That the school is maintained and operated in compliance with all pertinent ordinances and laws ….").

Defendants' witness, Voni Oerman, a former DPOS employee who, from time to time, dealt with CollegeAmerica, testified that she did not enforce the CCPA when she was at the DPOS, and that she was not trained to investigate violations of the CCPA. Ex. Q at 80:5-15, *Voni Oerman Deposition Designation* (read live). There is no evidence that DPOS reviewed and approved CollegeAmerica's catalog and enrollment agreement to make sure they adequately informed students. *Id*. at 16:17-17:1; Ex. 3499. There is also no evidence that DPOS evaluated CollegeAmerica's admissions process in the same way the Attorney General did in her investigation. Ex. Q at 52:22-53:5, 80:5-15, *Voni Oerman Deposition Designation* (read live). DPOS did not review CollegeAmerica's job placement and wage information at all to ensure the school's advertisements were true and accurate. *Id*. at 78:5-79:2.

3. Significant Public Impact

The parties contest whether the Attorney General is obligated to satisfy the third prong of the *Hall* test, that is, prove that the alleged deceptive trade practices have a significant impact on the public as actual or potential consumers of Defendant's goods, services or property in order for there to be liability. In its order dated October 15, 2017, issued two days before the start of the trial in this case, this court determined that the State was not required to demonstrate a significant public impact, and the case was tried on that basis.

However, there have been two critical developments with respect to this issue since the trial concluded. First, in *State ex. rel. Weiser v. Castle Law Group, LLC,* 2019 COA 49, 2019 WL 1474475 (Colo. App. 2019), the court of appeals concluded that, in an enforcement action under the CCPA, the Attorney General was required to make such a demonstration, confirming the ruling of Judge Hoffman of the Denver District Court to that effect. Second, and shortly following the court of appeals opinion, the General Assembly enacted new legislation providing that the State is, in fact, not required to demonstrate a significant public impact in an enforcement action under the CCPA. H.B. 19-1289, 72nd Gen. Assemb., 1st Sess. (Colo. 2019). Thus, the question becomes whether this court's analysis is controlled by the court of appeals opinion in *Castle,* requiring a demonstration of significant public impact, or by the newly-amended statute, which does not require such a demonstration.

a. Common Law Development

To answer this question, it is important to briefly review the legal analysis through which the significant public impact element of the *Hall* test, which was an action between private parties, was determined by the court of appeals in *Castle* to be applicable to an enforcement action brought by the Attorney General. By the time it adopted its five-factor test in the context of a private suit under the CCPA in *Hall*, the supreme court had long held that, in enforcement actions brought by the Attorney General, "the CCPA does not require proof of an actual injury or loss before a civil penalty can be awarded." *May, supra,* 863 P.2d at 973. As the *May* Court explained:

> Because the CCPA's civil penalty requirement is intended to punish and deter the wrongdoer and not to compensate the injured party, the CCPA is intended to proscribe deceptive acts and not the consequences of those acts. In *People ex rel Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 113, 493 P.2d 660, 668 (1972), the court stated:
>
> > [I]t is in the public interest to invoke the state's police power to prevent the use of *methods* that have a *tendency or capacity* to attract customers through deceptive trade practices…. The Colorado Consumer Protection Act is an outgrowth of this conclusion….

> (Emphasis added). Therefore, as the court of appeals pointed out, the CCPA does not require proof of an actual injury or loss before a civil penalty can be awarded. *May Dep't Stores Co.,* 849 P.2d at 802. In order to effectuate the broad remedial relief and deterrence purposes, the CCPA does not require proof of actual injury.

863 P.2d at 972-973. [7]

Thus, as the *Hall* court noted regarding the fourth and fifth elements of its test,

> [i]t is these final two elements, required under section 6-1-113, that distinguish a private CCPA action from a district attorney or an attorney general's action for civil penalties under section 6-1-112…. the latter requires no showing of either actual injury or causation.

969 P.2d at 236. In analyzing this language, the court of appeals in *Castle,* 2019 COA 49, ¶ 108, 2019 WL 1474475 *14, held as follows:

> So, although the supreme court did not say so directly, it implied that the State, in the form of an attorney general's action, must prove the first three elements to assess civil penalties under section 6-1-112. And, to the extent that the above-quoted material is dicta, we find it persuasive. *See Winkler v. Shaffer*, 2015 COA 63, ¶18, 356 P.3d 1020.

Thus, in summary, when the court of appeals decided *Castle*, it forthrightly recognized that the determination as to whether the significant public impact element of the *Hall* test applied in an enforcement action brought by the attorney general was based upon an inference from the supreme court's opinion on an issue which was not presented by that case, since it was a private lawsuit under the CCPA.

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[7] In footnote 9, accompanying the text of the penultimate sentence above, 863 P.2d 973, n. 9, the *May* Court expanded upon its rationale as follows:

> If the CCPA required some consumer injury or involvement, the state would be forced to wait until consumers were victimized before it could seek complete relief. A policy of tolerating false advertising until a customer was actually injured would contradict the mandatory nature of the civil penalty required for each violation and would ignore the plain language and broad remedial purposes of the CCPA. According to one court: "A complainant need not prove consumer reliance to establish an unfair or deceptive practice. A claimant must prove that the conduct has the capacity or tendency to deceive." *State v. Ralph Williams N. W. Chrysler Plymouth, Inc*., 87 Wash.2d 298, 553 P.2d 423, 436-37 (1976), *appeal dismissed*, 430 U.S. 952, 97 S.Ct. 1594, [] (1977)(citations omitted).

b. Legislative Amendment

The legislation which eventually changed this result of *Castle* was actually introduced in the general assembly five days before the court of appeals issued its opinion. As originally introduced, the legislation addressed the significant public impact element as a matter of standing, which was the context in which the issue had arisen in *Hall*, in which the plaintiff had not actually purchased land from the defendant, but rather owned the land adjacent to the development over which the defendant developer had misrepresented to purchasers that they would have the right to travel in order to access their property. Thus, as introduced, the legislation sought to add a new subsection (4) to C.R.S. § 6-1-105 of the CCPA, by explicitly eliminating any public impact requirement with respect to either private causes of action or enforcement actions brought by the attorney general. H.B. 19-1289, 72nd Gen. Assemb., 1st Sess. (Colo. 2019)(as introduced); Section 1 of Exhibit B to Plaintiff's Motion for Determination of a Question of Law under C.R.C.P. 56(h), filed June 25, 2019 ("Question of Law Motion"). In an amendment adopted on the floor of the Senate, however, the legislation was narrowed to apply only to enforcement actions brought by the attorney general or a district attorney, and was relocated to that section of the statute applying explicitly and exclusively to such actions, C.R.S. § 6-1-103, rather than C.R.S. § 6-1-105. Senate Floor Amendment to HB 19-1289, Exhibit D to the Question of Law Motion. That amendment, which became a part of the final bill, provided unequivocally as follows:

> An action under this Article 1 brought by the attorney general or a district attorney does not require proof that a deceptive trade practice has a significant public impact.

H.B. 19-1289, 72d Gen. Assemb., 1st Sess. (Colo.2019), Exhibit A to the Question of Law Motion ("HB-1289").

c. Application of the Amendment

In order to determine whether the outcome of this issue is controlled by the court of appeals opinion in *Castle*, or the amendment to § 6-1-103 adopted in HB-1289, the court is obligated to engage in a multistep analytical process. First, the court must determine whether the amendment clarified the law or changed it. The test for making that determination is well-settled:

> Amendments to a statute either clarify the law or change it, *Douglas County Bd. of Equalization v. Fid. Castle Pines, Ltd*., 890 P.2d 119, 125 (Colo. 1995), and there exists a presumption that, by amending the law, the legislature intends to change it. *Corsentino v. Cordova*, 4 P.3d 1082, 1091 (Colo. 2000). This presumption can be rebutted, however, by a showing that the legislature only meant to clarify an ambiguity in the statute by amending it. *Id*. If an amendment clarifies the law, the law then remains unchanged. *People v. Covington*, 19 P.3d 15, 21 (Colo. 2001). Accordingly, to determine whether an amendment changed the law or merely clarified it, we look to the legislative history surrounding an

> amendment, we consider the plain language used by the General Assembly, and we determine whether the provision was ambiguous before it was amended.

Academy of Charter Schools v. Adams County School Dist. No. 12, 32 P.3d 456, 464 (Colo. 2001). Thus, if the court concludes that a legislative amendment is merely a clarification of existing law, rather than an actual change, the law is deemed to remain unchanged, and the court may apply the law, as clarified by the amendment, even to transactions which occurred before its enactment. In fact, "subsequent clarification of ambiguous legislation is one accepted aid to the discovery of legislative intent," *Frank M. Hall & Co. v. Newsom,* 125 P.3d 444, 451 (Colo. 2005), "especially where the amendment was adopted soon after the interpretive controversy arose and was for the purpose of making plain what the legislation had been all along." *Leggett & Platt, Inc. v. Ostrom*, 251 P.3d 1135, 1145 (Colo. App. 2010).

If, however, the court concludes that the legislature intended to change the statute, in order to apply the amendment to transactions which occurred before it was enacted, the court must inquire whether the legislature intended it to apply retroactively, or merely prospectively. As the supreme court has explained,

> Legislation can be applied "prospectively," "retroactively," or "retrospectively." Legislation is applied prospectively when it operates on transactions that occur after its effective date, and retroactively when it operates on transactions that have already occurred or rights and obligations that existed before its effective date.

Ficarra v. Dept. of Regulatory Agencies, Div. of Ins., 849 P.2d 6, 11 (Colo. 1993), citing 2 Norman J. Singer, *Sutherland Statutory Construction* § 41.01, at 337 (4th ed. 1976). Once again, the courts apply a presumption to focus this analysis:

> In Colorado, "[l]egislation is presumed to have prospective effect unless a contrary intent is expressed by the general assembly." *Riley v. People*, 828 P.2d 254, 257 (Colo. 1992); *accord People v. Fagerholm*, 768P.2d 689, 692 (Colo. 1989)("legislation may be given retroactive effect if the statute indicates a clear legislative intent to achieve such… application" and if such application does not impair vested rights)[.]

Ficarra, 849 P.2d at 13. While "[i]n order to overcome the presumption of prospectivity, the statute must reveal a clear legislative intent of retroactivity…, express language of retroactive application is not required for courts to find such intent." *In Re Estate of DeWitt*, 54 P.3d 849, 854, citing *Ficarra,* 849 P.2d at 14.

Finally, the retroactive application of a statute requires the court to consider a matter of constitutional dimension. "[L]egislation that is retroactive in its application is not necessarily unconstitutional, whereas legislation that is also retrospective in its application is

unconstitutional," pursuant to Colo. Const., art II, § 11 ("No…law… retrospective in its operation… shall be passed by the general assembly.") A piece of legislation is unconstitutionally retrospective if it either "(1) impairs a vested right, or (2) creates a new obligation, imposes a new duty, or attaches a new disability." *Estate of DeWitt, supra,* at 855. However, even if the court finds that the retroactive application of a statute impairs a vested right, that alone is not dispositive as to its retrospectivity, and may be balanced against the public interest in the statute. *Id.* As the *Estate of DeWitt* Court noted,

> [W]e have held that a vested right, while an important consideration in our determination regarding retrospectivity, may be balanced against public health and safety concerns, the state's police powers to regulate certain practices, as well as other public policy considerations.

54 P.3d at 855. As to the second prong of this test, that is, whether the amendment creates a new obligation, imposes a new duty, or attaches a new disability "with respect to 'transactions or considerations already passed,' the application of the statute is not rendered retrospective 'merely because the facts upon which it operates occurred before the adoption of the statute.'" *Id., citing City of Greenwood Village v. Petitioners for the Proposed City of Centennial,* 3 P.3d 427, 445 (Colo. 2000).

d. Analysis

(1) Clarification or change?

The Court must first determine whether the amendment adopted in HB-1289 amounted to a clarification or change in the law. The court must presume that, by amending the statute, the legislature intended to change the law, rather than merely clarify it. However, this presumption is rebuttable, and the court must consider the legislative history of the amendment, the plain language used by the General Assembly, and whether the provision was ambiguous before it was amended.

As noted previously, it is important to remember that the significant public impact requirement was adopted in a supreme court case involving private parties, *Hall v. Walter, supra,* and was derived from the Washington Supreme Court's interpretation of its state statute on the same subject. The phrase "significant public impact" nowhere appeared in the CCPA interpreted by the *Hall* court. Thus, it was not the legislature's own words or even its own concept that it was amending by enacting HB-1289, but rather a holding by the co-equal branch of government charged with interpreting legislation. Moreover, prior to *Castle,* no Colorado appellate court had explicitly considered, let alone decided, whether the significant public impact requirement of the *Hall* test applied in an enforcement action brought by the Attorney General, as distinct from a private litigant.

These circumstances were cited with frequency during the legislature's consideration of HB-1289. In a hearing before the House Judiciary Committee on April 9, 2019, the House sponsor of the legislation, Representative Mike Weissman, noting that the significant public

impact requirement was not an element that the current legislature's predecessors had agreed to, but rather a "judicial creation" from 1998 (*Hall*), and characterized it as "contrary to the very spirit and intent of the Consumer Protection Act." Representative Weissman stated the purpose of the bill's elimination of the significant public impact requirement was to "prevent broad harm from happening to the consumer public before it happens or at the very least to be able to nip it in the bud." Hearing on HB 19-1289, House Judiciary Committee, 72nd Gen. Assemb., 1st Sess. (April 9, 2019) (statement of Rep. Mike Weissman).

In a hearing before the Senate Judiciary Committee on April 24, 2019, the Senate sponsor, Senator Foote, also recited the foregoing genesis of the significant public impact requirement, noting that the 1998 case had "pretty much put it in" the CCPA and that it "created a situation where [the Attorney General] would have to …sit back and wait to see if… more people who would be victimized before they could bring an action." Hearing on HB-1289, Senate Judiciary Committee, 72nd Gen. Assemb., 1st Sess. (April 24, 2019) (statement of Sen. Mike Foote). No witness who testified either for or against the bill in either legislative committee hearing believed that the significant public impact requirement should be applied to actions brought by the Attorney General or a district attorney, although many were opposed to the original bill's elimination of the requirement for private litigants. Indeed, in an amendment offered on Second Reading in the Senate, which eventually became a part of the adopted legislation, the provision was moved to that section of the statute referring to the concurrent enforcement responsibility of the Attorney General and district attorneys, C.R.S. §6-1-103, and made clear that such an action "does not require proof that a deceptive trade practice has a significant public impact." "A most basic resource for determining legislative intent is a discussion which takes place in hearings before House and Senate committees concerning the enactment of legislation." *People in Interest of G.W.R.*, 943 P.2d 466, 468 (Colo. App. 1997). Thus, the final adopted legislation preserved the significant public impact requirement in a private action brought under the CCPA, as *Hall* had held, but clarified that the requirement did not apply to an action brought by the Attorney General or a district attorney. In summary, HB-1289 as adopted did not change the holding of *Hall* with respect to private litigants, but simultaneously clarified that that holding did not apply to the Attorney General and district attorneys.

The plain language utilized by the General Assembly accomplished its goal of clarifying that the significant public impact requirement should not apply to actions brought by the Attorney General and district attorneys, but rather should apply to private litigants only. This language was amended from the original language of the bill as introduced, which would have eliminated the significant public impact requirement with respect to both species of litigants.

The final factor the court must consider is whether the provision was ambiguous before it was amended. If one interprets this factor as strictly a matter of the legislature's own words, the conclusion is indisputable. Again, there was no pre-existing legislative version of the "significant public impact" requirment, it being entirely a judicial gloss. Neither the phrase, nor its linguistic equivalent, appeared in the original enactment of the CCPA. The Colorado appellate courts have frequently lamented the fact that, although it is well understood that the CCPA was adopted in 1969 from the Uniform Deceptive Practices Act ("UDPA"), there is virtually no legislative history, *see, e.g.*, *May, supra,* 863 P.2d 967, 973, n. 9., from which courts might analyze whether

something akin to a significant public impact requirement was contemplated by the enacting legislature, even though not explicitly included.

