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Consumer Protection Section

June 30, 2022

The Honorable Miguel A. Cardona
Secretary of the U.S. Department of Education
40 Maryland Avenue SW
Washington, DC 20202

RE: Loan Forgiveness Application on Behalf of Students who Attended a Center for Excellence in Higher Education School

Dear Secretary Cardona:

As Attorney General for the State of Colorado, I write to request full loan discharge and refunds for Colorado borrowers who enrolled in schools owned by the Center for Excellence in Higher Education and its predecessors ("CEHE"). I noted with approval the relief the Department of Education recently provided to victims of deceptive conduct by the Corinthian family of colleges. Similar to Corinthian, every Colorado borrower who attended a CEHE school from 2006 through at least September 2017 was subject to conduct by CEHE that violated Colorado's Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq*. In addition, all borrowers in Colorado attending schools owned by CEHE, including those attending online, should be eligible for closed school discharge.

The Department currently has access to a large number of documents and transcripts as provided by CEHE to its accreditor, ACCSC, related to my office's 2017 trial against CEHE and CollegeAmerica. Those documents are cited in the Colorado court's order, which is attached hereto, and are referenced in the enclosed application. The Department should also conduct an independent inquiry into the conduct of CEHE in more recent years.

I respectfully request a written response to the application with a clear indication of whether you approve or deny discharge and refunds, and an explanation. I will appreciate a response from your office by July 30, 2022 as to your timeframe for reviewing this application as many student borrowers are substantially harmed by the ongoing demand for payment on these loans. I urge the Department to grant full discharge and repayment of federal loans taken out by the more than 10,000 Colorado students who enrolled at CEHE schools between 2006 and 2021.

Sincerely,

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Citation Conventions and Exhibit Reference Guide

Trial court opinion:

Op. ¶ #

Exhibits attached to this application:

Exhibit #

Trial exhibits:

Trial Ex. #

Trial testimony:

Ex. [letter], [page]:[line], *testimony of* [witness], [*witness identification*]

Example: Ex. B, 123:1-5, *testimony of Jane Doe, student*

Transcripts are referenced in the trial court's opinion with letters corresponding to each trial day. A table of the witnesses testifying on each date can be found at Appendix A.

I. Introduction

From 2006 through the date of the Colorado Attorney General's (hereinafter, "the State") trial in October 2017, CEHE and its predecessors (hereafter "CEHE") engaged in pervasive deception that impacted every student who attended one of CEHE's CollegeAmerica-branded institutions in Denver, Fort Collins, and Colorado Springs, Colorado. CEHE misled more than 10,000 Colorado students about job prospects, salaries, and the affordability of its institutional loan, EduPlan—all to enroll as many students as possible. CEHE's deceptive behavior violated Colorado law, and in August 2020, a Colorado state trial court issued a final judgment against CEHE for violations of the Colorado Consumer Protection Act and the Uniform Consumer Credit Code (hereafter "Opinion" or "Op."). The Opinion is attached as **Exhibit 1**. The same evidence that supported the state court's Opinion also supports a finding by the Department that CEHE made systematic misrepresentations and omissions to Colorado borrowers. Accordingly, the Department should discharge the loans and refund any amounts paid on the loans of all Colorado CEHE students who enrolled and took out loans between 2006 and October 2017.

The school also misled some students about the availability of specific training programs and certifications to induce them to enroll. Any borrower who received these misrepresentations, based on claims made in any future individual application, should be granted a loan discharge and refund based on the facts herein.

In addition, the Secretary should exercise his discretion to extend closed school discharge eligibility at least to include any Colorado student borrower enrolled at CEHE or its online school Independence University ("IU") who was in attendance on or after December 1, 2014, and automatically discharge their loans without individual applications.

II. Procedural background

a. Colorado Attorney General's case

The State sued CEHE, owner and founder Carl Barney, Chief Executive Officer Eric Juhlin, the Carl Barney Living Trust, and CollegeAmerica for conduct related to the operation of the three Colorado CollegeAmerica campuses. The State alleged that the school and its operators violated the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq*. ("CCPA") and the Uniform Consumer Credit Code, C.R.S. §§ 5-1-101, *et seq* on December 1, 2014.

The State pursued claims for six (6) categories of deceptive conduct that violated sections 6-1-105(1)(e), (g), and (u) of the CCPA. CEHE made false or misleading statements and failed to disclose material information about

(1) the earnings achieved by CEHE graduates;

(2) CEHE's job placement rates;

(3) the benefits of EduPlan, CEHE's institutional loan;

(4) whether completion of CEHE's Medical Specialties Associates Degree qualified students to sit for the Limited Scope Operator ("LSO") x-ray technician licensure in Colorado;

(5) the availability of Emergency Medical Technician training; and

(6) the availability of a Sonography degree program.[1]

The trial court conducted a four-week trial in October and November of 2017. On August 21, 2020, the Court issued its Opinion, finding all Defendants jointly and severally liable.[2] The Court ordered CEHE to pay restitution to 14 students, pay $3,000,000 in civil penalties to the State of Colorado (the statutory maximum at that time), and refrain from engaging in certain predatory behavior in Colorado.[3]

CEHE appealed the trial court's order, and a division of the Colorado Court of Appeals issued its opinion on August 26, 2021. The opinion is attached to this application as **Exhibit 2**. The division did not disturb the trial court's voluminous findings of deceptive conduct by the defendants—findings that are more than sufficient for ED to grant group discharge. But the division reversed on the narrow grounds that the trial court had erred by not requiring the State to prove that the defendant's conduct had a "significant public impact."[4] The division remanded the matter for a new trial, rather than making a decision on the record, based on an erroneous assumption that the "parties lacked the incentive to present evidence, rebut evidence, and develop a record" as to significant public impact.[5]

The division's assumption was incorrect. The trial record, which is in ED's possession, is more than sufficient to make the determination that CEHE's conduct had a significant public impact. The parties presented extensive evidence on the issue of public impact, much of which was addressed in the trial court's Opinion. After the trial, the trial court provided both parties with an opportunity to supplement the record concerning the significant public impact element—both the defendants and the State declined the opportunity.[6] The division never mentioned the trial or post-trial record—including the fact that the defendants agreed that the record on significant impact was complete, stating that "the Court has a detailed

[1] *See* **Exhibit 1**, Op. ¶¶ 585-648.
[2] *See id.*
[3] *Id.* at p. 160.
[4] *See* **Exhibit 2**, ¶ 54.
[5] *Id.* at ¶ 56.
[6] **Exhibit 3**, at p. 6.

understanding of the [significant public impact] evidence, such that no supplementation is needed."[7]

Although the division of the Court of Appeals denied the State's motion for rehearing, the State's brief, attached as **Exhibit 3**, sets forth why the trial court record is complete and demonstrates the significant public impact of Defendants' conduct.

On November 18, 2021, the State petitioned the Colorado Supreme Court for *certiorari* review. The State's Petition, which is pending, is attached as **Exhibit 4**.

b. ED's suspension of Eric Juhlin

On April 23, 2021, ED notified CEHE CEO Eric Juhlin that he was suspended from participating in any covered transactions under any federal agency's procurement and non-procurement programs and activities.[8] Referencing the August 21, 2020 judgment in the State's case, ED determined that there was "adequate evidence to suspect[] an offense listed under 2 C.F.R. § 180.800(a)." Specifically, ED concluded that Mr. Juhlin had engaged in the "commission of fraud in connection with … a public or private agreement or transaction" as well as "making false statements."[9] ED further determined that "a suspension was necessary to protect the federal interest during the pendency of the appeal."[10]

Mr. Juhlin challenged the suspension. While the suspension was under review, the Court of Appeals issued its opinion in the State's case, which Mr. Juhlin brought to the attention of the Office of Hearings and Appeals.

III. Relief under the Borrower Defense regulations

a. History of the Borrower Defense Rules

ED has the authority to relieve federal student loan borrowers of their obligation to repay a loan on the basis of an act or omission of the borrower's school.[11] ED first promulgated rules governing this borrower defense to repayment in 1995 ("1995 Borrower Defense Rules"). Under these rules, a student borrower has a defense to repayment when

[7] *Id.*
[8] *See* April 23, 2021, Notice of Government-Wide Suspension from Federal Procurement and Non-Procurement Transaction, attached hereto as **Exhibit 5**.
[9] *Id.* at 1.
[10] *Id.*
[11] *Vara v. DeVos*, CV 19-12175-LTS, 2020 WL 3489679, at *2 (D. Mass. June 25, 2020), appeal dismissed sub nom; *Vara v. Cardona*, 20-1832, 2021 WL 4057798 (1st Cir. July 21, 2021) *citing* Federal Direct Student Loan Program, Notice of Proposed Rulemaking, 59 Fed. Reg. 42,646, 42,649 (Aug. 18, 1994).

> any act or omission of the school attended by the student that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law.[12]

The 1995 Borrower Defense Rule governs applications for loan relief for loans disbursed prior to July 1, 2017.[13]

In 2016, ED promulgated new rules concerning borrower defense ("2016 Borrower Defense Rules"). Under those rules, a borrower may assert a defense if their school made a substantial misrepresentation that the borrower reasonably relied on to the borrower's detriment when the borrower decided to attend, or to continue attending, the school or decided to take out a Direct Loan.[14] The 2016 Borrower Defense Rule governs applications for loan relief for loans disbursed between July 1, 2017 and July 1, 2020.[15]

Under both regimes, ED is authorized to accept and consider applications from individuals or groups of borrowers for relief under the borrower defense rules.[16] The Attorney General can file a group application for borrower defense on behalf of borrowers in his state.[17] If the Secretary determines that common facts apply to a group of borrowers, then the Secretary may proactively identify members of that group for the purpose of processing a group application.[18] Members of the group can be identified through individual applications or through any other source.[19]

Upon receiving an application for borrower defense relief, a hearing official is appointed to oversee a fact-finding process.[20] Another official is designated to present the claims of the group during the process.[21] The hearing official considers any evidence and argument presented on behalf of the group and individual members of the group.[22] The hearing official also considers information, including any

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[12] 34 C.F.R. § 685.206(c)(1)
[13] *Id.*
[14] 34 C.F.R. § 685.222(d)
[15] *Id.* at (a)(2).
[16] *See* 34 C.F.R. 685.222(e) and (f); *see Vara*, at *26, *28 (in rejecting the claim that a group discharge process did not exist for loans taken out prior to 2017, the court found "overwhelming record evidence, which demonstrates that the agency repeatedly exercised its discretion to initiate group discharge processes upon receipt of group applications."); *see also Williams v. DeVos*, 2018 WL 5281741, at *12 (D. Mass. Oct. 24, 2018) ("In short, the Court finds that Attorney General Healey's DTR submission was sufficient to require the Secretary to determine the validity of the plaintiffs' borrower defense.").
[17] *Id.*
[18] 34 C.F.R. § 685.222(f)(1).
[19] *Id.*
[20] *Id.* at (g)(1).
[21] *Id.* at (f)(2)(i).
[22] *Id.* at (g)(1).

Department records or response from the school or a person affiliated with the school.[23] The hearing official then issues a written determination.[24]

b. Eligible Borrowers are entitled to loan discharge under both the 1995 and the 2016 Borrower Defense Rules

CEHE's Colorado students who enrolled and took out loans from 2006 until July 1, 2017 are entitled to full loan discharge under the 1995 Borrower Defense Rule. CEHE engaged in widespread, systemic misconduct during the admissions and financial aid process that violated Colorado state law, thus forming a basis for relief pursuant to the 1995 Borrower Defense Rule. As demonstrated by the facts below, CEHE violated four provisions of the CCPA:

1) Either knowingly or recklessly 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, C.R.S. § 6-1-105(1)(e);

2) 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, C.R.S. § 6-1-105(1)(g);

3) Fails to disclose material information concerning 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, C.R.S. § 6-1-105(1)(u); and

4) Either knowingly or recklessly engages in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice, C.R.S. § 6-1-105(1)(kkk).[25]

The necessary elements of a CCPA claim differ for private claimants and the State. To prevail in a civil enforcement action under the CCPA, a private party must establish by a preponderance of the evidence that: (1) the defendant engaged in an unfair or deceptive trade practice; (2) the challenged practice occurred in the course of the defendant's business, vocation, or occupation; (3) the practice significantly impacted the public as actual or potential consumers of the defendant's goods, services, or property; (4) the plaintiff suffered an injury in fact to a legally protected

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[23] *Id*; *see also id. at* (h)(i).
[24] *Id*. at (f).
[25] Effective October 1, 2022, this deceptive trade practice will be found at C.R.S. § 6-1-105(1)(rrr).

interest; and (5) the challenged practice caused the plaintiff's injury.[26] The Colorado Attorney General need only establish the first three elements.[27]

With regard to the third element, the Colorado Supreme Court has held that widespread advertisements directed to the market generally are sufficient to significantly impact the public.[28] Colorado courts consider number of consumers directly affected by the challenged practice, the relative sophistication and bargaining power of the affected consumers, and evidence that the challenged practice has impacted other consumers or has a significant potential to do so in the future.[29] As will be demonstrated below, CEHE's multiple misrepresentations were made in online, print and television advertisements were seen by tens of thousands of Colorado consumers and directly impacted the public. CEHE targeted people it knew to be relatively unsophisticated and used high-pressure sales tactics to rob them of bargaining power.

CEHE's Colorado students who enrolled and took out loans on or after July 1, 2017, until at least September of 2020 are entitled to substantial loan relief based on the 2016 Borrower Defense Rule.[30] CEHE engaged in multiple substantial misrepresentations that borrowers reasonably relied on to their detriment when they decided to attend or continue to attend CEHE schools, thus forming a basis for relief under the 2016 Borrower Defense Rule.[31]

A substantial misrepresentation is defined as a false, erroneous, or misleading statement about "the nature of [the school's] educational program, its financial charges, or the employability of its graduates."[32] Misleading statements can be made directly or indirectly to the student, prospective student, or any member of the public

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[26] *Hall v. Walter*, 969 P.2d 224, 233 (Colo. 1998); a*ccord Brodeur v. Am. Home Assur. Co.,* 169 P.3d 139, 155 (Colo. 2007); *Crowe v. Tull*, 126 P.3d 196, 200 (Colo. 2006).

[27] The CCPA was amended in 2019 to remove the requirement that the Attorney General prove significant public impact. See C.R.S. § 6-1-103. However, that amendment to the law does not apply retroactively to facts that predate the amendment. *See State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.,* 2021 COA 117, ¶¶ 49, 54, *reh'g denied* (Sept. 30, 2021).

[28] *Hall*, 969 P.2d at 235. *See also Loughridge v. Goodyear Tire & Rubber Co.*, 192 F. Supp. 2d 1175, 1186 (D. Colo. 2002) (finding that internet advertisements were sufficient to create significant public impact._

[29] *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc*., 62 P.3d 142, 149 (Colo. 2003)

[30] *Infra* Section VI.b; *see also* 34 C.F.R. 685.222(d).

[31] In 2021, CEHE's remaining schools were likely operating under provisional agreements to participate in Title IV. *See, e.g*., https://tcf.org/content/commentary/the-education-department-should-review-these-risky-schools/. ED has the authority to conduct a program review to determine whether CEHE engaged in substantial misrepresentations, which would allow the Secretary to revoke, limit or deny an institution's program participation agreement, "if the institution is provisionally certified under § 668.13(c)." If ED conducts such a program review and concludes that CEHE engaged in substantial misrepresentations, then those findings should be persuasive, if not conclusive, that students have a basis for discharge under the 2016 Borrower Defense Rule for relief, given that the rule incorporates section 668.13(c)'s definition of "substantial misrepresentation." 685.222(d)(1).

[32] 34 C.F.R. § 668.71(b) and (c).

or an accrediting agency.[33] A misleading statement includes any statement that has the likelihood or tendency to mislead under the circumstances.[34] As set forth below, Colorado borrowers who attended CEHE schools until at least September of 2020 should be afforded loan relief based on the 2016 Borrower Defense Rule.

IV. Relief under the Closed School Discharge Rule

ED has the authority to discharge a borrower's Direct Loan when a student cannot complete their course of study because the school closed.[35] Discharge is available for all students who are enrolled at the time of the closure and do not complete their course of study through a teach out or transfer of credits to another school.[36]

Students who took out their loans before July 1, 2020 are eligible for discharge if they withdrew from the school within 120 days of the closure ("2013 Closed School Discharge Rule").[37] Under the 2013 Closed School Discharge Rule, the Secretary may extend the 120-day pre-closure withdrawal eligibility period or "look-back period" period if exceptional circumstances justify the extension.[38] Among the non-exhaustive list of reasons for extension is the school's loss of accreditation or a finding by a state government agency that the school violated state or federal law.[39]

Students who took out loans after July 1, 2020, are eligible for discharge if they withdrew from the school within 180 days of the closure ("2019 Closed School Discharge Rule").[40] Exceptional circumstances warranting an extension of the look-back period include when the teach out of the student's educational program exceeds the 180 days.[41]

As detailed herein, the State determined as early as December 1, 2014, when it filed its Complaint against CEHE, that the school was engaged in violations of state law, forming a basis for extension of the lookback period under the 2013 Closed School Discharge Rule. Furthermore, the CEHE's teach out period exceeded 180 days, forming a basis for extension under the 2019 Closed School Discharge Rule.

