STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Case Type: Civil
(Consumer Protection)

State of Minnesota, by its Attorney General, Lori Swanson,

Plaintiff,

vs.

Minnesota School of Business, Inc. d/b/a Minnesota School of Business and Globe University, Inc. d/b/a Globe University,

Defendants.

Court File No.27-CV-14-12558
Hon. James A. Moore

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT

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INTRODUCTION

Defendants Minnesota School of Business, Inc. ("MSB") and Globe University, Inc. ("Globe") (collectively referred to as "Defendants") are "career training" schools who advertise that "all of our programs prepare students for a specific career." They hold out their sales agents as counselors and career advisors with the expertise and responsibility of consulting with prospective students and then recommending to them a career, a school, and a program of study that will lead to that career.

Defendants are able to mask these "career advisors'" real role as sales agents because, in the schools' words, "most people are not aware of the sales involvement when it comes to education" and "salesperson" is a "turn-off word." The salespersons, as instructed by Defendants, use a variety of deceptive tactics to get as many students to enroll as possible, even when a recommended program will not further the student's career goals. They make systematic false and misleading statements taught to them by Defendants to induce students to enroll, causing significant harm to students.

For example, the schools advertised and recommended their criminal justice program (costing up to almost $80,000) to Minnesota students who told the schools they wanted to become police officers, even though it is impossible under Minnesota law to use the schools' degree to become licensed as a police officer in Minnesota. Similarly, the schools recommended their associate's degree in criminal justice to Minnesota students who told the schools they wanted to become probation officers, even though at least a bachelor's degree is needed to be hired as a probation officer. The schools also recommended that students enroll in their programs after misrepresenting to prospective students that the schools' credits would transfer (and omitting material facts about the credits' non-transferability) to other higher education

institutions, even though the schools' credits rarely transfer to state or non-profit colleges and universities.

In addition, to entice prospective students to enroll, the schools widely claimed that "90 percent" of their graduates obtained jobs in their field of study. Defendants failed to disclose to prospective students that these "graduate job placement rates" include students whose job placement information was altered by the schools, who already had their jobs before enrolling, and whose jobs do not require a college degree, and excluded students who were unemployed, but were deemed by Defendants to be "unavailable" for employment. Similar practices regarding job placement rates were recently determined by the United States Department of Education to be false and misleading. Finally, Defendants made unlawful "institutional loans" to students with interest rates of up to 18 percent, which allowed Defendants to receive tens of millions of dollars in federal and private student loans.

Defendants' illegal conduct has left many students with crippling student loan debt, non-transferrable credits, and dismal job prospects. The undisputed material facts show that Defendants engaged in systematic and pervasive consumer fraud and other acts in violation of Minnesota law. The Court should impose appropriate remedies, not only to stop and deter future deceptive conduct by Defendants and others, but also to provide monetary relief to those harmed by Defendants.

Injunctive relief and a civil penalty are mandated based simply on the fact that Defendants' sales practices "tended to deceive or mislead" their students and Defendants' intended their students to rely on Defendants' representations. *See, e.g.*, Minn. Stat. §§ 8.31, subd. 3; 325.69, subd. 1; *Graphic Comms. Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 694-95 (Minn. 2014); *Group Health Plan, Inc. v. Philip Morris Inc.*,

621 N.W.2d 2, 5, 12 (Minn. 2001). Monetary relief in the form of restitution for students is warranted because the record, including approximately 140 student affidavits, establish a "causal nexus" between Defendants' fraudulent conduct and harm caused by that conduct. *See, e.g.*, *Group Health*, 621 N.W.2d at 13-15. The Court should establish a process for Defendants' students to seek restitution based on their individual circumstances. The Court should also declare void Defendants' illegal loans, require Defendants to repay all money paid on the loans, with interest, enjoin Defendants' illegal lending, and award the State its attorney fees, costs, and disbursements in accordance with Minn. Stat. section 8.31, subd. 3.

DOCUMENTS COMPRISING THE RECORD

Pursuant to Minnesota General Rule of Practice 115.03(d)(2), the State identifies the affidavits and documents which comprise the record in the attached exhibit A. This includes 180 affidavits from students (references to these affiants are bolded herein) and affidavits and other testimony from nine former employees[1] of Defendants.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants are "career training" schools with campuses throughout Minnesota.[2] They advertise that "all of our programs prepare students for a specific career."[3] Defendants solicit prospective students through oral and written advertisements,[4] spending over [redacted] on marketing between 2009 and 2014.[5]

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[1] Affidavits are filed for the following former employees: Ashlie LeGrande (recruiter); Hannah Von Bank (recruiter); Elizabeth Fishbein (recruiter); Jason Jensen (recruiter); Bradshaw Anderson (Criminal Justice Program Chair); Brittany Weller (career services student worker); and Margaret Scheel (career services student worker). Also included are excerpts of trial testimony from former employees Heidi Weber (Medical Assistant Program Dean) and Jeanne St. Claire (Network Dean of business programs).

[2] Am. Compl. ¶ 6; Am. Answer to Am. Compl. ¶ 6.

[3] Poupore Aff. Ex. 1 (solicitation).

[4] Am. Compl. ¶ 12; Am. Answer to Am. Compl. ¶ 12.

[5] Poupore Aff. [redacted]

I. DEFENDANTS REPRESENT THEIR SALESPEOPLE AS CAREER COUNSELORS AND ADVISORS WHO RECOMMEND SPECIFIC PROGRAMS AND CAREERS TO PROSPECTIVE STUDENTS.

A. Students Are Solicited By The Schools With The Promise Of Expert Career Planning Assistance.

Defendants hold out their salespeople as having the expertise and responsibility to provide career counseling and career and program recommendations to prospective students.[6] The schools solicit prospective students with mailings and emails asking them to call for "career-planning meeting[s],"[7] "career consultation[s],"[8] and "one-on-one career planning session[s]."[9]

The schools systematically tell prospective enrollees that those meetings will "answer[] questions about a career path in your chosen field,"[10] help with "designing a career path that's right for you,"[11] assist students to "learn about career options in your field of interest,"[12] provide information about what degree will lead to the career a student wants,[13] and "help you find the career that's right for you."[14] The schools' telephone scripts require their sales staff to tell prospective students who respond to these solicitations that the recruiter is responsible "to meet with students like you and help them explore their career field,"[15] to assist students in "seeing what career opportunities there are for professional [career interest] graduates,"[16] [redacted]

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[6] See, e.g., affidavits of former recruiters J. Jensen Aff. ¶ 5; H. Von Bank Aff. ¶ 13; A. LeGrande Aff. ¶ 4.

[7] Poupore Aff. Ex. 3 at 116720 (2013 webpage).

[8] *Id.* Ex. 4 at 102774 (2013 form letter).

[9] *Id.* Ex. 5 (2011 form email solicitation).

[10] *Id.* Ex. 6 at 129993 (2012 form email solicitation).

[11] *Id.* at 129994.

[12] *Id.* Ex. 7 at 128068 (2013 webpage).

[13] *Id.* Ex. 8 at 128375 (2013 webpage); see also [redacted]

[14] *Id.* Ex. 5 (2012 form email solicitation).

[15] *Id.* Ex. 10 at 129139 (2009 call script).

[16] *Id.*

[redacted]," [17] and "answer any questions that you have about career opportunities and starting salaries...." [18]

The schools barrage students with repeat sales calls and emails. [19] Defendants train their sales staff not to "discuss the cost, length, or other information about the school programs over the phone." [20] Rather, the schools' goal is to get prospective students to arrange an in-person, on-campus meeting with a "career counselor" (who is really a salesperson). [21]

B. "The Sale Begins When The Prospect Says 'NO.'"

The schools trained their sales staff to "master the art of selling," [22] noting that "selling education is different from any other type of selling." [23] Recruiters were told that: "You are there to enroll that student, not to PR [public relations] him and leave without a commitment" [24] and that "[t]he sale begins when the prospect says 'NO.'" [25] Recruiters were trained in tactics like not to talk after asking students if they are ready to "try for acceptance": "When you ask the question at the final close, remain silent. The next one who speaks loses." [26]

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[17] *Id.* [redacted]

[18] *Id.* Ex. 12 at 016140 ("Voicemail Scripts: First Call—New Lead").

[19] See, e.g. **Michael Bengson** Aff. ¶ 4 ("I left MSB without enrolling. MSB's admissions representative called me repeatedly, telling me that if I wanted a chance to enroll at MSB, I needed to return to campus within a week."); **Vanessa Keen** Aff. ¶ 3 ("MSB's admissions representative contacted me numerous times a week until I agreed to visit MSB."); H. Von Bank ¶ 4 (former recruiter).

[20] See, e.g., Poupore Aff. Ex. 13 at 015465 (2009 admissions training manual); see also *id.* Ex. 13 at 015441 ("The sole purpose of the phone call is to get the prospect into the school....").

[21] See, e.g., H. Von Bank Aff. ¶ 4 (Former recruiter Hannah Von Bank states: "We were trained to continually barrage prospective students...with phone calls and emails to try to get them on campus for an admissions presentation.").

[22] Poupore Aff. Ex. 13 at 015268 (2009 admissions training manual).

[23] *Id.* at 015272.

[24] *Id.* at 015347.

[25] *Id.* at 015400.

[26] *Id.* at 015352.

Recruiters were trained to sign the student up at the first meeting[27]—for college attendance and a major life decision that typically costs between $35,000 and $42,000 for an associate's degree, and between $70,000 and $89,000 for a bachelor's degree.[28] Ashlie LeGrande, a former recruiter who worked at the school for five years, explained: "The purpose of repeatedly contacting prospective students was to get them on campus and enrolled at MSB as quickly as possible, preferably the day of the admissions visit."[29] Another former recruiter, Elizabeth Fishbein, said: "MSB told admissions representatives that the school's goal was to enroll every student during the first admissions visit."[30]

C. Defendants Instructed Their Salespeople To Hold Themselves Out As Career Counselors or Advisors.

The schools hired recruiters based on previous sales experience, not academic counseling expertise.[31] The schools called their salespeople "admissions representatives."[32] Defendants' training manual explained that "salesperson" was a "turn-off word" and that recruiters should instead "substitute admissions representative [or] career specialist."[33] This tactic works because, as the schools' training manual pointed out, "[m]ost people are not aware of the sales involvement when it comes to education."[34]

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[27] H. Von Bank Aff. ¶ 7; E. Fishbein Aff. ¶ 13; J. Jensen Aff. ¶ 18.

[28] Am. Compl. ¶ 27; Am. Answer to Am. Compl. ¶ 27.

[29] A. LeGrande Aff. ¶ 13.

[30] E. Fishbein Aff. ¶ 13.

[31] Poupore Aff. Ex. 13 at 015272 (2009 admissions training manual) ("[O]ne of the reasons you were hired over others that applied for the same position is likely your previous success in sales."); Ex. 14 (pp. 25-27, 69-70) (Deposition testimony of Roger Kuhl, Defendants' former Chief Admissions Officer, describing how "sales experience" was preferred for admissions representatives).

[32] See, e.g., *id.* Ex. 13 at 015263 (2009 admissions training manual).

[33] *Id.* at 015300.

[34] *Id.* at 015299 (the training manual goes on to say "In fact if you look at our business cards, they don't say sales representatives. You are an admissions representative or a career advisor.").