If, on the other hand, one interprets the pre-existing ambiguity factor as a matter of not only the legislature's own words, but also any judicial interpretations thereof, from the standpoint of the 72nd General Assembly which enacted HB-1289, the intended scope and effect of the significant public impact requirement was decidedly ambiguous. Once again, *Hall* was decided in 1998, and involved private litigants, not the Attorney General. Indeed, the preamble to the court's adoption of the five factor test read "we now hold that *for purposes of a private cause of action pursuant to section 6-1-113, 2 C.R.S. (1998).* …" *Hall*, 969 P.2d at 235 (emphasis supplied). Moreover, in harmonizing the significant public impact requirement it adopted from the Washington case of *Hangman Ridge* with Colorado law, the court relied primarily upon its own jurisprudence in which it had repeatedly recognized that the CCPA focused upon the impact of deceptive trade practices on the public, and that "a more precise reading of the statute's function requires an impact on the public as consumers of the defendant's 'goods, services or property.' § 6-1-105(a)." *Id.*, at 234. Thus, the only statutory grounding of the significant public impact requirement was that lone 4-word phrase in C.R.S. §6-1-105. Further, as of the date of the introduction of HB-1289 on March 29, 2019, no Colorado appellate court had ever applied the significant public impact requirement to an enforcement action brought by the Attorney General. The General Assembly had apparently either concluded on its own that the significant public impact requirement already applied to enforcement actions, or anticipated that an appellate court might eventually so hold, and drafted the legislation as something of a preemptive strike. Judge Hoffman had applied the significant public impact requirement to the Attorney General's enforcement action at the trial court level in *Castle*, and less than a week after HB-1289 was introduced, the court of appeals affirmed him. However, and with all due respect, as of the legislature's consideration of the bill, the supreme court, the final judicial authority within the state of Colorado, had not explicitly ruled on the specific issue of whether the significant public impact requirement applied to a case brought by the Attorney General.[8] *See*, *Union Pacific R. Co. v. Martin*, 209 P.3d 185, 188 (Colo. 2009). Thus, the legislature's amendment to address the ambiguous scope of the significant public impact requirement is not indicative of a purpose to change the law. *Id*., at 189 (citing with approval 1A Norman J. Singer, *Sutherland Statutory Construction*, §22.30, at 373 (6th ed, 2000) for the proposition that "An amendment of an unambiguous statute indicates a purpose to change the law, whereas no such purpose is indicated by the mere fact of an amendment of an ambiguous provision.")

After careful consideration of the matter, the court finds that the presumption that HB-1289 changed the law has been rebutted, and that that legislation was a clarification of the law, rather than a change. "[S]ubsequent clarification of ambiguous legislation is one accepted aid to the discovery of legislative intent," *Frank M. Hall & Co. v. Newsom*, 125 P.3d 444, 451 (Colo. 2005), "especially where the amendment was adopted soon after the interpretive controversy arose and was for the purpose of making plain what the legislation had been all along." *Leggett & Platt, Inc. v. Ostrom*, 251 P.3d 1135, 1145 (Colo. App. 2010). Although not dispositive, the 72nd General Assembly's understanding of the purpose and intent of the CCPA, and its predecessor's intent with respect to public enforcement thereof, is an aid to the discovery of

[8] Nor will the Supreme Court have an opportunity to do so in *Castle*. It denied the State's Petition for Certiorari in an order dated February 24, 2020. *State of Colorado v. The Castle Law Grp., LLC, et al*, 2019 SC 325.

legislative intent. The fact that the amendment occurred soon after the interpretive controversy arose in the form of the district court and ultimately the court of appeals rulings in the *Castle* case, the court concludes that the amendment was for the purpose of making plain what the legislation had been all along. Accordingly, the court will apply amended C.R.S. § 6-1-103 to the facts of this case.

(2) Retroactive or Retrospective?

Because the court doubts that this Order will be the last word on this issue, it will also consider whether, even assuming HB 19-1289 represents a change in the law, it is proper to apply that amendment retroactively.

In order to overcome the presumption of prospective application only, the court must find a clear indication that the legislature intended otherwise. The language of the legislation itself is something of a mixed bag on this score. On the one hand, Section 5 of HB-1289 makes clear that it intends that Sections 2 and 3 of the Act would be prospective only, that is "apply to civil actions filed on or after the effective date of this act," while Section 4 is explicitly potentially retroactive, that is, that it would apply "to judgments entered into on or after the effective date of this act." However, Section 5 is silent as to the applicability of Section 1 of the bill, which contains the amendment at issue. As introduced, Section 1, which contained the original version of the amendment phrased in terms of standing, was made prospective only by Section 5, but the legislature amended it to be silent on the issue as enacted. Thus, the legislature was decidedly less than clear as to whether the relevant provision was to be prospective only or retroactive.

Thus, the court must consider whether the legislature otherwise clearly communicated its intent that the statute be applied retroactively. In this regard, it is important to recall, at the risk of sounding like a broken record, that the significant public impact requirement was entirely a judicial gloss imposed by the Supreme Court in *Hall*. Put another way, the very first time the phrase "significant public impact" appeared in the CCPA was when HB-1289 became effective on May 23, 2019, and that was for the singular purpose of clarifying that it was not a requirement in a case brought by the Attorney General or a district attorney, as distinct from a private party. "The legislature is presumed to be aware of the judicial precedent in an area of law when it legislates in that area," *Vaughan v. McMinn*, 945 P.2d 404, 409 (Colo. 1997), and as of the date of the introduction of HB 1289, no Colorado appellate court had held that *Hall's* significant public impact requirement applied in an enforcement action brought by the Attorney General. Thus, as originally introduced, the legislation would have undone the result in *Hall* with respect to private litigants, as well as preempted the possibility that its significant public impact requirement would eventually be imposed on the Attorney General by court interpretation. Again, five days after HB-1289 was introduced, the court of appeals decided *Castle*. Shortly thereafter, the legislature amended HB-1289 to change the result of *Castle*, but not of *Hall*. The court believes that this chronology of events in the drafting and revision of HB-1289 is critical to an understanding of the legislative intent behind it. "The legislative history of a statute, including successive drafts of a bill, *Haines v. Colorado State Personnel Board*, 39 Colo. App. 459, 566 P.2d 1088 (1977), may prove helpful in determining the legislative intent." *Three Bells Ranch Associates v. Cache La Poudre Water Users Assoc.*, 752 P.2d 164, 172 (Colo. 1988). The legislature remained firm in its determination to clarify its original intent that the Attorney

General need not demonstrate any particular public impact, despite the intervening decision in *Castle,* although it was somewhat less than explicit about that intent.

The court also concludes that the retroactive application of HB-1289 would not be unconstitutionally retrospective. Specifically, the court finds that the retroactive application of the amendment to C.R.S. §6-1-103 enacted in HB-1289 neither impairs a vested right, nor creates a new obligation, imposes a new duty, or attaches a new disability." *Estate of DeWitt, supra,* at 855. The fact that *Hall* was a case between private parties, and its *dicta* regarding cases brought by the Attorney General did not even explicitly refer to its newly adopted significant public impact factor (as opposed to the "fourth and fifth factors" pertaining to causation and damages as a matter of the standing analysis) makes it a very thin read upon which to conclude that CollegeAmerica had some species of vested right to harm Colorado consumers with impunity as long as there was no significant public impact. To so hold would be violative of the principle which has been recognized ever since *May, see* n. 7, *supra,* and which was reaffirmed in the legislative committee hearings associated with the adoption of HB 1289.

Accordingly, the court determines that the retroactive application of HB-1289 is not unconstitutionally retrospective.

4. Remedies

This Court's jurisdiction is based upon C.R.S. §§ 6-1-103 and 110, which put no geographic limitations on the Court's authority apart from the requirement that a portion of the deceptive trade practices must have taken place in Colorado. The CCPA's penalties provision in particular is directed not at compensating injured consumers, but at punishing the wrongdoer. *May Dep't Stores Co. v. Woodard*, 863 P.2d 967, 972 (Colo. 1993). Moreover, the CCPA authorizes restitution for "any person injured by means of any" deceptive trade practice and disgorgement of "any unjust enrichment by *any* person through the use or employment of any deceptive trade practice." § 6-1-110(1) C.R.S.

Defendants operate CollegeAmerica campuses in Colorado and advertise within the state. *See, e.g*. Ex. H at 7:14-19, *testimony of Carl Barney*; Ex. S at 22:6-9, *testimony of Eric Juhlin*; Ex. 750 at 1. Defendants Barney and Juhlin have developed a business model that requires CEHE's campuses to uniformly apply policies and procedures authorized by them. Ex. H at 10:13-22, 11:3-11, *testimony of Carl Barney*; Ex. S at 110:21-111:18, *testimony of Eric Juhlin*; *see also* Ex. 425 at 2 (**"Failure to follow this Procedure Directive will incur penalties up to and including termination of employment**." (emphasis in original).

The available remedies in a CCPA law enforcement action are designed to serve the Act's remedial and deterrence purposes. *See Western Food Plan, Inc. v. District Court*, 598 P.2d 1038, 1041 (Colo. 1979) (broadly interpreting the restitution remedy); *May Dep't Stores Co.,* 863 P.2d at 973, 978.

C.R.S. §6-1-110(1) provides as follows:

> (1) Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105..[she] may apply

> for and obtain… a temporary restraining order or injunction, or both,… prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

The remedial authority set forth in section 6-1-110(1) "must be read in light of the broad legislative purpose to provide prompt, economical, and readily available remedies against consumer fraud." *Western Food Plan, Inc.*, 598 P.2d 1041. The CCPA provides the Court "considerable discretion in entering orders and judgment." *In re Jensen*, 395 B.R. 472, 495 (Bankr. Colo. 2008).

As the Supreme Court observed in *May Dept. Stores Co. v. State ex. rel. Woodard*, 863 P.2d 967, 977 (Colo. 1993):

> An injunction is an extraordinary and discretionary equitable remedy which is available when there is no adequate remedy at law, or when authorized by statute. An injunction is intended to prevent future harm. The CCPA allows the trial court to enjoin fraudulent activity. § 6-1-110, 2 C.R.S. (1992). Appellate courts in trade regulation cases have a duty to ensure that the decree fashioned one point by the trial court will effectively redress and prevent future violations. Both injunctions and disclosure requirements can be adequate and have been held to be accepted vehicles to prevent deceptive advertising [citations and footnotes omitted].

Even if Defendants discontinued certain of their practices, there is still a need for injunctive relief in this case and this Court has the authority to enter such relief. In *May Dept. Stores Co.*, the Colorado Supreme Court stated that "[c]essation or modification of an unlawful practice does not obviate the need for injunctive relief to prevent future misconduct. 863 P.2d at 979 n.24 *(citing Old Homestead Bread Co. v. Marx Baking Co*., 117 P.2d 1007, 1010 (1941)). According to the United States Supreme Court: "It is the duty of courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment [of the unlawful practice] seems timed to anticipate suit, and there is probability of resumption." *United States v. Oregon State Medical Soc*., 343 U.S. 326, 333 (1952).

The Court finds and concludes that even though Defendants' misleading conduct with regard to X-ray, EMT, and Sonography training claims appears to have ceased, there is a strong possibility that Defendants' may resume this or similar behavior. This conclusion is based in part on Defendants' history with their accreditation body:

a. In 2008, ACCSC issued a letter to CollegeAmerica raising concerns about advertising language, including: "send this card right away and you can have a better paying job sooner than you think!" as may be construed as an "implied guarantee of employment," which is a violation of ACCSC standards. Ex. 274 at 6-7.

b. In response, CollegeAmerica stated that it would remove the phrase from future advertisements. Ex. 274 at 7.

c. In 2012, CollegeAmerica ran advertisements with the phrase: "you could have this ID badge and a better job making more money." See Ex. 222.

d. In 2009, ACCSC issued a letter to CollegeAmerica with concerns about advertising the names of specific employers. Ex. 2087 at 9.

e. Defendant Juhlin testified that Defendants stopped this practice in response to ACCSC, but in fact Defendants continued to advertise specific employers in 2012. *See* Ex. 222 at 2; Ex. J at 173:23-174:8, *testimony of Eric Juhlin*.

f. On October 8, 2015, ACCSC sent a letter to Eric Juhlin stating that "CEHE'S Advertisements include information regarding potential salaries, although a source is provided, may be misleading and not representative of the normal range and starting salaries in the occupation for which training is provided . . . such as the following: 'You Could be Earning 98% More Per Hour with the Right Degree.'" Ex. 6 at 5.

g. Defendants responded by stating that "[e]ffective May 2015, the college modified its policy and no longer puts any income or salary information into its advertisements." Ex. 6 at 14. Additionally, Defendants represented to ACCSC that "the College has eliminated the use of the '98% More Per Hour' headline from all advertising. Ex. 6 at 17.

h. Defendants currently advertise salary figures and phrases such as "Americans with four-year college degrees made 98 percent more an hour on average in 2013 than people without a degree" on its website. Ex. 920.

B. Application of the CCPA to the State's Claims

1. Wage and Employment Outcomes

C.R.S. § 6-1-105(1)(e) and (g)

585. The Court finds and concludes that Defendants engaged in a deceptive trade practice by knowingly making false and misleading representations about the potential wages and types of employment that a consumer can expect to obtain after completing a CollegeAmerica degree program. Defendants made these representations with the intent to induce consumers, many of whom were struggling financially, into a transaction involving tens of thousands of dollars, in the form of taking out federal student and EduPlan loans.

586. The Court also finds and concludes that Defendants represented in their advertisements and during the admission process that their programs of study were of a particular standard or quality in terms of wage and employment outcomes when they knew that they were of another.

587. Defendants had knowledge of what their graduates were earning. Defendants – and in particular Defendant Barney – require career services to collect and maintain this information and save it in a database. Ex. H at 43:14-22, 44:13-23, *testimony of Carl Barney*. Defendant Barney would also share the wage information with the other executives. *See* Exs. 499, 500.

588. The State's summary of Defendants' starting earnings data from the years 2006-2013 shows that, on the conservative assumption that the graduates were paid for forty hours per week, fifty-two weeks per year, the average annual earnings for CollegeAmerica graduates were in the low to mid twenty-thousands. Ex. 749.

589. Defendants advertised starting salaries for specific degrees that were in some cases double the starting earnings that Defendants' own records reflected for CollegeAmerica graduates with those degrees. *See* Ex. A at 133:9-15, 137:8-15, *testimony of LeAnn Lopez*; Exs. 889, 890 (computer science and accounting); Ex. 490 at 47; Ex. 749 (graphic arts).

590. Defendants' admissions consultants also quoted starting salaries that were far higher than the CollegeAmerica average. *See, e.g.,* Exs. 790.1; 764.5; 766.1; 781.5.

591. Most of Defendants' earnings representations were not directly tied to starting salaries. Defendants do not collect earnings information beyond the first job after graduating, so they had no basis for these advertisements.

592. Defendants took no steps to determine whether the national average earnings they advertised represented likely results for their graduates. *See, e.g.,* Ex. I at 278:20-279:1, 279:18-280:20, *testimony of Eric Juhlin.* All of the information available to Defendants pointed to the conclusion that CollegeAmerica graduates were unlikely to obtain the national average earnings that Defendants advertised, including the analysis and testing of their own expert, Jonathan Guryan.

593. Defendants knew that a much higher than average percentage of their students who utilized federal student aid – which is between 70% and 80% of the student population at the Colorado campuses – were struggling or unable to make their loan payments. *See* Exs. 865.1, 866.1, 867.1. For example, Defendants knew in 2013 that 38% of their students who exited school in 2009 defaulted on their federal student loans. Ex. O at 253:20-254:7, *testimony of Janna McKay*. The national average of defaults at that time was 14.7%. Ex. 29 at 3.