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[33] 34 C.F.R. § 668.71(c)
[34] *Id.*
[35] 34 C.F.R. § 685.214(a)(1)
[36] *Id.* § 685.214(c)(1)(i) and (c)(2)(i).
[37] *Id.* § 685.214(c)(1)(i)(b).
[38] *Id.*
[39] *Id.*
[40] *Id.* § 685.214(c)(2)(i)(b).
[41] *Id.*

V. CEHE's deceptive conduct

a. Factual background

1. Carl Barney founded CollegeAmerica Denver, Inc. as a for-profit entity in the early 1990s.[42] CollegeAmerica Denver Inc. was made up of three career college campuses in Denver, Colorado Springs, and Fort Collins.[43] Around the same time, Mr. Barney founded or purchased several other for-profit colleges: CollegeAmerica Arizona, Inc., Stevens-Henager, and California Colleges, Inc.[44] Barney also owned CollegeAmerica Services, Inc. ("CASI"), which provided senior management oversight and support services to the for-profit colleges.[45]

2. In 2012, the for-profit entities controlled by Mr. Barney merged with the non-profit entity CEHE.[46]

3. CEHE announced in May 2020 that it was closing virtually all of its ground campuses, including those in Colorado, effective August 17, 2020.[47] CEHE closed all of its schools on August 1, 2021.[48]

b. CEHE students

4. Mr. Juhlin, the CEO and President of CEHE, testified at trial that CEHE students had generally "been dealt a very challenging hand" and that they were "not folks that have had a relatively easy course in their life."[49] CEHE students were "typically [from] a much lower socioeconomic status than the traditional college student."[50] In the Denver campus, 74% of enrollees had a family income of less than $40,000.[51] The figure was 80% in the Colorado Springs campus and 74% in the Fort Collins campus.[52] Many CEHE students were single mothers with children and dependents.[53] 40% of CEHE's Colorado students identified as members of a racial or ethnic minority, primarily African American and Hispanic.[54]

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[42] Op. at ¶ 1, *citing* Ex. H at 6:16-25, *testimony of Carl Barney, Founder of College America.*
[43] Op. at ¶ 5, *citing* Ex. H at 7:14-8:1.
[44] Op. at ¶ 2, *citing* Ex. H at 8:7-17.
[45] Op. at ¶ 2, *citing* Ex. H at 9:9-19.
[46] Op. at ¶ 4, *citing* Ex. H at 107:23-25; *see generally* Trial Ex. 528.
[47] *Infra* Section V.i..
[48] *See*, https://boardofed.idaho.gov/resources/stevens-henager-college-shc-closure-frequently-asked-questions/.
[49] Op. at ¶ 10, *citing* Ex. S at 24:11-14, *testimony of Eric Juhlin, Chief Executive Officer.*
[50] Op. at ¶ 9, *citing* Ex. S at 25:1-3.
[51] Op. at ¶ 9, *citing* Trial Ex. 865.
[52] Op. at ¶ 9, *citing* Trial Ex. 866.1; Trial Ex. 867.1.
[53] Op. at ¶ 8, *citing* Ex. S at 24:19-20, *testimony of Eric Juhlin, Chief Executive Officer.*
[54] Op. at ¶ 8, *citing* Trial Ex. 3400.

5. A majority, 60-66%, of students who enrolled at CEHE in Colorado did not graduate.[55] Of those CEHE students who graduated, 76% received an associate's degree.[56] Statistics published in 2017 showed that three years after leaving a CEHE school, only 16% of students had paid down one dollar or more of the principal on their federal loans.[57] That number was significantly lower than the national average of 46% at the time.[58]

c. CEHE used false job placement rates to induce students to enroll

i. CEHE advertised false job placement rates to prospective students

6. Effective July 1, 2011, ED regulations required CEHE to disclose the employment rates it reported to its accreditor, ACCSC, to prospective students.[59] CEHE posted employment rates on its website and included a footnote that the job placement rate was calculated pursuant to ACCSC's methodology.[60]

7. CEHE also used graduate employment rates to entice prospective students to enroll in its schools and to take out student loans. In 2012 and 2013, Graduation and Employment charts were displayed in the hallway outside the Career Services office and in the student lounge at the Fort Collins campus.[61] The Graduation and Employment charts were presented to prospective students during their campus tour.[62] CEHE also posted employment rates on flyers and TV screens at all Colorado campuses.[63]

8. Graduate employment rates were also discussed during some admissions interviews. In 2012, the State conducted an undercover visit to one of CEHE's Colorado schools for an admissions interview. During the interview, the admissions consultant touted the school's high job placement rates:

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[55] Op. at ¶ 11, *citing* Ex. F at 22:13-20, *testimony of Ed Harvey, State's Expert.*
[56] Op. at ¶ 12, *citing* Trial Ex. 748.
[57] Op. at ¶ 13, *citing* Ex. D at 142:21-144:19, *testimony of Rohit Chopra, State's Expert*; Trial Exs. 865.1, 866.1, 867.1, Ex. F at 40:11-41:13, *testimony of Ed Harvey, State's Expert.*
[58] Op. at ¶ 13, *citing* Trial Ex. 865.1, 866.1, 867.1.
[59] Op. at ¶ 305, *citing* Ex. G at 40:7-12, *testimony of Greg Regan, State's Expert; See also* 75 FR 66831. The disclosure regulations remained in place after the decision in *Ass'n of Private Sector Colleges & Universities v. Duncan*, 681 F.3d 427, 442 (D.C. Cir. 2012) (vacating much of the gainful employment regulations). *See* Electronic Announcement #39, 7/6/12 *available at* https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2012-07-06/gainful-employment-electronic-announcement-39-status-gainful-employment-regulations.
[60] Op. at ¶ 305, *citing* at 51:2-52:21; Trial Ex. 988 at 11.
[61] Op. at ¶ 301, *citing* Ex. N at 141:23-142:7, *testimony of Kristy McNear, Director of Admissions for Fort Collins Campus and Regional Director of Admissions for Colorado.*
[62] *Id.*
[63] Op. at ¶ 306, *citing* Ex. Q at 266:14-23, *testimony of Susie Reed, Defendant's Expert.*

> Ms. Barber: Okay. Do you have – what is your success rate like?
>
> CEHE: 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.[64]

9. In anoher recorded admissions interview with a consumer in 2015, the admissions consultant assures the prospective student that "typically we have anywhere from a 70% to 100% placement rate."[65]

ii. CEHE was required to comply with its accreditor's guidelines when calculating job placement rates

10. CEHE's accreditor, ACCSC, established the method for calculating and substantiating graduate placement rates. ACCSC required member schools to submit annual reports that included, among other things, metrics concerning the percentage of graduates who found employment in a training-related field.[66] Since at least 2009, ACCSC has required that schools' employment placement rates be supported by verifiable records or documentation of initial employment.[67]

11. CEHE was well-versed in ACCSC's standards and guidelines, hiring a dedicated staff to monitor and report employment rates.[68] The school also engaged in considerable training about ACCSC's standards and guidelines.[69]

iii. CEHE routinely inflated its job placement rates

12. The State retained forensic accountant Greg Regan[70] to audit CEHE's job placement rates using CEHE's records. Mr. Regan was previously employed by ED to analyze whether Corinthian Colleges overstated the employment rates it disclosed to students.[71] Corinthian Colleges, like CEHE, had several programs that

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[64] Op. at ¶ 302, *citing* Ex. 914 at timestamp 4:40-4:55; see Ex. N at 234:25-235:5, *testimony of Vicky Barber, State's Investigator*.
[65] Op. at ¶ 303, *citing* Ex. 760.2.
[66] Op. at ¶ 210, *citing* Ex. G at 38:2-23, *testimony of Greg Regan, State's Expert*; Trial Ex. 17 at 93.
[67] Op. at ¶ 213, *citing* Trial Ex. 17 at 93.
[68] Op. at ¶ 610, *citing* Ex. Q at 85:11-86:4, 115:11-25, 116:1-122:23, 156:4-158:18, *testimony of Susie Reed, Defendant's Expert*.
[69] Op. at ¶ 611, *citing* Ex. Q at 113:17-122:23, 186:19-187:3, *testimony of Susie Reed, Defendant's Expert*.
[70] Op. at ¶ 220. Mr. Regan is a licensed Certified Public Accountant ("CPA"), certified in financial forensics, and as a fraud examiner by the Association of Certified Fraud Examiners. Op. at ¶ 221, *citing* Ex. G at 10:5-24. ACCSC identifies CPA's as parties that are qualified to perform independent employment verification audits. Op. at ¶ 221, *citing* Ex. G at 14:21-15:6, *testimony of Greg Regan, State's Expert*.
[71] Op. at ¶ 222, *citing id.* at 11:22-12:14.

were accredited by ACCSC.[72] 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.[73] And ED recently granted group discharge to hundreds of thousands of Corinthian students based in part on the job-placement misrepresentations. 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.[74]

13. Mr. Regan found that CEHE misrepresented the employment status of 35% of the graduates reported as "employed in field."[75] These included a Business Administration bachelor's degree holder employed as a produce clerk at the local grocery store,[76] a Business Management and Accounting bachelor's degree holder employed as a clerk at Panda Express,[77] and a Medical Specialties associate degree holder employed as a waiter.[78] ACCSC has emphasized that if a graduate's job title does not clearly indicate that the occupation is in a training-related field, a school must explain how the employment is training-related.[79]

14. Mr. Regan concluded that the methodology CEHE applied to report their employment rates was inconsistent with ACCSC's Standards. As a result, CEHE's actual employment rates were significantly lower than what they reported to ACCSC and disclosed to prospective students.[80]

15. Mr. Regan analyzed CEHE backup documentation that ostensibly supported the employment rates CEHE reported to ACCSC in 2009-2012 and 2015 to determine whether CEHE reported their employment rates according to ACCSC's Standards.[81] Based upon his review of CEHE's backup documentation, Mr. Regan recalculated the actual employment rate for different degree programs from 2009-2012 and 2015.[82]

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[72] Op. at ¶ 222, *citing id.* at 12:15-24.
[73] Op. at ¶ 222, *citing id.* at 13:1-8.
[74] Op. at ¶ 223, *citing* Ex. G at 13:9-14:20, *testimony of Greg Regan, State's Expert.*
[75] Op. at ¶ 239 *citing* Ex. G at 52:24-53:10, 76:21-77:3. *testimony of Greg Regan, State's Expert*; *see also* Trial Ex. 988 at 12 and 22.
[76] Op. at ¶ 263 *citing* Ex. G at 201:14-203:16, *testimony of Greg Regan, State's Expert.*
[77] Op. at ¶ 267 *citing* Ex. G at 204:21-205:17, *testimony of Greg Regan, State's Expert*; Trial Ex. 550.
[78] Op. at ¶ 265 *citing* Ex. G at 199:4-200:22, *testimony of Greg Regan, State's Expert*; Trial Ex. 564.
[79] Op. at ¶ 213, *citing* Ex. G at 59:18-60:14, *testimony of Greg Regan, State's Expert.*
[80] Op. at ¶ 226, *citing* Ex. G at 33:11-23, *testimony of Greg Regan, State's Expert.*
[81] Op. at ¶ 220, *citing* Ex. G at 10:25-11:10, 32:22-33:8, *testimony of Greg Regan, State's Expert.*
[82] Op. at ¶ 225, *citing* 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, State's Expert*; Trial Ex. 988 at 55-61 (demonstrative exhibit).

16. Mr. Regan concluded that CEHE inflated the employment rate of the Healthcare Administration Bachelor's degree program at all of their Colorado campuses.[83] For example, in the Denver Campus:

Year	CEHE reported…	Regan calculated…
2010 [84]	> 90%	< 30%
2011 [85]	75%	15%
2012 [86]	90%	< 20%
2015 [87]	70%	40%

17. This type of reporting disparity can also be seen in CEHE's Fort Collins and Colorado Springs' Healthcare Administration programs.[88]

18. Mr. Regan similarly concluded that CEHE inflated the employment rates for the Graphic Arts,[89] Medical Specialties,[90] Business Administration,[91] Business Management and Accounting,[92] and Computer Science programs[93] at all three CEHE campuses in Colorado. These six programs comprise over 90% of the graduates whose employment rates Mr. Regan tested.[94]

19. Included in that calculation were students whom CEHE had misrepresented as eligible for career advancement due to their education.[95] When a graduate is already employed in a training-related field at the time of graduation, the graduate can only be reported as "employed in field" if CEHE obtained documentation indicating that their education allowed the graduate to maintain the employment

[83] Op. at ¶ 230, *citing* Ex. G at at 194:23-195:18, *testimony of Greg Regan, State's Expert*; Trial Ex. 988 at 55.
[84] Op. at ¶ 231, *citing* Trial Ex. 988 at 55 (demonstrative exhibit).
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *See id.*
[89] Op. at ¶ 232, *citing* Ex. G at 197:12-198:4, *testimony of Greg Regan, State's Expert*; Trial Ex. 988 at 56.
[90] Op. at ¶ 233, *citing* Ex. G at 198:13-199:1, *testimony of Greg Regan, State's Expert*; Trial Ex. 988 at 57.
[91] Op. at ¶ 234, *citing* Ex. G at 200:23-201:8, *testimony of Greg Regan, State's Expert*; Trial Ex. 988 at 58.
[92] Op. at ¶ 235, *citing* Ex. G at 203:18-204:3, *testimony of Greg Regan, State's Expert*; Trial Ex. 988 at 59.
[93] Op. at ¶ 236, *citing* Ex. G at 205:18-206:6, *testimony of Greg Regan, State's Expert;* Trial Ex. 988 at 60.
[94] Op. at ¶ 237, *citing* Ex. G at 54:2-54:23; Trial Ex. 988 at 13.
[95] Op. at ¶ 249, *citing* Ex. G at 119:25-122:14, *testimony of Greg Regan, State's Expert*; Trial Ex. 563.

position or be eligible for advancement.[96] CEHE routinely failed to obtain this documentation,[97] and its practices were in direct conflict with ACCSC guidelines.[98]

20. Also included were graduates whom CEHE misrepresented as being self-employed.[99] ACCSC's Standards require schools to have a signed statement from a self-employed graduate attesting that the graduate was earning training-related income to report that graduate as employed in field.[100] Susie Reed, the former Vice President of Compliance at CEHE, admitted that she would count self-employed students as employed in field even when CEHE could not meet ACCSC's documentation requirements.[101] Jasmine Valencia, the former Director of Career Services at CEHE's Colorado Springs campus, testified that she was trained to report self-employed graduates as employed in field even if the only backup documentation she had was a statement of trade name which CEHE helped them to obtain.[102]

d. CEHE promised students income and wages that CEHE knew its graduates were unlikely to attain

i. CEHE advertisements touted its ability to get students more money

21. CEHE consistently ran advertisements on behalf of its CEHE schools in Colorado with headlines and statements that emphasized how attending CEHE would increase earnings:

- "Higher education means higher earnings!"[103]
- "Education is essential in getting a high-paying job."[104]

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[96] Op. at ¶ 248, *citing* Trial Ex. 13 at 115.
[97] Op. at ¶ 251, *citing* Trial 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; Trial Ex. 744 at Control #s 901, 914, 1137, 1276, 1280, 1313, 1324.
[98] *See* Op. at ¶ 253 *citing* Ex. G at 67:9-69:20, 329:7-330:2, *testimony of Greg Regan, State's Expert;* Trial Ex. 5 at 2; Op. ¶¶ 255-56, *citing* Trial Ex. 435 at 4; Ex. 253 at 2; *but see* Op. at ¶ 254 *citing* Ex. Q at 303:12-16, *testimony of Susie Reed, Def. Expert*.
[99] Op. at ¶ 261, *citing* Trial Ex. 740 at Control #s 360, 382, 691, 705, 1369; Trial Ex. 744 at Control #s 968, 975, 1151, 1154, 1328, 1331.
[100] Op. at ¶ 257, *citing* Trial Ex. 13 at 115; Trial Ex. 2133 at 125; Ex. F at 290:11-291:7, *testimony of Jasmine Valencia, Career Services specialist*.
[101] Op. at ¶ 259, *citing* Ex. R at 10:23-11:7, *testimony of Susie Reed, Def. Expert.*
[102] Op. at ¶ 258, *citing* Ex. F at 292:7-293:6, 294:2-10, *testimony of Jasmine Valencia, Career Services specialist.*
[103] Op. at ¶ 38, *citing* Trial Ex. 678 at 8; Trial Ex. 678 at 15, 40, 63; Trial Ex. 608 at 10; Trial Ex. 679 at 5, 13, 71.
[104] Op. at ¶ 38, *citing* Trial Ex. 608 at 9; Trial Ex. 678 at 8, 15, 21, 62; Trial Ex. 679 at 5, 71.