The schools systematically lead prospective students to believe that "admission representatives" were acting in the students' best interests. The schools' training manual told admissions representatives that: "You are acting as a quasi-counselor or a career advisor guiding and helping the prospect...."[35] A former recruiter for the school explained: "MSB trained us to present ourselves as career advisers whose role was to determine whether MSB was the right fit for each person. . . . [W]e presented ourselves as acting in students' best interests . . . ." [36] Jason Jensen, who was an admissions representative at the schools for several years, said: "MSB trained us to present ourselves to potential students as educational counselors with the knowledge and skills to help them decide whether MSB was the right school for them based on their interests, skills, and career goals."[37]

D. The Schools Recommended Specific Careers And Courses Of Study That Will Purportedly Lead To That Career.

Defendants' training manual[38] instructed their salespeople to tell prospective students that their "first goal is to identify if the MSB is the best school for you," and the "second goal is to identify if the career field you are interested in, is the best field for you."[39]

Recruiters recommended specific careers to prospective students. They were trained that:

> We attempt to get 5 or 6 good solid reasons why this person should go into a career field. We build the person's confidence when we share with him all the reasons this is the right choice for him....If he trusts you and you tell him in a convincing way this is the best career option for him, you will have a sale.[40]

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[35] *Id.* at 015289.

[36] A. LeGrande Aff. ¶ 4.

[37] J. Jensen Aff. ¶ 5.

[38] Defendants distributed various iterations of their training manual over the years. As noted *infra* at pages 14-15, Defendants sanitized certain language of their training manual after controversy surfaced in the for-profit college industry, but Defendants' practices continued unchanged.

[39] Poupore Aff. Ex. 13 at 015361 (2009 admissions training manual); [redacted]

[40] *Id.* Ex. 13 at 015384 (2009 admissions training manual).

As the schools' training manual for their sales staff stated:

> The recommendation tells the prospect why they should enter the career field you are recommending....Almost everyone comes in to meet with us a little unsure if they are making the right decision on which career is best for them. The recommendation takes away that doubt.[41]

The salespeople also recommended particular programs of study to students.[42] On their website and in advertisements, the schools solicit prospective students with offers to help in "identifying the right program for you,"[43] "help you make the best choice regarding a college program,"[44] and "design an education plan that's right for you,"[45] stating that recruiters are "responsible for identifying whether Globe University/Minnesota School of Business will be the right school for you."[46] A former salesperson explained: "MSB trained us to present ourselves as career advisers whose role was to determine whether MSB was the right fit for each person."[47] Roger Kuhl, Defendants' former Chief Admissions Officer from 2005 to the fall of 2014, confirmed that recruiters were expected to recommend a particular program of study to a student.[48]

The schools instructed their sales staff to tell prospective students that they would not be accepted without the recommendation of the recruiter and that the recruiter would only recommend a student for acceptance in a program "if it would put your career in the direction you would like to see it go." Recruiters were required to read this script to prospective students:

> The [] goal is to identify if the career field you are interested in, is the best field for you. We will be able to help you in choosing the right career path by asking

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[41] *Id.* at 015350.
[42] *Id.* Ex. 14 (pp. 167-68) (Deposition testimony of former Chief Admissions Officer Roger Kuhl).
[43] See, e.g., *id.* Ex. 16 (2012 solicitation).
[44] See, e.g., *id.* Ex. 17 at 128078 (2013 webpage).
[45] See, e.g., *id.* Ex. 18 at 132692 (2013 webpage).
[46] *Id.* Ex. 19 (email script).
[47] A. LeGrande Aff. ¶ 4.
[48] Poupore Aff. Ex. 14 (pp. 10-11; 167-68).

> you questions about your interests and skills. At the end of our meeting today, I will recommend that your application be submitted for acceptance, *but only if both you and I believe that you can benefit from career training and that it would put your career in the direction you would like to see it go.*[49]

E. Defendants Represented That They Were Selective In Who They Recommended For Admission And Created False Urgency To Cause Students To Enroll Immediately.

One former recruiter explained that admissions representatives "were…taught to use whatever information the student told us, no matter how generalized, to 'recommend' they apply for acceptance into a particular program."[50] He added: "This tactic worked on prospective students, who believed I had the expertise and authority to help select and recommend a particular program to them."[51] Another former recruiter said:

> [W]e presented ourselves as acting in students' best interests by telling each student that we would make a recommendation only if we both believed he or she would benefit from MSB's career training. We represented to prospective students that we had the knowledge and training to determine which program was best for each student based on their skills and career goals. In truth, the purpose of meeting with prospective students was to convince them to enroll that day. We did not 'recommend' students for acceptance because MSB enrolled any student that could pay tuition.[52]

Recruiters were trained to present "challenges to the potential students and an attitude that they must prove their worthiness of being accepted."[53] For example, the schools' training

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[49] See, e.g., *id.* Ex. 20 at 016119 (emphasis added); [redacted] A. LeGrande Aff. ¶ 4 (former recruiter Ashlie LeGrande states: "[We told] each student that we would make a recommendation only if we both believed he or she would benefit from MSB's career training.") (emphasis in original).

[50] J. Jensen Aff. ¶ 5.

[51] *Id.* at ¶ 6.

[52] A. LeGrande Aff. ¶ 4 (emphasis in original).

[53] See, e.g., Poupore Aff. Ex. 20 at 016113 (2010 admissions training manual); Ex. 14 (pp. 78-79) (Deposition testimony of former Chief Admissions Officer Roger Kuhl).

manual instructed recruiters to "[c]hallenge the prospect's grades, attendance, ambitions, desires and [support system], if applicable."[54] The training manual also instructed recruiters to:

> Let the prospect sell you on all the reasons he should be accepted for training. Cast yourself into the role of deciding if he should be considered for acceptance. You will be on your way to great heights in the educational selling business.[55]

The training manual also instructed recruiters to tell prospective students that the schools were only accepting a "small number of students" from each high school.[56]

As one recruiter stated: "In fact, MSB admitted any student who was able to come up with money to fund his or her program,"[57] and "every student was given a 'recommendation' based on the information given to us by the student.[58] Another recruiter said: "Contrary to our representation to prospective students that we 'recommended' them for admission, MSB admitted virtually every student that was able to find funding to pay for MSB's tuition."[59] A former dean, Jeanne St. Claire, was not aware of any student who was rejected.[60]

Defendants told recruiters to create "urgency" for students to enroll.[61] Students were rushed through the enrollment process.[62] The schools used the possibility that the recruiter may

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[54] See, e.g., *id.* Ex. 13 at 015280 (2009 admissions training manual); [redacted]

[55] *Id.* Ex. 13 at 015284 (2009 admissions training manual).

[56] *Id.* at 015475.

[57] H. Von Bank Aff. ¶ 12.

[58] *Id.* at ¶ 13.

[59] J. Jensen Aff. ¶ 6.

[60] Poupore Aff. Ex. 22 (p. 936) (Trial testimony of Jeanne St. Claire, former Network Dean of Defendants' business programs).

[61] See, e.g., Deposition testimony of former Chief Admissions Officer Roger Kuhl, Ex. 14 (p. 166); H. Von Bank Aff. ¶ 7 ("MSB taught us to....'create urgency' to convince students to enroll as quickly as possible, preferably that day."); J. Jensen Aff. ¶ 18 ("I was trained to 'create urgency' to get students to enroll as quickly as possible, preferably during [the presentation], before [prospective students] had time to think about the important decision they were making.").

[62] See, e.g., **Jon Gardner** Aff. ¶ 4 (recruiter said "if [he] wanted a better life for [his] family, [he] needed to enroll right away"); **Tiffany Mbaluka** Aff. ¶ 3 (recruiter pushed to enroll "right away"); **Neil Werdal** Aff. ¶ 3 (recruiter said "if [he] did not enroll that day, [he] would have to delay continuing [his]

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not "recommend" a prospective student for admission as a tactic to get students to sign up that day. As one former recruiter said: "I was trained to tell such a student I was hesitant to even recommend him for acceptance unless he was ready to apply during the campus visit."[63] Students describe this tactic in their affidavits.[64]

Defendants instructed recruiters that "we are selling a feeling, an attitude."[65] That "feeling" included "painting the dream" of a better future[66] and finding "pain points" in students' lives such as poverty, underemployment, or single parenthood.[67] Former recruiter Fishbein states: "MSB trained us to find students' 'pain' or the negatives in their lives and use that pain to convince them to enroll," and then to "'paint the dream' of a better future" if they enrolled.[68] Former admissions representative Von Bank states: "We were trained to identify prospective students' 'pain points,' or motivations to consider college" and the school "instructed us to continually refer back to individuals' pain points during our ongoing communications...."[69] Another recruiter testified: "MSB trained us to 'find the pain,' or the prospective student's dissatisfaction with their lives, and use that 'pain' to convince them to enroll at MSB."[70]

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education"); **Emma Finkenaur** Aff. ¶ 2 (recruiter said if she "waited to apply, [she] may not get into the program"); **Jason Miske** Aff. ¶ 3 (same).

[63] H. Von Bank Aff. ¶ 8.

[64] See e.g., **Elisha Claiborne** Aff. ¶ 4 (recruiter said "he would be hesitant to recommend me at a later date if I could not commit...that day); **Angel Mader** Aff. ¶ 5 (same).

[65] Poupore Aff. Ex. 13 at 015349 (2009 admissions training manual).

[66] See, e.g., affidavits of former recruiters E. Fishbein Aff. ¶¶ 4-5; J. Jenson Aff. ¶ 10.

[67] See, e.g., affidavits of former recruiters H. Von Bank Aff. ¶ 6; E. Fishbein Aff. ¶¶ 4-5.

[68] E. Fishbein Aff. ¶¶ 4-5.

[69] H. Von Bank Aff. ¶ 6.

[70] J. Jensen Aff. ¶ 7.

Defendants told recruiters that their tactics could "overcome pretty much any objection (especially price)" that the student may raise.[71]

F. Defendants Pressured Their Salespeople To Make Sales.

Former recruiters state that the schools pressured them to recommend the schools' programs regardless of the student's circumstances.[72] As one salesperson said: "MSB did not train us on the degrees required for particular careers, so we recommended programs that appeared to fit a student's interest or attributes without regard to whether the career required a particular degree or a more advanced degree than MSB offered."[73] Jeanne St. Claire, a former dean who sued the schools and settled for an undisclosed sum, testified that neither she, nor Defendants' sales staff, were provided proper training on how to analyze a student's needs or abilities to make a proper recommendation for potential careers.[74] A former recruiter who worked for the school for three years (until 2015) said: "MSB trained me to write 'APPROVED' on a piece of paper in big letters so that the prospective student could see, to circle 'APPROVED,' and tell the student something like, 'congratulations I think you would be a great fit for the [name of program] and I plan on recommending you for acceptance.[75] In reality, MSB required that I 'recommend' every student that came through MSB's doors."[76]

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[71] Poupore Aff. Ex. 23 (email recapping Defendants' admissions training).

[72] See, e.g., affidavits of former recruiters H. Von Bank Aff. ¶¶ 4, 8, 16; E. Fishbein Aff. ¶ 13; A. LeGrande Aff. ¶¶ 4, 13. See also Defendants' 2009 admissions training manual, Poupore Aff. Ex. 13 at 015466.

[73] J. Jensen Aff. ¶ 5.

[74] Poupore Aff. Ex. 22 (p. 939).

[75] E. Fishbein Aff. ¶ 6.

[76] *Id.* at ¶ 7.