594. While Ms. McKay was able to bring the cohort default rate down by placing former students into deferment, forbearance, and income-based repayment, the low cohort default rate does not mean that students are repaying their loans. Indeed, to the extent students are using these programs, they are by definition making little or no progress in paying down their loans. Ex. O at 266:1-267:16, t*estimony of Janna McKay*; Ex. D at 98:21-99:2, 144:3-16, *testimony of Rohit Chopra*.

595. Defendants also knew in 2013 that more than 40% of their students who took out loans through the school's EduPlan loan were unlikely to make a single payment in the upcoming year. *See* Ex. D at 178:11-179:7, *testimony of Rohit Chopra.*

596. Defendants also knew that the population of students who typically enrolled at CollegeAmerica – racial minorities and women – earned less than the national average. Ex. R at 126:17-21, 127:12-128:1; *testimony of Diane Jones*; Ex. L at 75:18-76:5, *testimony of Jonathan* Guryan; Ex. 202 at 2.

597. Notwithstanding this knowledge, Defendants, since at least 2006, directed CollegeAmerica advertising and admissions to use national wage data that was much higher in most cases than CollegeAmerica's outcomes. *See, e.g.*, Ex. 501; Ex. H at 35:1-16, *testimony of Carl Barney*; Ex. 749. The wage representations typically included national wage averages. Even though the information was true in fact and sourced to the BLS web site or the U.S. Census Bureau, the advertisements and sales pitches during admissions, taken as whole, had the effect of leading prospective students to believe that CollegeAmerica's outcomes were commensurate with the national averages.

598. The advertisements used first person pronouns when referring to both the audience for the ad ("you" and "your"), and CollegeAmerica ("We" and "Us"). Ex. 608. The footnotes make reference to BLS and Census Bureau data, in purposely small font, but nowhere do the "Education Pays Off" and "The More you Learn the More You Earn" ads make explicit that the salaries referred to are based on national averages, rather than CollegeAmerica-specific data. To the uninitiated, a simple reference to a source of information, including "BLS" or the "Census Bureau," does not necessarily mean that the information provided is not CollegeAmerica-specific data. In fact, in the last paragraph of one of the footnotes on Ex. 608, it is stated "[f]or *more* information about *our* graduation rates, the median debt of students who completed the programs and other important information, please visit our website…" Ex. 608 (emphasis supplied). The statement that "more" information is available about "our" graduation rate, etc., on a website strongly implies that what is on the website is in addition to what has been presented in the ad, and it all pertains to CollegeAmerica.

599. Defendants knew that their graduates were not employed in jobs in their fields of study at the rate CollegeAmerica reported to its accreditor and disclosed to students. Ex. G at 33:11-23, *testimony of Greg Regan;* Ex. 17 at

93; Ex. 5. Defendants also knew that graduates of the school's Healthcare Administration degree program were not getting jobs related to the field and, instead, were working as medical assistants and CNA's – jobs that did not require a bachelor's degree and were not "entry level management" as represented in the catalog. *See* Exs. 812-816; Ex. 277 at 5-6; Ex. 234 at 13.

600. Defendants also trained admissions consultants to use a PowerPoint presentation that depicted certain jobs within the fields of study that students were simply not obtaining. *See* Ex. 230 at 81-90. This was most clearly evident in the fields of healthcare administration and graphic arts. Ex. F at 280:22-283:25, 284:22-285:24, *testimony of Jasmine Valencia*.

601. Defendants knew that representations about higher wages, earnings, better jobs, and high employment placement rates were material to students' decision to attend CollegeAmerica. *See e.g.* Ex. C at 256:19-257:4, *testimony of Laura Goldhammer*; Ex. N at 131:10-132:4, 217:24-25, *testimony of Kristy McNear*; Ex. O at 31:13-20, *testimony of Sharrie Maple*. Defendants further capitalized on this during admissions, telling prospective students specific high wages based on national data, that students would be able to double or triple their return on investment by attending CollegeAmerica, and that they would have no trouble repaying their student loans. *See* Ex. 764.5; Ex. 771.3; Ex. 788.2; Ex. 790.1.

602. The Court was not persuaded by the testimony of defense expert Dr. Howard Beales, who considered only a portion of Defendants' marketing scheme, those being its advertisements. In reaching his conclusions that Defendants' wage advertisements are not misleading, Dr. Beales did not consider whether the specific population of CollegeAmerica students would be more susceptible to high wage claims in advertisements about employment, even though such consideration is required by the FTC Policy Statement on Deception that he applied. *See* Ex. M at 150:6-155:11, *testimony of Howard Beales*. Nor did Dr. Beales consider Defendants' intent in advertising earnings, another factor required by the FTC Deception Statement. Ex. 942 at 3 and n.51. Instead, he adopted defense counsel's view and did not consider internal documents from the Defendants that illustrate their purpose and design to entice consumers with high wages. Ex. M at 162:12-163:11, *testimony of Howard Beales*; Exs. 570, 907.

603. During his testimony, Dr. Beales analogized the BLS wage data to gas mileage numbers used in automobile ads. He also testified that the message of the "Education Pays Off" and "The More You Learn, the More You Earn" ads is simply that "Education is good. We sell Education." In the court's judgment, these analogies actually bring into somewhat sharper focus the deceptive nature of the ads. The customer shopping for a new car is generally not interested in the nationwide average fuel efficiency of cars *like* the one he is interested in, but rather is interested in what the fuel efficiency of *that particular car* is. To the prospective student attracted by CollegeAmerica's

ads, the question is not whether education *in general* is good, but rather, *how good* is a CollegeAmerica education?

C.R.S. § 6-1-105(1)(u)

604. The Court finds and concludes that Defendants failed to disclose to prospective students the actual wages and jobs that CollegeAmerica graduates were finding. Given the materiality of money and employment to the typical CollegeAmerica student when deciding whether to enroll, Defendants' knowledge of that motivation, and the fact Defendants collect and maintain wage and employment information, Defendants could have – and should have – shared that information with prospective students. Several witnesses formally and currently associated with the admissions function at CollegeAmerica campuses made clear that the information regarding employment and wages is, in fact, available to consumers, but not right at the "point of sale," that being the admissions counselor's desk and computer. Instead, it is kept in a separate office, in career services, and it is entirely unclear why it is not available to admissions counselors to show prospective students.

605. The court concludes that Defendants withheld the true earnings information with intent to induce consumers to enroll. Defendants' knew that disclosing the true earnings would make potential students think twice about spending tens of thousands of dollars on a CollegeAmerica degree. Other aspects of the admissions process, including the emphasis on enrolling and "packaging" a prospective student with a financial aid package on the same day, is clearly designed to expedite the decision-making process, during which information regarding outcomes is likely to be lost in the shuffle.

606. No credible evidence or legal authority supports Defendants' claim that they withheld this information because federal law and/or their regulator forbade them from disclosing it, or that disclosing the information would subject them to litigation risk. Among other inconsistencies, the Court is unable to square this assertion with Defendants' additional claim that the career services department has this information readily available to consumers if a consumer asks for it. *See* Ex. C at 55:12-23, *testimony of Mary Gordy*.

2. Employment Placement Rates

C.R.S. § 6-1-105(1)(e) (g), and (u)

607. The Court finds and concludes that Defendants engaged in a series of deceptive trade practice by knowingly inflating employment rates of their degree programs and reporting and disclosing those inflated rates to ACCSC and prospective students in an effort to maintain CollegeAmerica's accreditation and induce students to enroll.

608. The Court also finds and concludes that Defendants represented on their web site, on postings at the campuses, and during the admission process that their

programs of study were of a particular standard or quality in terms of job placement outcomes when they knew that they were of another.

609. Defendants also falsely represented that their employment rates were calculated in accordance with ACCSC standards. The court concludes that Mr. Regan's testimony demonstrated that they clearly were not. Although his analysis occasionally bordered on the hypertechnical, the court is satisfied that it was much more in keeping with the ACCSC's requirements regarding documentation than was CollegeAmerica's actual practices.

610. The Court finds and concludes that Defendants were well aware and well-versed in their accrediting body's standards and guidelines, hiring a dedicated staff to monitor and report employment rates. See Ex. Q at 85:11-86:4, 115:11-25, 116:1-122:23, 156:4-158:18, *testimony of Susie Reed*. Yet, Defendants failed to follow ACCSC's Standards, including the Guidelines for Employment Classification, in numerous ways including failing to obtain proper documentation before reporting graduates as employed in field, reporting graduates as employed in field when they were actually employed in an unrelated occupation, and improperly classifying graduates as exempt/unavailable for employment.

611. Since 2009, ACCSC Standards have been clear that in order to report a graduate as employed in field Defendants were required to maintain verifiable documents that supported this classification. Ex. 17 at 93. In 2011, ACCSC implemented further documentation requirements that Defendants were required to meet in order to report graduates as employed in field. See Ex. 5. Defendants have engaged in considerable training about ACCSC's standards and guidelines, which begs the question why they did not follow the employment guidelines. *See* Ex. Q at 113:17-122:23, 186:19-187:3, *testimony of Susie Reed*.

612. Defendants' knowing failure to follow ACCSC Standards had the effect of substantially increasing their degree programs' employment rates, which were then disclosed to consumers. Ex. G at 33:11-23, 194:23-195:18, 197:12-198:4,198:13-199:1, 200:23-201:8, 203:18-204:3, 205:18-206:22, *testimony of Greg Regan;* Ex. Q at 266:14-23, *testimony of Susie Reed*. Defendants then used the inflated employment rates to induce consumers to enroll. Ex. 914 at timestamp 4:40-4:55; Ex. N at 234:25-235:5, *testimony of Vicky Barber*; *see also* Ex. 760.2; Ex. C at 65:11-66:4, *testimony of Mary Gordy*.

613. Similar to the reasons why Defendants' misrepresentations about wages and employment harmed consumers, here, too, false and misleading job placement rates had the effect of inducing consumers who wished to better their financial circumstances into enrolling at CollegeAmerica as opposed to another, possibly less expensive school, that did not misrepresent its outcomes.

614. With regard to the State's subsection (u) claim, with the intent of inducing students to enroll, Defendants withheld the material facts that their graduates were not

obtaining jobs in their fields of study and that Defendants did not follow ACCSC guidelines in calculating their employment rates.

3. EduPlan Makes College Affordable

C.R.S. § 6-1-105(1)(e) and (g)

615. The Court finds and concludes that Defendants knowingly made false and misleading representations about EduPlan in connection to making college affordable.

616. The Court also finds and concludes that Defendants represented in their advertisements and during the admissions process that EduPlan was of a particular standard or quality in terms of affordability when they knew that most students could not afford the loan. *See e.g.* Ex. 679 at 15, 23, 28, 45, 60; Ex. 679 at 15, 23, 28, 37, 45, 53, 60; Ex. 920.

617. Specifically, Defendants knew that the vast majority of borrowers were defaulting on their EduPlan loans. *See Les Marstella CID Designation* at 43:16-44:15; Ex. D at 178:11-179:7, *testimony of Rohit Chopra.* Defendants annually predicted write-offs of EduPlan as high as 40%. More than 80% of the loan records between 2010 and 2016 show late fees. According to Mr. Chopra, "that's a real indicia of immediate distress when you have that level of late fee assessment." *See* Ex. D at 178:11-24, *testimony of Rohit Chopra*. Students, after enrolling, frequently told financial aid planners that they could not afford the payments. *See* Ex. E at 897-15, *testimony of Krista Jakl*.

618. Yet since at least 2010, Defendants have advertised EduPlan as a reason why consumers should get a degree from CollegeAmerica, as a means to make college more affordable, and even to help re-establish credit. Ex. 678 at 8, 15, 24, 27, 40, 45, 47, 62; Ex. 679 at 7, 13, 15, 21, 23, 28, 37, 45, 53, 60, 72; *see also* Ex. I at 216:23-217:7, *testimony of Eric Juhlin*.

619. No evidence was presented that EduPlan helps reestablish a students' credit. To the contrary, there is evidence that EduPlan has harmed students' credit, Ex. 747, and that students – before they even leave school – are falling behind on their EduPlan payments. Ex. 754.

620. Defendants train their admissions and financial aid staff to minimize the student's obligations under the EduPlan loan, frequently referring to it as a payment plan with a minimum monthly payment as low as $10. Ex. 778.2.

4. Medical Specialties and Sitting for the LSO Certification in Colorado

C.R.S. § 6-1-105(1)(e) and (g)

621. In their advertising and in the admissions process, Defendants engaged in a deceptive trade practice in that they knowingly misrepresented the characteristics, uses, and benefits of their x-ray training within the medical specialties curriculum.

622. Defendants also misrepresented that their x-ray training was of a particular standard, quality, or grade – namely, that it would qualify students to sit for the Limited Scope exam – when they knew or should have known that their services were not of such standard, quality, or grade.

623. Defendants were well aware of the appeal of a job as an X-Ray Technician. In a November 2009 email, Defendant Barney wrote that X-Ray Tech (Ltd scope) provided an advertising opportunity for Defendants. Ex. H at 16:25-18:5, *testimony of Carl Barney*; Ex. 376 at 1.

624. When Christine Irving searched CDPHE's records from 2005-October 2014, she found a total of 17 -18 CollegeAmerica students who had qualified to sit for the exam, but only one CollegeAmerica student who actually sat for and passed the Limited Scope exam. Ex. J at 264:17-20, 265:23-25, *testimony of Christine Irving*.

625. Defendants knew the requirements to sit for the Limited Scope exam as early as 2005, when Christine Irving and her colleagues from CDPHE informed them of the requirements. *Id.* at 258:15-259:6, 259:10-260:3.

626. Defendants also knew that the Medical Specialties program did not prepare students to sit for the Limited Scope exam. Ex. I at 231:7-11, t*estimony of Eric Juhlin*; Ex. 908 at 30-31.

627. Defendants did not have functioning x-ray equipment in their facilities, rendering it impossible for students to take any of the 80 required images at CollegeAmerica. Ex. J at 288:17-24, *testimony of Rozann Kunstle*.

628. And while 480 clinical hours were required to sit for the Limited Scope exam, the Medical Specialties externship was just 160 hours long. Ex. J at 26:4-5, *testimony of Eric Juhlin*.

629. There was no evidence that any student obtained *any* clinical hours during the course of their CollegeAmerica training.

630. It was CDPHE's expectation that the schools would maintain records of the clinical hours obtained by Limited Scope applicants. Ex. J at 264:1-9, *testimony of Christine Irving*. Defendants did not track the clinical hours, if any, obtained by their students. *See* Ex. I at 231:17-236:2, *testimony of Eric Juhlin*; Ex. 908 at 30-31 (Interrogatory 18).

631. Notwithstanding this knowledge, in television commercials, through internet marketing, newspaper advertisements, in their catalog, in the admissions binder, and in flyers given to students, Defendants misled students to believe that CollegeAmerica would prepare them to sit for the Limited Scope exam. *See* Ex. I at 219:1-14, 224:9-225:2, 226:8-15, 229:5-15, 230:7-15, *testimony of Eric Juhlin*; *Kirk Bowden Deposition Designation* at 43:25-44:11, 77:25-78:13; Ex. 2037 at 53; Ex. 2041 at 21; Ex. 2042 at 29; Ex. 2008 at 20; Ex. 230 at 23; Ex. 2479 at 22; Ex. 489 at 19; Ex. 167.

632. And Defendants' admissions consultants repeatedly led potential students to believe that they would be prepared to sit for the Limited Scope exam upon or before graduation from the Medical Specialties program. *See* Ex. E at 145:12-147:6, *testimony of Krystal Neeley*; Ex. B at 144:10-25, *testimony of Stacey Potts*; Ex. 3157; Ex. B at 18:15-19:21, *testimony of Shawndel Sievert*; *Jessica McCart Deposition Designation* at 23:14-22; Ex. C at 229:2-18, *testimony of Laura Goldhammer*.