- "We make it easy to start your career faster and make more money sooner!"[105]

- "A college degree is an investment."[106]

22. CEHE's advertisements frequently made use of personal language that implied that the reader, as opposed to college students generally, would make more money with a college degree, such as:

- "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!"[107]

- "You could make more money and have a real career with the right degree."[108]

- "Think about what a bigger paycheck could mean for your future."[109]

- "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."[110]

- "In today's world, people with the right degree often get the best jobs. Give yourself an advantage in the job market, earn your degree in a high-demand field."[111]

23. CEHE's advertisements consistently made reference to what it called 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.[112] In a number of ads, CEHE drew a link between this general proposition based on national averages and the education offered by CEHE with language such as,

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[105] Op. at ¶ 38, *citing* Trial Ex. 678 at 7.
[106] **Exhibit 6** at 4
[107] Op. at ¶ 38, *citing* Trial Ex. 678 at 5, 43.
[108] Op. at ¶ 38, *citing* Trial Ex. 608 at 10; Trial Ex. 678 at 16, 63.
[109] Op. at ¶ 38, *citing* Trial Ex. 608 at 10; Trial Ex. 678 at 8, 22, 40; Trial Ex. 679 at 13, 21, 71.
[110] Op. at ¶ 38, *citing* Trial Ex. 678 at 5 (emphasis in original); Trial Ex. 678 at 7, 21, 23, 39, 43; Trial Ex. 679 at 69, 71.
[111] **Exhibit 6** at 5.
[112] Op. at ¶ 39, *citing* Ex. R at 232:3-5, 22-23, *testimony of Diane Auer Jones, Defendant's Expert*; Trial Ex. 678 at 5, 21, 23, 39, 43; Trial Ex. 679 at 69, 71.

- "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*."[113]

- "You already know that the right degree means more money and a better life. Here's why you should get a degree from CollegeAmerica."[114]

- "Call [number] and you can have a better paying job sooner than you think!"[115]

- "Choose your [career] field and start today to potentially earn more tomorrow. How? Call [number] and have your temporary ID card ready. Call today!"[116]

- "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."[117]

- "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.[118]

- "Besides increasing your prospects of earning a bigger paycheck, your CollegeAmerica degree could help you get better benefits, more promotions, more job security, and increased self esteem"[119]

24. The last phrase ran on the CollegeAmerica website until September of 2020.[120]

25. One graphic that was ubiquitous in CEHE's advertisements depicted national average salaries for different degree levels (high school, associate's degree, bachelor's degree, and master's degree) in the form of a bar chart with an upward-sloping arrow in the background.[121] The bar chart was frequently accompanied by the

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[113] Op. at ¶ 40, *citing* Trial Ex. 608 at 10; Trial Ex. 678 at 8, 15, 40, 63; Trial Ex. 679 at 5, 13, 21, 71 (emphasis added).
[114] Op. at ¶ 41, *citing* Trial Ex. 678 at 8, 40; *see also* Trial Ex. 679 at 5, 13, 21, 71.
[115] Op. at ¶ 41, *citing* Trial Ex. 608 at 10; Trial Ex. 678 at 16, 63; Trial Ex. 679 at 6, 14, 22.
[116] Op. at ¶ 41, *citing* Trial Ex. 678 at 21, 39.
[117] Op. at ¶ 41, *citing* Trial Ex. 679 at 6, 14, 22.
[118] Op. at ¶ 41, *citing* Trial Ex. 678 at 21.
[119] **Exhibit 6** (attached) at 4
[120] *Id.*
[121] Op. at ¶ 43, *citing* Trial Ex. 230 at 90; Trial Ex. 231 at 97; Trial Ex. 608 at 10; Trial Ex. 2003 at 34; Trial Ex. 2055 at 34; Trial Ex. 2058 at 71; Trial Ex. 678 at 8, 15, 22, 40, 63; Trial Ex. 679 at 5, 13, 21, 72.

phrase “Education Pays Off.”[122] Similar content was also featured on CEHE’s website between 2009 and 2017[123] and in numerous direct mailers sent to consumers.[124]

26. Admissions consultants were required to show prospective students a PowerPoint presentation which included the bar chart with national average wage data.[125] 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.[126]

27. These advertisements were part of a cohesive strategy, developed early on by CollegeAmerica founder Carl Barney, to sell an education to students by promising more money and better jobs. [127] From 2006 until at least 2017, CEHE used consistent messaging in its advertising[128] that was intended to induce prospective students to enroll with the promise of higher salaries.[129] Mr. Barney created an advertising checklist that was issued in 2008 and reissued in 2010.[130] The checklist dictates that headlines must include “higher pay, more money, or higher salary; better job or great career and faster.”[131] Mr. Barney testified that these headlines were used “frequently.”[132] The checklist asks, “does [the advertisement] <u>constantly</u> write about benefits?” and “does it mention … higher salary … often enough?”[133]

28. Testimony from students, and CEHE’s own records, showed how CEHE used the national wage data to induce students to enroll.[134]

ii. CEHE knew that its graduates did not make the advertised incomes

29. CEHE made no effort to determine whether its advertisements about long-term income or lifetime earnings were accurate for CEHE graduates.[135] CEHE

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[122] *Id.*
[123] Op. at ¶ 45, *citing Kirk Bowden Deposition Designation* at 91:18-93:6; 47:18-22; 93:14-16.
[124] Op. at ¶ 46, *citing* Trial Exs. 608, 678, and 679.
[125] Op. at ¶¶ 70, 72, *citing* Trial Exs. 198, 230, 231, 808, 809; Ex. B at 307:1-308:4, *testimony of Mary Gordy, Director of Admissions for Denver Campus,*
[126]Op. at ¶ 72, *citing See* Ex. B at 308:9-312:12, *testimony of Mary Gordy, Director of Admissions for Denver Campus*; Trial Exs. 198, 230, 231, 808, 809, 2055.
[127] *Id.*
[128] 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. Op. at ¶ 35, *citing* Trial 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.
[129] Op. at ¶ 36, *citing* Trial Exs. 425, 608, 678, 679, 425, 920.
[130] Op. at ¶ 37, *citing See* Trial Ex. 425; Ex. H at 24:9-25:1, *testimony of Carl Barney, Founder of CollegeAmerica.*
[131] Op. at ¶ 37, *citing* Trial Ex. 425 at 4.
[132] Op. at ¶ 37, *citing* Ex. H at 27:7-19, *testimony of Carl Barney, Founder of CollegeAmerica.*
[133] Op. at ¶ 37, *citing* Trial Ex. 425 at 7 (emphasis in original).
[134] Op. at ¶¶ 54-59, 499-518.
[135] Op. at ¶ 592, *citing* Ex. I, at 278:20-279:1, *testimony of Eric Juhlin, CEO of CEHE.*

did, however, track and analyze the starting salaries of graduates.[136] The following table depicts CEHE graduate starting salaries according to CEHE's own records:

Averages Starting Salaries for Colorado Graduates, 2006-2013		
	Hourly	Annual
Associate degree[137]	$11.61	$24,149
Bachelor's degree[138]	$14.06	$29,241

30. The average annual earnings for Medical Specialties graduates, CEHE's most popular program in Colorado, was $11.10 hourly and $24,441 annually.[139]

31. All of CEHE's advertisements that feature starting salaries have figures far higher than the salaries in CEHE's records.[140] For example, one advertisement which ran in 2014 states that "starting offers for graduates with a bachelor's degree in computer science averaged $60,473."[141] CEHE's records indicate that the average starting salary for graduates of CEHE's computer science bachelor's program was $31,870—nearly 50% of the advertised salary.[142]

32. The same advertisement states that "the median starting salary for graduates with a bachelor's degree in accounting was $44,700."[143] 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%)."[144] CEHE's records indicate that the average starting salary for graduates of CEHE's accounting

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[136] Op. at ¶ 145, *citing,, e.g.* Trial Exs. 499, 500, 811, 2370; Ex. H 43:14-22, *testimony of Carl Barney, Founder of CollegeAmerica.*
[137] Op. at ¶ 146, *citing* Trial Ex. 749.
[138] *Id.*
[139] *Id.* These figures are based on the State's generous assumption that all employed graduates were paid for forty (40) hours per week, fifty-two (52) weeks per year. Op. at ¶ 146, *citing* Ex. A at 131:11-25, *testimony of LeAnn Lopez, State's Investigator.*
[140] Op. at ¶ 159, *citing* Trial Exs. 608, 678.
[141] Op. at ¶ 160, *citing* Trial Ex. 890; Ex. A at 133:9-15, *testimony of LeAnn Lopez, State's Investigator*.
[142] Op. at ¶ 161, *citing* Trial Ex 890; Ex. A at 137:8-15, *testimony of LeAnn Lopez, State's Investigator*.
[143] Op. at ¶ 162, *citing* Trial Ex. 889; Ex. A at 133:9-15, *testimony of LeAnn Lopez, State's Investigator*.
[144] Op. at ¶ 162, *citing* Trial Ex. 889.

bachelor's program was $27,040—more than 30% lower than the lowest advertised salary.[145]

33. In the 2013-2014 timeframe, CEHE provided students an admissions binder that listed starting salaries of $38,000-$45,000 for graphic arts graduates, even though they knew the median starting earnings for graduates of their graphic arts program was less than $16,000.[146] Again, the actual salary of CEHE graduates was less than 50% of the advertised salary.

34. Trial testimony from the State's experts demonstrated that the prospects of CEHE graduates did not improve with time: employment and earnings for CEHE graduates remained significantly lower than the national average even years after graduation.

35. The State's economics expert, Ed Harvey,[147] conducted a survey of CEHE's Colorado graduates to ascertain their long-term employment and income outcomes.[148] Mr. Harvey surveyed approximately 12% of the CEHE's Colorado graduates between 2004 and 2016.[149] At the time of the survey in 2016, the average survey respondent was 36 years old and had graduated from CEHE four years prior.[150] Approximately 76% of the survey respondents held a bachelor's degree, with the remaining 24% holding an associate's degree from CEHE.[151] Mr. Harvey's analysis did not address the large majority of students who did not graduate.

36. The survey results revealed the dire economic circumstances of CEHE graduates, even years into their careers. Approximately 24% of survey respondents were unemployed at the time of the survey.[152] Of the small minority of Colorado CEHE students who both graduated and found employment, the average income was just over $35,000 per year (assuming that they worked 40 hours per week and were paid for 52 weeks per year).[153]

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[145] Op. at ¶ 163, *citing* Trial Ex. 889; Ex. A at 139:5-9, *testimony of LeAnn Lopez, State's Investigator*.
[146] Op. at ¶ 164, *citing* Trial Ex. 490 at 47; Trial Ex. 749.
[147] Ed Harvey is the Principal Economist at Harvey Economics. He received a bachelor's degree in economics from the University of Denver in 1971 and a master's degree in 1973. Ed Harvey founded Harvey Economics in 2002. Harvey specializes in it's a broad-based economic, financial and market research. He performs economic feasibility studies, including benefit-cost studies, economic-impact studies, and forecasting.
[148] Op. at ¶ 489 *citing* Ex. F at 19:12-20:2, *testimony of Ed Harvey, State's Expert*. Although the majority of CollegeAmerica students do not graduate, Mr. Harvey limited his survey to graduates, who would presumably realize the most significant benefits from attending CollegeAmerica.
[149] Op. at ¶ 494 *citing* Exhibit F at 43:4-60:1, *testimony of Ed Harvey, State's Expert.*
[150] Op at ¶ 495 *citing* Exhibit F at 60:11 - 70:9, *testimony of Ed Harvey, State's Expert*.
[151] *Id*.
[152] Op at ¶ 495 *citing* Exhibit F at 60:11 - 70:9, *testimony of Ed Harvey, State's Expert*.
[153] Op. at ¶ 494-95 *citing* Exhibit F at 108:11 – 112:1., *testimony of Ed Harvey, State's Expert*; Trial Ex. 2615

37. These real long-term incomes earned by CEHE graduates are dwarfed by CEHE's advertisements about long-term earnings. Surveyed graduates earned, on average, 19% less than the income that CEHE's ubiquitous bar chart advertised for associate degrees and 37% less than the income advertised for bachelor's degrees.[154]

38. Indeed, CEHE's graduates earned far less than the average *high school graduate* of a similar age. According to the U.S. census in 2016, the average earnings of high school graduates aged 36 was $39,750 – almost $4,000 per year more than the average CEHE graduate.**[155]**

Average Earnings for Individuals Aged 36		
Degree	**2016 U.S. Census[156]**	**Survey of CEHE Graduates[157]**
High School Graduate	$39,750	$35,000
Associate	$47,391	
Bachelor's	$69,809	

39. Even CEHE's expert witness admitted that CEHE graduates were highly unlikely to reach the earnings advertised by the school.[158] CEHE's expert projected that the peak earnings for CEHE graduates with a bachelor's degree would be 20% less than the advertised earnings.[159] According to these optimistic projections, CEHE bachelor's degree graduates would not achieve these peak earnings until age 55.[160] Similarly, the projected peak earnings of CEHE graduates with an associate's degree were 19% less than CEHE's advertised earnings.[161] According to the projections, bachelor's degree graduates would not achieve these earnings until age 57.[162]

40. Despite the wealth of evidence presented at the 2017 trial that CEHE graduates did not earn the salaries advertised, CEHE continued to advertise national average salaries on its website until September of 2020.[163]

41. CEHE's executives knew all along that CEHE graduates were underearning their peers. CEHE tracked starting salaries of graduates as early as

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[154] Op. at ¶ 495 *citing* Ex. 608, at 10 *compare* Exhibit F at 108:11 – 112:1, *testimony of Ed Harvey, State's Expert*; Trial Ex. 2615.
[155] Op. at ¶ 497 *citing* Ex. F at 92:1-19, *testimony of Ed Harvey, State's Expert*.
[156] Op. at ¶ 497 *citing* Ex. F at 92:1-19, *testimony of Ed Harvey, State's Expert*.
[157] Op. at ¶ 495 *citing* Exhibit F at 108:11 – 112:1., *testimony of Ed Harvey, State's Expert*; Trial Ex. 2615
[158] Op. at ¶ 545, *citing* Trial Exs. 892-894, Ex. L at 278:3-281:25, *testimony of Jonathan Guryan, Def. Expert*.
[159] Op. at ¶ 546, *citing* Trial Ex. 894.
[160] *Id*.
[161] Op. at ¶ 547, *citing* Trial Ex. 894.
[162] *Id*.
[163] **Exhibit 6** at 3.

the 1990s,[164] and executives received regular reports and analyses of the data.[165] One 2008 letter, sent to all Campus Directors, states, "Medical Specialists are starting at much lower salaries - $19,000 to $25,000."[166] The letter shows that the average salaries for graduates of the Medical Specialties associate's degree from the Colorado campuses ranged from $22,797 to $25,834 in 2007.[167] Salaries for the Healthcare Administration bachelor's degree program graduates from the Colorado campuses ranged from $23,525 to $28,163.[168] Similarly, in a 2011 letter, then-CEO Mr. Barney wrote to his executive team and career services staff that "some salaries, for some fields, are far too low."[169]

42. Despite this knowledge, CEHE consistently elected to advertise national salary data that bore little relation to the wages earned by graduates of CEHE schools.[170] In January 2014, Mr. Barney issued a data letter directing staff to use average national BLS salary data in CEHE's advertisements for the following year.[171]

43. In 2015 CEHE's accreditor, ACCSC, sent a letter to CEHE stating "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.'"[172] CEHE responded with a pledge to remove "any income or salary information" from its advertisements and specifically stated that "the College has eliminated the use of the '98% More Per Hour' headline from all advertising."[173]

44. CEHE's promise to its accreditor turned out to be yet another misrepresentation: as of September 2020, CEHE's CollegeAmerica website still featured salary figures and the phrase, "Americans with four-year college degrees made 98 percent more an hour on average in 2013 than people without a degree."[174]

45. Instead of advertising truthfully, CEHE intentionally hid its graduates' actual wage outcomes from prospective students and admissions staff. Information about the starting salaries for CEHE graduates was summarized and distributed to executives and career services staff, but this information was never shared with

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[164] Op. at ¶ 145 *citing* Trial Exs. 499, 500, 811, 2370; Ex. H 43:14-22, *testimony of Carl Barney, Founder of CollegeAmerica.*
[165] Op. at ¶ 147, *citing* Trial Ex. 499, 500, 811.
[166] Op. at ¶ 148 *citing* Trial Ex. 499.
[167] Op. at ¶ 149, *citing* Trial Ex. 499 at 2; Ex. I at 268:8-15, *testimony of Eric Juhlin, Chief Executive Officer.*
[168] Op. at ¶ 149, *citing* Trial Ex. 499 at 2.
[169] Op. at ¶ 150, *citing* Trial Ex. 500.
[170] Op. at ¶ 158, *citing* Trial Ex. 503 at 2 *compare with* Ex. 749.
[171] Op. at ¶ 154 *citing* Trial Ex. 503 at 1.
[172] Op. at ¶ 584.f *citing* Trial Ex. 6 at 5.
[173] Op. at ¶ 584.g *citing* Trial Ex. 6 at 14 and 17.
[174] Op. at ¶ 584.h *citing* Trial Ex. 920; **Exhibit 6** at 3.