Defendants meted out rewards[77] and punishment to their recruiters based on sales numbers. They required recruiters to make 250-400 calls and schedule an average of 9-10 appointments with prospective students per week.[78] Recruiters were required to enroll a certain percentage or number of students interviewed.[79] Defendants told recruiters to keep contacting students after they said they were not interested in their programs.[80] Recruiters who did not meet their sales quotas were disciplined and eventually terminated.[81] Former recruiter Ashlie LeGrande states: "[I]t [was] clear that our job was a sales job, and that we would be rewarded or disciplined based on how many students we enrolled."[82] Former recruiter Fishbein observed the

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[77] Defendants published weekly sales numbers to foster competition among recruiters. See, e.g., deposition of former Chief Admissions Officer Roger Kuhl, Poupore Aff. Ex. 14 (p. 126); [redacted]. They gave awards and promotions based on enrollment volume, held sales competitions, published newsletters recognizing high sellers, and provided paid lunches and vacation time based on high sales. See, e.g., id. Ex. 25 (Senior and Executive Metrics for Defendants' admissions departments); Ex. 26 (Minneapolis Quarterly Contest Tracking); Ex. 27 at 015976 (July 2009 "Winning Edge" newsletter recognizing "high achievers"); A. LeGrande Aff. ¶ 11 (former recruiter LeGrande stated: "MSB held "Kick-Off" weeks during which its corporate team would give motivational speeches and present prizes to those with the highest sales numbers from the previous quarter, including gift cards, electronics, and jewelry, including a Movado watch.").

[78] See, e.g., DOA [Director of Admissions] Level II Training: Understanding Admissions Reports and Goal Setting, Poupore Aff. Ex. 28 at 024231; *id.* Ex. 29 at 129766 (2011 email from recruiter to Defendants' Corporate Director of Admissions Training Jennifer Foss-Wille) ("Based on my Fall start goals of 11 enrollments and 8 [starts], my daily goals are: 62 calls, 10 contacts, 1.5 appointments scheduled.").

[79] *Id.* Ex. 30 (2013 email discussing MSB—Blaine recruiter enrollment goals); A. LeGrande Aff. ¶ 29, Ex. B (former recruiter LeGrande was expected to enroll 59% of the prospective students she interviewed); J. Jensen Aff. ¶ 12 ("Each quarter, I was expected to enroll 12 students or more."); H. Von Bank Aff. ¶ 10 ("I was expected to enroll at least 60% of the individuals I met with.").

[80] Poupore Aff. Ex. 31 at 015648 (stating that Defendants will not approve Do Not Call requests if "the person is not interested in our programs," because "that is different than 'this person requests to be removed from our contact lists'"); Ex. 32 (stating that, "I am no longer interested" [d]oes not qualify as a non-lead, rather is part of the 84% of leads that may not convert.").

[81] *Id.* Ex. 14 at p. 150 (Deposition testimony of former Chief Admissions Officer Roger Kuhl, stating that representatives who did not meet their sales quotas were terminated); E. Fishbein Aff. ¶¶ 12, 18-19 (Former recruiter Elizabeth Fishbein said: "Those who did not meet MSB's quotas were subjected to weekly counseling meetings, performance improvement plans (PIPs), and ultimately, termination. . . ."); H. Von Bank Aff. ¶ 10 (MSB warned its recruiters that if they did not meet their sales goals, they could be terminated).

[82] A. LeGrande Aff. ¶ 3.

"constant pressure to meet our quotas."[83] Former recruiter Von Bank stated: "[My Director of Admissions] told me multiple times that if I did not meet my quotas, I would be fired."[84]

G. In the Wake of Industry Scrutiny, The Schools Sanitized Their Training Manual But Did Not Change Their Sales Practices and Tactics.

In November 2010, *Businessweek* published an article in which a for-profit college was exposed for using a training manual that encouraged its recruiters to use fear and manipulation in marketing their programs.[85] The U.S. Government Accountability Office (GAO) also issued a report that year finding that many for-profit colleges used similar tactics during their admissions processes.[86] Around that time, the U.S. Senate Committee on Health, Education, Labor and Pensions also launched an investigation of for-profit colleges.[87] Thereafter, Defendants "revis[ed] the vocabulary" in the training manual to "match the changes in the industry" and to modify language to avoid discussing "practices that are being noted in the industry."[88] Defendants reduced the size of their training manual from 217 pages of detailed instruction down to 28 pages and deleted passages detailing sales techniques.[89] An internal email stated that presentations were modified to feature "more professional phrasing," but retain "similar meanings."[90] The executives who developed and taught Defendants' sales practices remained in

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[83] E. Fishbein Aff. ¶¶ 15, 18.
[84] H. Von Bank Aff. ¶ 21.
[85] Poupore Aff. Ex. 33.
[86] *Id.* Ex. 34 (GAO Rep.).
[87] *Id.* Ex. 35 ("Senate HELP Rep.").
[88] *Id.* Ex. 36 at 129583 (Dec. 2010 email from Defendants' Network Director of Admissions Operations and Procedures to former Chief Admissions Officer Roger Kuhl et al.); J. Jensen Aff. ¶ 23 ("After I had been working at MSB for some time, MSB's corporate team visited my campus and told us that the for-profit college industry was under attack. MSB told us that it was changing the verbiage on its written materials, and that we could no longer use phrases like "find the pain," because it made MSB look bad. However, MSB did not change the substance of any of its admissions practices.").
[89] Poupore Aff. Ex. 13 (2009 admissions training manual); Ex. 20 (2010 admissions training manual).
[90] *Id.* Ex. 36 at 129583 (Dec. 2010 email from Defendants' Network Director of Admissions Operations and Procedures to former Chief Admissions Officer Roger Kuhl et al.).

place.[91] Former employees confirm that the above sales practices and tactics have continued throughout the relevant time period.[92]

Meanwhile, a highly critical 2012 report by the Senate HELP committee concluded that many for-profit colleges made misrepresentations in their admissions practices.[93] In September 2012, a Minnesota news organization aired a story featuring former recruiters who described misleading practices and the manipulation of prospective students at Globe/MSB.[94] Defendants' executives could not recall any substantive changes to Defendants' marketing practices in light of the GAO and Senate reports,[95] nor could Defendants' former Chief Admissions Officer recall trainers telling admissions recruiters to stop committing any practices uncovered in the GAO investigation.[96]

Defendants' former Chief Admissions Officer also could not recall changes following several lawsuits over the years based on related practices.[97] In 1986, students filed suit against Defendants' predecessor ITT Education Services, Inc. based on misrepresentations concerning accreditation and transferability of credits. The district court denied ITT's summary judgment motion,[98] and the case settled shortly thereafter.[99] Another group of students sued MSB based on

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[91] Deposition of former Chief Admissions Officer Roger Kuhl, Poupore Aff. Ex. 14 at pp. 10-11.

[92] Affidavits of former recruiters J. Jensen Aff. ¶ 23; H. Von Bank Aff. ¶¶ 6-9, 12-17, 22; E. Fishbein Aff. ¶¶ 4-10, 12-16; A. LeGrande Aff. ¶¶ 4-6, 12-19, 23. See also Poupore Aff. Ex. 22 at pp. 929-30 (Trial testimony of Jeanne St. Claire, former Network Dean of Defendants' business programs).

[93] Poupore Aff. Ex. 35 at 3-5 (Senate HELP Rep.).

[94] Poupore Aff. Ex. 37 (2012 article).

[95] Deposition of Chief Operating Officer Jeanne Herrmann, Poupore Aff. Ex. 38 at pp. 106-110 ("Q: Do you know if any changes were made specifically as a result of the Harkin[] report? A: I don't recall."); Deposition of former Chief Admissions Officer Roger Kuhl, Poupore Aff. Ex. 14 at p. 90 ("Q: . . . Do you recall any concerns around that time about MSB using the types of practices that had been noted in the industry? A: I don't remember that.").

[96] *Id.* Ex. 14 at p. 168 (Deposition of former Chief Admissions officer Roger Kuhl).

[97] *Id.* at pp. 182-83 ("Q: Do you know if those lawsuits resulted in any changes in the school's admissions training? A: No, neither one of those did.").

[98] *Larson et al. v. ITT Educ. Servs., Inc.*, Civil No. 4-86-801 at *3 (Minn. Dist. Ct. July 12, 1990) (Poupore Aff. Ex. 39).

misrepresentations of career opportunities for their graduates. Thereafter, the court denied MSB's motion for summary judgment and the case later settled. The Supreme Court affirmed an attorneys' fees award based on the "successful prosecution" of the students' claims that "benefitted the public."[100]

More recently in 2011, one of Defendants' former associate deans, Heidi Weber, filed a whistleblower action against Defendants alleging that she was fired for raising concerns about Defendants' deceptive practices, including the misrepresentation of credit transferability and the falsification of job placement rates.[101] A jury agreed with Ms. Weber and awarded $395,000 in damages, which was affirmed on appeal.[102] In April 2012, Jeanne St. Claire, another former dean, filed an action alleging that Defendants inflated job placement rates to induce students to enroll.[103] That case settled after Weber's jury verdict. In October 2013, another group of students filed a class action alleging that Defendants aggressively enroll students using high-pressure, deceptive tactics.[104]

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[99] *Larson et al. v. ITT Educ. Servs., Inc.*, Civil No. 4-86-801 (Minn. Dist. Ct. Oct. 10, 1990) (Poupore Aff. Ex. 40).

[100] *Collins v. Minn. Sch. of Bus., Inc.*, 655 N.W.2d 320 (Minn. 2003).

[101] *Weber v. Minn. Sch. of Bus., Inc*, 27-CV-12-8762 (Minn. Dist. Ct. 2012) (Poupore Aff. Ex. 41); *Weber v. Minn. Sch. of Bus., Inc.*, No. 82-CV-12-2797, 2014 WL 7011353 at *1-4 (Minn. App. Dec. 15, 2014) (Poupore Aff. Ex. 42), *rev. denied* Mar. 17, 2015.

[102] *Weber*, 2014 7011353 at *1-4, 10.

[103] *St. Claire v. Minn. Sch. of Bus., Inc.*, 27-CV-12-8767 (Minn. Dist. Ct. 2012) (Poupore Aff. Ex. 43).

[104] *Beck et al. v. Globe University, Inc.*, 27-CV-13-17941 (Minn. Dist. Ct. 2013) (Poupore Aff. Ex. 44) (This lawsuit was dismissed on procedural grounds based on an arbitration provision in Defendants' form contract).

II. DEFENDANTS RECOMMENDED THEIR CRIMINAL JUSTICE PROGRAM TO STUDENTS FOR WHOM THE PROGRAM WOULD NOT MEET THE STUDENTS' STATED CAREER OBJECTIVES, INCLUDING EMPLOYMENT AS A MINNESOTA POLICE OFFICER.

Defendants offered an associate's degree in their criminal justice program from at least January 2009 through December 2014,[105] costing about $39,150 per year,[106] and a bachelor's degree in the criminal justice program from October 2009 through December 2014,[107] costing about $78,300 per year.[108] In December 2014, they ceased enrolling new students into the criminal justice program.[109] Of the over 400 students who graduated from Defendants' criminal justice programs from January 1, 2009 through June 30, 2014, only 35% were reported by Defendants as "placed" in the criminal justice field.[110] The majority of those graduates reported as "placed" were working security guard/monitoring jobs,[111] low-paid positions that generally do not require a college education.[112]

A. The Schools' Criminal Justice Degree Was Not Recognized By The Minnesota POST Board As Satisfying The Educational Requirements To Become A Police Officer In Minnesota.

A person must be licensed to become a police officer in Minnesota.[113] Among other things, licensure requires that a person satisfy certain educational requirements. This may be

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[105] Am. Compl. ¶ 71; Am. Answer to Am. Compl. ¶ 71.

[106] Poupore Aff. Ex. 45 at 122031 (2013 webpage discussing associate degree criminal justice tuition costs).

[107] Am. Compl. ¶ 71; Am. Answer to Am. Compl. ¶ 71; Poupore Aff. Ex. 46 at 8129 (Dec. 15, 2009 criminal justice blog posting discussing Defendants' new bachelor degree criminal justice program).