633. Defendants were on ongoing notice of the misleading nature of their solicitations as early as March 2008, *see* Ex. 267 at 32 (sixth bullet point from the top), but they continued to misleadingly represent Limited Scope certification in television commercials, in the course catalog, and during the admissions interviews well into 2011. *See* Ex. I at 219:1-14, *testimony of Eric Juhlin*; Ex. 167; Ex. 2042 at 29; Ex. C at 229:2-18, *testimony of Laura Goldhammer*.

634. The court finds that the disclaimer in some versions of the Enrollment Agreement, to the effect that some certifications required additional study and cost, is simply ineffective to overcome the misrepresentation that the x-ray program would "lead to" the limited scope certification. The facts that at least one instructor saw fit to assign the task of researching certification requirements in the class itself; that a number of students stated that they had not known of the externship and 80 images requirements, and the fact that Mr. Barney put together a list of certification requirements which he circulated are evidence that CollegeAmerica knew it had failed to adequately communicate this information to students before they enrolled, and, in many cases, were well into their programs before discovering the truth.

C.R.S. § 6-1-105(1)(u)

635. Defendants knowingly failed to disclose material information to students concerning CollegeAmerica's x-ray training. Even though Defendants knew that the Medical Specialties program did not prepare students to sit for the Limited Scope exam, they withheld this information from potential students. They also withheld the State's eligibility requirements for the Limited Scope exam – 480 hours and 80 images – even though they were made aware of these requirements in 2005.

636. As evidenced by the multiple consumers who testified live or through designation of prior testimony, this information was highly material to students who enrolled in the medical specialties program, and particularly those who were interested in becoming Limited Scope technicians.

637. Given that Limited Scope certification is necessary to operate certain x-ray machines in Colorado, the certification is critical to employment in the field of x-ray. As such, the training requirements for Limited Scope x-ray, and the fact that CollegeAmerica did not meet them, are material information when a school purports to offer career training and certification in Limited Scope x-ray.

638. The court determines that defendants withheld this information with the intent to induce consumers to enroll in CollegeAmerica. Defendants' repeated failure to clearly disclose the limitations of their x-ray training – despite ongoing notice that

consumers were being misled – can only be explained by their zeal to "enroll the honored guest –today." Ex. 2479 at 74.

639. Various disclosure strategies were eventually devised by the individual campuses, with no uniformity. These disclosures were inadequate and in some cases deceptive in and of themselves, but the fact that each campus felt it necessary to make such a disclosure reinforces the conclusion that the information had not been clearly communicated during the admissions process.

640. Defendants knew that informing consumers of the additional hours required for Limited Scope licensing would cause some students not to enroll. Thus, Defendants elected to provide this information – when they provided it at all – only after students had been enrolled in CollegeAmerica for months. *See, e.g.*, Ex. P at 16:22-17:3, *testimony of Celestino Garcia*.

5. EMT Training

6-1-105(1)(e)

641. Although the evidence is closer on this issue than with either the Limited Scope or Sonography programs, the court finds that the state has sustained its burden of demonstrating by a preponderance of the evidence that CollegeAmerica engaged in a deceptive trade practice by knowingly making false representations about the characteristics and benefits of the Medical Specialties program, specifically that CollegeAmerica offered EMT training and preparation for certification in EMT.

642. Defendants knew that they did not offer EMT training and they were repeatedly put on notice that they were misleading consumers, beginning in March 2008. Ex. 267 at 32; *testimony of Oonah Mankin*.

643. Notwithstanding this knowledge, Defendants advertised the ability to earn an EMT certification in the course catalog, admissions binders, on the website, and during at least two admissions interviews. *See* Ex. 2037 at 53; Ex. 188 at 19; Ex. 615 at 1; Ex. 922 at 1; *testimony of Shawndel Sievert and Oonah Mankin*. EMT training was advertised on Defendants' website as late as August 2010. Ex. 615; Ex. I at 239:9-240:1, *testimony of Eric Juhlin*.

644. CollegeAmerica did disclose that not all courses are offered at all of its campuses, and that the student interested in pursuing an EMT certification needed to get the approval of the Dean of the Medical Department before registering. In addition, no student ever enrolled or took an EMT course at any of the CollegeAmerica campuses in Colorado. However, the EMT certification was essentially embedded within the Medical Specialties curriculum, so it was certainly possible that a student interested in EMT certification would continue to labor under the misimpression that taking of those courses, and the requisite Dean approval, could be put off until somewhat later in their course.

6. Sonography Degree Program

C.R.S. § 6-1-105(1)(e)

645. The Court finds and concludes that Defendants engaged in a deceptive trade practice by knowingly making false representations from 2010 through at least 2014 about the availability of a sonography degree program at the Denver Campus in in-person communications.

646. In 2010, Defendants represented to former students of Mile High Medical Academy that CollegeAmerica would be launching a Sonography program within a few months to a year even though they knew they could not launch the Sonography program unless and until the program had been approved and accredited by ACCSC, s*ee* Ex. 2303 at 38, that they had not acquired the equipment necessary to offer the program, *see* Ex. I at 246:24-247:10, *testimony of Eric Juhlin*, and had not even performed a market study to determine if they even wanted to offer the program. *See* Ex. J at 18:20-21:10, t*estimony of Eric Juhlin;* Ex. 2309. Indeed, the market survey was not even initiated until approximately two and half years following the initial meeting with the displaced MHMA students.

647. Notwithstanding, Defendants encouraged students to sign up for a different program in the meantime promising that the credits would transfer to the forthcoming Sonography program. *See* Ex. E at 22:11-23, 23:11-24:24, 25:7-14, *testimony of Ashley Barksdale*; Ex. J at 218:1-219:1, 219:12-17, 219:21-24, 221:4-8, 221:16-20, *testimony of Alicia Zeller.*

648. The Court also finds and concludes that CollegeAmerica violated § 6-1-105(1)(e), C.R.S. by representing in its course catalogs that its Denver campus offered a Sonography program when Defendants never offered any such sonography program at any of their Colorado campuses. *See* Ex. 173 at 28; Ex. 372 at 52-53. Defendants knew that placing the Sonography program in the course catalog was confusing prospective students, *see* Exs. 320, 398, 412, 414, yet made a conscious decision to leave it in the catalog. *See* Ex. 432. There is no credible reason for Defendants to list sonography in the catalog. *See* Ex. 2134 at 43, 100-101; *see also* Ex. 320. If it is truly necessary to list a prospective course in the catalog in order to facilitate accreditation with the ACCSC, then it is particularly incumbent upon CollegeAmerica to communicate with prospective students that it is not actually offering such a course.

7. Statute of Limitations Defense

649. The court concludes that the Defendants have failed to sustain their burden of proof as to an asserted statute of limitations defense regarding the State's CCPA claims.

650. Under C.R.S. § 6-1-115,

> All actions brought under this article must be commenced within three years after the date on which the false, misleading, or deceptive act or practice occurred or the date on which the last in a series of such acts or practices occurred or within three years after the consumer discovered or in the exercise of reasonable diligence should have discovered the

> occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

651. In *Full Draw Prods. v. Easton Sports*, an actor was determined to be engaged in a "series of acts" when it engaged in a number of similar statements in violation of the CCPA prior to three years from the date of filing and after three years from the date of filing. 85 F. Supp. 2d 1001, 1005 (D. Colo. 2000).

652. Defendants argue that the statutory language referring to "the last of a series of such acts" is the "embodiment of the continuing torts doctrine," Defendants' [Proposed] Findings of Fact and Conclusions of Law, filed December 4, 2017, att. A, at 169, and argues that the statute of limitations is tolled under this doctrine only "when the alleged wrong is of a continuing nature," citing *325-343 E. 56th St. Corporation v. Mobil Oil Corp*., 906 F.Supp. 669, 675 (D.D.C. 1995) (Defendants' emphasis). However, the court has been unable to discern any intent on the part of the legislature to incorporate the common law of the continuing tort doctrine, let alone one imported from a federal district court in the District of Columbia.

653. In Colorado, application of the continuing tort rule has been limited to employment discrimination cases. *Harmon v. Fred S. James & Co.*, 899 P.2d 258, 261 (Colo. App. 1994); *see also Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402, 405 (Colo. App. 2000), *Clementson v. Countrywide Fin. Corp*., 2011 U.S. Dist. LEXIS 53308, *27 (D. Colo. 2011).

654. Moreover, the application of equitable tolling rules such as the continuing tort rule are appropriate "where flexibility is required to accomplish the goals of justice." *Damian v. Mt. Parks Elec., Inc*., 310 P.3d 242, 245 (Colo. App. 2012). However, courts have rejected equitable tolling as a redundant remedy where the applicable statute anticipates a similar extension of the statute of limitations. *See id; Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1192 (Colo. 2010). As discussed above, the CCPA provides a statutory remedy for the extension of the statute of limitations, therefore the application of the continuing tort rule is redundant and inappropriate in this case. In interpreting the CCPA, the Court should "avoid any interpretation that 'defeats the legislative intent'" of the statute. *Gen. Steel Domestic Sales, LLC v. Hogan & Hartson, LLP*, 230 P.3d 1275, 1281 (Colo. App. 2010) (internal citations omitted). Defendants' proposed application of the continuing tort rule would do just that.

655. The State filed its case on December 1, 2014. However, the parties entered into a tolling agreement, effective December 5, 2012. *See* Exhibit 2 to

Defendants' Combined Motion in limine and Memorandum of Law in Support Thereof, filed April 9, 2015.

656. CollegeAmerica has simply failed to demonstrate which of the alleged violations of the CCPA occurred before December 5, 2009, and, with respect to any such violations, that they were not part of a series of acts which continued after December 5, 2009, such as to bring them within the statutory limitations.

657. The State established that Defendants' misleading use of national earnings averages continued in a standardized manner both before and after December 5, 2009 (three years prior to December 5, 2012). *See* Ex. 198 at 88; Ex. 230 at 90; Ex. 231 at 97; Ex. 2003 at 34 and Ex. C at 259:6-11, *testimony of Laura Goldhamer*; Ex. 2055 at 34 and Ex. B at 310:12-17, *testimony of Mary Gordy*.

658. The Court concludes that Defendants' misrepresentations and failures to disclose LSO certification continued into at least 2011 – well within the statute of limitations in this matter. Such misrepresentations and failures to disclose were found in the catalog and the admissions process both prior to and after December 5, 2009. *See* Ex. 2037 at 53, Ex. 2041 at 21, Ex. 2042 at 29; Ex. 2008 at 20; Ex. 230 at 23; Ex. 2479 at 22; Ex. I at 229:5-15, 226:8-15, 230:7-15, *testimony of Eric Juhlin.*

659. Further post-December 5, 2009 misrepresentations and failures to disclose occurred in at least one television commercial, the admissions binder and in the admissions interviews of Robin Moreno and Jessica McCart. Ex. I at 219:1-14, 224:9-225:2, *testimony of Eric Juhlin*; Ex. 167; Ex. 489 at 19; *Robin Moreno Deposition Designation* at 25:3-24, 129:24-131:13; *Jessica McCart Deposition Designation* at 23:14-22.

660. Defendants misrepresented the availability of EMT training as part of the Medical Specialties program in a consistent manner both before and after December 5, 2009.

661. From 2006-2008, Defendants' catalog represented EMT training. Ex. 2037 at 53; Ex. 615 at 1; Ex. 188 at 19. CollegeAmerica admissions consultants represented EMT training to potential students in or around January 2008, *see testimony of Megan Posey*, and August 2009, *see testimony of Shawndel Sievert*.

662. The 2009 admissions binder also represented the availability of EMT training, Ex. 188 at 19, and EMT training was advertised on CollegeAmerica's Colorado-specific website as late as August 2010. Ex. 615; Ex. I at 239:9-240:1, *testimony of Eric Juhlin*.

II. UNIFORM CONSUMER CREDIT CODE

A. Governing Law

The Colorado General Assembly adopted the UCCC in 1971 from the 1968 Draft of the Uniform Consumer Credit Code promulgated by the National Conference of Commissioners on Uniform State Laws, and became effective October 1, 1971. 1971 Colo. Sess. Laws Ch.207, at 770; Laura Udis, *The "New and Improved" Colorado Uniform Consumer Credit Code*, 29 Colo. Law 5-12 (December, 2000)(hereinafter, "Udis Article"). It was enacted to, among other things, "protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit" and to "permit and encourage the development of fair and economically sound consumer credit practices." C.R.S. § 5-1-102(2). To these ends, the UCCC itself provides that it must be "liberally construed and applied to promote its underlying purposes and policies." C.R.S. § 5-1-102(1).

The statute was amended in piecemeal fashion, including when the final draft of the UCCC was promulgated in 1974. See, National Conference of Commissioners on Uniform State Laws, *Uniform Consumer Credit Code* (1974), Ex. U ("UCCC (1974)"). Colorado's UCCC underwent a repeal and reenactment in 2000, which amounted to the first major rewrite of the statute in thirty years. Udis Article, at 5. It did so based upon the report of a special UCCC Revision Committee appointed by then-Attorney General Kenneth Salazar, which reported its findings to the legislature in its *Report of the Uniform Consumer Credit Code Revision Committee and Actions of the Colorado Commission on Consumer Credit*, dated November 30, 1999, (hereinafter "UCCC Revision Committee Report.").[9] The statute controlling this case is the result of that repeal and reenactment.

The statute creates the position of Administrator of the UCCC, who is empowered to seek injunctive relief against unconscionable agreements and fraudulent or unconscionable conduct. C.R.S. §5-6-112 lists the prohibited conduct, the elements of a claim, and factors to be considered in determining unconscionability, in relevant part, as follows:

> **5-6-112. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.** (1) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of:
>
> (a) Making or enforcing unconscionable terms or provisions of consumer credit transactions; [or]
>
> (b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions;
>
> * * * * * *

[9] Available at web.archive.org/web/200010217221243/http://www.ago.state.co.us/uccc/finalrpt.htm (last visited August 8, 2020)

(2) In an action brought pursuant to this section, the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Whether the creditor should have reasonably believed at the time consumer credit transactions were made that, according to the credit terms or schedule of payments, there was no reasonable probability of payment in full of the obligation by the consumer;

(b) Whether the creditor reasonably should have known, at the time of the transaction, of the inability of the consumer to receive substantial benefits from the transaction;

(c) Gross disparity between the price of the transaction and its value measured by the price at which similar transactions are readily obtainable by like consumers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit transaction with the effect of making the transactions, considered as a whole, unconscionable;

(e) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his or her interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors; and

(f) Any of the factors set forth in section 5-5-109(4).

* * * * * *

Subsection (1)(a) describes substantive unconscionability and subsection (b) describes procedural unconscionability, and this court has previously held that the violation of either

amounts to a sufficient basis for liability. Order Re: Defendant's Motion for Summary Judgment on Count VII alleging Violations of the Colorado Uniform Commercial [sic] Credit Code ("UCCC"), issued October 13, 2017, at 2-3. Thus, for the reasons set forth in that Order, although creditor misconduct may satisfy either or both of the statutory definitions, either one alone is sufficient to trigger an injunction. *See Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 571 (Colo. 2008) ("Generally, we presume the disjunctive use of the word 'or' marks distinctive categories."). Indeed, the disjunctive phrasing appears to have been precisely what the UCCC's drafters intended:

> Subsection (1)… provides that a court can refuse to enforce or can adjust an agreement or part of an agreement that was unconscionable on its face at the time it was made. However, many agreements are not in and of themselves unconscionable according to their terms, but they would never have been entered into by a consumer if unconscionable means had not been employed to induce the consumer to agree to the contract. It would be a frustration of the policy against unconscionable contracts for a creditor to be able to utilize unconscionable acts or practices to obtain an agreement. Consequently subsection (1) also gives to the court the power to refuse to enforce an agreement if it finds as a matter of law that it was induced by unconscionable conduct.