admissions or financial planning staff.[175] Mr. Juhlin testified that CEHE never even considered disclosing the earnings of its graduates to prospective students.[176]

e. CEHE misrepresented that its institutional loan made education "affordable," even while borrowers struggled to repay their loans

i. CEHE advertised the affordability of its institutional loan to attract students

46. Since at least 2010, CEHE advertised their institutional loan, called EduPlan, as a means to make college affordable and to help students re-establish their credit.[177] CEHE's advertisements featuring EduPlan include headlines and statements such as:

- "EduPlan loans, which can help you pay for college and help re-establish your credit."[178]
- "You can afford college."[179]
- "Why wait? …You may be surprised by how easy it is to afford college."[180]
- "You can afford your college degree."[181]
- "Our financial planners help you get the student loans and grants that you may qualify for – college is affordable."[182]

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[175] Op. at ¶ 152, *citing* Trial Ex. 499, 500; Ex. H at 46:1-10, 48:2-4, *testimony of Carl Barney, Founder of CollegeAmerica*. Admissions consultants and career services employees testified that they never provided information about CEHE graduates' income or job prospects to prospective students. Op. at ¶ 166, *citing* Ex. B at 232:16-24, *testimony of Cristi Brougham, Admissions Consultant;* Ex. C at 211:21-213:1, *testimony of Laura Goldhammer, Admissions Consultant*; Ex. N at 175:19-23, *testimony of Kristy McNear, Director of Admissions for Fort Collins Campus and Regional Director of Admissions for Colorado*; Op. at ¶ 198, *citing* Ex. F at 269:12-25, 271:21-272:15, 275:14-276:6., *testimony of Jasmine Valencia, Career Services.*
[176] Op. at ¶ 194, *citing* Ex. S at 58:25-59:21, *testimony of Eric Juhlin, Chief Executive Officer*.
[177] Op. at ¶ 414, *citing* Trial Ex. 678 at 8, 15, 24, 27, 40, 45, 47, 62; Trial Ex. 679 at 7, 13, 15, 21, 23, 28, 37, 45, 53, 60, 72; Ex. I at 216:23-217:7, *testimony of Eric Juhlin, Chief Executive Officer*.
[178] Op. at ¶ 416, *citing* Trial Ex. 678 at 47; Trial Ex. 679 at 7, 15, 23, 28, 37, 45, 53, 60.
[179] Op. at ¶ 415, *citing* Trial Ex. 679 at 15, 23, 28, 45, 60; Trial Ex. 679 at 37, 53.
[180] Op. at ¶ 415, *citing* Trial Ex. 679 at 15, 23, 28, 37, 45, 53, 60.
[181] Op. at ¶ 417, *citing* Trial Ex. 920; Ex. R at 366:14-19, *testimony of Diane Jones*.
[182] Op. at ¶ 415, *citing* Trial Ex. 678 at 27, 45.

ii. EduPlan was not affordable for most students

47. The State's expert, Rohit Chopra,[183] reviewed a sample of EduPlan loan records from 2003 through 2006. He identified the loans that CEHE wrote off after twelve months of non-payment from the borrower.[184] Using this conservative definition of default, Mr. Chopra found that 70% of EduPlan borrowers defaulted on their loans between 2003 and 2006.[185] In addition, more than 80% of loan records between 2010 and 2016 showed late fee assessments.[186]

EduPlan Analysis	
Default	70%
Late Fees	80%

48. As Mr. Chopra testified, "that's a real indicia of immediate distress when you have that level of late fee assessment."[187]

49. In its survey of CEHE graduates, the State asked CEHE graduates if they were better off, worse off, or about the same financially as a result of attending a CEHE school.[188] Nearly half (49.5%) of respondents reported that they were worse off financially than before they attended CEHE.[189] One third (32%) reported that they

[183] Prior to testifying in the AG's case, Rohit Chopra served as the Assistant Director and Student Loan Ombudsman for the CFPB in 2011. Ex D at 15:23-18:19. Shortly after the trial, Mr. Chopra was appointed as a Commissioner on the Federal Trade Commission. Mr. Chopra is currently the Director of the CFPB.

Chopra graduated from Harvard University in 2004, where he received his bachelor's degree and served as president of the student body. After graduating from Harvard, Chopra attended the Wharton School of the University of Pennsylvania, where he received a Master of Business Administration (M.B.A.) degree in 2009. Chopra was a recipient of a Fulbright Fellowship to South Korea.

[184] CollegeAmerica "writes off" student debt as uncollectable when a student has not made a payment in one year. Op. at ¶ 471. 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. Op. at ¶ 471, *citing* Ex. I at 274:7-15, 274:22-25, *testimony of Eric Juhlin, Chief Executive Officer*; Ex. D at 179:8-180:22, *testimony of Rohit Chopra, State's Expert.* A write-off is simply an accounting term that signifies a default. Op. at ¶ 447, *citing* Ex. D at 179:8-180:22, *testimony of Rohit Chopra, State's Expert.*

[185] Op. at ¶ 527, *citing* Ex. D at 181:1-183:16, *testimony of Rohit Chopra, State's Expert*; Trial Ex. 986 at 15.

[186] Op. at ¶ 531, *citing* Ex. D at 178:11-24, *testimony of Rohit Chopra, State's Expert.*

[187] *Id.*

[188] Op. at ¶ 498, *citing* Trial Ex. 987 at 13.

[189] Op. at ¶ 498, *citing Id*; Ex. F at 92:22-93:16, *testimony of Ed Harvey, State's Expert.*

were about the same financially as a result of attending CEHE.[190] Only 18.5% responded that they were better off financially as a result of attending CEHE.[191]

50. As the creditor of the EduPlan loan, CEHE included several terms that made the loans less affordable than other options, especially federal student loans. The repayment terms of EduPlan are structured to accelerate cash collections.[192] Because of the varying repayment terms tied to the balance amount, borrowers were required to pay higher monthly payments.[193] This made the EduPlan repayment amount significantly higher than typically required on a loan with a ten-year term.[194]

51. Unlike many student loans, EduPlan required students to pay a monthly minimum while enrolled.[195] In 2014, Les Marstella, who worked 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 were packaged with EduPlan agreements.[196]

iii. CEHE knew that EduPlan was not affordable for most Colorado students

52. CEHE executives were well aware of this borrower distress, even as they continued to advertise EduPlan as "affordable." Mr. Barney reviewed an annual report which summarized the amount of debt that was written off as uncollectible after 12 months of non-payment by the borrower.[197] In one 2013 report, CEHE projected that 40% of student balances would be uncollectible after one year.[198]

53. CEHE also had access to other information indicating that graduates were in financial distress: CEHE's Colorado students, on average, had significantly higher levels of student loan debt and significantly lower loan-repayment rates than students who attended other schools.[199] About two-thirds (71-81%) of the students who attended CEHE's Colorado schools borrowed federal student aid.[200] As of 2017, only 16% of students had paid down $1 or more of the principal on their federal loans

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[190] Op. at ¶ 498, *citing* Ex. F at 92:22-93:16, *testimony of Ed Harvey, State's Expert*.
[191] *Id*.
[192] Op. at ¶ 440, *citing* Ex. D at 165:18-167:3*, testimony of Rohit Chopra, State's Expert.*
[193] *Id*.
[194] Op. at ¶ 440, *citing* Ex. D at 167:10-170:4*, testimony of Rohit Chopra, State's Expert.*
[195] Op. at ¶ 412, *citing* Trial Ex. 236 at 1-2.
[196] Op. at ¶ 443, *citing e* Ex. H at 234:14-236:19, *testimony of Michelle Bollig, Denver Campus Business Officer*; Trial Ex. 478.
[197] Op. at ¶ 584, *citing* Ex. H at 100:21-101:8, *testimony of Carl Barney, Founder of CollegeAmerica.*
[198] Op. at ¶ 472, *citing* Ex. D at 178:11-179:7, *testimony of Rohit Chopra, State's Expert.*
[199] Op. at ¶ 493 citing Ex. F at 36:17-39:8;, *testimony of Ed Harvey, State's Expert*.
[200] Op. at ¶ 425, *citing* Ex. D at 144:20-145:5, *testimony of Rohit Chopra, State's Expert*; Trial Exs. 865.1, 866.1, 867.1.

within three years of leaving the school.[201] This number is significantly lower than the 2017 national average of 46%.[202]

54. CEHE employees and financial aid planners also knew that students were not repaying on their EduPlan loans. During weekly meetings at the Denver campus, Krista Jakl, a financial aid planner, was told that "we were having, you know, issues with students not making those payments."[203]

55. CEHE's students were in such financial distress that the school had to take drastic actions in order to maintain its continued access to Title IV funding. Ms. Jakl recalls being told quite often that CEHE was close to losing access to federal student aid because of a high federal loan default rate.[204] In 2013, a supervisor instructed Ms. Jakl 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. As Ms. Jakl testified, "[My supervisor] told us that we were so close to the default rates that we could lose our Title IV funding..."[205]

56. Still, Ms. Jakl did not disclose to prospective students that former students were close to defaulting on their federal loans and struggling to make payments on their EduPlan loans.[206] Instead, when prospective students expressed concern that they would not be able to repay their loans, Ms. Jakl would tell prospective students to "think of the big picture, that they could be potentially making more money."[207]

57. Andrea Orendorff, a former admissions consultant and financial aid planner, testified that she sometimes felt that a potential student could not afford to attend CEHE.[208] She would talk to the admissions department about not enrolling the student in those situations. Her recommendations were not well received. Ms. Orendorff testified, "I mean, there was a conversation that was had. But in the end, it was the admission consultant's job to push forward with the enrollment."[209] This meant the student was enrolled and packaged even though the financial aid planner believed that the student couldn't afford the loans.[210]

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[201] Op. at ¶ 13, *citing* Ex. D at 142:21-144:19, *testimony of Rohit Chopra, State's Expert*; Ex. F at 40:11-41:13, *testimony of Ed Harvey, State's Expert*; Trial Exs. 865.1, 866.1, 867.1.
[202] Op. at ¶ 13, *citing* Trial Exs. 865.1, 866.1, 867.1.
[203] Op. at ¶ 473, *citing* Ex. E at 88:16-89:6, *testimony of Krista Jakl, Financial Aid Planner.*
[204] Op. at ¶ 474, *citing* Ex. E at 90:6-14, *testimony of Krista Jakl, Financial Aid Planner.*
[205] Op. at ¶ 474, *citing* Ex. E at 90:15-91:7, *testimony of Krista Jakl, Financial Aid Planner*.
[206] Op. at ¶ 475, *citing* Ex. E at 119:10-25, *testimony of Krista Jakl, Financial Aid Planner.*
[207] Op. at ¶ 466, *citing* Ex. E at 88:5-15, *testimony of Krista Jakl, Financial Aid Planner.*
[208] Op. at ¶ 465, *citing* Ex. A at 314:11-315:6, *testimony of Andrea Orendorff, Financial Aid and Admissions*.
[209] *Id.*
[210] *Id.*

f. CEHE pressured students to enroll and take out federal student loans quickly

58. At CEHE, the "goal of the admissions experience [was] **to enroll the honored guest--today**."[211] Admissions consultants and financial aid planners worked together when enrolling a student to get them enrolled and packaged on the day of their initial visit to the campus.[212] The whole admission and financial aid process took about an hour and a half to two hours.[213]

59. CEHE knew that it had a limited opportunity to sell its school to prospective students before they had the time to carefully consider their decision. The admissions consultant manual stated 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."[214] Former admissions consultant Cristi 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."[215]

60. One financial aid planner testified that quick enrollment was important because a delay—even of one day—gave the student that much more time to be influenced by people who were not supportive of this new endeavor or to think through the possible obstacles preventing them from starting school.[216] In fact, admissions consultants are trained by CEHE to "inoculate" prospective students "against negative influences and buyer's remorse" in order to increase enrollments.[217]

61. Admissions consultants and financial aid planners were trained to pressure prospective students by "overcoming" any "objections" the prospective student may have about starting school. Overcoming prospective students' objections was part of the Admissions Manual from 2006 until at least 2017.[218] The CEHE Admissions Manual stated:

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[211] Op. at ¶ 80, *citing* Ex. A, at 227:19-228:3; *testimony of Andrea Orendorff, Financial Aid and Admissions*; Trial Ex. 230 at 67.
[212] Op. at ¶ 60, *citing* Ex. A at 222:22-223:5, *testimony of Andrea Orendorff, Financial Aid and Admissions*; Ex. B at 213:7-8, 230:8-16, *testimony of Cristi Brougham, Admissions Consultant;* Ex. C at 213:2-13, *testimony of Laura Goldhammer, Admissions Consultant*.
[213] Op. at ¶ 82, *citing* Ex. A. at 223:16-224:4, *testimony of Andrea Orendorff, Financial Aid and Admissions*.
[214] Op. at ¶ 84, *citing* Trial Ex. 230 at 123.
[215] Op. at ¶ 85, *citing* Ex. B at 229:17-19, *testimony of Cristi Brougham, Admissions Consultant*.
[216] Op. at ¶ 87, *citing Ex. A* at 261:24-262:7, *testimony of Andrea Orendorff, Financial Aid and Admissions.*
[217] Op. at ¶ 88, *citing* Trial Ex. 203 at 2.
[218] Op. at ¶ 90, *citing* Trial Exs. 198, 230, 231, 808, 809.

> *Problems and objections can indicate a pressing need of* the [prospective student]. *When you handle that pressing need,* the [prospective student] *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.*[219]

62. Admissions consultants were trained extensively on "overcoming objections" and "closing the sale."[220] 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!*
>
> …
>
> *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* [prospective student] *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.*[221]

63. If a student identified "money" as an obstacle to enrollment, admissions consultants were trained to communicate positively about how it "won't be a big deal to afford college."[222]

64. Admissions consultants testified to using CEHE's training regarding objections especially when students expressed concern about affording college.[223] One former admissions consultant, Ms. Brougham, testified that when prospective students would voice objections such as "I can't afford it!" she would talk about graduates earning higher wages and then "pencil out" their earnings before and after

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[219] Op. at ¶ 90, *citing* Ex. 198 at 97.
[220] Op. at ¶ 91, *citing* Trial Exs. 308, 314.
[221] Op. at ¶ 91, *citing* Trial Ex. 314 at 8.
[222] Op. at ¶ 69, *citing* Ex. A at 241:7-242:6, *testimony of Andrea Orendorff, Financial Aid and Admissions.*
[223] Op. at ¶ 93, *citing* Ex B at 234:1-5, 236:11-13, *testimony of Cristi Brougham, Admissions Consultant*; Op. at ¶ 94, *citing* Ex. O at 135:2-7; 136:6-137:1, *testimony of Sharrie Maple, Admissions Consultant.*

college.[224] Similarly, admissions consultant Ms. Maple testified that students expressed concern about affording the tuition at CEHE.[225] Ms. Maple always provided students with national wage data because she did not know the actual wages of CEHE graduates.[226]

65. At trial, the State presented audio recordings from a number of admissions interviews with prospective students. In the interviews, CEHE employees repeatedly assure prospective students that they would make high incomes after graduation. Statements such as:

- "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?"[227]
- "What's the most money an hour you've earned at a job? … How would you like to triple that right out of school?"[228]
- "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."[229]
- "Median wage for those two bachelor's degrees is $88,000 a year."[230]
- "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. .... Anything IT, graphic design, programming, anything like that, even business degrees – you will get your money back in your first year."[231]

66. In each case, the admissions consultant in the recording testified that she was not disciplined for her statements or similar statements.[232]

67. The recordings further reveal that admissions consultants referred prospective students to national statistics when asked about how much CEHE graduates earn. In a recording from March 2015, an admissions consultant at the

[224] Op. at ¶ 93, *citing* Trial Ex. 230 at 99; Ex. B at 236:11-13, *testimony of Cristi Brougham, Admissions Consultant*.
[225] Op. at ¶ 94, *citing* Ex. O at 135:2-7; 136:6-137:1, *testimony of Sharrie Maple, Admissions Consultant*.
[226] *Id*.
[227] Op. at ¶ 171 *citing* Trial Ex. 788.2.
[228] Op. at ¶ 172, *citing* Trial Ex. 790.1.
[229] Op. at ¶ 173, *citing* Trial Ex. 766.1.
[230] Op. at ¶ 175, *citing* 777.3.
[231] Op. at ¶ 177, *citing* 781.5.
[232] Op. at ¶ 171 *citing* Ex. C at 265:2-8, *testimony of Laura Goldhammer, admissions consultant;* Op. ¶ 172, citing Ex. C at 266:11-17, *testimony of Laura Goldhammer*; Op. at ¶ 173, citing Ex. C at 267:19-25, *testimony of Laura Goldhammer*; Op. at ¶ 176, citing Ex. C at 269:6-13, *testimony of Laura Goldhammer*.