[108] *Id.* Ex. 47 (2013 webpage discussing bachelor degree criminal justice tuition costs).

[109] See *id.* Ex. 48 (*Globe University, Minnesota School of Business Close Programs and Strand Students*, STAR TRIBUNE (Feb. 3, 2015).

[110] *Id.* Exs. 49, 50 (Defendants' job placement spreadsheets for students who graduated from January 1, 2009 through June 30, 2014, indicate that 151 of Defendants' 428 criminal justice graduates were reported "placed" in the criminal justice field).

[111] *Id.*

[112] *Id.* Ex. 51 at 2-3 (Occupational Information Network (developed by the U.S. Department of Labor/Employment and Training Administration), Summary Report for Security Guards, stating that 94% of security guard jobs require a high school diploma or less).

[113] Minn. Stat. § 626.84, subd. 1(c).

done in one of two ways. First, a person may graduate from a *regionally accredited* college in any field of study and then complete a program of professional peace officer education (PPOE) from a college certified by the Minnesota Board of Peace Officer Standards and Training (POST Board).[114] The PPOE component lasts a few months and is often referred to as "skills training." "Skills training" teaches a prospective officer the "hands on" elements of policing, such as how to use a weapon, handle a traffic stop, respond to an incident, and apprehend a suspect.[115] Second, a person may obtain a law enforcement or criminal justice degree through a program approved by the Peace Officer Standards and Training (POST) Board.[116] If a law enforcement or criminal justice degree is obtained through a POST Board-accredited school, a student obtains both the academic and skills training in one program at the same school.[117]

Defendants' schools are and were not regionally accredited,[118] nor is or was their criminal justice program approved by the POST Board.[119] As a result, the schools' criminal justice degree did not satisfy either the academic or the "skills training" requirements of Minnesota law for police officers. Thus, a graduate of the schools' criminal justice program who wanted to become a Minnesota police officer would have to start their entire education from scratch at a recognized institution. Defendants knew this, because they previously, and unsuccessfully,

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[114] Minn. R. 6700.0100, subps. 5a, 7, 20, 24; see also Poupore Aff. Ex. 52 (Minnesota POST Board, Information for Prospective Students); Ex. 53 at 1 (Minnesota POST Board, Choosing a Professional Peace Officer Education (PPOE) Program That is Right for You).

[115] Minn. R. 6700.0300; see also Poupore Aff. Ex. 54 (Minnesota POST Board, Learning Objectives for Professional Peace Officer Education).

[116] Minn. R. 6700.0100, subp. 5a; see also Poupore Aff. Ex. 53 at 1 (Minnesota POST Board, Choosing a Professional Peace Officer Education (PPOE) Program That is Right for You).

[117] Poupore Aff. Ex. 53 at 1 (Minnesota POST Board, Choosing a Professional Peace Officer Education (PPOE) Program That is Right for You).

[118] Am. Compl. ¶ 74, Am. Ans. To Am. Compl. ¶ 74.

[119] Id.; see also the Minnesota POST Board directory of POST-certified PPOE programs, Poupore Aff. Ex. 55.

lobbied the POST Board to approve their programs,[120] and their internal records acknowledge the schools' criminal justice degree was not recognized by the State of Minnesota for purposes of educating police officers.[121] Yet, as discussed below, the schools actively recommended their criminal justice program to Minnesota students who wanted to become police officers.

B. The Schools Enticed Minnesota Students Who Wanted To Become Police Officers To Meet With The Schools' Recruiters.

Defendants paid internet search engines to direct searches for "college for Minnesota police officer," "police college degree [M]innesota," "skills training [M]innesota college," "[M]innesota school to become a police officer," "police college [M]innesota," and the like to their criminal justice webpage.[122] Defendants also advertised their criminal justice program on websites like police-schools.com[123] and purchased leads from lead generation companies like Police Link.[124]

Blogs are a way to reach young people. Defendants' blog marketed their criminal justice program as leading to police careers. For example, one blog post lists "police officer" under the heading for "Best Careers for People with a Criminal Justice Degree."[125] Another describes a Minnesota student in the criminal justice program as wanting to become a local sheriff or state trooper,[126] positions that require licensure as a police officer in Minnesota. A June 2014 post entitled, "Do You Have What It Takes to Work in Criminal Justice?" featured a picture of a

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[120] Poupore Aff. Ex. 38 at pp. 116-17 (Deposition testimony of Chief Operating Officer Jeanne Herrmann).

[121] Poupore Aff. Ex. 56 at 4, 5 (March 20, 2012 DOCS [Director of Career Services] PowerPoint presentation).

[122] *Id.* Exs. 57-61 (July 2014 Google searches for these terms produced paid advertisements and links to Defendants' criminal justice webpage as one of the top hits).

[123] *Id.* Ex. 62 (Identifying "police-schools.com" as a website from which Defendants receive "inbound links").

[124] *Id.* Ex. 63.

[125] *Id.* Ex. 64 at 2373 (June 2014 blog post).

[126] *Id.* Ex. 65 at 2381 (January 2014 blog post).

police officer walking a handcuffed person to a squad car.[127] Other advertisements of Defendants encouraged students to "make the world a better place" with "a criminal justice degree"[128] and featured police officers in uniforms and badges[129] and performing sobriety tests.[130]

C. The Schools Recommended Their Criminal Justice Degree To Minnesota Students Who Told The School They Wanted To Become Police Officers.

The schools gave Jason Jensen (a recruiter from 2010 to 2011) criminal justice leads, many of whom were looking for a program to educate them to become police officers.[131] Mr. Jensen states: "MSB trained us to recommend its criminal justice program to these students, and never told us that an MSB college degree would not allow them to become police officers."[132] Ashlie LeGrande, a recruiter from 2008-2012 (who herself enrolled in the criminal justice program) states that she recruited many students who expressed interest in police work and that "MSB had never told us that it was not POST Board-approved."[133]

Defendants' admissions department received complaints from students who had been told by the schools that they could become police officers with their degree.[134] Defendants thereafter told Ms. LeGrande and other recruiters that students could earn a criminal justice degree at the schools and then transfer to another institution to complete "skills training" (e.g., the short course providing training on the "hands-on" elements of policing).[135] As noted *supra* at pages 17 to 19, however, the academic component of Defendants' criminal justice program does not satisfy the

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[127] *Id.* Ex. 66 at 2367.
[128] *Id.* Ex. 67.
[129] *Id.* Ex. 67-69.
[130] *Id.* Ex. 69.
[131] J. Jensen Aff. ¶ 16.
[132] *Id.*
[133] A. LeGrande Aff. ¶ 26.
[134] *Id.*
[135] *Id.* at ¶ 27.

educational requirements for Minnesota police officers and does not qualify applicants to receive their "skills training" to become Minnesota police officers. MSB subsequently told Ms. LeGrande "to continue contacting police officer leads, and instructed [her] not to tell them that MSB criminal justice degrees would not qualify them to become police officers in Minnesota."[136]

Bradshaw Anderson was a Minnesota state trooper for 20 years.[137] In 2011 and 2012, he worked as the Criminal Justice Program Chair at MSB's Shakopee campus.[138] He states that he overheard the school's recruiters "recommend MSB's criminal justice program to prospective students who told MSB's recruiters that they wanted to become police officers."[139] Steve Lorenz is a former POST Board Coordinator for a northern Minnesota community college.[140] He has been contacted by many students and graduates of MSB's criminal justice program who wanted to become police officers and sought to transfer their MSB credits to the community college.[141] He states: "It is especially troubling [to receive these calls] because over the years, I have had multiple communications with [MSB] and told them that because MSB is not regionally accredited, [the community college] will not enter into an articulation agreement with MSB, nor will [it] allow MSB students to transfer into [the community college's] law enforcement program."[142]

As discussed *supra* at pages 6 through 9, Defendants tell prospective students that they will only recommend the school and a particular program of study if they would lead to the

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[136] *Id.* ¶ 27.
[137] B. Anderson Aff. ¶ 1.
[138] *Id.* at ¶ 2.
[139] *Id.* at ¶ 4.
[140] S. Lorenz Aff. ¶ 1.
[141] *Id.* at ¶ 5.
[142] *Id.* at ¶ 7.

student's career goals. Yet, Defendants recommended their criminal justice degree program to Minnesota students wanting to become police officers, even though it is impossible under Minnesota law to use that degree to become a police officer in Minnesota. For instance, upon returning from a tour of duty in Iraq, National Guard member **Robert Boleen** told Globe's recruiter that he wanted to become a police officer.[143] The recruiter recommended Globe's criminal justice program.[144] Robert had to start his college education over after learning part way into the program that Globe was not approved by the Minnesota POST Board.[145]

Another one of Defendants' recruiters recommended Iraq War Army veteran **Kurtis Nahl** for the criminal justice program when Kurtis said he wanted to be a police officer.[146] After using $65,000 of his GI Bill benefits to attend Globe, Kurtis learned that he cannot become a Minnesota police officer with his degree.[147] He is now starting his education over at a community college.[148] **Rodney Coons** wanted to become a police officer after his contract with the Army Reserves ended.[149] When he told one of MSB's recruiters about his interest in law enforcement, the recruiter recommended MSB's criminal justice program, claiming that MSB was in the process of becoming certified by the POST Board.[150] After using his GI bill funding

[143] R. Boleen Aff. ¶¶ 2-4; [redacted]

[144] R. Boleen Aff. ¶ 4.
[145] *Id.* at ¶ 7.
[146] K. Nahl Aff. ¶ 4.
[147] *Id.* at ¶¶ 9-10.
[148] *Id.* at ¶ 10.
[149] R. Coons Aff. ¶ 2.
[150] *Id.* at ¶ 3.

and taking out $40,000 in student loans to graduate, Rodney learned that MSB never became certified by the POST Board.[151]

Dillon Zerwas decided at a young age that he wanted to be a police officer.[152] Dillon told this to MSB several times, and MSB told Dillon that its criminal justice program would be "a great fit" and would allow him to apply for skills training.[153] When Dillon shared his career goal with a substitute criminal justice instructor, however, the instructor told Dillon he was at the wrong school if he wanted to be a police officer.[154] **Perry Schramm** was similarly counseled that MSB's criminal justice degree would give him the education he needed to complete skills training.[155] After spending over three years and $50,000 on his MSB criminal justice degree, Perry learned that he would have to start school over if he wanted to accomplish his dream of becoming a Minnesota police officer.[156] His student loan payments and $10 an hour mall security job have put a financial strain on his family of five.[157] Numerous other students have had similar experiences.[158]