Ex. U, UCCC (1974), § 5.108, cmt. 1 at 178; See, *Yacht Club II Homeowners Ass'n, Inc. v. A.C. Excavating*, 94 P.3d 1177, 1180 (Colo. App. 2003) ("[W]e accept the intent of the drafters of a uniform act as the General Assembly's intent when it adopts a uniform act.").

In order to give courts flexibility in the face of unique credit situations, the list of factors to be considered in subsection (3)(a) – (f) is non-exhaustive. *See* C.R.S. § 5-6-112(3) ("consideration shall be given to the following factors, *among others*) (emphasis added). This is because the Court must consider the totality of the agreements and conduct surrounding the agreements. *See* Ex. U, UCCC (1974), § 6.111 cmt. 4. ("[E]ven though a practice or charge is authorized by this Act, the totality of a particular creditor's conduct may show that the practice or charge is part of an unconscionable course of conduct. Therefore, in determining its unconscionability, the creditor's total conduct . . . may be considered."). Thus, the supreme court has recognized that the UCCC "commits us to a broad construction of its terms to effectuate its remedial purpose." *See Oasis Legal Fin. Grp., LLC v. Coffman*, 361 P.3d 400, 406 (Colo. 2015).

Two of the drafters of the UCCC by the National Commission on Uniform State Laws observed "that among the reasons the great volume of consumer credit legislation enacted in the last twenty years has not adequately protected consumers from the more rapacious type of creditor who deals with lower economic groups is that these laws have been too rigid and specific." Their analysis supports the flexibility which was built into the Uniform Act:

> The specific legislative approach favored by cautious creditors has serious deficiencies. Some matters have been dealt with too rigidly…. Then, too, the custom of enacting an ever-expanding list of prohibited creditor conduct culled from the more objectionable

> practices of the last decade has all too frequently served merely as a guide for the imaginative but unscrupulous credit grantor in devising new and (until the next session of the legislature) entirely legal stratagems. A legislative formula was called for that would not only enable the Administrator to deal with new patterns of reprehensible creditor conduct unforeseen and, perhaps, unforseeable at the writing of the Act, but would allow him to cope in a more flexible manner with some of the creditor practices that had been too rigidly treated in previous legislation. Section 6.111 [of the 1968 Working Draft Number 6 of the Code, which is substantially similar to C.R.S. § 5-6-112], which gives the Administrator the power to seek injunctions against fraudulent and unconscionable conduct, is the Code's response to this need.

Ex. T, Robert L. Jordan & William D. Warren, *The Uniform Consumer Credit Code*, 68 Colum. L. Rev. 387, 423 and nn. a1 and 102 (1968) (authors were the co-Reporters-Draftsmen of the Consumer Credit Project of the National Commission of Uniform State Laws which drafted the UCCC upon which Colorado's version is based). *See also*, National Conference of Commissioners on Uniform State Laws, Uniform Consumer Credit Code (1974), § 6.111, cmt. 2 at 211 (Official comment captures the flexibility approach set forth in the article).[10] For this reason, the UCCC's drafters authorized the administrator to seek injunctions against new and unique credit practices that may not violate a specific prohibition (*e.g.*, a rate cap), but nonetheless may feature one or more of the factors which the court is to consider in determining whether an agreement or conduct is unconscionable. *See* C.R.S. § 5-6-112(3). Together these protections form the essential safeguards inherent in the UCCC's remedial purposes.

In its comments to § 5.108 of the UCC (1974), the National Conference of Commissioners on Uniform State Laws also made clear that the model language was intended to allow courts to apply a flexible approach that considers the totality of the circumstances:

> The basic test is whether, in the light of the background and setting of the market, the needs of the particular trade or case, and the condition of the particular parties to the conduct or contract, the conduct involved is, or the contract or clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time the conduct occurs or is threatened or at the time of the making of the contract. The principle is one of the prevention of oppression and unfair surprise and not the disturbance of reasonable allocation of risks or reasonable advantage because of superior bargaining power or position. The particular facts involved in each case are of utmost importance since certain conduct, contracts or contractual provisions may be unconscionable in some situations but not in others.

Ex. U, UCCC (1974), § 5.108 cmt. 3, at 178-179.

[10] Available at www.uniformlaws.org (last visited August 3, 2020).

The UCCC's unconscionability provision gives the Court broad powers to enter an injunction "to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of" impermissible conduct. C.R.S. § 5-6-112(1). Specific to this case, such conduct can include "[m]aking or enforcing unconscionable terms or provisions." C.R.S. § 5-6-112(1)(a). It can also include engaging in "[f]raudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions." C.R.S. § 5-6-112(1)(b).

B. Application of the UCCC Unconscionability Factors to EduPlan and Defendants' Conduct

663. A "creditor" means the seller, lessor, lender, or person who makes or arranges a consumer credit transaction and to whom the transaction is initially payable, or the assignee of a creditor's right to payment, but use of the term does not in itself impose an assignee any obligation of his or her assignor. C.R.S. § 5-1-310(17).

664. A "consumer credit transaction" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease. § 5-1-310(12).

665. The Court finds and concludes that CollegeAmerica is a creditor and that EduPlan entails a consumer credit transaction under these statutory definitions. *See Les Marstella Deposition Designation* at 19:4-14; Ex. D at 213:11-215:19, *testimony of Rohit Chopra.* CollegeAmerica is the creditor of EduPlan loans. *See Les Marstella CID Designation* at 93:20-94:1.

666. The court will now consider each of the factors which the statute requires it to examine on the issue of unconscionability.

1. Reasonable Probability of Payment in Full

667. With respect to the first factor, the reasonable probability of payment in full, some additional statutory history is appropriate.

668. As originally enacted in 1971, the section provided as follows:

> (3) In applying this section, consideration shall be given to each of the following factors, among others:
>
> (a) Belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

1971 Colo. Sess. Laws Ch. 207, at 846, *codified at* C.R.S. §73-6-111(3)(a)(1971). The statute remained in this form until the 2000 repeal and reenactment. See, C.R.S. § 5-6-111(3)(a) (1999).

669. As repealed and reenacted in 2000, the statute now provides as follows:

> (3) In applying this section, consideration shall be given to each of the following factors, among others:

> (a) Whether the creditor *should have reasonably believed* at the time consumer credit transactions were made that, *according to the credit terms or schedule of payments*, there was no reasonable probability of payment in full of the obligation by the consumer;

2000 Colo. Sess. Laws Ch. 265, at 1249, *codified at* C.R.S. §5-6-112(3)(a)(emphasis supplied).[11]

670. With respect to the first highlighted phrase above, by amending the original language from requiring proof that a creditor had an actual "belief," to a determination as to whether the creditor "should have reasonably believed" that there was an ability to repay in full, the legislature clearly intended to, and did, adopt an objectively reasonable standard by which evidence relating to an ability to repay is to be analyzed.

671. In its Report that became the basis of the repeal and reenactment of Colorado's UCCC, the Revision Committee made clear that their purpose in proposing the amendment of this particular section was as follows:

> One of the current statutory factors - whether the creditor had a reasonable belief that the borrower could repay the transaction in full - should be amended to require that the creditor's belief be objectively reasonable and that the ability to repay also be based on the repayment terms of the obligation. For example, the borrower's ability to pay should be considered by the creditor both in determining whether to extend credit and whether repayment should be made in a single balloon-payment installment or multiple installments.

UCCC Revision Committee Report, at 5/17. At a hearing before the House Committee on Business Affairs & Labor on January 25, 2000, the House sponsor of the legislation, Representative Gayle Barry, made clear that the Revision Committee Report was the source of the proposed amendments, including the creation of the objectively reasonable standard for unconscionability. See, Hearing on H.B. 00-1185, House Committee on Business Affairs & Labor, 62nd Gen. Assemb., 2nd Reg. Sess. (Jan. 25, 2000), at approximately 14:00., available at https://drive.google.com/drive/folders/1csXRR5ltY6yOjc6r5wj9LD7NeLgau47w?usp=sharing (last visited August 8, 2020).

[11] These amendments are unique to Colorado law. Of the eleven states and the federal district that have adopted one version or the other of the model UCCC, nine still retain the original phraseology from the 1968 draft, referring to a creditor's actual "belief" that there was no reasonable probability of payment in full. See, Idaho Code §28-46-111(3)(a)(2020); Iowa Code Ann. §537.5108. 4. a (2020); Indiana Code § 24-4.5-6-111(3)(a) (2020); Kan. Stat. Ann. §16a-6-111 (2020); 9-A Me. Rev. Stat. Ann. § 6-111 (2020); 14A Okla. St. Ann. § 6-111(3)(a) (2020); Ohio Rev. Code § 1345.03 (B)(4) (2020); Wyoming Statutes § 40-14-611(c)(i) (2020); D.C. Code Ann. § 28-3904 (r)(1) (2020)(creditor's "knowledge"). South Carolina's version is adopted from the 1974 Final Draft of the UCCC, and also adopts an objectively reasonable standard with respect to the creditor's knowledge ("knows or should know"), but it is a permissive, rather than a mandatory, consideration. South Carolina Code §§37-6-111(3) and 37-5-108(4)(b) (2020). Utah repealed its UCCC in 1985. Laws, 1985, c. 159, § 9.

672. The second highlighted phrase in amended section 5-6-112(3)(a), above, indicates that the determination of what the creditor objectively reasonably understood is to be made "according to the credit terms and schedule of payments." The court is, of course, obligated to give consistent, harmonious and sensible effect to all parts of the amended statutory language, *Crow v. Penrose-St. Francis Healthcare Sys.*, 169 P.3d 158, 165 (Colo. 2007), including the phrase "according to the credit terms and schedule of payments." In the court's judgment, this phrase actually narrows the inquiry somewhat.

673. On the basis of the totality of the evidence received at trial, the court cannot find that CollegeAmerica should have reasonably believed at the time EduPlan loans were made that, according to the credit terms or schedule of payments, there was no reasonable probability of payment in full of the obligation by CollegeAmerica students.

674. The bulk of the State's evidence regarding what CollegeAmerica knew or should have known about the EduPlan loan program was statistical and macroeconomic in nature. CollegeAmerica certainly tracked its students' repayment of EduPlan loans by means of a write-off report. *See id.* at 47:5-16. The write-off report tracks whether borrowers have made a single payment in the past year, and it predicts the percentage of the debt that the school will likely write off in the coming year. *See id* at 43:16-44:15. CollegeAmerica has annually written off upwards of 40% of debt owed by students. *See* Ex. D at 178:11-179:7, *testimony of Rohit Chopra.* There was also substantial evidence that CollegeAmerica has turned its delinquent EduPlan loan files over for collection, either to a vendor, or, more recently, to an in-house entity, CollegeAmerica Services, Inc. (CASI). While the write-off reports make clear that the EduPlan loans were not performing particularly well, and that, as a portfolio, they would have been a matter of distress for a private lender, the State has failed to demonstrate that this was directly a result of the credit terms and schedule of payments under the loans themselves, as required under C.R.S. § 5-6-112(3)(a).

675. However, even meeting the State's evidence on its own terms, it seems inescapable that the existence of the Great Recession, and the effect which it had on CollegeAmerica students' job prospects during a significant portion of the time at issue in this case, played at least a role in the less than stellar EduPlan default rate of such students. More generally, Mr. Chopra acknowledged that student loans, whether from the federal government or the educational institution itself, frequently take a backseat to higher interest-bearing obligations such as credit card debt, for recent college graduates. CollegeAmerica does seem to have regarded EduPlan loans as something of a "loss leader," that is, they were willing to take an overall loss on the EduPlan loan program in order to allow students to pay the full tuition of attending their college. Although the state points to these circumstances as evidence of unconscionability, the court disagrees. This is the type of judgment which businesses large and small make on a daily basis, and there does not seem to be any grounds for finding it to be unconscionable, especially when the state has not tied CollegeAmerica students' poor performance on paying off their EduPlan loans

directly and specifically to the credit terms and payment schedules of the loans themselves, as required by the statute.

676. With respect to the terms and conditions of the loans, as the statute focuses the court's inquiry, they were memorialized on a form provided by the DOE and approved for use with respect to federal student loans, complete with truth in lending disclosures. Ex. 2457. CollegeAmerica utilized the same interest rate as the federal government did in its direct student loan program, which was 7%. As with federal student loans, CollegeAmerica students were not charged interest on their EduPlan loans as long as they remained in school. Further, although students were encouraged to, and at least some did, make payments on their EduPlan loans while in school, CollegeAmerica's approach to those payments seems to have been relatively benign. They would often take whatever a student could pay, even an amount well below the amount of the scheduled payment. Thus, while the "pay while in school" feature of EduPlan loans was unique, in Rohit Chopra's experience, it was, nevertheless, something of a win-win situation. On the one hand, the student had an opportunity to reduce the principal balance of their institutional loan during the time they were in school, and CollegeAmerica could use the proceeds of those payments to meet its obligation under the 90/10 rule.

677. The state also offered a great deal of evidence in an attempt to demonstrate that, in fact, CollegeAmerica created and maintained the EduPlan loan program precisely to create a revenue stream from which it could satisfy its obligations under the 90/10 rule. Although the genesis of EduPlan program actually predated the most favorable treatment of institutional loans for purposes of 90/10, it does seem clear on the evidence that student payments were an important part of CollegeAmerica meeting its obligations under 90/10. However, that fact alone in no way converts an otherwise lawful purpose into a basis for a finding of unconscionability. The fact that CollegeAmerica relied upon such payments to meet its obligations under 90/10 may be an explanation for its existence, but, without more, does not constitute either substantive or procedural unconscionability. Similarly, the fact that those circumstances were not disclosed to CollegeAmerica students who received such loans also does not serve as any sort of indictment of the program as either substantively or procedurally unconscionable. The state has not pointed to any legal obligation on the part of CollegeAmerica to disclose to students the exact use to which their tuition dollars are put by the school.

678. Accordingly, consideration of this first factor militates against a finding of unconscionability in the EduPlan program.

2. Inability to Receive Substantial Benefits

679. As to the the second factor, the court finds that, with respect to three caregories of students, CollegeAmerica reasonably should have known, at the time of the transaction, of the inability of these particular consumers to receive substantial benefits from the transaction.

680. Although the court has found that CollegeAmerica engaged in deceptive trade practices with respect to their advertising, recruitment and admissions practices and procedures, and that their results, in terms of placement rates and earnings, often fell short of those which CollegeAmerica had represented to its accreditor and its students reasonably expected, this is not the same determination as whether or not a particular consumer would receive substantial benefits from an EduPlan loan. Indeed, this factor, as all the others, requires that the court view the evidence on a consumer by consumer basis. The court declines to paint with a broader statistical brush, as the State invites it to. The determination, based upon a reasonable analysis, as to whether someone will receive substantial benefits from taking out an EduPlan loan is one which has multiple variables, many of which are outside of CollegeAmerica's control, but they certainly include an individual student's drive and motivation, readjustment to an academic routine and lifestyle after time away from school, and the effect of outside concerns, including family and economic issues.

681. The evidence in this case demonstrated that the results achieved by CollegeAmerica graduates have varied widely. As the court reads this factor, it must consider such evidence on an individual basis. It cannot simply conclude, for instance, that because some students, perhaps a large number, have not achieved the career path they had hoped for, that therefore CollegeAmerica engaged in unconscionable conduct with respect to its EduPlan program, in violation of the UCCC because they could not accurately foresee each student's future path from the outset. The court finds that the fact that the placement rates and starting salaries of its graduates are not what CollegeAmerica would like them to be, and in fact have represented them to be, is nevertheless not the equivalent of determining that they should have known from the outset that a particular student would not receive a substantial benefit from attending their college, and taking out an EduPlan loan to finance it.

682. Three cases which do implicate this factor, however, are the cases of A.G., the students who enrolled to obtain certification in Limited Scope x-ray, and the students who enrolled at CollegeAmerica in anticipation of a sonography program.