Denver campus directed a prospective student to the wage chart on the admissions PowerPoint presentation which references the BLS wage data and said, "[t]his 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 master's degree."[233] Although the admissions consultant does tell the prospective student that his earnings will depend on the field he goes into, she does not provide specifics.[234]

68. CEHE trained admissions consultants and financial planners to aggressively "close" the sale with prospective students.[235] Admissions consultants were trained to try early in every interview for a close, to watch for "buying signals," and to "close even after resistance."[236] If the prospective student was hesitant to enroll on the same day, the admissions consultant was trained to overcome the student's objections and try closing again.[237] The CEHE Admissions Manual's section on "closing techniques" states:

> *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.*[238]

69. These high-pressure tactics were routinely and aggressively employed at every CEHE campus, including those in Colorado. "Closing techniques" continued to be part of the CEHE Admissions Manual and training through at east 2017.[239] 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, NV, which lasted for multiple days.[240] The agenda and the training materials for the semi-annual training conference in Las Vegas were developed by corporate executives.[241]

70. The Admissions Manual also states in connection with "closing" techniques: "We never hard-sell or high pressure, never."[242] 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

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233 Op. at ¶ 182, *citing* Ex. 775.4.
234 *Id.*
235 Op. at ¶ 101, *citing* Trial Ex. 314 at 4; Ex. C at 29:21-30:21, *testimony of Mary Gordy, Director of Admissions for Denver Campus.*
236 *Id.*
237 *Id.*
238 Op. at ¶ 99, *citing* Trial Ex. 198 at 95.
239 Op. at ¶ 99, *citing* Trial Ex. 230 at 97-98; Trial Exs. 231, 808, 809, 314; Ex. C at 26:9-27:11; 27:21-24, *testimony of Mary Gordy, Director of Admissions for Denver Campus.*
240 Op. at ¶ 105, *citing* Ex. B at 208:4-21, *testimony of Cristi Brougham, Admissions Consultant.*
241 *Id.*
242 Op. at ¶ 97, *citing* Trial Ex. 230 at 97.

the quota that was projected by my boss."[243] 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.[244] Other admissions consultants also testified that it was their responsibility to "enroll every student" they interviewed.[245] Admissions consultant Ms. Brougham testified that she enrolled students she felt would "really struggle in school" because of the directive to enroll every student.[246]

71. Admissions consultants' performance was partially measured by the number of prospective students who enrolled in a CEHE school. Quotas were established at the campus level on a monthly basis.[247] Admissions departments were expected to enroll and start between 60% and 70% of the prospective students who came in for an interview each month.[248] In fact, admissions consultants received financial bonuses for each student they enrolled after the student completed thirty-six credit hours.[249] The United States Department of Justice has a pending lawsuit under the False Claims Act alleging that CEHE and Stevens-Henager College falsely certified compliance with provisions of federal law that prohibit a university from paying incentive-based compensation to its admissions recruiters based on the number of students they recruit.[250]

72. Mary Gordy, Director of Admissions at the Denver campus, testified that she has never fired any admissions consultant for missing their enrollment quotas.[251] Still, former admissions consultant Ms. Brougham testified that there were negative ramifications if an admissions consultant failed to meet the enrollment goal. According to Ms. 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."[252] Ms. Brougham testified

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[243] Op. at ¶ 98, *citing* Ex. A at 319:25-320:18, *testimony of Andrea Orendorff, Financial Aid and Admissions*.
[244] Op. at ¶ 123, *citing* Ex. A at 296:3-14, *testimony of Andrea Orendorff, Financial Aid and Admissions*.
[245] Op. at ¶ 123, *citing* Ex. B at 205:14-15; 215:13-25, *testimony of Cristi Brougham, Admissions Consultant*; Trial Ex. 230 at 21.
[246] Op. at ¶ 125, *citing* Ex. B at 216:1-5, *testimony of Cristi Brougham, Admissions Consultant*;
[247] Op. at ¶ 139, *citing* Ex. B at 218:6-15, *testimony of Cristi Brougham, Admissions Consultant*. This metric was referred to internally as "intcon" which refers to the number of interviews which were converted to enrollments.
[248] Op. at ¶ 139 citing Ex. A at 331:24-335:3, *testimony of Andrea Orendorff, Financial Aid and Admissions*.
[249] Op. at ¶ 124, *citing* Ex. B at 227:8-18, 279:15-23, *testimony of Cristi Brougham, Admissions Consultant*.
[250] *See* https://www.justice.gov/opa/pr/united-states-files-complaint-against-stevens-henager-college-inc-alleging-false-claims-act.
[251] Op. at ¶ 141, *citing* Ex. C at 154:2-4, *testimony of Mary Gordy, Director of Admissions for Denver Campus*.
[252] Op. at ¶ 140 *citing* Ex. B at 224:12-19, 225:4-19, *testimony of Cristi Brougham, Admissions Consultant*.

that once you were on a freeze "you had probably had two to three months left before you were gone."[253] Ms. Brougham, who worked at the Denver campus, knew this first-hand, as she was put on a freeze for failing to meet her enrollment goals.[254]

73. Financial aid planners' performance was also based on numbers—specifically, the percentage of students enrolled and packaged the same day. Ms. Jakl, a financial aid planner, testified that when she started working at CEHE, her performance was based on the percentage of prospective students she could enroll in a financial package, including federal student loans, in a day.[255]

74. In 2014, CEHE changed how admissions and financial planners were compensated, which resulted in Ms. Jakl's yearly compensation jumping by 50%.[256] As a financial aid planner, Ms. Jakl's direct supervisor told her that she would have to achieve nine enrollments every module and package 90% of the students she interviewed with loans.[257]

75. Ms. Jakl was told that there would be consequences if she failed to meet these requirements for three consecutive months. "We were told that we would need to—we couldn't have three consecutive months of missing these goals or guidelines. And that [financial aid planners] would be terminated after three consecutive months."[258] Even though she was not terminated for missing her quota three consecutive months Ms. Jakl testified to feeling "nervous" when she missed her goals.[259] The new requirements impacted the way Ms. Jakl did her job: "I would be more inclined to want [the prospective student] to start right away, as opposed to allowing them to think about it or do research."[260]

76. This pressure on admissions consultants and financial planners had perverse results; CEHE enrolled students who were ill-prepared to succeed in school or benefit from their student loans.

g. CEHE's disclaimers do not cure their misrepresentations

77. Instead of using more accurate data about graduate incomes, CEHE instead elected to include a disclaimer in some advertisements with wage data which read, "salaries will vary by location and may be higher or lower than salaries

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[253] *Id.*
[254] Op. at ¶ 140, *citing* Ex. B. at 288:17-289:9, *testimony of Cristi Brougham, Admissions Consultant*.
[255] Op. at ¶ 143, *citing* Ex. E at 70:10-72:9, *testimony of Krista Jakl, Financial Aid Planner*; Trial Ex. 317.
[256] Op. at ¶ 143, *citing* Ex. E at 73:18-24, *testimony of Krista Jakl, Financial Aid Planner*.
[257] Op. at ¶ 143, *citing* Ex. E at 74:2-75:21, *testimony of Krista Jakl, Financial Aid Planner*.
[258] Op. at ¶ 143, *citing* Ex. E at 78:9-17, *testimony of Krista Jakl, Financial Aid Planner*.
[259] Op. at ¶ 143, *citing* Ex. E at 78:18-79:11, *testimony of Krista Jakl, Financial Aid Planner*.
[260] Op. at ¶ 143, *citing* Ex. E at 79:12-22, *testimony of Krista Jakl, Financial Aid Planner*.

listed."[261] Mr. Barney admitted that the disclaimers accompanying CEHE's salary ads appeared in a font smaller than the ad's text.[262]

78. The last paragraph of one of disclaimer footnotes states "[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…"[263] 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 that all of the information pertains to CEHE graduates.

79. In addition, enrolling students were required to sign a six to seven page, single-spaced enrollment agreement.[264] On the last page of the enrollment agreement and disclosures, there is a provision that reads: "[i]f any oral statement has been made which is inconsistent or contradicts these disclosures and conditions of enrollment, write it below. If none, write 'none.'"[265] No version of the enrollment agreement includes a disclosure indicating to students that the wages and jobs shown and described to them during advertisements and the admissions process were not representative of actual outcomes.[266]

80. Former admissions consultants testified that they took only a few minutes to go over the enrollment agreement.[267] Former admissions consultants testified that they would go over the disclosure section of the agreement 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.'"[268] Another former consultant testified that she would simply instruct students to write the word "none" on the line provided for this clause.[269]

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[261] Op. at ¶ 157, *citing* Trial Ex. 425 at 12; Ex. H 30:24-31:10, *testimony of Carl Barney, Founder of CollegeAmerica.*

[262] Op. at ¶ 157, *citing* Ex. H at 33:20-23; 34:18-20, *testimony of Carl Barney, Founder of CollegeAmerica.*

[263] Op. at ¶ 598, *citing* Ex. 608 (emphasis supplied).

[264] Op. at ¶ 107, *citing* Trial Ex. 3293.

[265] Op. at ¶ 111, *citing* Trial Ex. 230 at 166. No version of the enrollment agreement includes a disclosure indicating to students that the wages and jobs shown and described to them during advertisements and the admissions process were not representative of actual outcomes. Op. at ¶ 116, *citing* Trial Exs. 3293, 3215, 3159, 3133, 3077, 2802, 2800.

[267] Op. at ¶ 115, *citing* Ex. A at 264:23-265:19, *testimony of Andrea Orendorff, Financial Aid and Admissions*; Op. at ¶ 113, *citing* Ex. B at 244:6-14, *testimony of Cristi Brougham, Admissions Consultant;* Op. at ¶ 114, *citing* Ex. O at 150:5-152:5, *testimony of Sharrie Maple, Admissions Consultant.*

[268] Op. at ¶ 111, *citing* Ex. A at 266:5-17, *testimony of Andrea Orendorff, Financial Aid and Admissions.*

[269] Op. at ¶ 112, *citing* Ex. B at 246:25-247:7, *testimony of Cristi Brougham, Admissions Consultant.*

h. CEHE misrepresented the availability and nature of training concerning X-ray certification, EMT, and sonography[270]

i. CEHE misled students to believe they would be prepared to sit for Limited Scope X-Ray certification

81. A Limited Scope x-ray operator in Colorado is authorized to operate certain types of x-ray machines called radiographic x-ray machines. In 2005, the requirements to become a Limited Scope x-ray operator in Colorado changed.[271] Before the change, all one had to do to become a Limited Scope x-ray operator was to pass the Limited Scope exam.[272] 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, and 80 imaging procedures.[273]

82. Students who completed their education at CEHE schools in Colorado were not able to meet the requirements to sit for the Limited Scope exam after 2005. The school did not have functioning x-ray equipment in their facilities, rendering it impossible for students to take any of the 80 required images.[274] And while 480 clinical hours were required to sit for the Limited Scope exam, the CEHE externship was just 160 hours long.[275]

83. Prior to trial, CEHE identified only one student who obtained the required number of clinical hours to sit for the Limited Scope exam during the course of her training at a CEHE school.[276] A Colorado Department of Health and Environment employee testified that only 17 or 18 CEHE students had qualified to

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[270] These specific misrepresentations were concurrent with the misrepresentations discussed above related to income, employment, and EduPlan which applied to all students. Colorado borrowers should be afforded full loan relief on the basis of the misrepresentations discussed in sections III.b.iii, iv, and v. In addition, any individual borrower who received and relied up on the specific misrepresentations outlined in sections III.b.vii should be granted a loan discharge and refund based on the facts herein.

[271] Op. at ¶ 308, *citing* Ex. J at 257:14-21, *testimony of Christine Irving, Colorado Department of Health and Environment Employee.*

[272] Op. at ¶ 308, *citing* Ex. J at 257:14-21, *testimony of Christine Irving, Colorado Department of Health and Environment Employee.*

[273] Op. at ¶ 308, *citing* Ex. J at 256:23-13, *testimony of Christine Irving, Colorado Department of Health and Environment Employee.*

[274] Op. at ¶ 627, *citing* Ex. J at 288:17-24, *testimony of Rozann Kunstle, Executive Director for Colorado Springs Campus*.

[275] Op. at ¶ 628, *citing* Ex. J at 26:4-5, *testimony ofEric Juhlin, Chief Executive Officer*.

[276] Op. at ¶ 312, *citing* Ex. J at 25:6-25, *testimony of Eric Juhlin, Chief Executive Officer*; Trial Ex. 908 at 30-31.

sit for the Limited Scope exam between 2005 and 2014.[277] Of those, only one student passed the Limited Scope exam.[278]

84. Despite this, CEHE regularly advertised that students could obtain a Limited Scope certification after completing a degree with CEHE. An admissions binder that CEHE 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.[279] From 2008-2011, CEHE featured “X-Ray (limited scope)” in a TV commercial.[280] CEHE mailers induced students to enroll with claims about the growing need for x-ray technicians in the job market.[281] From 2006 through 2011, the CEHE course catalog stated that the Medical Specialties program at CEHE would “prepare students for possible certification or licensing (Note: radiology courses are limited scope, not an RRT certification) in the various medical specialties.”[282]

85. The CEHE Admissions Consultant Manual provided scripted responses to questions potential students might ask. From 2006-2012, if a potential student asked about CEHE’s x-ray training, the admissions consultant was directed to respond, in part, “[o]ur courses lead to a limited scope licensure by the State.”[283] The scripted response to this question did not disclose the fact that CEHE’s training did not meet the clinical-hour or imaging requirements to sit for limited scope certification.[284]

86. Several students testified to enrolling at a CEHE school as a result of CEHE’s misrepresentations about the availability of an LSO certification.[285]

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[277] Op. at ¶ 313, *citing* Ex. J at 263:10-22, 264:17-20, 264:21-265:22, 273:3-7, 276:20-277:7, 280:25-281:4, *testimony of Christine Irving, Colorado Department of Health and Environment Employee.*
[278] Op. at ¶ 313, *citing* Ex. J at 264:17-20, 265:23-25, *testimony of Christine Irving, Colorado Department of Health and Environment Employee.*
[279] Op. at ¶ 321, *citing* Ex. I at 224:9-225:2, *testimony of Eric Juhlin, Chief Executive Officer*; Trial Ex. 489 at 19.
[280] Op. at ¶ 316, *citing* Ex. E at 143:21-144:5, *testimony of Krystal Neeley, Student*; Ex. I at 219:1-14, *testimony of Eric Juhlin, Chief Executive Officer*; Trial Ex. 167.
[281] Op. at ¶ 317, *citing* Trial Ex. 678 at 6, 16.
[282] Op. at ¶ 318, *citing* Trial Ex. 2037 at 53, Trial Ex. 2041 at 21, Trial Ex. 2042 at 29.
[283] Op. at ¶ 319, *citing* Trial Ex. 2008 at 20, Trial Ex. 230 at 23, Trial Ex. 2479 at 22; Ex. I at 229:5-15, 226:8-15, 230:7-15, *testimony of Eric Juhlin, Chief Executive Officer*.
[284] Op. at ¶ 319, *citing* Trial Ex. 2008 at 20, Trial Ex. 230 at 23, Trial Ex. 2479 at 22.
[285] See Op. at ¶¶ 322-344.

ii. CEHE misled consumers about the availability of EMT training

87. CEHE never offered any Emergency Medical Technician ("EMT") courses in their Colorado campuses.[286] Despite this, between 2006 and 2010, CEHE 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.[287]

88. In March of 2008, CEHE was put on notice that students were being misled about the availability of the EMT certification in Colorado. CEHE received a team visit summary report from its accreditor, ACCSC, that contained student responses to a survey regarding the Medical Specialties program.[288] 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."[289]

89. Despite this, in the 2009 version of the admissions binder, EMT certification was included in a "Possible Certifications and Licenses" list that could be obtained through the Medical Specialties Program.[290] As of August of 2010, CEHE listed EMT as one of the possible certifications for the Medical Specialties program on its Colorado-Wyoming specific webpage.[291]

90. Several students testified at trial that they were misled about the availability of the EMT certification in Colorado.[292]

iii. CEHE misled students about the availability of a sonography program

91. CEHE never offered a Sonography program at its Colorado campuses.[293] In fact, CEHE'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.[294]

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[286] Op. at ¶ 367, *citing* Ex. J at 21-25, Ex. I at 237:3-5, *testimony of Eric Juhlin, Chief Executive Officer*; Ex. M at 313:10-12, *testimony of Joel Scimeca, Executive Director for Fort Collins Campus*.
[287] Op. at ¶ 367, *citing* Trial Exs. 2037 at 53; 615 at 1; 188 at 19.
[288] Op. at ¶ 375, *citing* Trial Ex. 267 at 30-33.
[289] Op. at ¶ 375, *citing* Trial Ex. 267 at 32.
[290] Op. at ¶ 376, *citing* Trial Ex. 188 at 19; Ex. E at 148:14-25, *testimony of Krystal Neeley, Student.*
[291] Op. at ¶ 380, *citing* Trial Ex. 615; Ex. I at 239:9-240:1, *testimony of Eric Juhlin, Chief Executive Officer*.
[292] Op. at ¶¶ 368-78
[293] Op. at ¶ 406, *citing* Ex. I at 246:15-19, *testimony of Eric Juhlin, Chief Executive Officer*.
[294] Op. at ¶ 406, *citing* Ex. I at 246:24-247:10, *testimony of Eric Juhlin, Chief Executive Officer*.