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[151] *Id.* at ¶¶ 5-6, 8.
[152] D. Zerwas Aff. ¶ 2.
[153] *Id.* at ¶¶ 4-7.
[154] *Id.* at ¶ 9.
[155] P. Schramm Aff. ¶¶ 1, 3.
[156] *Id.* at ¶¶ 2, 6-7.
[157] *Id.* at ¶¶ 1, 7.
[158] See, e.g., **Clarissa Overend** Aff. ¶¶ 6, 10 (told MSB's recruiter and at least two instructors she wanted to be a police officer; learned from a fellow student she could not do so with Defendants' criminal justice degrees); **David Holmes** Aff. ¶¶ 1-9 (wanted to be police officer after two tours in Iraq, and MSB recommended criminal justice program); **Lori Beise** Aff. ¶¶ 2-3 (told recruiter she wanted to become police officer after son died, and recruiter recommended criminal justice program); **Phillis Dudley-Martin** Aff. ¶¶ 1-5 (19-year-old told MSB recruiter that she wanted to be a police department detective; recruiter twice told her that criminal justice degree from MSB would allow her to become police officer); **Wendy Lehman** Aff. ¶¶ 3-4 (recruiter recommended MSB's criminal justice program after mother of two shared dream of becoming police officer); **Jason Miske** Aff. ¶¶ 2, 4-5 (learned halfway through program that MSB's criminal justice degree (recommended by recruiter after student said he wanted to become police officer) would not advance him toward his dream); **Kristina Anderson** Aff. ¶¶ 2-3 (same); **Timothy Bennett** Aff. ¶¶ 3-5 (after telling recruiter he wanted to become police officer, recruiter recommended criminal justice degree); **Cole Bougie** Aff. ¶¶ 2-3 (recruiter recommended criminal justice
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Defendants have prospective students click through numerous computer "disclosure" boxes at enrollment. Prior to 2010, Defendants' computerized "disclosures" had no language about its criminal justice program.[159] In 2010, Defendants buried among their numerous other online "disclosure" boxes one stating that the criminal justice program is not "POST certified" such that a student cannot participate in "skills training."[160] Sales staff were not aware of this "disclosure."[161] These boxes appeared with many others on a computer screen, and students rapidly clicked through them without reading them.[162] Despite being aware that their criminal justice program was not certified to educate police officers in Minnesota (e.g., it did not satisfy

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degree to father of son who wanted to enter law enforcement to provide better standard of living for family); **Tammy Marquardt** Aff. ¶¶ 1-2 (recruiter said criminal justice degree was perfect for student who wanted to become police officer); **Anne Bates-Edwards** Aff. ¶¶ 1-7 (recruiter recommended criminal justice degree when she said she wanted to be a police officer); **Allyson Pritchett** Aff. ¶¶ 3, 8-14 (same); **Wendy Brown** Aff. ¶¶ 2-4 (after student confronted recruiter about this lawsuit, recruiter reassured her she could become a police officer with an MSB degree); **Jesse LeFebvre** Aff. ¶¶ 2 (student enrolled in MSB's associate degree criminal justice program after being assured that after graduation, all he needed to do was complete "skills training" to become a police officer); **Sheena Janusch** Aff. ¶¶ 1-3 (same); **Shannon Chapin** Aff. ¶¶ 1-3 (student shared goal of becoming police officer with recruiter, who recommended MSB's criminal justice degree); **Christopher St. John** Aff. ¶¶ 2-5 (same); **Melissa Savage-Heinkel** Aff. ¶¶ 2-5 (student enrolled in criminal justice program to become detective, but learned at graduation that MSB's program is not recognized by Minnesota); **Jesup Studer** Aff. ¶¶ 1-3 (student incurred $20,000 in debt in criminal justice program after telling recruiter he wanted to be police officer); **Bill Cloak** Aff. ¶¶ 2-4 (recruiter recommended student switch to Globe's criminal justice program from community college after he expressed interest in becoming police officer); **Elizabeth Romero-Castro** Aff. ¶ 4 (after she told MSB that she wanted to become homicide detective, MSB recommended MSB's criminal justice program); **Crystal Steffens** Aff. ¶ 2 ("MSB's admissions representative told me that a criminal justice degree would open up a world of employment opportunities, including . . . police officer[.]"); **Joshua Brown** Aff. ¶ 5 ("I told MSB's advisor that because of my military experience, I had decided to pursue a career as a police officer. Based on MSB's advice, I enrolled in MSB's bachelor degree in criminal justice.").

[159] See 2009 Enrollment Agreement and Admissions Information, Poupore Aff. Ex. 72.

[160] See 2010 Enrollment Agreement and Admissions Information, Poupore Aff. Ex. 73 at 35519.

[161] *Id.* Ex. 74 at pp. 46-47, 94-95 (Deposition testimony of former recruiter Ashlie LeGrande) ("Q: Okay. And did you at some point become aware in the enrollment process that there was a disclosure on the student's enrollment agreement that said that they could not become, that they could not test to become a Minnesota police officer if they – A: No, I did not know that."); see also Ex. 75 at pp. 63-64 (Deposition testimony of former recruiter Jason Jensen).

[162] E. Fishbein Aff. ¶ 14.

either the academic requirement or the skills training requirement to become a police officer in Minnesota), Defendants continued to recommend this program to people who wanted to become police officers, costing students up to $78,000.

D. Defendants Recommended Their Two-Year Degree In Criminal Justice To Prospective Students Who Wanted To Be Probation Officers, Even Though At Least A Four-Year Degree Is Needed To Be A Probation Officer In Minnesota.

Defendants induced prospective students to contact them by promoting their criminal justice program as a way for students to become probation officers. For example, their website stated that students could look forward to jobs as probation officers[163] and discussed starting salaries of probation officers.[164]

In Minnesota, probation officers are employed by counties or the State. The Minnesota Department of Corrections requires probation officers to have at least a bachelor's degree.[165] Similarly, Minnesota counties require that probation officer applicants have at least a bachelor's degree.[166] Defendants' internal records acknowledge that a probation officer requires at least a bachelor's degree and that "most want a TON of experience and some require a Master's Degree."[167] All counties where Defendants' campuses are located require that probation officer applicants have at least a bachelor's degree and many require related experience.[168]

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[163] See, e.g., *Id.* Ex. 76 (2013).

[164] See, e.g., *Id.* Ex. 77 (2014).

[165] Poupore Aff. Ex. 78 (Minnesota Department of Corrections, Job Qualifications for Corrections Agents) (the Department of Corrections refers to its probation officers as "corrections agents").

[166] John Klavins, the Chair of the County Probation Officers Director's Committee, states that he is not aware of any counties that hire associate degree holders as probation officers. J. Klavins Aff. ¶ 4.

[167] *Id.* Ex. 56 at 5 (March 20, 2012 DOCS [Director of Career Services] PowerPoint presentation).

[168] See Poupore Aff. Ex. 79 at 2270 (Hennepin probation officers must have a master's degree, or a bachelor's degree and a year of related experience); Ex. 80 at 2278 (Dakota County probation officers must have a bachelor's degree and one to two years of related experience); Ex. 81 at 2275 (Sherburne County probation officers must have a bachelor's degree and experience); Ex. 82 at 2281 (Scott County probation officers must have a bachelor's degree and two years of related experience); Ex. 83 at 2287 (Washington County probation officers must have a master's degree, or a bachelor's degree and a year of

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One of the schools' former recruiters explains that leads stay with a recruiter through graduation, so that recruiters get credit for re-enrolling a student who is graduating with an associate's degree into a bachelor's degree program.[169] She states that recruiters therefore often recommend an associate degree program for students needing a bachelor's degree or higher to increase their enrollment numbers.[170]

As discussed previously, recruiters recommend the school and a specific program to a prospective student based on that student's career goals. The schools recommended that Minnesota students who wanted to become probation officers obtain an associate's degree in criminal justice, even though, as noted above, the State and Minnesota counties require probation officers to have at least a *bachelor's* degree.

For example, MSB counseled **Rhonda Litke** that she would make a great probation officer and recommended its criminal justice associate's degree program because it would "allow [her] to begin working in the criminal justice field in two short years."[171] Rhonda was devastated to learn a quarter or two before graduation that she needed a bachelor's, if not a master's degree, to be a probation officer.[172] Based on **Brittany Celski's** interest in probation officer work, MSB recommended and enrolled her in its criminal justice associate's degree

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related experience); Ex. 84 at 2289 (Olmsted County probation officers must have a master's degree and one year of related experience or a bachelor's degree and two years of related experience); Ex. 85 at 1 (Anoka County probation officers must have at least a bachelor's degree and related experience); Ex. 86 at 1 (Stearns County probation officers must have at least a bachelor's degree and one year of related experience); Ex. 87 at 2580 (Clay County probation officers must have at least a bachelor's degree).

[169] A. LeGrande Aff. ¶ 20.

[170] *Id.*

[171] R. Litke Aff. ¶ 5.

[172] *Id.* at ¶ 7.

program.[173] Brittany has $50,000 in student loans and the same customer service job she had before enrolling.[174] MSB recommended that **Katie Gerads** switch from MSB's graphic design program to its criminal justice associate's degree program when Katie said she wanted to be a probation officer.[175] Around graduation, MSB tried to persuade Katie, who already had $80,000 in student loans, to continue her education at MSB by telling her that she needed a bachelor's degree to work as a probation officer.[176]

When **Tracey Hovland** asked MSB whether it had a program that would qualify her for probation officer work, MSB recommended its criminal justice associate degree program, telling Tracey that MSB worked with counties to place criminal justice graduates in probation officer jobs.[177] Around graduation, Tracey learned from a county probation officer that she needed a bachelor's degree to be a probation officer.[178] **Ivette Hodge** was advised by MSB that its associate criminal justice degree would allow her to begin working as a probation officer in 18 short months.[179] **Rhonda Bell** did not learn that her MSB criminal justice associate's degree would not allow her to become a probation officer until the end of her program.[180] She has $40,000 in student loans and works the same job she had before enrolling.[181] Other students had similar experiences.[182]

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[173] B. Celski Aff. ¶ 2.
[174] *Id.* at ¶ 8.
[175] K. Gerads Aff. ¶ 3.
[176] *Id.* at ¶ 4.
[177] T. Hovland Aff. ¶ 7.
[178] *Id.* at ¶ 11.
[179] I. Hodge Aff. ¶ 2.
[180] R. Bell Aff. ¶¶ 4, 6.
[181] *Id.* at ¶ 7.
[182] **Jon Gardner** Aff. ¶¶ 2, 4, 11 (he told MSB he wanted to be probation officer, and the school recommended its associate criminal justice degree because it would "get [him] into the workforce as quickly as possible"); **Crystal Lemke** ¶¶ 1, 3, 6, 8 (MSB recommended criminal justice associate degree based on her interest in probation officer work); **Nicole Manderscheid** ¶ 3 (same); **Drew Mehling** Aff. ¶ 1-3 (same); **Terran North-Simpson** ¶¶ 3, 5 (same); **Jodi Pugh** Aff. ¶¶ 1, 3 (same); **Denise Traylor** Aff.
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E. Defendants Recommended Their Criminal Justice Degree To Other Students Who Could Not Or Did Not Become Employed With It In The Manner Recommended To Students.

In Minnesota, a person needs a social work degree to become a licensed social worker.[183] The schools do not offer a social work degree.[184] However, Defendants enrolled students who said they wanted to be a social worker in their criminal justice programs. For example, one of Defendants' recruiters recommended a bachelor's degree in criminal justice to **Hayley Anderson**, who told the recruiter she wanted to be a social worker.[185] The same thing happened to **Carolyn Brooks**[186] and **Vanessa Keen.**[187]

Various jobs are classified according to the U.S Department of Labor/Employment and Training Administration's Standard Occupational Classification, referred to as "SOC codes." On their website and in sales meetings, Defendants represented that their criminal justice program prepared students for jobs in SOC Code such as first-line supervisors/managers of police and

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¶ 3 (when she told Globe that she wanted to be a probation officer, Globe recommended she complete a business administrative assistant diploma and then earn a criminal justice associate's degree, telling her the combination would "make her more marketable."); **Melissa Adreon** Aff. ¶ 3 (shortly before graduation, she discovered that employers required probation officers to have a bachelor's degree, even though recruiter recommended associate's degree after she said she wanted to be probation officer); **Nicholas Reeve** Aff. ¶ 5 (MSB recruiter told him to switch to MSB's associate's degree in criminal justice after he said he wanted to be a probation officer); **Kati Pantekoek** Aff. ¶ 4 ("I told my MSB advisor that I was interested in being a probation officer, and my MSB advisor recommended MSB's criminal justice associate's degree program."); **Melanie Gonsior** Aff. ¶ 3 (same); **Tony Smith** Aff. ¶ 3 (same); **Magdalena Alameda** Aff. ¶ 18 ("I am working the same job I was before MSB and deep in debt.").