683. A. G. has a rather severe developmental delay, and was ultimately found to be totally and permanently disabled on that basis. He did not understand very basic information about his financial aid package, including what an interest rate was. It is inconceivable to the court that an adequately-trained admissions counselor and financial planner would not have recognized at the very first meeting that A.G. was not capable of doing college work, let alone achieving his dream of working in animation with the Walt Disney company. Even if that had not been obvious from the outset, it certainly became obvious to CollegeAmerica in short order after his uninterrupted poor performance in class, and certainly long before it decided to "graduate" him early with an associate's degree, although he had signed up for a bachelor's degree. A.G.'s case fits this second statutory criteria like a glove –

CollegeAmerica should reasonably have known from the get-go that he would not receive substantial benefits from the education funded in part by an EduPlan loan.[12]

684. With respect to students who attended CollegeAmerica for purposes of obtaining a certification in Limited Scope Radiology, Defendants should also have recognized their inability to obtain substantial benefits from the education funded in part by their EduPlan loans. It is clear that the 480 hour and 80 images clinical requirement, only 160 hours of which CollegeAmerica could provide, were very poorly, if not universally misunderstood by the students. Witnesses Krystal Neeley, Stacy Potts, Shawndel Sievert, Jessica McCart, and Robin Moreno, as well as the other complainants listed on Ex. 3427, all misunderstood those circumstances. The fact that at least some of the instructors took it upon themselves to actually assign a research project to determine licensing requirements is a clear indication that CollegeAmerica was well aware of these difficulties. If that wasn't enough, its own faculty member, Oonah Mankin, communicated several times that a number of students had come to her being unclear as to the requirements for certification, and how much of them their CollegeAmerica degree would satisfy. Carl Barney was concerned enough about the issue to promulgate a document listing the certification requirements for each of the certifications within the programs at CollegeAmerica. Of course, the required clinical hours and images were necessary to qualify to sit for the limited scope certification examination, and the fact that only one CollegeAmerica student had actually sat for and passed the limited scope radiology exam during the nine years of records witness Christine Irving examined, speaks volumes as to whether the school can credibly claim that they believe enrollees in that program will obtain any substantial benefit such as to justify, on either CollegeAmerica or the students part, entering into an EduPlan loan.

685. Although it is something of a closer call, the cases of Ashley Barksdale and Alicia Zeller, also fit these statutory criteria. They were both given to understand that, although it was not completely certain, CollegeAmerica's Denver campus was committed to developing a program in sonography, to replace the one that they had lost when the Mile High Medical Academy closed its doors. There was evidence that the admissions counselor with whom Ms. Zeller met gave her a funny look when she mentioned that she was interested in the sonography program, which the admissions counselor had apparently never heard of. Ms. Barksdale and Ms. Zeller were reassured repeatedly by CollegeAmerica administrator Nathan Larson that the Denver campus was going to have a sonography program. Both students denied that either Mr. Larson or Ms. Gordy, the head of admissions, ever told them that there was a possibility that the school would not have a sonography program. While it is understandable that the college would have to go through a several step process in creating a new educational program, getting it accredited, and into its catalog, the

[12] For many, if not most, of the students as to whom the court has concluded CollegeAmerica should reasonably have known of their inability to receive a substantial benefit from their EduPlan loans, there is, at best, undifferentiated evidence regarding the amount and type of loans they received. Many students who testified at trial authenticated their enrollment agreement, which typically would recite the total tuition, but did not contain their financial aid package. Such information may exist in the record for some of the students.

evidence in this case clearly indicates that CollegeAmerica went about its review in a bizarre sequence. It apparently called a meeting of the displaced Mile High Medical Academy students, approximately 15 in number, and represented that they were going to have a sonography program in place within a few months. They then made a significant presentation to ACCSC, created an entry in their catalogs complete with course names, and obtained accreditation, all before even undertaking a market survey which it claims was the basis for its eventual decision, some two and a half years after the initial meeting with the MHMA students, not to pursue the sonography program after all. In the meantime, both Ms. Barksdale and Ms. Zeller had exhausted the courses in the medical specialties program that they had been led to believe would transfer into their sonography curriculum, and had actually left CollegeAmerica. Why that market survey did not occur before all else was never explained, and seems unexplainable. In any event, the court concludes that these two students certainly fit the statutory criteria that CollegeAmerica reasonably should have known at the time of their EduPlan loans, that they would not be able to receive substantial benefits, because CollegeAmerica did not and would not have a sonography program.

3. Gross Disparity in Price and Value

686. The third factor whch the court must consider with respect to unconscionability is any gross disparity between the price of the transaction and its value measured by the price at which similar transactions are readily obtainable by like consumers. In this regard, taking into account all of the factors that would go into a fair accounting of the price and value of a college education, the court cannot conclude that the disparity rises to the level of being a gross disparity.

687. There was undisputed testimony at trial that community colleges offer similar degrees to a similar student demographic as CollegeAmerica. Ex. R at 121:11-122:5, *testimony of Diane Jones.* There was also undisputed testimony that community colleges' tuition is significantly less than CollegeAmerica's tuition in terms of the price a student will pay. Ex. 2024; Ex. I at 153:7-14, *testimony of Carl Barney;* Ex. 314 at 5; Ex. 918 at timestamp 21:02.[13]

688. The Court heard testimony from Ms. Jones about the "opportunity cost" being an added value that students receive in exchange for a higher tuition at CollegeAmerica. *See* Ex. R at 156:11-159:3, *testimony of Diane Jones*. Carl Barney made a comparison between CollegeAmerica Denver and the Community College of Denver, in which he calculated that the cost to graduate with an associate's degree in medical specialties from CollegeAmerica was $92,400, compared to $154,090 to

[13] There were only limited references to the actual cost of particular degrees at community colleges in the evidence, and no comprehensive comparison with comparable degrees at CollegeAmerica. This may be, in part, an apples to oranges issue, which would require a closer examination of the specific requirements of particular degree programs. For example, CollegeAmerica's most popular associates degree is in medical specialties, which is designed to be something of a hybrid including aspects of traditional medical assisting, but also including x-ray technician, laboratory technician, pharmacy technician, medical coding and billing, and medical office administration. Ex. 376.

graduate with an associate's degree in medical assisting from the community college. Ex. 2024. Mr. Barney's analysis makes several dubious assumptions, and the source of his data is not entirely clear. However, the court concludes that, given the high bar of a "gross disparity" in not only the price but also the "value" of similar services available in the community, it is appropriate to consider such items as the fact that CollegeAmerica graduates are intended to complete their course of study significantly faster than a student at the community college (which gives rise to the computation of an "opportunity cost" associated with attending community college), and that in-state tuition at a community college does not accurately reflect its full cost, because the community college is funded in part by the government. Ms. Jones also testified that the Court should consider the government subsidies that a community college receives to run expensive vocational programs, which CollegeAmerica does not receive. Of course, such government subsidies are offset somewhat by the profit margin which is built into CollegeAmerica's tuition, as well as the relatively low percentage of revenues it spends on actual instruction, as distinct from marketing and advertising.

689. While nothing in subsection (3)(c) of C.R.S. §5-6-112 indicates the court is to consider from whom similar transactions are available to like consumers, with respect to the price of a product or service that was available through a government-supported entity, there would always be a disparity, in some cases a gross one, when compared to a similar product or service offered by a private entity, even one which is technically a non-profit and receives the vast bulk of its revenue from student financial aid under Title IV, which nevertheless must pay all of its own bills. The court has difficulty believing that the drafters of the model UCCC, and the members of the general assembly which adopted it, intended for a court to simply disregard the true cost of producing a product or providing a service in comparing its price and value to other products and services available in the market.

4. Knowingly Taking Advantage of Consumers

690. Finally,[14] the Court finds that CollegeAmerica has knowingly taken advantage of the inability of at least some consumers reasonably to protect their interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors.

691. Initially, the court notes that CollegeAmerica's admissions department's singular focus on obtaining enrollments, with the only actual qualification for admission to CollegeAmerica being a high school diploma or its equivalent, has led to the admission of a number of students, or categories of students, as to whom even CollegeAmerica admissions consultants question whether they belong in college. A.G. was perhaps the most dramatic example, at least among those who testified, but there was also evidence that CollegeAmerica has enrolled people who are currently

[14] The court makes no findings with respect to subsection (d) of § 5-6-112(3), because EduPlan loans do not include separate charges for insurance.

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living in homeless shelters. *See* Ex. C at 134:4-8, *testimony of Mary Gordy*. Ms. Valencia observed students whom she believed should not be at CollegeAmerica because they did not have the intellectual capacity to benefit from the school or because they were homeless. Ex. F at 278:9-17, *testimony of Jasmine Valencia*. Defendants know that the typical prospective student who walks into a CollegeAmerica admissions interview is unsophisticated. "Remember, our guests are not often skilled in problem-solving and life. Guide them." Ex. 314 at 10; *see also* Ex. C at 33:8-14, *testimony of Mary Gordy.*[15]

692. However, the admissions process did not appear to be focused on guiding prospective students, at least not in an attempt to protect their best interests, but rather with simply enrolling them, and "packaging" them with a financial aid package, all within a single day. Admissions consultants were trained extensively on how to deal with a prospective student's "objections," and achieving a "close," even after a student had expressed doubt about the wisdom of going forward. By contrast, those same admissions consultants were not trained to read word-for-word the six-page enrollment agreement, nor did they receive any training on how to present the information. Ms. Orendorff observed students not taking the time to go through it themselves. *See* Ex. A at 317:24-318:15, *testimony of Andrea Orendorff*. Former admissions consultants testified to taking only a few minutes to go over it. *Id.* at 220:19-221:10, 298:12-301:24; Ex. 2030. Students rarely asked any questions about the enrollment agreement. Ex. O at 150:5-152:5, *testimony of Sharrie Maple*. At least the effect, if not the purpose, of the one-day focus was to prevent the prospective student from having time to reflect, and perhaps consult with others, regarding the wisdom of incurring the substantial debt associated with a CollegeAmerica education

693. Of particular concern under this factor is CollegeAmerica's business officers' practice of literally creating an EduPlan loan with respect to an unsecured balance due the school, and "waiving" the student's signature, without showing the "loan" and its terms to the student, in order to collect on the debt owed to the school. *See* Ex. H at 272:13-274:6, *testimony of Michelle Bollig*. These unilateral memorializations of a debt, without even an arguable transaction or meeting of the minds, resulting in the creation of remedies for CollegeAmerica as the creditor, which the student debtor never even knows are afoot, are particularly unconscionable. Indeed, such students

[15] The court pauses to note that it is difficult to express these conclusions without sounding pejorative or elitist. The court certainly acknowledges that people who find themselves homeless or who have developmental disabilities might nonetheless derive benefit from attending college. Indeed, the court notes that A.G. enrolled in Pikes Peak Community College before he attended CollegeAmerica, and that at Pikes Peak he was given a test, and placed in classes that he felt were slower and more comfortable for him. Ex. C at 344:18-345:20, *testimony of A.G.* However, subsection (3)(e) of section 5-6-112 requires the court to examine such circumstances, as they are often hallmarks of persons who have been taken advantage of in credit transactions. At the very least, the court regards it as incongruous that someone who is living in a homeless shelter would nevertheless be "packaged" with a financial aid package which contemplates them paying off loans in the tens of thousands of dollars, or that someone with a severe developmental disability would be expected to thrive under the rigor of a college academic program without very significant support.

only become aware that they are liable on a loan when they receive a letter from CollegeAmerica which, among other things, threatens a lawsuit.

694. Defendants, as the creditor of the EduPlan loan, must make disclosures and notices as required by the Truth in Lending Act. C.R.S. § 5-3-101(2). Their argument that an addendum to the enrollment agreement is sufficient to comply with the law is incorrect. The addendum does not include the terms of the loan or the interest rate – the very basic disclosures and notices required by law. *See* Ex. H at 299:17-301:23; 336:15-338:6, *testimony of Michelle Bollig*; Ex. 184 at 28. The court finds and concludes that this practice is a stand-alone violation of § 5-6-112(3)(e) as Defendants' conduct is unconscionable.

C. Harm Caused

695. Finding that CollegeAmerica acted unconscionably as to some of its students does not end the court's inquiry. The court must also examine two prongs of a causation analysis set forth in subsections (2)(b) and (2)(c) of section 5-6-112, that is, whether the unconscionable conduct "has caused or is likely to cause injury to consumers," and whether the creditor "has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions."

696. First and foremost, the students who enrolled at CollegeAmerica under the genuine impression that they would be able to become certified as EMTs, or could sit for the limited scope radiology exam upon graduation, or would receive training in sonography, were directly harmed because those things did not come to pass. Less precisely, A. G. and persons who were living in homeless shelters when they enrolled also were unable to achieve their career objectives, because they were simply unable to perform college-level academic work, let alone service their student loans, including their EduPlan loans, when they were through. Not only did these specific individuals suffer these tangible harms, the same type of harms were likely with respect to many others, including those who had also been misled regarding the EMT certification, limited scope radiology, and sonography programs.

697. Beyond actual harms suffered by identifiable students, the court finds that CollegeAmerica has been and will be able to cause such injuries primarily because the transactions involved are credit transactions. The evidence suggested that virtually all of CollegeAmerica enrollees, or at least the vast majority of them, have a "gap" between the amount of federal student financial aid available to them, and CollegeAmerica's tuition. CollegeAmerica created and administers the EduPlan loan program in order to satisfy that need, and there are virtually no other competitors in the field. The state's expert, Rohit Chopra, made clear that a private lender, after examining publicly-available information pertaining to CollegeAmerica and its graduates, and most specifically its student loan cohort default rates, would be very apprehensive to make such loans. In fact, Carl Barney created the EduPlan program because the other lenders with which CollegeAmerica students had worked in the past were unsatisfying to him, in that their loans were not student friendly and the interest rate was high. As a practical matter, CollegeAmerica students had little choice but to

take out an EduPlan loan to finance their "gap." Indeed, Ms. Bollig testified that the financial planners treated EduPlan as a option of first resort, rather than last.

698. Mr. Chopra recited the range of significant economic consequences which awaited the high percentage of CollegeAmerica EduPlan borrowers who defaulted on their loans. Students who default on their school loans face negative credit reporting, a tougher time qualifying for other loans, falling behind on other credit obligations, missing rent or utility payments, and losing money they could use to support their families. *See* Ex. D at 199:2-200:25, *testimony of Rohit Chopra.* Mr. Chopra also testified that employers run credit checks on prospective employees, and landlords run credit checks when determining whether to approve someone for a lease as well as how much they're going to set the rent. *See id.* at 199:2-200:25. An EduPlan loan is not dischargeable in bankruptcy. *Id*., 212:6-24, *testimony of Rohit Chopra.*

699. In addition, defaulting on a student loan can make it difficult to start a new academic program at a different school. *See id.* at 200:16-19. For example, Bradley Dean and his wife enrolled in CollegeAmerica degree programs after being led to believe they would find careers in graphic design making more money. *See* Ex. B at 86:17-25, 87:1-12, t*estimony of Bradley Dean*. Mr. Dean and his wife took out loans from CollegeAmerica but neither of them has been able to make any payments on those loans. *Id.* at 106:20-107:6. Due to taking out extensive loans with CollegeAmerica, Mr. Dean cannot afford to go back to school because the "funding is not there." *Id.* at 104:11-17.

700. Even though since 2012 CollegeAmerica no longer sends delinquent EduPlan borrowers to third-party collectors, it could do so again if it chose to. When it did send debtors to Aurora Collections, the agency was aggressive, filing suits against most of the debtors whose accounts it received. *See id.* at 251:5-253:19, 258:16-24; Ex. 747.