92. Despite this, in the Spring of 2010, CEHE representatives told prospective students that CEHE would be launching a sonography program in a few months.[295] Representatives 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.[296]

93. Starting in March of 2012, CEHE listed the Sonography program in its course catalogs, indicating that this program was available at the school's Colorado campuses.[297] The Sonography program remained in CEHE's course catalog at least until April of 2014.[298]

94. Several former students testified at trial about CEHE's misrepresentations concerning a forthcoming Sonography program.[299]

95. CEHE was aware that CEHE employees had misled students about the availability of a sonography program. On March 29, 2013, Joel Scimeca, the Executive Director of CEHE's Fort Collins campus, sent an email to Kody Larson, the Vice President of CEHE's 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."[300] In that same email, Mr. Scimeca referred to an attachment indicating that the call center had implied to prospective students that CEHE had a Sonography program.[301] From March 2012 to March 2013, at least nineteen prospective students had contacted CEHE looking for a Sonography program.[302]

96. On June 3, 2013, Tresban Rivera, the Dean of Education at CEHE's campus in Fort Collins, emailed Michael Maki, the Vice President of Academic Affairs, and Susie Reed, the Vice President of Compliance, stating that "[w]e 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?'"[303]

97. Notwithstanding, during an executive meeting on October 1, 2013, the executive team, including Mr. Juhlin, Ms. Reed, and Mr. Maki, decided to leave the

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[295] Op. at ¶ 387, *citing* Ex. E at 22:11-23, *testimony of Ashley Barksdale, Student*.
[296] *Id*.
[297] Op. at ¶ 399, *citing* Trial Ex. 173 at 4, 28.
[298] Op. at ¶ 404, *citing* Trial Ex. 372 at 2, 52-53.
[299] *See* Op. ¶¶ 383-406.
[300] Op. at ¶ 402, *citing* Trial Ex. 412 at 2-3.
[301] Op. at ¶ 402, *citing Id;* Trial Ex. 414.
[302] Op. at ¶ 402, *citing* Trial Ex. 414.
[303] Op. at ¶ 403, *citing* Trial Ex. 398.

Sonography program in the course catalog.[304] CEHE continued to list the Sonography program as available at all of their Colorado campuses in their course catalog even after the school submitted an application to ACCSC on January 21, 2014, to discontinue the proposed Sonography program at the Denver and Fort Collins campuses.[305]

i. Closure of CEHE schools

98. On September 10, 2019, CEHE announced a teach-out of its CollegeAmerica schools in Colorado. However, the teach-out proved illusory. CEHE closed virtually all of its ground campuses, including the CollegeAmerica campuses in Colorado, effective August 17, 2020.

99. It is highly likely that most of the displaced CollegeAmerica students transferred to Independence University ("IU"), an online school, given IU's Colorado enrollments jumped from 255 students in 2019 to 681 students in 2021.[306]

100. Less than one year after CEHE abruptly closed its Colorado ground campuses encouraged students to enroll at IU, CEHE announced the closure of it's remaining schools, including IU, on August 1, 2021.[307]

101. In the interim period between the closures, CEHE's accreditor, ACCSC, announced on April 22, 2021, that it withdrew IU and Stevens-Henager College's accreditation.[308] While this did not mean the schools lost their accreditation, it was an adverse action taken by ACCSC.[309]

j. CEHE's executives are personally responsible for the school's misrepresentations

i. Carl Barney

101. Carl Barney founded CollegeAmerica Denver in the early 1990s.[310] Prior to the merger with CEHE in 2012, Mr. Barney was the president and CEO of CASI, which provided senior management oversight and support services to all of

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[304] Op. at ¶ 404, *citing* Trial Ex. 432 at 2.
[305] Op. at ¶ 405, *citing* Trial Ex. 2304; Trial Ex. 372 at 52-53.
[306] *See*, NC-SARA 2019 Out of State Education Enrollments, at https://nc-sara.org/data-files.
[307] *See*, https://boardofed.idaho.gov/resources/stevens-henager-college-shc-closure-frequently-asked-questions/.
[308] *See* https://www.accsc.org/UploadedDocuments/Commission%20Actions/2021/Public-Notices/ACCSC-060221-Public-Notice.pdf.
[309] *See* https://www.accsc.org/UploadedDocuments/July%202014%20IRD%20Forms/august%202014/Commission%20Action%20Factsheet.pdf.
[310] Op. at ¶ 1 *citing* Ex. H at 6:16-25, *testimony of Carl Barney, CollegeAmerica Founder.*

the colleges owned by Mr. Barney.[311] Barney was the Chief Marketing Officer for CASI until 2010.[312]

102. Under Carl Barney, CASI provided training, marketing, and accounting support to the for-profit colleges, including CollegeAmerica Denver, Inc.[313] Mr. Barney effectuated control over the day-to-day operations of the colleges through written policies and procedures which he personally authored.[314] Barney expected the staff of CEHE to read and follow the policies and procedures outlined in his directives as written.[315]

103. Carl Barney introduced the EduPlan loan program in a procedure directive he authored in 2002.[316]

104. Mr. Barney personally issued a number of policies and directives concerning advertising.[317] For example, Carl Barney created a checklist for all advertising which was issued in 2008 and republished in 2010.[318] 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.[319] 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**."[320]

101. In 2009, Carl Barney issued letter to all Advertising Executives, Directors of Admissions, and Admissions Consultants with advertising concepts to be used in all media.[321]

102. As part of the merger between Barney's colleges and CEHE in 2012, Mr. Barney became the sole member and the Chairman of the Board of CEHE.[322]

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[311] Op. at ¶ 573 *citing* Ex. H at 9:9-19, 10:8-12, *testimony of Carl Barney, CollegeAmerica Founder.*
[312] *Id.*
[313] Op. at ¶ 576 *citing* Ex. H at 9:9-10:7, *testimony of Carl Barney, CollegeAmerica Founder.*
[314] *Id.* at 10:13-22.

[315] *Id.* at 11:9-11.
[316] Op. at ¶ 583 *citing* Trial Ex. 236.
[317] Op. at ¶ 597 *citing* Trial Ex. 425, 570, 503, 697 *testimony of Carl Barney*, *CollegeAmerica Founder*.
[318] *Id. citing* Trial Ex. 425; Ex. H at 24:9-25:1, *testimony of Carl Barney*, *CollegeAmerica Founder.*
[319] *Id. citing* Trial Ex. 425 at 4.
[320] *Id. citing* Trial Ex. 425 at 2 (emphasis in original).
[321] Op. at ¶ 580 *citing* Ex. H at 12:6-25, *testimony of Carl Barney*, *CollegeAmerica Founder*; Trial Ex. 570.
[322] Op at ¶ 574 *citing* Ex. H at 6:13-15; 169:4-6, *testimony of Carl Barney*, *CollegeAmerica Founder*; Trial Ex. 528 at 4.

Through the Carl Barney Living Trust, Carl Barney was also CEHE's largest creditor.[323]

103. Mr. Barney was also the Chief Marketing Officer of CEHE from 2012 until 2014.[324] As Chief Marketing Officer, Mr. Barney Carl Barney issued a letter directing staff to use specific national salary data in CEHE's advertisements.[325]

104. At all times, Mr. Barney was personally aware that the advertisements he directed and oversaw were misrepresentations. Mr. Barney initiated the practice of gathering salary data from CollegeAmerica graduates in the early 1990s, a practice that continued under CEHE.[326] As CEO of CollegeAmerica and later as Chairman of the Board of CEHE, Mr. Barney regularly received information about the starting salaries of graduates.[327] Information about the starting salaries for CEHE graduates was summarized and distributed to executives and on an annual basis via letters, some of which were signed by Barney.[328]

105. Mr. Barney was also aware that an annual write-off report was created which documented those EduPlan accounts which CollegeAmerica deemed uncollectible.[329]

ii. Eric Juhlin

106. Eric Juhlin began working for CollegeAmerica in May of 2010, when he was hired as the Chief Executive Officer.[330] As part of the merger between Mr. Barney's colleges and CEHE in 2012, Mr. 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 in 2017.[331]

107. As CEO, Mr. Juhlin was responsible for reviewing and approving all of Defendants' advertisements.[332] Mr. Juhlin took over responsibility for reviewing advertisements from Mr. Barney sometime between mid-2011 to 2012.[333] A CEHE policy dictated that all promotional items must be sent to the CEO, then Juhlin, or

[323] *Id. citing* Ex. H at 122:12-123:6, *testimony of Carl Barney*, *CollegeAmerica Founder.*
[324] Op. at ¶ 575 *citing* Ex H at 40:16-42:1, *testimony of Carl Barney*, *CollegeAmerica Founder.*
[325] Op. at ¶ 581 *citing* Trial Ex. 503 at 1.
[326] Op. at ¶ 582 *citing* Ex. H at 43:14-22, *testimony of Carl Barney, CollegeAmerica founder*.
[327] *Id. citing* Ex. H at 43:23-44:2.
[328] *Id. citing* Trial Ex. 499, 500.
[329] Op. at ¶ 584 *citing* Ex. H at 100:21-101:8, *testimony of Carl Barney, CollegeAmerica Founder.*
[330] Op. at ¶ 563 *citing* Ex. I at 209:2-6, *testimony of Eric Juhlin, CEHE CEO.*
[331] Op. at ¶ 564 *citing* Ex. I at 209:23-210:4; Trial Ex. 528 at 4.
[332] Op. at ¶ 565 *citing* See Ex. I at 212:5-213:5, *Testimony of Eric Juhlin, CEHE CEO.*
[333] *Id.*

CMO, then Mr. Barney, for final approval.[334] Since 2010, 90% of Defendants' advertisements have been reviewed and approved by Mr. Juhlin or Mr. Barney.[335]

108. In 2015, CEHE conducted a "comprehensive review" of advertisements published between 2013 and 2014 in response to an inquiry from its accreditor ACCSC.[336] CEHE prepared an "analysis of how the statements and claims in the ads are truthful and accurate."[337] Eric Juhlin personally attested to the accuracy of the information in the response and analysis.[338]

109. Mr. Juhlin was aware that CEHE advertisements contained misrepresentations. Information about the starting salaries for CollegeAmerica graduates was summarized and distributed to the executive team on an annual basis via letters.[339]

110. Juhlin also had knowledge that Defendants did not offer EMT or sonography training at the Colorado campuses.[340]

VI. Borrower Defense Rules support relief for CEHE borrowers

CEHE's misrepresentations and omissions violated the CCPA and constitute substantial misrepresentations as such, student borrowers who were enrolled at CEHE from 2006 through at least September 2017 are eligible for relief under the 1995 and 2016 Borrower Defense Rules.[341] All Eligible Borrowers from 2006 to 2021 should be granted full loan discharges and refunds of amounts already paid.[342]

Upon consideration of the common facts outlined herein, the Secretary has the authority to determine whether a group qualifies for loan discharge.[343] The Secretary can identify a group eligible for discharge from any source.[344] The Attorney General is authorized to bring this group application on behalf of all CEHE borrowers in

[334] Op. at ¶ 566 *citing* Trial Ex. 697 at 3.
[335] *Id.*, *citing* Ex. I at 213:2-5, *Testimony of Eric Juhlin, CEHE CEO*.
[336] Op. at ¶ 568 *citing* Trial Ex. 6 at 1.
[337] Id.
[338] *Id.*
[339] Op. at ¶ 571 *citing* Ex. 500.
[340] Op. at ¶ 572 *citing* Ex. I at 237:3-5, 246:15-19, *testimony of Eric Juhlin, CEHE CEO.*
[341] See 34 C.F.R. § 685.206(c); 34 C.F.R. § 685.222(d).
[342] *See, Vara v. DeVos*, 2020 WL 3489679, at **32-33 (D. Mass. June 25, 2020) (holding that whether the Secretary grants full loan discharge is based on state law under the pre-2017 borrower defense rule; it is not left to the discretion of the Secretary); *see also* 34 C.F.R. § 685.206(c).
[343] *See* 34 C.F.R. § 685.222(f).
[344] 34 C.F.R. § 685.222(f)(1)(i). It is our understanding that ED can identify CollegeAmerica borrowers eligible for borrower defense to repayment loan forgiveness using loan disbursement and enrollment information in the National Student Loan Data System, as well as enrollment information reported by CollegeAmerica during the relevant period. We also believe that loan information reported by the borrower's loan servicer may be used to determine if loans were disbursed during the period the borrower enrolled at CollegeAmerica.

Colorado, and ED is required to consider it.[345] Given the mandate of the Attorney General to enforce the CCPA and to obtain relief on behalf of consumers,[346] the Attorney General seeks borrower defense relief on behalf of Colorado consumers harmed by CEHE.[347]

a. 1995 Borrower Defense Rule

i. Loans governed by the 1995 Borrower Defense Rule should be discharged because CEHE violated Colorado law

The Higher Education Act directs the Secretary to "specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment" of a federal student loan.[348] CEHE students who borrowed federal loans before July 1, 2017, are entitled to relief under 34 C.F.R. § 685.206(c), which provides that "any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law" constitutes a borrower defense (the "1995 Borrower Defense Rule").

CEHE violated the Colorado Consumer Protection Act ("CCPA") from 2006 until at least September of 2017. In order to establish a violation of the CCPA during the relevant time period, the State was required to demonstrate three elements:

1. the defendant engaged in an unfair or deceptive trade practice;
2. the challenged practice occurred in the course of the defendant's business, vocation, or occupation;
3. the practice significantly impacted the public as actual or potential consumers of the defendant's goods, services, or property. [349]

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[345] *See Vara*, at *26 and *28 (D. Mass. June 25, 2020) (in rejecting the claim that a group discharge process did not exist for loans taken out prior to 2017, the court found "overwhelming record evidence, which demonstrates that the agency repeatedly exercised its discretion to initiate group discharge processes upon receipt of group applications."); *see also Williams v. DeVos*, 2018 WL 5281741, at *12 (D. Mass. Oct. 24, 2018) ("In short, the Court finds that Attorney General Healey's DTR submission was sufficient to require the Secretary to determine the validity of the plaintiffs' borrower defense.").
[346] *See,* C.R.S. § 6-1-103 and 110.
[347] In *Vara*, the court rejected ED's argument that the Massachusetts Attorney General's group application on behalf of Corinthian borrowers was defective because it lacked signed attestation forms from students consenting to the Attorney General's representation. The court noted: "This argument fundamentally misunderstands [] the scope of the AGO's authority and its capacious role in protecting the public interest." *Vara* at *28.
[348] 20 USC § 1087e(h).
[349] *See State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.,* 2021 COA 117, ¶¶ 49, 54, *reh'g denied* (Sept. 30, 2021).

Private plaintiffs must demonstrate two additional elements:

4. the plaintiff suffered an injury in fact to a legally protected interest; and
5. the challenged practice caused the plaintiff's injury.[350]

When looking for a significant public impact, Colorado courts consider (1) the number of consumers directly affected by the challenged practice, (2) the relative sophistication and bargaining power of the affected consumers, and (3) evidence that the challenged practice has impacted other consumers or has a significant potential to do so in the future.[351] Widespread advertisements, directed to the market generally, are sufficient to significantly impact the public.[352] Online advertisements can be sufficient, if they are targeted at consumers.[353]

CEHE engaged in six distinct categories of deceptive trade practices, each of which violates one or more subparts of the CCPA, occurred within the scope of CEHE's business, and significantly impacted the public:

<u>#1 Employment placement rates:</u> Between 2009 and at least 2017, CEHE engaged in a series of deceptive trade practices by knowingly inflating graduate employment rates and reporting those inflated rates to ACCSC and prospective students in an effort to maintain CEHE's accreditation and induce students to enroll.[354] These actions violated the CCPA, C.R.S. §§ 6-1-105(1)(e), (g), and (u).[355] CEHE knew that representations about high employment placement rates were material to students' decision to attend CEHE.[356] CEHE was aware of and trained in the reporting requirements of its accreditor, ACCSC.[357] CEHE falsely inflated their degree programs' employment rates by knowingly violating ACCSC Standards.[358] Those inflated employment rates were then advertised to consumers.[359]

The employment placement misrepresentations had a significant public impact. First, CEHE presented inflated placement rates to thousands of students:

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[350] *Hall v. Walter*, 969 P.2d 224, 234 (Colo. 1998); *Accord Brodeur v. Am. Home Assur. Co.,* 169 P.3d 139, 155 (Colo. 2007); *Crowe v. Tull*, 126 P.3d 196, 200 (Colo. 2006).
[351] *Rhino Linings,* 62 P.3d at 149.
[352] *Hall*, 969 P.2d at 235.
[353] <u>*Loughridge v. Goodyear Tire & Rubber Co.*</u>, 192 F. Supp. 2d 1175, 1186 (D. Colo. 2002)(finding that internet advertisements were sufficient to create significant public impact because they were targeted at consumers and not manufacturers.)
[354] *Supra* section V.c; Op. at ¶¶ 607-14.
[355] *Id.*
[356] Op. at ¶ 601, *citing e.g.* Ex. C at 256:19-257:4, *testimony of Laura Goldhammer, Admissions Consultant*; Ex. N at 131:10-132:4, 217:24-25, *testimony of Kristy McNear, Director of Admissions for Fort Collins Campus and Regional Director of Admissions for Colorado*; Ex. O at 31:13-20, *testimony of Sharrie Maple, Admissions Consultant*.
[357] *Supra* section V.c.ii.
[358] *Supra* section V.c.i.
[359] *Id.*

CEHE posted the inflated placement rates on flyers and television screens at the campuses and presented them to prospective students during their tour of the campus.[360] Admissions consultants touted the inflated figures during admissions interviews,[361] and the information was posted on the CEHE website.[362] Second, CEHE intentionally targeted relatively unsophisticated students: one CEHE training document described prospective students as "not often skilled in problem-solving and life" and advised admissions consultants to "[g]uide them."[363] CEHE further robbed prospective students of their bargaining power with high-pressure sales tactics.[364] Third, CEHE demonstrated a long history of deceptive trade practices from 2006 until 2020.