[183] Minn. Stat. § 148E.055, subd. 2(1).

[184] Poupore Aff. Ex. 14 (p. 49) (Deposition Testimony of former Chief Admissions Officer Roger Kuhl).

[185] H. Anderson Aff. ¶ 2.

[186] C. Brooks Aff. ¶ 2 ("I told MSB's admissions representative that I was interested in becoming a social worker, and he recommended MSB's criminal justice associate degree program.").

[187] V. Keen Aff. ¶ 4.

detectives,[188] which includes positions like "Chief of Police," "Detective Sergeant," and other high-ranking police titles."[189] At a February 2013 meeting, a school official expressed concern "that the [published criminal justice SOC codes] are nowhere near realistic."[190] In May 2013, Defendants' corporate career services manager emailed one of Defendants' directors asking why the schools' published SOC codes did not "better reflect the roles our graduates get."[191] The director admitted that the school could remove from public descriptions the occupations that did not coincide with actual graduate employment.[192] Defendants, however, did not change their SOC codes on their public website until 2014.[193]

In their internal communications, Defendants conceded that students have difficulties in obtaining federal agent employment, indicating: "Federal Agencies: FBI, ATF, DEA, Customs/Border Patrol—most want a TON of experience or a special language."[194] Yet, Defendants advertised that their criminal justice graduates could obtain careers as FBI agents, and Customs/Border Patrol agents, as well as crime scene investigators, telling students they

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[188] See, e.g., Poupore Aff. Ex. 45 at 122031 (2013 website).

[189] *Id.* Ex. 88 at 1 (Occupational Information Network (developed by the U.S. Department of Labor/Employment and Training Administration), Summary Report for First-Line Supervisors of Police and Detectives).

[190] *Id.* Ex. 89 at 020616 (February 19, 2013 DOCS [Director of Career Services] Meeting Minutes).

[191] *Id.* Ex. 90 at 028120 (July 2013 email correspondence between Defendants' Corporate Career Services Manager, Jodi Boisjolie-Rosen, and Director of Institutional Effectiveness, Dr. Mitchell Peterson).

[192] *Id.* at 028119.

[193] *Id.* Ex. 91 [redacted]

[194] See, e.g., *id.* Ex. 56 at 5 (March 20, 2012 DOCS [Director of Career Services] Meeting PowerPoint presentation).

could be hired in these fields upon graduation.[195] During the relevant time period, however, no graduate of the schools obtained employment in these careers.[196]

III. DEFENDANTS MISREPRESENTED TO PROSPECTIVE STUDENTS THE TRANSFERABILITY OF THE SCHOOLS' CREDITS TO OTHER HIGHER EDUCATION INSTITUTIONS.

Nearly all higher-education institutions in Minnesota—i.e., the University of Minnesota, colleges within the MnSCU system, and private nonprofit universities—are accredited by Minnesota's "regional" accreditor: the Higher Learning Commission, located in Chicago.[197] This makes them "regionally accredited." Defendants, however, are accredited by a national organization called the Accrediting Council for Independent Colleges and Schools (ACICS).[198] This makes Defendants "nationally accredited." National accrediting organizations, such as ACICS, were created to allow for-profit colleges to obtain financial aid without meeting the same academic quality standards of other colleges.[199]

In practice, coursework from nationally accredited schools almost never transfers to regionally accredited schools.[200] Jeanne Herrmann, Defendants' Chief Operating Officer, testified that out of the tens of thousands of state, community, and non-profit colleges in the United States, she is aware of only three or four that accept Defendants' credits.[201] COO

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[195] See, e.g., *id.* Ex. 76 (2013 website); Ex. 77 (2014 website).

[196] *Id.* Exs. 49, 50 (Defendants' job placement spreadsheets for students who graduated from January 1, 2009 through June 30, 2014).

[197] Higher Learning Commission, Directory of Institutions, available at https://www.hlcommission.org/Directory-of-HLC-Institutions.html.

[198] Am. Compl. ¶ 37; Am. Ans. to Am. Compl. ¶ 37.

[199] Poupore Aff. Ex. 35 at 123 (Senate HELP Rep.).

[200] *Id.*; Trial Testimony of former dean Heidi Weber, Ex. 22 at 277-79 ("[A] regionally accredited school will not, unless it's some extenuating circumstance, will not accept credits from a nationally accredited. . . school.").

[201] Poupore Aff. Ex. 22 at pp. 1041-42 (prior trial testimony of COO Jeanne Herrmann). The following are some examples of the Minnesota public and non-profit universities and colleges that have published blanket policies not to accept credits of nationally accredited institutions: University of Minnesota—Twin Cities, see K. Hanson Aff. ¶¶ 2-4, Ex. A; St. Catherine University, see C. Egeness Aff. ¶¶ 2-5, Exs. A, B; see also Poupore Aff. Ex. 93 (Credit transfer policies of Normandale Community

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Herrmann acknowledged that state colleges and universities are particularly unlikely to accept Defendants' credits.[202]

Defendants, however, train their recruiters to mislead prospective students regarding the difference between national and regional accreditation—a key factor in the transferability of credits. Defendants' training materials teach recruiters to believe that it is a "myth" that "regionals won't accept credits from nationally accredited institutions" and that national accreditation is less valuable than regional accreditation and state that "neither is better than the other."[203] Defendants told recruiters to say that "[ACICS] accreditation is an important consideration for smooth transfer of courses and programs between colleges and universities."[204] The training worked. Recruiters provided feedback after their training underscoring their belief, based on Defendants' instruction, that national and regional accreditation are equal.[205] As former recruiter Elizabeth Fishbein explains: "we were told to tell [prospective students] that there was no difference between regional and national accreditation."[206]

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College, University of Minnesota Rochester, Augsburg College, Hamline University, Bemidji State University, University of St. Thomas, Bethel University, University of Minnesota Morris, Gustavus Adolphus College, St. Olaf College, St. John's University, College of Saint Benedict, Central Lakes College, Pine Technical College, and Ridgewater Community College).

[202] Poupore Aff. Ex. 38 at p. 57 (Deposition testimony of COO Herrmann).

[203] See, e.g., Accreditation: Separating Fact from Fiction (PowerPoint presentation), Poupore Aff. Ex. 94 at 3 ("busting" the "myth" that "regionals won't accept credits from nationally accredited institutions"); see also *id.* Ex. 95 at 024514 (FAQ: National versus Regional Accreditation) (states that neither type of accreditation is better than the other).

[204] *Id.* Ex. 96.

[205] Recruiters made the following types of comments after training by Defendants: Poupore Aff. Ex. 97 ("Knowing that Regionally accredited universit[ies] do accept our credits is a big help."); Ex. 98 ("There is no difference in quality or difficulty in obtaining/maintaining regional versus national accreditation"); Ex. 99 ("Regional accreditation isn't necessarily better—only requires updates every 10 years compared to national which requires annual activity."); Ex. 100 ("There is no difference in [r]egional and [n]ational accreditation besides which schools implement it…schools don't need one or the other to be successful.").

[206] E. Fishbein Aff. ¶ 8.

Former recruiter Ashlie LeGrande states: "I often overheard admissions representatives telling prospective students that because MSB was accredited, students would have no problem transferring their credits to another school."[207] Defendants specifically told recruiters not to disclose that regionally accredited colleges rarely accepted their credits.[208]

Defendants also told recruiters to use their aura as counselors to feign concern about a student's commitment if he or she kept asking about the transferability of credits. One former recruiter explained: "If students asked how MSB's accreditation would affect their ability to transfer credits, we were taught to deflect these questions by asking, 'why would you want to go elsewhere when you can continue here at MSB?' or 'Are you planning on leaving? MSB students start and finish here.'"[209] Another recruiter was trained to respond to students' questions regarding credit transferability with something like, "Why are you already thinking about transferring? MSB offers associate, bachelor, and master's degree programs and many students choose to continue their education here. It concerns me that you are thinking about transferring before you have even enrolled."[210] Defendants' internal documents confirm this tactic.[211]

Defendants' enrollment agreement, signed on a computer after students agreed to enroll, appended several boxes of fine print, purported "disclaimers," one of which merely stated that

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[207] A. LeGrande Aff. ¶ 16.

[208] J. Jensen Aff. ¶ 17 ("At MSB's instruction, I did not disclose to prospective students the fact that most public and non-profit colleges would not accept most MSB credits."); E. Fishbein Aff. ¶ 8 ("MSB instructed us never to tell students that its credits would not transfer to other schools."); H. Von Bank Aff. ¶ 9 ("MSB advised us not to tell prospective students that regionally accredited schools would not likely accept MSB's credits….").

[209] A. LeGrande Aff. ¶ 16.

[210] E. Fishbein Aff. ¶ 9.

[211] See, e.g., Poupore Aff. Ex. 101 at 21531 (Nov. 2012 regional admissions conference call notes, advising recruiters to respond to transfer credit objections by stating: "Now I am even more concerned. Are you committed to starting and graduating? I am concerned about giving my recommendation if you are not fully invested.").

the transfer of credits was up to the receiving institution.[212] As former recruiter Elizabeth Fishbein explains:

> When students agreed to enroll during admissions visits, at MSB's instruction, I would pull up MSB's enrollment agreement on my computer and tell students they needed to complete the agreement. The enrollment agreement was lengthy and contained multiple links that students had to navigate....It contained several pages of disclosures....MSB instructed me to tell students that to enroll, they needed to 'check all the boxes.' I was trained by MSB to tell students something like, 'you can always go back and review the enrollment agreement at a later date. Only once do I recall a student stopping to read MSB's disclosures. All other students quickly clicked through all of MSB's disclosures without reading them in order to complete the enrollment agreement.[213]

As noted *supra* at pages 4 to 12, the schools assumed responsibility to determine if it was the best school for students and if its "career training" will "put your career in the direction you would like to see it go." Despite this responsibility, Defendants misrepresented the transferability of their credits to many students and failed to provide material information about the non-transferability of the credits to various other students. Many students found that their credits would not transfer to other institutions.

For example, Navy veteran **Elisabeth Grossman** enrolled in Globe's vet-tech program based on a recruiter's repeated promise that her credits would transfer because Globe was accredited.[214] Having used up her GI Bill benefits, but dissatisfied with her education, she withdrew and enrolled at Normandale Community College, which did not accept any of her credits.[215] **Ana-Katherine Anderson** enrolled in MSB's massage-therapy program because she was assured "that MSB was accredited and...[she] would have no problem transferring [her]

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[212] See, e.g., Poupore Aff. Ex. 73 at 35518 (2010 Enrollment Agreement and Admissions Information).

[213] E. Fishbein Aff. ¶ 14.

[214] E. Grossman Aff. ¶¶ 4-5.

[215] *Id.* at ¶ 8.

credits elsewhere."[216] After she incurred $30,000 for an associate's degree, she was told by the U of M, St. Kate's, and Normandale that they would not accept MSB's credits.[217] 25-year old mother **Jesily Abrahamson** asked MSB if its credits would transfer and she was assured that they would.[218] When she tried to transfer her credits they were rejected by public community colleges and universities.[219] Many other students had similar experiences.[220]

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[216] A. Anderson Aff. ¶ 3.

[217] *Id.* at ¶¶ 4-5.

[218] J. Abrahamson Aff. ¶¶ 1-2.

[219] *Id.* at ¶¶ 5-6.