701. Another very real harm to EduPlan borrowers is a situation where Defendants sell EduPlan current and written-off debt or use it as collateral for a loan from a third party. *See* Ex. D at 209:22-210:8, *testimony of Rohit Chopra.* In these scenarios, unpaid debt can actually continue to be transacted and have value even if it is uncollectable. *See id.* at 210:19-211:17. The debt buyer seeks to maximize a return by conducting the collections activities through their own operations as well as third-party collectors. *See id.* at 209:22-210:14. The debt buyer may very well use negative reporting and lawsuits to extract payment from EduPlan borrowers. *See id.* at 211:18-212:5. Since EduPlan may only be deferred if a student reenrolls at a CEHE school – not any other school – borrowers who dropped out of CollegeAmerica are induced to reenroll and incur even more debt. *See See* Ex. D at 165:18-167:3, *testimony of Rohit Chopra;* Ex. E at 89:16-25, *testimony of Krista Jakl.*

702. For all of the foregoing reasons, the court concludes that EduPlan loans taken out by students seeking EMT certification, to sit for the limited scope radiology examination, or a degree in sonography, as well as those who were incapable of performing college

work either because of severe learning disabilities or dire economic circumstances, or for whom an EduPlan loan was created and their signature "waived," were all violations of the procedural unconscionability provision of the UCCC, C.R.S. §5-6-112(1)(b).

III. PERSONAL LIABILITY OF DEFENDANTS BARNEY AND JUHLIN

703. The State need not pierce the corporate veil in order to prove liability against Defendants Barney and Juhlin. Rather, under *Hoang v. Arbess*," 80 P.3d 863, 868 (Colo. App. 2003) the court of appeals reasoned "[a]t a minimum, personal liability attaches to a defendant who was directly involved in the conduct through conception or authorization," citing *Snowden v. Taggart*, 91 Colo.525, 531, 17 P.2d 305, 307 (1932) and *Sanford v. Kobey Bros. Constr. Corp*., 689 P.2d 724 (Colo. App. 1984).

704. Relying on cases from the Tenth Circuit and other states, the *Hoang* Court also held that "[o]ther direct involvement, such as active participation or cooperation, specific direction, or sanction of the conduct, also may be sufficient," and that an individual defendant can also be personally liable where the defendant "approved of, directed, actively participated in, or cooperated in the representations made to the purchasers." 80 P.3d at 868 and 869.

705. With respect to CCPA claims in particular, including those arising under C.R.S. §§ 6-1-105(1)(g) and (1)(u), the *Hoang* court concluded that the "plaintiffs presented evidence that defendant knew or should have known the construction techniques implemented were insufficient to protect against damage from expansive soils and that, therefore, defendant should not have directed the sales person to represent otherwise." *Id.* at 870.

706. Although no Colorado case has addressed the personal liability of an officer of a corporate creditor, the same statutory analysis which convinced the *Hoang* Court that personal liability was appropriate under the CCPA convinces this court that personal liability is appropriate under the UCCC. The statute authorizes the administrator to bring a civil action to restrain "a creditor or a person acting in the creditor's behalf…" C.R.S. § 5-6-112(1). "Creditor," in turn, is defined as "the seller, lessor, lender, or person who makes or arranges a consumer credit transaction…," and "person" includes "an organization," which means, among other entities, "a corporation… or trust." C.R.S. § 5-1-301(17), (33), and (31). See *Hoang*, 80 P.3d at 870.

707. The court finds and concludes that Defendants Barney and Juhlin are personally liable, jointly and severally, with CEHE for the school's violations of the CCPA and UCCC because they directed and participated in the conduct of CEHE that gave rise to CEHE's violations of the CCPA and UCCC. *Id.*

708. It is undisputed that Defendant Barney was essentially the architect of CollegeAmerica's advertising and admissions process and the school's institutional loan – the very core of the State's claims. *See* Exs. 198, 230, 231, 235, 236, 808, 809; Ex. H at 53:13-20, 85:4-8, *testimony of Carl Barney*. The admissions consultant

manuals are actually copyrighted by Mr. Barney, and are largely a compilation of the Procedure Directives, Information Letters, Data Letters, etc., that Mr. Barney personally drafted over decades. He is the principal author of the vast majority of such documents.

709. Defendant Barney provided specific directions concerning advertisements and sometimes drafted headlines and content of ads that represented wage and employment outcomes. *See* Exs. 425, 570, 503. By reviewing and approving all advertisements, Barney sanctioned the illegal conduct. *See* Ex. 697 at 3.

710. At all times, Defendant Barney was aware that graduates of CollegeAmerica were not making the salaries advertised. *See* Ex. H at 43:14-22, 43:23-44:2, *testimony of Carl Barney*; Exs. 499, 500. Barney received routine operations reports that detailed statistics about the campuses, including wages. It was Barney's idea to collect before and after wages in the first place. Ex. H at 43:14-22, *testimony of Carl Barney.*

711. Defendant Barney also knew that students with EduPlan loans who wished to obtain certification as EMTs, to prepare to sit for the limited scope x-ray examination, or to train as sonographers were unlikely to obtain substantial benefits from those loans, as such certification, preparation and curriculum were either entirely unavailable at CollegeAmerica, or substantially so.

712. After being hired as the CEO in 2010, Defendant Juhlin also reviewed and approved all CollegeAmerica advertisements. *See* Ex. I at 212:5-213:5, *testimony of Eric Juhlin*; Ex. 697 at 3. At the same time, Juhlin was aware that graduates of CollegeAmerica were not making the salaries advertised. *See* Ex. I at 213:15-23, *testimony of Eric Juhlin*; Ex. 500. Juhlin also was aware of the admissions process, as he attended and participated in the training of admissions staff. Ex. E at 115:5-10, *testimony of Krista Jakl*. There is no evidence that Juhlin substantially changed any of the advertising or admissions policies established by Barney even though he could have done so as the CEO.

713. At all times, Juhlin had knowledge that Defendants did not offer EMT or sonography training at the Colorado campuses. Ex. I at 237:3-5, 246:15-19, t*estimony of Eric Juhlin*; Exs. 412, 414. He also knew of the significant amount of externship that was required of limited scope radiology students outside of CollegeAmerica, and should have been aware of the abysmal passage rate of CollegeAmerica students on the limited scope radiology examination.

714. Accordingly, the Court finds and concludes that Defendants Barney and Juhlin are personally liable, jointly and severally, with CEHE for the school's violations of the CCPA and UCCC because they directed and participated in the conduct of CEHE that gave rise to CEHE's violations of the CCPA and UCCC.

IV. LIABILTY OF CARL BARNEY AS TRUSTEE OF THE CARL BARNEY LIVING TRUST

715. The legislature intended the CCPA to cover the conduct of trusts, and it treats trusts the same as it does any other legal entity. C.R.S. § 6-1-102(6) (defining a "Person" to mean an "individual, corporation, *business trust,* estate, *trust,* partnership, unincorporated association, or two or more thereof having a joint or common interest… .") (emphasis added); C.R.S. § 6-1-110 (when the attorney general has cause to believe that a person has engaged in or is engaging in a deceptive practice…[she] may apply for and obtain, in an action in the appropriate district court of this state…[an] injunction."). Furthermore, the Court may make such orders or judgments as may be necessary not only to prevent the use or employment by such person of any such deceptive trade practice, but also "which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment…" C.R.S.§ 6-1-110(1).

716. When an entity is a "mere instrumentality" for the transaction of the owner's affairs and there is such unity of interest that the separate personalities of the corporation and the owners no longer exist, then the entity is properly characterized as the alter ego of its owner. *Phillips v. Englewood Post No. 322 V.F.W, Inc.*, 139 P.3d 639, 645 (Colo. 2006) (internal quotes omitted). When an entity acts as an alter ego of its owner, the actions ostensibly taken by the owner will be considered acts of the entity. *Id*.

717. Although the traditional alter ego claim concerns a corporate entity, it is widely accepted that trusts are also subject to alter ego claims. *See Vaughn v. Sexton*, 975 F.2d 498, 504 (8th Cir. 1992), cert, denied, 507 U.S. 915, 113 S. Ct. 1268, 122 L. Ed. 2d 664 (1993) ("The concept of personal liability for the obligations of an entity considered to be an alter ego of an individual is frequently employed in relation to corporations. We see no reason why the alter ego concept should not have the same effect in the case of a trust."); *see also e.g., United States v. Krause*, 637 F.3d 1160, 1165 (10th Cir. Kan. 2011).

718. Carl Barney has complete control of the Carl Barney Living Trust as both the trustee and the beneficiary. *See* Ex. H at 108:12-14, *testimony of Carl Barney*. Through the Carl Barney Living Trust, Carl Barney is able to exert power over CEHE and CollegeAmerica. *See* Ex. 524 at 12.

719. With regards to a grantor trust similar to the Carl Barney Living Trust, the Colorado Supreme Court stated that "it is against public policy to permit a man to tie up his own property in such a way that he can still enjoy it but can prevent his creditors from reaching it." *In re Cohen*, 8 P.3d 429, 433 (Colo. 1999).

720. The Court finds and concludes that the Carl Barney Living Trust is an alter ego of Carl Barney and a "mere instrumentality" for the transaction of his affairs with CEHE.

721. Accordingly, the Court finds and concludes that the Carl Barney Living Trust shall be held liable, jointly and severally with Defendants for any and all violations of CCPA and UCCC for which Carl Barney is personally liable.

REMEDIES

I. Injunctive Relief

A. CCPA Injunctions

722. To prevent the use or employment of deceptive trade practices by Defendants, the Court orders that Defendants are HEREBY ENJOINED from the following conduct, pursuant to C.R.S. § 6-1-110(1):

a. Representing, impliedly or expressly, specific wages or ranges of wages as attainable with a CollegeAmerica degree, in advertisements and during the admissions process; except as provided in paragraph 722(b), below.

b. Representing, impliedly or expressly, that particular training is available at a particular CollegeAmerica campus in Colorado unless the particular training isc, in fact, currently available for students at such campus, and accredited by ACCSC (or any successor accreditor).

c. Representing, impliedly or expressly, that a program of study provides sufficient training and/or externship hours to qualify a student who completes the program to obtain a specific license or certification, or to be fully eligible to sit for a specific licensing or certification examination, if such is not the case. Compliance with this paragraph shall include: prior to enrollment, Defendants shall provide all potential students a complete list of relevant eligibility requirements for certifications and licenses in Colorado for which CollegeAmerica purports to prepare students, and a description of any qualifications or requirements to sit for the licensing examination which the completion of a CollegeAmerica degree will not satisfy, in whole or in part.

d. Representing, impliedly or expressly, that a program of study is available or forthcoming at a particular CollegeAmerica campus in Colorado unless there has been a formal decision by the governing board of directors that such a program of study will be offered, has been accredited or accreditation is pending, and that the particular program is available or will be available by a date certain.

e. Making false or misleading representations about the ability of prospective students to repay their student loans, including, but not limited to, federal student loans and institutional loans.

f. Misrepresenting job placement rates or falsely stating that job placement rates have been calculated in accordance with federal law or accreditation standards or guidelines, if such is not the case.

g. Using written disclosures to disclaim any misleading statements used in advertisements or during the admissions process.

h. Requiring or encouraging admissions and financial aid planners to obtain same-day enrollments and financial aid packaging of prospective students.

723. The Court FURTHER ORDERS that Defendants shall take the following affirmative actions:

a. Defendants shall affirmatively offer a "cooling off" period of no less than 48 hours to prospective students after their interview with admissions and before enrolling and packaging them with financial aid.

b. If Defendant utilizes in its advertising or promotional materials data regarding wages, obtained or derived from the Bureau of Labor Statistics or any other national database, it shall affirmatively disclose, immediately adjacent to its recitation or depiction of such data, and in a conspicuous manner achieved by means of larger font size, color, or some combination thereof, that the data, or any graph, chart or other depiction of it "is based upon national data, not College America-specific data," together with a web address where such data may be accessed.

c. Defendants shall provide prospective students who participate in admissions interviews with (1) color paper copies of all pages available on the College Scorecard for the CollegeAmerica campus where enrollment is contemplated, together with the web address for the College Scorecard (currently, collegescorecard.ed.gov); and (2) a paper copy of that campus' most recent Graduation and Employment Chart, pertaining to the relevant field(s) of study contemplated by the prospective student, which Graduation and Employment Chart shall have been completed in strict compliance with Appendix VII of ACCSC's Accrediting Standards, or successor provision(s).

d. Defendants shall make available to prospective students in the admissions interview and prior to enrollment the median wages of CollegeAmerica graduates in the prospective students' program(s) of interest. The median wages must be accurately collected, tabulated, and verifiably documented, and shall be based on data collected from students who completed the program in the two accreditation reporting years preceding the disclosure. If Defendants collected wage information from less than ten graduates during that timeframe, Defendants shall disclose this fact to consumers and shall not disclose the wages. Defendants shall maintain all backup documentation for a period of five yearsfrom the end of the last accreditation reporting year preceeding the disclosure.

e. Defendants shall videotape all admissions and financial aid interviews and shall maintain copies of the videos for a period of three years from the date of the interview.

B. UCCC Injunctions

724. The Court HEREBY ENJOINS Defendants from the following, pursuant to C.R.S. § 5-6-112:

a. Making an EduPlan loan available, as part of a financial aid package, for any student who has expressed a primary interest in a course of study, or a particular emphasis within a course of study, which is not currently available and accredited at the CollegeAmerica campus where enrollment is contemplated.

b. Making an EduPlan loan available, as part of a financial aid package, for any student who has expressed a primary interest in a course of study, or a particular emphasis within the course of study, which the program at CollegeAmerica will not fully prepare the student for licensure or eligibility to sit for the relevant licensure examination, without an express written acknowledgment of such limitation(s) in a separate document confined to that subject, signed and dated by the student.

c. Making an EduPlan loan available, as part of a financial aid package, for any student as to whom CollegeAmerica admissions and financial aid planners reasonably believe is intellectually incapable of academic work of the sort that will be required in their chosen course of study at CollegeAmerica, or whose financial circumstances are such that repayment of the loan in full is unlikely.

d. "Waiving" or failing to obtain a student's consent via signature on an EduPlan loan or any successor institutional loan and/or payment plan and otherwise failing to comply with the relevant disclosure requirements articulated in C.R.S. § 5-3-101.

725. The Court FURTHER ORDERS that the Defendant shall take the following affirmative actions:

a. Within thirty (30) days of the date of this order, formally forgive any remaining balance due on any EduPlan loan, and remit the total amount of payments received from or on behalf of the following CollegeAmerica students, with interest thereon calculated at 8% per annum, compounded annually, from the date of receipt of each such payment by CollegeAmerica until paid in full:\

1. Ashley Barksdale

2. Laura Barnett

3. A.G.

4. Love King

5. Kristie Matlock

6. Jessica McCart (Skancke)

7. Robin Moreno

8. Krystal Neeley

9. Megan Posey

10. Stacey Potts

11. Alexander Shaw

12. Shawndel Siever

13. Lea Vigil

14. Alicia Zeller

II. Civil Penalties Under the CCPA

A. Governing Law

726. The civil penalties provision of the CCPA[16] provides that

> any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved, except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

C.R.S. 6-1-112(1)(a) (2017).[17] As to the scope of penalties available under this provision in a case involving false advertising, the supreme court in *May*, *supra*, affirmed the court

[16] The court notes that the state only seeks civil penalties under the CCPA, and not the UCCC, pursuant to C.R.S. § 5-6-114(1)(a). No such remedy was sought in the Joint Stipulated Trial Management Order, approved by the court on 9/18/17.

[17] The maximum amount of the civil penalty was raised from $2,000 to $20,000, and the $500,000 cap on all civil penalties for any related series of violations was eliminated in HB 19-1289. Section 5 of that legislation provided that these amendments "apply to civil actions filed on or after the effective date of this act." The effective date was May 3, 2019. Accordingly, these amendments do not apply to this case.

of appeal's interpretation of the statutory language "with respect to each consumer or transaction involved," as follows:

> Assessing a penalty for a consumer involved punishes the advertiser for the injury sustained by the purchaser or potential purchaser. Assessing a penalty for a transaction involved, however, punishes the deceptive act. In this manner, substance is given to the CCPA's mandate to punish and deter the deceptive act and not just the injury. We therefore affirm the court of appeals holding the term transaction to mean "one ad in one media outlet per day."