<u>#2 Wage and employment outcomes:</u> CEHE committed deceptive trade practices between 2006 and at least 2020, when it knowingly made false and misleading representations about the potential wages and types of employment that a consumer could expect to obtain after completing a CEHE degree program, in violation of the CCPA, C.R.S. § 6-1-105(1)(e) and (g).[365] CEHE also committed deceptive trade practices when it failed to disclose to prospective students the actual wages and jobs that CEHE graduates obtained in violation of the CCPA, C.R.S. § 6-1-105(1)(u).[366]

CEHE executives knew that its graduates were earning low wages.[367] Despite this, CEHE promised students "more money" and "higher wages" in advertisements[368] and during the admissions presentation.[369] CEHE advertised starting salaries for specific degrees that were in some cases double the starting earnings for CEHE graduates with those degrees.[370] CEHE took no steps to determine whether the national average earnings they advertised represented likely results for their graduates.[371] All of the information available to CEHE pointed to the conclusion that CEHE graduates were highly unlikely to obtain the national average earnings that the school advertised.

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360 *Supra* V.c.i.
361 *Id.*
362 *Id.*
363 Op. at ¶ 127 *citing* Trial Ex. 314 at 10; Ex. C at 33:8-14, *testimony of Mary Gordy, Admissions Director.*
364 *Supra* section V.f.
365 *Supra* section V.d; Op. at ¶¶ 585-603.
366 *Supra* section V.d; Op. at ¶¶ 604-606.
367 *Supra* section V.d.ii; Op. at ¶ 582, *citing* Ex. H. 43:14-22, *testimony of Carl Barney, Founder of CollegeAmerica.*
368 *Supra* section V.d.i.
369 *Id.*
370 *Id.*
371 *Id.*; *see, e.g.,* Op. at ¶ 592, *citing* Ex. I at 278:20-279:1, 279:18-280:20, *testimony of Eric Juhlin, Chief Executive Officer*.

CEHE hid material information from prospective students to induce consumers, many of whom were struggling financially, into a transaction involving tens of thousands of dollars. CEHE knew that omissions about CEHE graduates' real earnings and employment placement rates were material to students' decision to attend CEHE.[372]

The wage and employment misrepresentations had a significant impact on the public. First, misrepresentations concerning the higher salaries and "more money" that graduates would earn were disseminated via mailers, TV, radio, the Internet, and in admissions interviews.[373] CEHE circulated one of these mailers to more than 13,000 Colorado consumers.[374] That mailer was one of 75 similar mailer campaigns.[375] The school ensured that its admissions representatives discussed national averages – and not the wages of actual CEHE graduates – with each prospective student.[376] The second and third factors Colorado court consider also weigh heavily in favor of finding that CEHE significantly impacted the public, as described above.

<u>#3 EduPlan:</u> From 2010 until at least 2017, CEHE knowingly made false and misleading representations about EduPlan in connection to making college affordable in violation of the CCPA, C.R.S. § 6-1-105(1)(e) and (g).[377] CEHE knew that the vast majority of borrowers were defaulting on their EduPlan loans.[378] The school predicted that up to 40% of loans would be uncollectible after one year and assessed late fees on more than 80% of loans.[379] Yet CEHE advertised EduPlan as a reason why consumers should get a degree from CEHE, as a means to make college more affordable and even help re-establish credit.[380] As CEHE well knew, EduPlan has harmed students' credit,[381] and borrowers are unable to repay the loans.[382]

The misrepresentations about EduPlan had a significant public impact. First, CEHE presented its misrepresentations concerning EduPlan in a mailer that, in various iterations, was sent to tens of thousands of consumers.[383] Along with the misrepresentations in this mailer, admissions consultants encouraged prospective students to enroll even if they did not have enough money to pay the tuition, telling

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[372] Op.at ¶ 601, *citing* 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*.
[373] *Supra* section V.d; Op. at ¶ 737 *citing* Ex. I at 277:19-20, 283:23-284:3, *testimony of Eric Juhlin*; Trial Ex. 608.
[374] Op. at ¶ 737, *citing* Ex. I at 277:19-20, 283:23-284:3, *testimony of Eric Juhlin, CEO of CEHE.*
[375] Op. at ¶ 737, *citing* Trial Ex. 608; Trial Ex. 678
[376] *Supra* sections V.d.
[377] *Supra* section V.e; Op. at ¶¶ 615-20
[378] *Supra* section V.e.iii.
[379] *Supra* section V.e.ii.
[380] *Supra* section V.e.i
[381] Op. at ¶ 619, *citing* Trial Ex. 747
[382] Op. at ¶ 619, *citing* Trial Ex. 754.
[383] *Supra* section V.e.i.

them that EduPlan could help make college affordable.[384] As late as 2017, the CEHE website included the statement, "You can afford your college degree" on the landing page for tuition and fees.[385] The second and third factors Colorado courts consider also weigh heavily in favor of finding that CEHE significantly impacted the public, as described above.

#4 X-Ray:[386] From 2005 until 2011, CEHE knowingly misrepresented the characteristics, uses, and benefits of their x-ray training in violation of the CCPA, C.R.S. § 6-1-105(1)(e) and (g).[387] CEHE also failed to provide students with material information about the requirements for becoming certified and the fact that their training would not lead to certification, in violation of the CCPA, C.R.S. § 6-1-105(1)(u).[388] CEHE knew the requirements to sit for the Limited Scope exam as early as 2005.[389] The school also knew that its programs did not prepare students to meet those requirements.[390]

The misrepresentations about X-Ray had a significant public impact. First, CEHE included misrepresentations about the availability of the Limited Scope certification in television commercials, in internet marketing, newspaper advertisements, in their catalog, in the admissions binder, and in flyers given to students.[391] The second and third factors Colorado courts consider also weigh heavily in favor of finding that CEHE significantly impacted the public, as described above.

#5 EMT:[392] From 2006 until 2010, CEHE misrepresented the availability of an EMT program in violation of the CCPA, C.R.S. § 6-1-105(e).[393] CEHE knew that they did not offer EMT training at their Colorado campuses, and they were repeatedly put on notice that they were misleading consumers about its availability.[394]

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[384] *Supra* section V.e.i
[385] Op. at ¶ 417, *citing* Trial Ex. 920; Ex. R at 366:14-19, *testimony of Diane Jones, Def. Expert.*
[386] These specific misrepresentations were concurrent with the misrepresentations discussed above related to income, employment, and EduPlan which applied to all students. Colorado borrowers should be afforded full loan relief on the basis of these misrepresentations, discussed in detail in section V.c, d, and e. In addition, any individual borrower who received and relied up on the specific misrepresentations on X-Ray, EMT and Sonography, outlined in detail in sections V.h, should be granted a loan discharge and refund based on those facts as well.
[387] *Supra* section V.h.i.
[388] *Supra* section V.h.i; Op. ¶¶ 635-640; *see also* Op. at ¶ 640, *citing* Ex. P at 16:22-17:3, *testimony of Celestino Garcia, student*.
[389] *Supra* section V.h.i.
[390] *Supra* section V.h.i.
[391] *Supra* section V.h.i; *see* Op. at ¶ 631, *citing* Ex. I at 219:1-14, 224:9-225:2, 226:8-15, 229:5-15, 230:7-15, *testimony of Eric Juhlin, Chief Executive Officer*; Kirk Bowden Deposition Designation at 43:25-44:11, 77:25-78:13; Trial 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.
[392] *Infra* n.383.
[393] *Supra* section V.h.ii; Op. ¶¶ 641-44
[394] Op. at ¶ 642, *citing* Trial Ex. 267 at 32; *testimony of Oonah Mankin, Instructor.*

CEHE's EMT misrepresentations significantly impacted the public. First, CEHE advertised the ability to earn an EMT certification in the course catalog, in the admissions binder, during admissions interviews, and on the website.[395] The second and third factors Colorado courts consider also weigh heavily in favor of finding that CEHE significantly impacted the public, as described above.

#6 Sonography:[396] From 2010 until 2014, CEHE misrepresented the availability of a sonography program in violation of the CCPA, C.R.S. § 6-1-105(e).[397] In 2010, CEHE represented to former students of Mile High Medical Academy that CEHE would be launching a Sonography program within a few months, despite not having approval from their accreditor to do so.[398] Notwithstanding, CEHE encouraged students to sign up for a different program in the meantime, promising that the credits would transfer to the forthcoming Sonography program.[399]

The sonography misrepresentations significantly impacted the public. First, until at least 2014, CEHE represented in its course catalogs that its Denver campus offered a Sonography program.[400] CEHE had frequent inquiries about the Sonography program based upon the representations in the course catalog.[401] The second and third factors Colorado courts consider also weigh heavily in favor of finding that CEHE significantly impacted the public, as described above.

For the reasons set forth herein, CEHE borrowers have valid claims under the CCPA. Categories #1 (Employment placement rates), #2 (wage and employment outcomes), #3 (EduPlan) apply to all borrowers who enrolled in CEHE's Colorado schools from 2006 to October of 2017 and are each sufficient basis for the Department to grant relief to all borrowers under the 1995 Borrower Defense Rule.

It is appropriate to grant relief without individual applications in this case because the State has identified the eligible cohort of borrowers that were subjected

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[395] Op. at ¶ 643, *citing* Trial Ex. 2037 at 53; Ex. 188 at 19; Ex. 615 at 1; Ex. 922 at 1; *testimony of Shawndel Sievert, Student, and Oonah Mankin, Instructor*; Ex. 615; Ex. I at 239:9-240:1, *testimony of Eric Juhlin, Chief Executive Officer*.

[396] *Infra* n.383.

[397] *Supra* section V.h.iii; Op. ¶¶ 645-48

[398] *Supra* V.h.iii.3; *see* Op. at ¶ 646, *citing* Trial Ex. 2303 at 38,

[399] *Supra* V.h.iii.3; *see* Op. at ¶ 647, *citing* Trial Ex. E at 22:11-23, 23:11-24:24, 25:7-14, *testimony of Ashley Barksdale, Student*; Ex. J at 218:1-219:1, 219:12-17, 219:21-24, 221:4-8, 221:16-20, *testimony of Alicia Zeller, Student*.

[400] *Supra* section V.h.iii.3; *see* Op. at ¶ 754, *citing* Trial Ex. 173 at 28; Ex. 372 at 52-53.

[401] *See* Op. at ¶ 648, *citing* Trial Exs. 320, 398, 412, 414, 432.

to CEHE's systematic material misrepresentations.[402] ED has previously granted Group Discharge Applications based on the 1995 Borrower Defense Rule.[403]

ii. Eligible Borrowers should be granted full loan discharge and refunds of amounts paid

Eligible Borrowers with loans governed by the 1995 Borrower Defense Rule should receive full discharge of their loans. Under the Rule, the measure of relief is "determined by reference to the state law that gave rise to the right to relief."[404] Under the CCPA, the State can recover the amount necessary to "completely compensate or restore to the original position" any person who is injured by a deceptive trade practice or "to prevent any unjust enrichment" through the use of a deceptive trade practice.[405] The CCPA also permits successful individual claimants to recover up to three times the amount of actual damages.[406]

Over the course of at least a decade, CEHE used numerous and widespread deceptive trade practices to induce students to enroll in its schools. CEHE collected millions of dollars of federal student loans as a direct result of its misrepresentations and omissions to students. This is supported by the testimony of both students and former employees of the school, who testified that CEHE's various misrepresentations and omissions were material to the decision to attend the school. Indeed, several students testified that they would not have attended CEHE absent the misrepresentations.[407] Given this, it is appropriate to restore to these students, and all similarly situated students, the full cost of attending CEHE schools. Due to the widespread and egregious nature of CEHE's CCPA violations, which impacted all enrollees, all Colorado borrowers who enrolled between 2006 and 2017 should be afforded full loan discharge.

The borrower defense regulation also anticipates a return of payments rendered.[408] For loans disbursed prior to July 1, 2017, borrowers may recover payments if the borrower asserts the claim within the limitation period of the applicable state law under which relief is granted.[409] Claims under the CCPA must be brought "within three years after the date on which the false, misleading, or

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[402] *See Vara* at *28 (finding that the Massachusetts AGO was not required to provide borrowers' social security numbers to comply with the borrower defense rule).
[403] American Career Institute, https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans.
[404] *See Vara* at *32.
[405] C.R.S. § 6-1-111(1).
[406] C.R.S. § 6-1-113(2)(a) (providing damages in the greater amount of either actual damages plus prejudgment interest, five hundred dollars, or three times the actual damages); *see also* 20 U.S.C.A. § 1087e(h) (stating that a borrower may not recover an amount in excess of the amount such borrower has repaid on the loan).
[407] *See* Op. at ¶¶ 322-344 *citing* consumer testimony.
[408] *See* 34 C.F.R. § 685.212(k)(1)
[409] *Id.* at 212(k)(1)(ii)(a).

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."[410] An actor engages in a "series of acts" when they make similar misrepresentations or misleading statements over a period of time.[411] If the last in the series of acts is within the CCPA's three-year statute of limitations, then a plaintiff may bring claims based on the entire series, even where conduct extends beyond the statute of limitations.[412]

Publicly available documents show that CEHE continued to make misleading statements about its graduates' ability to earn high wages until September of 2020.[413] These advertisements utilize the same messages, and sometimes the exact same phrases as advertisements that date back to the early 1990s. This continuity in messaging constitutes a series of acts which extends into the CCPA's three years statute of limitations, bringing all related conduct into the statute of limitations. Based on these advertisements alone, all students who attended CEHE have valid claims under the CCPA.

The State urges the Department to investigate whether CEHE's other misrepresentations or material omissions continued following the State's trial in October of 2017. Any misrepresentations made within three years of the date of this application are part of a series of acts that extends the statute of limitations and permits students who enrolled between 2006 and the date of the last misrepresentation to appropriately bring claims under the CCPA and 34 C.F.R. § 685.212(k)(1)(ii)(a).

b. 2016 Borrower Defense Rule

i. Loans governed by the 2016 Borrower Defense Rule should be discharged because CEHE made substantial misrepresentations to borrowers

On November 1, 2016, ED published a revised borrower defense rule applicable to student loans issued on or after July 1, 2017 ("2016 Borrowers Defense Rule").[414]

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[410] C.R.S. § 6-1-115

[411] *See Full Draw Prods. v. Easton Sports*, 85 F. Supp. 2d 1001, 1005 (D. Colo. 2000).

[412] *Id.* (holding that all of defendant's conduct was within the statute of limitations where similar statements were made both before and after the three-year limitations period.)

[413] *See* **Exhibit 6**; *see also* file:///C:/Users/hanah.harris/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/IDL3BWSJ/4527_web-archive-org-web-20200925222420-https-www-collegeamerica-edu-tuition-financial-aid-tuition-fees_2022-03-11_09-57-48.mhtml

[414] Although this rule belatedly went into effect as a result of the Department's delay notices that the U.S. District Court for the District of Columbia found in violation of the Administrative Procedure Act in September of 2018, the plain language of the rule's applicability to loans issued on or after July 1, 2017 remains unchanged.