[220] See **John Moen** Aff. ¶¶ 4-10 (recruiter said credits would transfer to other schools, but did not transfer to Rochester Community and Technical College and student is $40,000 in debt); **Lewis Lumley** Aff. ¶¶ 3-6 (recruiter said he could transfer to Alexandria Tech, but student didn't find out credits couldn't transfer until this lawsuit); **Tracy Green** Aff. ¶¶ 4-5 (recruiter promised medical assistant credits could transfer to further education, but no schools accepted credits and student is $50,000 in debt); **Jennifer Hallman** Aff. ¶¶ 4-7 (recruiter said business-accounting credits were 'transferrable,' but schools would not accept them); **Krissy Johnson** Aff. ¶¶ 2, 13-18 (recruiter said criminal justice program could be used to pursue further education; recruiter later told student MSB knew credits did not transfer); **Lori Ganey** Aff. ¶¶ 4, 6 (recruiter promised credits would transfer, but they did not); **Christina Harness** Aff. ¶¶ 4, 6 (same); **Tamara Blanchette** Aff. ¶¶ 5, 7 (same); **Gary Ussery** Aff. ¶¶ 3, 7 (recruiter said credits could transfer to MSU-Moorhead, but it rejected credits and student is $75,000 in debt); **Brittany Weller** Aff. ¶¶ 3, 8 (recruiter assured student that degree could be used to transfer or continue education, but no schools accept the degree and student is $60,000 in debt); **Jennifer Lipkie** Aff. ¶¶ 4-6 (recruiter said most credits would transfer, but other schools rejected them); **Tyron McMiller** Aff. ¶¶ 4, 7 (recruiter said music-business credits would transfer, but two local colleges rejected them and student is $20,000 in debt); **Chelsea Adams** Aff. ¶¶ 3, 4 (recruiter said criminal justice credits would transfer, but school rejected them when she transferred); **Abigail Erb** Aff. ¶¶ 3, 6 (recruiter promised vet-tech credits would transfer, but Minnesota State Community and Technical College accepted none); **Angela Spike** Aff. ¶¶ 4, 12 (recruiter said medical assistant credits could transfer, but other schools would not accept after she incurred $45,000 in debt); **Ashley Rioux** Aff. ¶¶ 4-6 (recruiter said credits would transfer, but Inver Hills Community College rejected them); **Amanda Enright** Aff. ¶¶ 2, 4 (recruiter said nursing credits could be used for advanced degree, but no credits transferred after she incurred $70,000 in debt); **Emily Tomlin** Aff. ¶¶ 2, 4, 6 (recruiter said criminal justice credits would transfer, but they do not); **Amanda Skorichow** Aff. ¶¶ 2, 4 (recruiter said schools accepted Defendants' credits, but no nursing program would); **Kate Schmitz** Aff. ¶¶ 2-12 (recruiter said Globe credits would transfer, but Mankato State rejected them and she incurred $100,000 of debt); **Katie-Ann Dryden** Aff. ¶¶ 2-3 (recruiter promised that medical-administrative credits would transfer, but other colleges rejected them); **Timothy Erickson** Aff. ¶¶ 2, 4, 6 (credits would not transfer to Bemidji State University); **Tamara Jergenson** Aff. ¶¶ 3, 4, 8 (recruiter said other schools would accept credits, but Anoka Ramsey and others would not); **Allison Ludvingson** Aff. ¶¶ (recruiter said credits would transfer, but St. Paul College rejected them); **Jamila Reid** Aff. ¶¶ 4, 6 (recruiter said other schools would accept credits, but every school she contacted rejected them); **Melinda Wolgast** Aff. ¶¶ 3, 5 (promised that she could transfer her credits to obtain her nursing degree at another college, but Anoka-Ramsey Community College did not accept credits because MSB is not properly accredited); **Ralph Rainville** Aff. ¶¶ 4, 7 (was told that his son would have "no

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IV. DEFENDANTS MISREPRESENTED THEIR SUCCESS AT PLACING STUDENTS IN JOBS.

A. Defendants Entice Students With High Job Placement Numbers.

As "career training" schools, Defendants recognize that "students come to the school to get a job."[221] One way Defendants attract potential students is by advertising high job placement rates, calling job placement rates one of the "top ten" reasons students attend the school.[222] Defendants instructed their sales people that students' expectation of a job in their field of study was essential to a sale.[223] Defendants' training materials tell recruiters that students "must have confidence that there are career opportunities in this career and it will help them fulfill their dreams of success."[224] Recruiters were required to tell students about Defendants' graduate job placement rates as part of their sales presentations.[225] After presenting job placement rates to prospective students, recruiters ask questions like: "Wouldn't it be important to you to attend a school whose graduates are able to find employment upon graduation?"[226] and "When choosing a college to attend, is it important to choose one that works hard to place a high percent of their

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problem transferring his credits to complete his bachelor's degree," but he was unable to transfer his credits to the U of M or Minneapolis Technical and Community College); **Anthony Cincoski** Aff. ¶ 6 (unable to transfer credits "due to MSB's type of accreditation"); **Wendy Duel** Aff. ¶ 4 (forced to enroll in Defendants' advanced degree programs because other schools would not accept credits).

[221] Poupore Aff. Ex. 102 (Sep. 18, 2012 DOCS [Director of Career Services] Meeting Minutes); see also id. Ex. 13 at 015288 (2009 admissions training manual); Ex. 103 at p. 111 (Deposition testimony of Jeffrey Myhre, Defendants' Chief Executive Officer) ("Q: And you understand that students who might be shopping around between institutions, that job placement rates might be very important to them in making that decision about what institution to attend, correct? A: Yes.").

[222] *Id.* Ex. 104 (advertisement).

[223] See, e.g., Ex. 13 at 015288 (2009 admissions training manual).

[224] *Id.*

[225] See, e.g., E. Fishbein Aff. ¶ 5 (Elisabeth Fishbein, who worked as a recruiter from 2012 to 2015, states: "I was trained to tell students about MSB's high job placement rates and salary ranges, and ask questions like, "wouldn't it be great to attend a school with such high job placement rates?"); H. Von Bank Aff. ¶ 14 (former recruiter Hannah Von Bank was "trained [to tell] students that because of MSB's reputation and effective job placement services, over 90% of MSB graduates found work in their field of study upon graduation."); A. LeGrande Aff. ¶ 14.

[226] Poupore Aff. Ex. 105 at 015740 (2013 Admissions Script).

students?"[227] A question and answer page distributed by the schools to recruiters states: "Do we use Placement to sell? Yes."[228]

For example, one email told students that "the majority of our placement rates are 90%. That's tremendous! 9 of 10 of our graduates are placed within the field of their choice doing exactly what they chose to complete their degree in."[229] In another advertisement, Defendants state that their job placement rate is 88.6 percent.[230] Defendants represented their business administration/business management job placement rate to be 84 percent,[231] and their healthcare management job placement rate to be 89 percent.[232] During sales meetings, Defendants' recruiters told prospective enrollees that 92.9 percent of their associate degree business administration graduates were placed.[233]

Defendants also publish job placement rates on their website. For example, they describe their 2010 to 2011 graduate job placement rate for a Bachelor's of Science Degree in Health Care Management as 89 percent,[234] an Associate of Arts Degree in Business Administration/Cosmetology Business/Transportation Business as 90 percent in 2010 to 2011,[235] and an Associate of Arts Degree in Sales and Marketing as 100 percent in 2010 to 2011.[236] Here, they drop in a footnote that rates are calculated using a methodology established by their accreditor, ACICS, but without explaining the methodology for calculating the rate.

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[227] *Id.* at 015741.
[228] *Id.* Ex. 106.
[229] *Id.* Ex. 107 at 101931 (2009 admissions email).
[230] *Id.* Ex. 108 (2012 advertisement).
[231] *Id.* Ex. 109.
[232] *Id.* Ex. 110.
[233] *Id.* Ex. 111 at 016075 (discussing 2008 to 2009 graduate job placement rate).
[234] *Id.* Ex. 112 (2013 webpage).
[235] *Id.* Ex. 113 (2013 webpage).
[236] *Id.* Ex. 114 (2013 webpage).

Students were strongly influenced by Defendants' statements about their job placement rates. For instance, MSB told **Fred Brett** and his son that 90 percent of its graduates were placed in jobs in their field of study at graduation.[237] The father states: "I was impressed by this job placement rate as [my son] had difficulty maintaining employment due to his disability."[238] **Emily Soule Truax** enrolled at MSB based on its statement that over 90 percent of MSB's graduates found work in their field of study.[239] MSB told **Dirk Drake** that it placed 75-80 percent of graduates in their field of study. "[I]mpressed by MSB's graduate success," Dirk enrolled that day.[240] Other students had similar experiences.[241]

B. The Schools Put Pressure On Their Campuses To Show High Numbers.

Defendants gave discretion to each campus to decide whether students were "placed" in a job after graduation for purposes of job placement calculations.[242] Defendants kept tabs on the number of students deemed "placed," circulating numbers, assigning regions to competing teams, and forecasting placements needed to reach rates for monthly "business reviews."[243] This

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[237] F. Brett Aff. ¶ 4.

[238] *Id.* at ¶ 5.

[239] E. Truax Aff. ¶¶ 2-3

[240] D. Drake Aff. ¶ 2.

[241] **Magan and Travis Pritzl** Aff. ¶ 3 (MSB told them that over 90 percent of its graduates found work in their field of study upon graduation); **Rachel Steinbock** Aff. ¶ 2 (MSB told her that 90 percent of massage therapy graduates were placed in jobs at graduation); **Amy Kunkel** Aff. ¶ 3 (MSB told her that that over 80 percent of MSB's digital media and video production graduates found in-field jobs); **Octavia Killion** Aff. ¶ 3 (Globe told her that 80-90 percent of paralegal graduates were placed in paralegal jobs at graduation); **Amber Becker** Aff. ¶ 2 (enrolled after MSB told her that it helped place over 80 percent of graduates in their field of study); **Colton Moore** Aff. ¶ 2 (Globe told him that it placed 80 percent of its health fitness graduates in health fitness jobs); **Krystin and Matthew Fetzer** ¶ 3 (MSB told them that it helped place over 80 percent of graduates in their fields of study); **Brandon Shimpa** Aff. ¶ 2 (was told and relied upon the 90% number at time of entrollment).

[242] Poupore Aff. Ex. 38 at p. 95 (Deposition testimony of COO Herrmann); Ex. 115 at pp. 24-25 (Deposition testimony of Corporate Manager of Career Services Jodi Boisjolie-Rosen).

[243] See, e.g., id. Ex. 116 (Nov. 2011 to Oct. 2012 "Placement Rates and Forecast" emails between Corporate Manager of Career Services Jodi Boisjolie-Rosen, Defendants' Career Service Departments, Campus Directors, and Regional Directors); Ex. 117 (2010 email from Corporate Manager of Career

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created a highly competitive atmosphere to inflate job placement rates.[244] For example, career services employees received instructions like this: "Keep PUSHHHHING! Just under a month left before reporting time!"[245]

In 2010, Defendants' accreditor for its medical assistant program cited Defendants for reporting false job placement rates.[246] The accreditor found, for instance, that Defendants misreported as "placed" medical assistant graduates for jobs such as nursing assistants and medical administrative assistants, which do not require degrees or involve medical assistant job duties[247] and categorized a graduate as "unavailable" for job placement without documentation that the graduate continued her education.[248]

As noted above, former dean Heidi Weber of the schools, obtained a nearly $400,000 jury verdict against Defendants in 2013 for wrongfully terminating her employment after she blew the whistle against the schools for, among other things, falsifying job placement numbers.[249] During her trial, she testified that the school falsified its job placement numbers for its medical assistant program by utilizing a calculation method that inflated job placement rates

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Services Jodi Boisjolie-Rosen to Milissa Becker, Defendants' Director of Operations: "I contacted all the Regionals this morning identifying campuses who didn't hit April placement numbers.").