May, 863 P.2d 967, 975-976, quoting *State ex. rel. Woodard v.May Dept. Stores Co*., 849 P.2d 802, 810 (Colo. App. 1992).

727. The Court "should apply the following concepts in determining the amount of [the penalty] award":

(a) the good or bad faith of the defendant;

(b) the injury to the public;

(c) the defendant's ability to pay; and

(d) the desire to eliminate the benefits derived by violations of the CCPA.

State ex rel. Woodard v. May Dep't Stores Co., 849 P.2d 802, 810 (Colo. App. 1992).

728. The Court finds that there was bad faith on the part of Defendants in using the same misleading representations about wage and employment outcomes year after year – even during the recession when wages decreased and unemployment rose– to induce consumers to enroll at CollegeAmerica. The careful use of first party pronouns in referring to both CollegeAmerica and its prospective students in connection with national wage data reflecting far higher wages than CollegeAmerica graduates earn; the use of fonts, color, size of text, etc. to both emphasize and deemphasize certain information; and the careful and uniform isolation of accurate information regarding CollegeAmerica graduates and their wages from prospective students during the admissions process, coupled with the emphasis on enrolling students in a single day, all point to CollegeAmerica's bad faith in connection with its advertising and admissions.

729. The State has established substantial injury to Colorado consumers who incurred thousands of dollars in debt based upon Defendants' unlawful conduct.

730. With respect to ability to pay, all indications are that Defendants have operated a highly profitable operation for many years, garnering hundreds of millions of dollars in revenue. Ex. 750; Ex. D, 81:10 – 93:4, *testimony of Rohit Chopra*. Further, Defendants have put forth no evidence establishing that they are unable to pay a substantial penalty in this case. *See People v. First Fed. Credit Corp.*, 128 Cal Rptr.

2d 542, 548 (Cal Ct. App. 2002) ("[T]he People were not required to present evidence of defendants' wealth in order to obtain the penalties mandated by [California's Consumer Protection Act] . . . [T]he issue of defendants' financial condition was a matter the defendants could raise in mitigation.").

731. For the reasons set forth below, the court concludes that the maximum penalty is warranted for each violation identified herein.

732. The Court finds that Defendant Juhlin began his employment with CEHE in or around 2010. Defendant Juhlin implemented Defendant Barney's longstanding policy of advertising earnings that they both knew were not representative of actual or likely CollegeAmerica outcomes.

733. The Court finds liability for the following six series of violations. The Court determines that the statutory cap of $500,000 is met for each series, and that a total civil penalty in the amount of $3,000,000 is proper in this case.

B. Misrepresentation of Earnings

734. The Court has found that Defendants misrepresented earnings in a variety of ways. When viewed on a "per consumer" basis, *May Dep't Stores Co.*, 863 P.2d at 976, the Court notes that 10,879 consumers enrolled in CollegeAmerica since 2006. Ex. 748. The admissions process, including the use of national average salary data in the admissions interview, has remained materially unchanged since that time. *See* Ex. 198 at 88; Ex. 230 at 90; Ex. 231 at 97; Ex. 2003 at 34; Ex. 2055 at 34; Ex. 2058 at 71.

735. As discussed above, Defendants' scripted admissions presentation violated C.R.S. § 6-1-105(1)(e), (g), and (u) in its discussion of earnings. At $2,000 per violation, the 10,879 violations of any one of these three provisions would result in a penalty of $21,758,000 – far in excess of the $500,000 cap.

736. When viewed on a "per transaction" basis, *May Dep't Stores Co.*, 863 P.2d at 976, Defendants' written advertisements provide further basis for penalties. For example, Ex. 608 contains a variety of false and misleading earnings representations, including starting salary representations for Accounting and Computer Science degrees that were well in excess of those earned by CollegeAmerica graduates, as demonstrated by Defendants' own records. *See* Ex. 608 at 10; Exs. 889 and 890. These representations violated C.R.S. § 6-1-105(1)(e), (g), and (u).

737. Ex. 608 was mailed to 13,000-14,000 Colorado households. Ex. I at 277:19-20, 283:23-284:3, *testimony of Eric Juhlin*. Ex. 608 was similar to approximately 75 mailer campaigns that were mailed out between 2010 and 2015. *See* Ex. 608; Ex. 678 (filed as Ex. B to Defendants' April 28, 2017 Motion for Partial Summary Judgment); Defendants' April 28, 2017 Motion for Partial Summary Judgment at 4 and Ex. A.

738. Focusing solely on Ex. 608, at $2,000 per violation, the 13,000 mailings would vastly exceed the $500,000 cap.

739. The Court concludes that the earnings violations constitute a related series and that a civil penalty in the amount of the statutory cap of $500,000 is proper.

C. Misrepresentation of EMT Training

740. When viewed on a "per consumer basis," the Court has found that two consumers enrolled in connection with Defendants' misrepresentation of EMT training at CollegeAmerica: Megan Posey in January 2008 and Shawndel Sievert in August 2009.

741. The court concludes that a civil penalty in the amount of $4,000 is proper for these violations of C.R.S. § 6-1-105(1)(e).

742. When viewed on a "per transaction basis," the Court concludes that a penalty is proper for Defendants' advertisement of EMT training on the CollegeAmerica website. The State proved that this representation was on the website for one day in or around August 2010. *See* Ex. 615; Ex. I at 239:9-240:1, *testimony of Eric Juhlin*.

743. The Court concludes that a civil penalty in the amount of $2,000 is proper for this violation of C.R.S. § 6-1-105(1)(e).

744. The State also proved that the CollegeAmerica catalog for the years 2006-2008 misrepresented the availability of EMT training at its Colorado campuses. *See* Ex. 2037 at 53; Ex. H at 91:11-16, *testimony of Carl Barney*; Ex. 208 at 1. At 365 days per year, this amounted to 1,095 violations. Applying the statutory maximum of $2,000, the penalty for this violation of C.R.S. § 6-1-105(1)(e) would exceed the statutory cap.

745. The State also proved that the 2009 binder misrepresented the availability of EMT training in the Medical Specialties program. *See* Ex. E at 148:14-25, *testimony of Krystal Neeley*; Ex. 188 at 19. At 365 days per year, the $2,000 maximum would result in a penalty in excess of the statutory cap.

746. The Court concludes that the EMT violations constitute a related series and that a civil penalty in the amount of the statutory cap of $500,000 is proper.

D. Misrepresentations Regarding X-Ray Certification

747. When viewed on a "per consumer" basis, the State proved that five consumers enrolled in CollegeAmerica in connection with x-ray misrepresentations: Krystal Neeley, Stacey Potts, and Shawndel Sievert in 2009, and Jessica McCart and Robin Moreno in 2010.

748. The court concludes that a civil penalty in the amount of $10,000 is proper for these violations of C.R.S. § 6-1-105(1)(e), (g), and (u).

749. When viewed on a "per transaction" basis, the State proved that from 2006 through 2011, the CollegeAmerica catalog falsely stated that the Medical Specialties program would prepare students to take the limited scope certification exam. Ex.

2037 at 53; Ex. 2041 at 21; Ex. 2042 at 29. At one violation per day and $2,000 per violation, the penalty would exceed the $500,000 cap.

750. The State also proved that the 2009 binder falsely stated that the Medical Specialties program would prepare students to take the limited scope certification exam. *See* Ex. E at 148:14-25, *testimony of Krystal Neeley*; Ex. 188 at 19. At 365 days per year, the $2,000 maximum results in a penalty in excess of $500,000.

751. The Court concludes that the x-ray violations constitute a related series and that a civil penalty in the amount of the statutory cap of $500,000 is proper.

E. Sonography

752. When viewed on a "per consumer" basis, the Court has found that two consumers, Ashley Barksdale and Alicia Zeller, enrolled in CollegeAmerica in connection with sonography misrepresentations.

753. The court concludes that a civil penalty in the amount of $4,000 is proper for these violations of C.R.S. § 6-1-105(1)(e) and (u).

754. The Court has also concluded that from March 2012 to at least April 2014 Defendants' catalogs falsely represented that Defendants' Colorado campuses offered a Sonography program. *See* Ex. 173 at 28; Ex. 372 at 52-53. When viewed on a "per transaction" basis, for the 730 days (two years) in which these representations were made, the $2,000 maximum would result in a penalty in excess of $500,000.

755. The Court concludes that the sonography violations constitute a related series and that a civil penalty in the amount the statutory cap of $500,000 is proper.

F. Misrepresentation of Job Placement Rates

756. The Court calculates penalties for Defendants' misrepresentation of placement rates on a "per transaction" basis.

757. The Court has concluded that Defendants' disclosures of CollegeAmerica's employment rates for the years 2009-2012 inflated the rates in violation of C.R.S. § 6-1-105(1)(e).

758. Beginning on July 1, 2011, Defendants disclosed the inflated rates on their website and on flyers and TV screens on campus. *See* Ex. Q at 266:14-23, 266:14-23, *testimony of Susie Reed*. The Court also heard audio recordings of Mary Gordy and an unidentified admissions consultant using the placement rates as an inducement to enroll students.

759. Given that the rates for 2009, 2010, and 2011 were all inflated, the disclosures in the subsequent years violated C.R.S. § 6-1-105(1)(e). At $2,000 per day, the hundreds of days of false representations would result in a penalty in excess of $500,000.

760. The Court concludes that the employment-rate violations constitute a related series and that a civil penalty in the amount of the statutory cap of $500,000 is proper.

G. Misrepresentations Regarding EduPlan

761. The Court has found that Defendants violated C.R.S. § 6-1-105(1)(e) by falsely representing that EduPlan would make college affordable and help reestablish consumers' credit. *See* Ex. 679 at 7, 15, 23, 28, 37, 45, 53, 60, 72.

762. Defendants have admitted that approximately forty mailing campaigns included flyers that stated that EduPlan loans "can . . . help re-establish your credit." *See* April 28, 2017 Motion for Partial Summary Judgment, at 4 and Exs. C and D. (Exhibit D to this motion was admitted as Ex. 679.)

763. The Court concludes that the $2,000 maximum penalty is proper for each misrepresentation that EduPlan loans can help reestablish a consumer's credit.

764. Although the Court did not receive evidence about how many households were reached through the forty mailing campaigns that included the "reestablish your credit" language, the Court has heard evidence that another mailer was sent to 13,000-14,000 consumers. Ex. I at 277:19-20, 283:23-284:3, *testimony of Eric Juhlin*.

765. Thus, it is likely, and the Court finds, that the "reestablish your credit" mailers were sent to more than 1,000 consumers. At $2,000 per violation, this would result in a penalty in excess of $500,000.

766. The Court concludes that the "re-establish your credit" violations constitute a related series and that a civil penalty in the amount of the statutory cap of $500,000 is proper.

767. The Court therefore calculates the maximum civil penalty for each related series of violations under § 6-1-105(1)(e), (g) and (u) at: $3,000,000.

768. The Court finds that all Defendants, jointly and severally, are liable for the $3,000,000.00 in civil penalties.

III. Restitution and Unjust Enrichment

769. Under the CCPA, the term "restitution" refers "solely to a district court's orders or judgments . . . which may be necessary" to completely compensate or restore to the original position any person injured or to prevent any unjust enrichment. *Western Food Plan, Inc. v. District Court*, 598 P.2d 1038, 1039 n.1 (Colo. 1979).

770. With respect to each of the students listed in ¶ 726, *supra*, each was allowed to enroll in CollegeAmerica for the purpose of pursuing a course of study, or an emphasis within the course of study, which either did not exist at all, existed on the pages of CollegeAmerica catalogs but not in reality, had been represented to be imminent before it was accredited, without the acquisition of necessary equipment, and without even a corporate commitment to providing the program at all. One student

was admitted despite his permanent mental disability which obviously precluded him from doing college level work, despite his sincere desire to do so. CollegeAmerica received tuition dollars in the form of payments under the federal student aid program under Title IV, significant balances, if not all, of which is still owed by most such students. Accordingly, the court ORDERS that, within thirty (30) days of the date of this order, Defendants refund the entire amount of federal student aid received on behalf of each such student, together with interest at the rate of 8% per annum from the date such federal student aid was received on their behalf. This restitution is in addition to the remedy pertaining to their EduPlan loans referred to in ¶ 726.

771. Relying primarily on federal cases arising under the Federal Trade Commission Act, the state argues for very broad restitution, and disgorgement of tuition and fees paid by, virtually every student who has registered at a CollegeAmerica campus in Colorado since 2006, numbering over 10,000. The court declines to do so for several reasons.

772. First, the statutory language giving rise to the claim for restitution refers to the court making "such orders or judgments as may be … *necessary* to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice." C.R.S. § 6-1-110(1)(emphasis supplied). For the court to award restitution to every single student who has ever enrolled at CollegeAmerica or to seek to prevent unjust enrichment by CollegeAmerica with respect to each such student, would be to completely disregard a significant percentage of the evidence in this case. There certainly were a number of students who testified that their CollegeAmerica education had been a very positive thing in their lives, making it impossible for the court to conclude that it was "necessary," let alone appropriate, to order restitution of substantially all that every student has ever paid in tuition and fees to CollegeAmerica. For the same reasons, it is impossible for the court to conclude that CollegeAmerica was unjustly enriched by receipt of such tuition and fees. Restitution, and the disgorgement of those amounts by which someone has been unjustly enriched, requires far more precision than that.

773. Second, while the state certainly presented evidence regarding a large number of CollegeAmerica students whose experience was negative, with respect to some of those persons, there was no evidence regarding what amount would be necessary to compensate them or restore them to their original position. In the case of those who had actually obtained degrees from CollegeAmerica despite their misgivings, there would need to be an offset for the value of that degree, even though it allegedly had less value than the student anticipated or would have liked. Because it is the state's obligation to demonstrate what amounts are "necessary" to compensate or restore to their original position persons injured by a deceptive trade practice, there is simply insufficient evidence in the record to do that, beyond what the court has already ordered.

774. Finally, the state essentially concedes that it presented inadequate evidence to allow the court to make the necessary calculations of restitution and unjust enrichment. In its Proposed Findings of Fact and Conclusions of Law, the state proposes a very elaborate

post-trial disclosure mechanism which would require significant time and effort on the Defendants' part to locate and disclose evidence pertaining to each student who has ever attended CollegeAmerica in Colorado, how much CollegeAmerica received in tuition dollars from them, and many additional data points. With respect to this particular species of relief, it is simply too late in the day to require the sorts of disclosuresand discovery the state requests. With the extraordinary investigative powers of the Attorney General, together with the extensive discovery pursued by the parties in this case, it is unclear to the court why such matters were not pursued before trial and presented, perhaps through an appropriate expert witness, at trial. In any event, it is simply too late to remedy that hole in the evidentiary record at this point in the process.

JUDGMENT

Pursuant to C.R.C.P. 79, the clerk of the court is HEREBY DIRECTED TO ENTER JUDGMENT on the Register of Actions in favor of the Plaintiffs, and against Defendants, jointly and severally, as follows:

1. In the amount of $3,000,000.00 for civil penalties under the Colorado Consumer Protection Act, C.R.S. § 6-1-112;

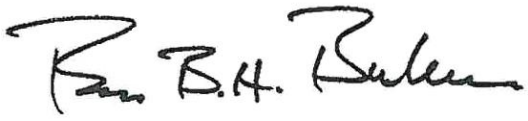
2. For injunctive relief under the Colorado Consumer Protection Act, as set forth in Remedies, § I.A, above.

3. For injunctive relief under the uniform consumer credit code, as set forth in Remedies, §I.B, above.

Plaintiffs seek an award of attorney fees and costs, pursuant C.R.S § 6-1-113(4). The State shall have 21 days from the date of this order to file a motion and supporting documentation in support of that claim; Defendants shall have 14 days after such filing to file an opposition and any supporting documentation; and Plaintiffs shall have seven days thereafter to file a reply.

DATED this 21st day of August, 2020.

BY THE COURT:



Ross B.H. Buchanan
Denver District Court Judge