Two of the above-referenced misrepresentations continued until at least 2017 and constitute substantial misrepresentations:

<u>#1 Employment placement rates:</u> Substantial misrepresentation is defined to include false or misleading statements concerning the institution's employment placement rate.[415] Although the State's expert's review was limited to select years, the trial court found that CEHE's interpretation of the rules governing the reporting of student employment were inconsistent with the accreditor's standards until at least October of 2017.[416] CEHE's falsely inflated employment placement rates were posted on the school's website at least until October 2017.[417]

<u>#2 Wage and employment outcomes:</u> A substantial misrepresentation is specifically defined to include false or misleading statements concerning "[t]he institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared"[418] and "[g]overnment job market statistics in relation to the potential placement of its graduates."[419]

CEHE's advertisements featured promises about the employability of graduates in high-income positions until at least September of 2020.[420] The website stated

> Besides increasing your prospects of earning a bigger paycheck, your CollegeAmerica degree could help you get better benefits, more promotions, more job security, and increased self-esteem. Getting the right degree could put you ahead of the competition and open the door to advancement opportunities in the future.[421]

The website boasted that "'[a]mericans with a four-year college degrees make 98 percent more an hour on average in 2013 than people without a degree.'"[422] The "Tuition and Fees" page of the website stated, in bold letters, "[a] college degree is an investment."[423] This statement was supported by national salary data indicating that individuals with a bachelor's degree earn more than individuals with a high school diploma.[424]

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[415]*See* 34 C.F.R. 668.72(o); 34 C.F.R. 668.43(a)(14).

[416]*See* Op. at ¶¶ 253-54 citing Ex. G at 67:9-69:20, 329:7-330:2, *testimony of Greg Regan, State's Expert*; Ex. Q at 303:12-16, *testimony of Susie Reed, Def. Expert*; *see also Trial* Ex. 5 at 2.

[417] *See* Op. ¶ 305 *citing* Ex. G at 51:2-52:21.

[418] 34 C.F.R. § 668.74(c)

[419] *Id*. at 668.74(e).

[420] *See* Exhibit 6 at 3; *see also* Op. at ¶¶ 36, 44-48, *citing* Trial Ex. 920.

[421] *Id*. at 4.

[422] *Id*. at 3.

[423] *Id*. at 4.

[424] *Id*. at 3.

For group applications, there is a rebuttable presumption that borrowers reasonably relied upon any "widely disseminated" substantial misrepresentation.[425] When considering the reasonability of the borrower's reliance on any misrepresentation, the Secretary may consider whether the school or any representative thereof engaged in conduct such as:

i. Demanding that the borrower make enrollment or loan-related decisions immediately;

ii. Placing an unreasonable emphasis on unfavorable consequences of delay;

iii. Discouraging the borrower from consulting an adviser, a family member, or other resource;

iv. Failing to respond to the borrower's requests for more information, including about the cost of the program and the nature of any financial aid; or

v. Otherwise unreasonably pressuring the borrower or taking advantage of the borrower's distress or lack of knowledge or sophistication.[426]

Borrowers' reliance on CEHE's various misrepresentations was reasonable in light of the undue haste that CEHE insisted on during the admissions process. CEHE pressured and incentivized employees to enroll prospective students on the same day as their first visit to the campus.[427] At least one stated purpose behind the pressure was to prevent prospective students from discussing their decision to attend school with friends or family members who might dissuade them from enrolling.[428]

ii. Eligible Borrowers should be granted substantial loan discharge and refunds of amounts previously paid

The 2016 Borrower Defense Rule requires ED to "factor the borrower's cost of attendance to attend the school, as well as the value of the education the borrower received, the value of the education that a reasonable borrower in the borrower's circumstances would have received, and/or the value of the education the borrower should have expected given the information provided by the institution, into the

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[425] 34 C.F.R. § 685.222(f)(3).
[426] 34 C.F.R. § 685.222(d)(2).
[427] *Supra* section V.f.
[428] *Id*; *see* Op. at ¶ 87, *citing* Ex. A at 261:24-262:7, *testimony of Andrea Orendorff, Financial Aid and Admissions*; Op. at ¶ 88, *citing* Trial Ex. 203 at 2.

determination of appropriate relief."[429] The Department is also required to asses value in a manner that is "reasonable and practicable."[430]

The reasonable borrower, when faced with CEHE's pervasive written and oral misrepresentations, would have expected that the value of a CEHE education would be demonstrated by the higher income which they would earn after graduation. CEHE's promises concerning higher incomes were both prolific and specific. ED should use CEHE's advertisements and other written misrepresentations concerning the salaries earned by college graduates generally to determine the value a reasonable borrower would have expected to receive from CEHE.

It would be unreasonable for ED to undertake a case-by-case analysis of borrowers to determine the value of a CEHE education in relation to the promises made by CEHE. The school's misrepresentations were systemic and substantial regardless of a borrower's current salary trajectory. ED should rely on the starting salary data collected by CEHE and the State's expert's survey concerning mid-career salaries as sufficient evidence of the actual incomes of CEHE graduates.

Information about the cost of tuition at CEHE's schools is available in the course catalogs, which are in ED's possession.

For loans disbursed between July 1, 2017, and July 1, 2020, the borrower may assert a claim to recover payments "not later than six years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation."[431] It is highly unlikely any borrower could have been

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[429] 34 C.F.R. 685.222(i)(2)(i).
[430] *Id.*
[431] 34 CFR §685.212(k)(1)(ii) (discussing the limitations period for loans disbursed during prior to and after June 30, 2017, defining the available relief). In discussing its rationale for preserving this dual system when transitioning to the federal framework of borrower defenses in 2017, the Department explained that "this rule comports with the FTC Holder Rule 30 and general State law principles, as well as general principles relating to the defense of recoupment." 81 Fed. Reg. 75,959 (Nov. 1, 2016). ED also cited the Supreme Court's decision in *Bull v. United States* for further authority. *Id,* quoting 295 U.S. 247, 262 (1935) ("Recoupment is in the nature of a defense arising out of some feature of a transaction upon which the plaintiff's action is grounded. Such a defense is never barred by the statute of limitations so long as the main action itself is timely"). Thus, the position advanced by the Department is that a borrower is never barred from asserting a defense to outstanding obligations but may only recover past payments or amounts recovered by the Department if the claim is brought within the relevant statute of limitations under State law. For private litigants, no borrower defense claims are time barred because a defendant may plead a set-off or counterclaim as a defense, regardless of whether the statute of limitations has expired on the set-off or counterclaim. *See, e.g.* 735 ILCS 5/13-207; *See City of St. Paul, Alaska v. Evans*, 344 F.3d 1029, 1033-35 (9th Cir. 2003) ("courts generally allow defendants to raise defenses that, if raised as claims, would be time-barred."); *see also Ottaviano v. Home Depot, Inc., USA,* 701 F. Supp. 2d 1005, 1013 (N.D. Ill. 2010); *Household Fin. Corp. v. Pugh*, 288 N.W.2d 701, 702 (Minn. 1980) (holding that TILA violation alleged as a "defense to a creditor's" claim for money owed under a loan obligation even if statute of limitations would bar affirmative case on the same claim); *Reynolds v. Reynolds*, 458 N.W.2d 103, 105 (Minn. 1990) ("The general rule is that the statute of limitations may be used as a shield, not as a sword, and that the statute of limitations does not bar a party from raising a pure defense.").

aware of the misleading nature of the school's marketing that was used to induce them to enroll prior to the presentation of the State's evidence at trial in 2017. Without access to the school's internal documents and financial information, students had very limited ability to verify the information they were given about wages, job placement, and affordability of EduPlan at the time of their enrollment. Further, CEHE continues to argue (incorrectly) that the majority of the trial record is confidential, which further limits the ability of consumers to discover CEHE's fraud. Accordingly, student claims of misrepresentation would likely survive any limitations defense under the discovery rule.

c. All borrowers who attended CEHE schools in Colorado between 2006 and 2020 should be afforded loan relief

Given the widespread dissemination of CEHE's extensive misrepresentations, all Eligible Borrowers who enrolled between 2006 and at least 2020 should be granted loan discharges and refunds.[432] The representations and omissions described herein were distributed in advertisements, admissions presentations, catalogs, and other written materials routinely provided to all prospective students and enrollees across CEHE's campuses.[433] Substantial misrepresentations and omissions are also present in the employee training manuals that every admissions consultant and financial aid planner was required to follow as a condition of employment.[434]

CEHE continuously made misrepresentations concerning graduate income,[435] employment,[436] and the affordability of the EduPlan[437] loans from 2006 to 2017. Publicly available documents indicate that misrepresentations concerning graduate income continued until 2020.[438] It is not clear whether other misrepresentations continued between the conclusion of the trial in November of 2017 and the final

[432] *See* 34 C.F.R. §§ 685.212(k) and 685.206(c); *see also* FTC, Commission Advisory Opinion on 16 C.F.R. Part 433: Federal Trade Commission Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (The Holder Rule) (May 3, 2012), https://www.ftc.gov/system/files/documents/advisory_opinions/16-c.f.r.part-433-federal-trade-commission-trade-regulation-rule-concerning-preservation-consumers-claims/120510advisoryopinionholderrule.pdf ("Thus, to give full effect to the Commission's original intent to shift seller misconduct costs away from consumers, consumers must have the right to recover funds already paid under the contract if such recovery is necessary to fully compensate the consumer for the misconduct . . . . Otherwise, whether a consumer is able to be fully compensated would depend on how much the consumer paid under the contract at the time of the dispute.").

[433] *Supra* section V; Op. ¶ 106 *citing* Ex. I at 63:8-11, *testimony of Carl Barney;* Ex. M at 338:7-12, *testimony of Joel Scimeca* (testifying that all prospective students receive an admissions binder)

[434] *Supra* sections V.i, and V.f.

[435] *Supra* section V.d.

[436] *Supra* section V.c.

[437] *Supra* section V.e.

[438] *See* **Exhibit 6**

closing of CEHE's Colorado campuses in 2020.[439] The Department should request and review marketing materials, including advertisements, websites, admissions binders, course catalogs, and employee manuals from 2017 to 2020 to determine if CEHE continued to make similar misrepresentations to prospective students following the conclusion of the State's trial.

VII. Relief under the Closed School Discharge Rule

Pursuant to the Closed School Discharge Rule, the Secretary should exercise his discretion to:

1. Grant automatic discharge without requiring borrowers to submit individual applications;

2. Grant permission to agencies that hold FFEL Loans and Perkins Loan to grant automatic discharge without individual borrower applications;

3. Grant an extended pre-closure withdrawal eligibility period or "look-back period" to under the 2013 Closed School Discharge Rule to December 1, 2014, when the State filed its law enforcement action against CEHE; and

4. Grant an extended look-back period under the 2019 Closed School Discharge Rule to September 10, 2019, when CEHE announced a teach-out of its CollegeAmerica schools in Colorado.

The Closed School Discharge regulations explicitly give ED discretion to grant automatic closed school discharges of Direct Loans without any borrower applications if ED determines that an individual borrower or a group of borrowers is eligible[440] based on information in its possession.[441] The same is true for guarantee agencies that hold FFEL Loans and Perkins Loan holders, so long as ED gives them permission to do so.[442]

Under both the 2013 and the 2019 Closed School Discharge Rules, the Secretary has the discretion to extend the look-back period beyond the standard number of days prior to closure where "exceptional circumstances" related to a school's closing justify an extension.[443]

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[439] The Colorado state courtdid not issue an opinion until August 20, 2020 and there were no judicial restrictions upon CollegeAmerica of CEHE's conduct until that time.

[440] A borrower is not qualified for discharge if they elected to complete their program through a teach-out at another school or by transferring credits to another school. 34 C.F.R. § 214(c)(1)(i)(C) and § 214(c)(2)(i)(B).

[441] 34 C.F.R. § 685.214(c)(3).

[442] 34 C.F.R. § 682.402(d)(8)(i) (FFEL Loans); 34 C.F.R. § 674.33(g)(3)(i)(B) (Perkins Loan).

[443] 34 C.F.R. § 685.214(c)(1)(i)(B) and (c)(2).

Under the 2013 Closed School Discharge Rule, exceptional circumstances include the determination by a state agency that the school violated state or federal law.[444] The State's complaint against CEHE, filed on December 1, 2014, constitutes a determination by a state agency, the Office of the Attorney General, that CEHE had violated state law in Colorado. The look-back period should therefore be extended to all borrowers who took out loans after December 1, 2014.

Under the 2019 Closed School Discharge Rule, exceptional circumstances include "the teach-out of the student's educational program exceeds the one hundred and eighty (180) day look-back period for a closed school loan discharge," or "the school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study or a comparable program."[445] CEHE announced the teach-out of its Colorado ground campuses on September 10, 2019, but abruptly closed the schools on August 17, 2020 without concluding the teach-out. Students were encouraged to enroll in CEHE's online school, Independence University, which also closed abruptly on August 1, 2021. The look-back period should be extended to all students who took out loans after July 1, 2020.

VIII. Conclusion

Over 10,000 Coloradans were harmed as a result of CEHE's illegal conduct. Those who enrolled between 2006 and 2021, when all CEHE schools closed, are eligible for borrower defense relief. These consumers took on tens of thousands of dollars in debt to earn a degree that CEHE promised would open doors of opportunity for them. Instead, they were left in a far worse position than before. I urge the Secretary to mitigate this harm by granting CEHE borrowers full loan discharges and refunds of amounts already paid. I also request an expeditious written response to this application with a clear decision and rationale.

[444] 34 C.F.R. § 685.214(c)(2)(i)(B).
[445] *Id.* at 214(c)(2)(i)(B).

Appendix A

EXHIBIT NO.	DATE	WITNESS	IDENTITY
Exhibit A	Monday, October 16, 2017	Lopez, Leann	State's Investigator
		Orendorff, Andrea	Financial Aid and Admissions
Exhibit B	Tuesday, October 17, 2017	Brougham, Cristi	Admissions Consultant
		Dean, Bradley	Student
		Gordy, Mary (1)	Director of Admissions for Denver Campus
		Potts, Stacy	Student
		Sievert, Shawndel	Student
Exhibit C	Wednesday, October 18, 2017	Goldhammer, Laura	Admissions Consultant
		Gilliam, Andre	Student
		Gordy, Mary (2)	Director of Admissions for Denver Campus
Exhibit D	Thursday, October 19, 2017	Chopra, Rohit	State's Expert
Exhibit E	Friday, October 20, 2017	Barksdale, Ashley	Student
		Jakl, Krista	Financial Aid Planner
		Neeley, Krystal	Student
Exhibit F	Monday, October 23, 2017	Harvey, Ed	State's Expert
		Nanney, Jeremy	Student
		Valencia, Jasmine	Career Services
Exhibit G	Tuesday, October 24, 2017	Regan, Greg	State's Expert
Exhibit H	Wednesday, October 25, 2017	Barney, Carl (1)	Founder of CollegeAmerica
		Bollig, Michelle	Denver Campus Business Officer
		Posey, Megan	Student
		Barney, Carl (2) (confidential)	Founder of CollegeAmerica
Exhibit I	Thursday, October 26, 2017	Barney, Carl (3)	Founder of CollegeAmerica
		Juhlin, Eric (1)	Chief Executive Officer
Exhibit J	Friday, October 27, 2017	Irving, Christine	Colorado Department of

			Public Health and Environment Employee
		Juhlin, Eric (2)	Chief Executive Officer
		Kunstle, Rozann (1)	Executive Director for Colorado Springs Campus
		Zeller, Alicia	Student
Exhibit K	Monday, October 30, 2017	Calderon, Allan	Student
		Guryan, Jonathan (1)	Def. Expert
		Herrera, Claudio	Student
		Kunstle, Rozann (2)	Executive Director for Colorado Springs Campus
		Pfenning, Paul	Credit Examiner for Colorado Attorney General's Office
Exhibit L	Tuesday, October 31, 2017	Chavez, Joe	Student
		Guryan, Jonathan (2)	Def. Expert
		Huerta, Veronica	Student
Exhibit M	Wednesday, November 1, 2017	Guryan, Jonathan (3)	Def. Expert
		Beales, Howard	Def. Expert
		Blanchard, Wendy	Student
		Dejong, Camden	Student
		Scimeca, Joel (1)	Executive Director for Fort Collins Campus
Exhibit N	Thursday, November 2, 2017	Scimeca, Joel (2)	Executive Director for Fort Collins Campus
		Thompson, Kristy	Student
		McNear, Kristy	Director of Admissions for Fort Collins Campus and Regional Director of Admissions for Colorado

		Barber, Vicky	Former State Investigator
Exhibit O	Friday, November 3, 2017	Maple, Sharrie	Admissions Consultant
		Gray, Beth	Student
		McKay, Janna	CEHE Director of Default Management
Exhibit P	Monday, November 6, 2017	Garcia, Celestino	Instructor
		Lowrey, Charlene	Student
		Lee, Lisa	Student
Exhibit Q	Tuesday, November 7, 2017	Orman, Voni	Colorado Division of Private Occupational Schools Program Supervisor
		Reed, Susie (1)	Def. Expert
Exhibit R	Wednesday, November 8, 2017	Reed, Susie (2)	Def. Expert
		Jones, Diane Auer	Def. Expert
Exhibit S	Thursday, November 9, 2017	Scimeca, Joel (3)	Executive Director for Fort Collins Campus
		Juhlin, Eric (3)	Chief Executive Officer
		Mankin, Oonah	Instructor