[244] *Id.* Ex. 116 (Nov. 2011 to Oct. 2012 "Placement Rates and Forecast" emails between Corporate Manager of Career Services Jodi Boisjolie-Rosen, Defendants' Career Service Departments, Campus Directors, and Regional Directors).

[245] *Id.* at 23294.

[246] *Id.* Ex. 118 at 128929 (MSB—Richfield's reported job placement rates were inconsistent with the rates confirmed by Defendants' accreditor); Ex. 119 at 25806 (MSB—Brooklyn Center incorrectly reported graduates working out-of-field as "placed"); Ex. 120 at 25954 (MSB—Shakopee incorrectly reported graduates as "placed" and "unavailable for placement"); Ex. 121 at 025839 (accreditor was unable to substantiate MSB—Blaine's job placement rates because "the documentation provided to the team did not correlate with the actual numbers the institution used in the required [accreditation] placement formula").

[247] *Id.* Ex. 119 at 025806; Ex. 120 at 025954.

[248] *Id.* Ex. 120 at 025954.

[249] *Weber*, 2014 WL 7011353 at *1.

by 23%[250] and that Defendants used these inflated numbers to market to prospective students.[251] She confirmed that students relied on Defendants' job placement numbers: "the students would come into the classroom and say this is really great, I'm going to get a job. You guys have the highest placement rates of all the schools."[252]

C. Defendants Published Graduate Job Placement Rates are Misleading.

Defendants' conduct with regard to the advertisement of job placement rates is similar to practices that the United States Department of Education (DOE) recently found misleading, resulting in a $30 million fine to Corinthian Colleges.[253] There, the DOE found that Corinthian misled students by, among other things: (1) failing to disclose that it excluded from its placement rate calculations students who were unavailable for employment, (2) failing to disclose that it counted graduates as placed in jobs when their employment began prior to graduation (and, in some cases, prior to enrolling at the school), and (3) counting placements that were clearly outside the student's field of study as in-field placements.[254] As discussed below, Defendants did the same things.

1. Defendants altered job placement forms submitted by students.

Before graduation, Defendants ask students to complete a form that asks the question: "Are you utilizing your training?"[255] Defendants use this form to decide if students were "placed."[256] Many students indicate that they answered "No" on this form, but that Defendants

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[250] Poupore Aff. Ex. 22 at pp. 224-226 (Heidi Weber trial testimony).
[251] *Id.*
[252] *Id.*
[253] *Id.* Ex. 122 (Apr. 14, 2015 Notice of Intent to Fine, OPE-1D 00723400, U.S. Department of Education to Corinthian Colleges).
[254] *Id.* at pp. 5-9.
[255] See, e.g. [redacted]
[256] *Id.* Ex. 115 at p. 28 (Deposition testimony of Corporate Career Services Manager Jodi Boisjolie-Rosen).

changed their answer to a "Yes" or "Somewhat," or added job duties that the student did not have. For example, [redacted] told Defendants that she was not utilizing her [redacted] training as a [redacted], a job she had for years before enrolling.[257] Defendants crossed out [redacted] "No," circled "Yes" and "Somewhat," and added job duties that [redacted] did not have.[258] [redacted] circled "No" to indicate that she was not utilizing her [redacted].[259] Defendants circled "Somewhat" on [redacted] form,[260] but internally acknowledged that [redacted] was "work[ing] at [redacted], but is not using her skills."[261]

[redacted] indicated that she was not utilizing her [redacted] training as a [redacted] a job that paid [redacted] an hour and required no [redacted] background or education.[262] Defendants wrote "see job duties—related" below [redacted] response,[263] and added job duties she did not have.[264] [redacted], who took out [redacted] in student loans to attend MSB, told Defendants that she continued to work as a [redacted][265] In response to the questions, "Are you utilizing your training?" Defendants crossed out [redacted] "No" response, circled "Somewhat," and added job duties to her form.[266] Many other students had similar experiences.[267] Defendants counted all of these students as "placed" graduates.[268]

257 [redacted]
258 [redacted]
259 [redacted]
260 [redacted]
261 [redacted]
262 [redacted]
263 [redacted]
264 [redacted]
265 [redacted]
266 [redacted]

2. Defendants excluded from job placement statistics students who they deemed to be "unavailable" for employment.

Just like Corinthian College, *supra* at page 39, *infra* at page 69, the schools excluded from their published job placement rates students who were "unavailable" for placement.[269] The schools, however (also like Corinthian College), did not tell this to prospective students.[270] This practice boosted the schools' job placement numbers by omitting a large number of unemployed graduates based on their supposed "unavailability."[271] For example, of 429 students who graduated from the criminal justice program from January 2009 through June 2014, over 30%

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[267] [redacted] (Defendants changed her form to indicate that she was "somewhat" utilizing her [redacted]). [redacted]. (Defendants' crossed out her "No" circled "Somewhat" for a [redacted] an hour [redacted] job she had before enrolling); [redacted] (Defendants crossed out his "No" and circled "Yes" to indicate he was using his [redacted] training as a [redacted], jobs that paid [redacted] an hour and required a high school education. [redacted] (she told Defendants that she was not using her [redacted] skills as [redacted] or, a job she had for years before enrolling, and [redacted]. [redacted] Defendants altered her form to indicate that she was "somewhat" using her training); [redacted]. (Defendants' crossed out her "No" and circled "Somewhat" to indicate that she was using [redacted] training as a [redacted], the same job she had before taking out [redacted] in student loans to attend MSB.); [redacted] (She indicated that she was not using her [redacted] training in her pre-MSB entry-level [redacted] position. Defendants crossed out her "No" and circled "Yes."); [redacted] (Defendants filled in form to indicate that he was "somewhat" using his training as a [redacted] even though he [redacted] before he enrolled at MSB); [redacted] (Defendants claimed that she performed [redacted] related "investigation" work in her [redacted] job, which did not require any college education); [redacted] Defendants crossed out his "No" and circled "Yes" to indicate he was using his training).

[268] Poupore Aff. Ex. 49 (Defendants' graduate job placement spreadsheet for all graduates from January 1, 2009 through June 30, 2013).

[269] *Id.* Ex. 49-50 (Defendants' job placement spreadsheets indicate that from January 1, 2009 through June 30, 2014, Defendants excluded over 1,000 graduates based on their "unavailability.").

[270] *Id.* Ex. 127 at 129464 (July 2010 email to "All Admissions" stating, "The placement numbers that we share with prospects include all graduates with the exception of [waivers]...We do not need to share information regarding waivers with prospects unless they ask.").

[271] See *supra* note 269. Of the 10,250 students who graduated from January 1, 2009 to June 30, 2014, Defendants reported 1,018 students (9.9%) as unavailable for placement.

were excluded from Defendants' published job placement statistics due to "unavailability."[272] Over 25% were excluded from Defendants' calculation of job placement rates for associate-degree music business graduates due to unavailability.[273]

Some of these students were in fact available for placement. Former student **Sarah McCoy** states: "I recently learned that MSB's records indicate that I was unavailable for job placement at graduation because I chose to continue my education. This is false. I could not continue my education because none of my MSB credit would transfer to other schools."[274] **Felicia Schultz** was similarly counted as "unavailable" when she was actively looking for employment: "I recently learned that MSB reported to its accreditor that I was unavailable for job placement in the paralegal field because I chose to continue my education after earning my MSB paralegal associate's degree. This was concerning to hear because I did not continue my education after graduating, and I have been looking for paralegal jobs since graduating from MSB three years ago."[275] [redacted] recently learned that Defendants filled out an employment waiver on her behalf, indicating that she does not require employment assistance because of [redacted].[276] [redacted] however, never told Defendants that she did not need employment assistance due to her pregnancy and has in fact been actively seeking employment in her field without success for two years.[277] Many other students had similar experiences.[278]

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[272] *Id.*
[273] *Id.*
[274] S. McCoy Aff. ¶ 6.
[275] F. Schultz Aff. ¶ 7.
[276] [redacted]
[277] *Id.*
[278] **Jennifer Strahl** Aff. ¶¶ 4, 7 (reported as "unavailable" due to continuing education, but she "never advised Globe that [she] would be continuing [her] education" and was looking for work when deemed unavailable); **Allison Ludvigson** Aff. ¶ 5 (reported "unavailable" because of a health condition, but was applying for positions and never told Defendants she was unavailable); **Charlotte Simmons** Aff. ¶ 8 (reported "unavailable" due to continuing her education, but was not able to do so because her MSB

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3. Defendants counted as "placed" students who had their jobs before enrolling.

The schools, just like Corinthian College, also counted as "placed" for purposes of their published job placement rates students who had their jobs before enrolling.[279] Defendants, however (like Corinthian College), did not disclose this to prospective students. For example, after being unable to find a paralegal job with the certificate she obtained from Defendants in 2012, [redacted] continued working as a [redacted], a position she held for several years.[280] Defendants nevertheless counted her as a "placed" [redacted].[281] [redacted], an [redacted] was counted as a "placed" [redacted] graduate of MSB's [redacted] program, even though [redacted] held her [redacted] position before enrolling with MSB.[282] [redacted] now has $[redacted] in student loans and is unable to transfer her credits to obtain a master's degree.[283]

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degree was rejected by other school); **Julie Barthelemy** Aff. ¶ 4 (was counted an "unavailable" for placement because she was continuing her education at MSB, when in reality, she was enrolled in a bachelor's degree program at MSB for only one week and then withdrew); **Angela Harshe** Aff. ¶ 9 (was counted as unavailable, "[w]hich is false"); **Ashley Beckman** Aff. ¶ 5 (was counted as unavailable because of a health condition but "never advised" that she was unable to work). Poupore Aff. Ex. 49 (Defendants' job placement spreadsheets for January 1, 2009 through June 30, 2013 indicate [redacted]).

[279] Poupore Aff. Exs. 49-50 (Defendants' job placement spreadsheets for January 1, 2009 through June 30, 2014, indicate that at least 1,974 (19.2%) of Defendants' graduates were counted "placed" for employment that began before they enrolled in one of Defendants' programs).

[280] [redacted]

[281] [redacted] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates that they counted Laura as a "placed" graduate).

[282] [redacted] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates that they counted [redacted] as a "placed" graduate).

[283] [redacted].

Similarly, [redacted] was counted as "placed" for a [redacted] position she had prior to enrolling in Defendants' [redacted] program.[284] [redacted] now has [redacted] in student loan debt and has been unable to find a job that uses her degree.[285] After taking out [redacted] in student loans to get her degree, [redacted] still works in her pre-college job as a [redacted],[286] but was documented as "placed" by Defendants.[287] Single mother of two **Carolina Pedroso** incurred over $45,000 in student loans to obtain her medical assistant degree.[288] Defendants [redacted].[289] Other students had similar experiences.[290]

4. Defendants counted as "placed" students whose jobs did not require a college degree or in which students were not using their education.

Again, similar to Corinthian College, the schools also counted as "placed" for purposes of their published job placement numbers students whose jobs required no college or in which they were not using their education.[291] Defendants' corporate managers confirmed that they did

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[284] [redacted] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 [redacted]

[285] [redacted]

[286] [redacted]

[287] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates [redacted]

[288] C. Pedroso Aff. ¶ 8.

[289] *Id.* at ¶¶ 2, 8; Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates [redacted]

[290] See, e.g., **Tracy Nicholas** Aff. ¶¶ 9; **Ashley Thompson** Aff. ¶¶ 5-7; **Jennifer Lyman** Aff. ¶¶ 2, 12; **Linda Serfling** Aff. ¶¶ 6-8, Ex. A; Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet from January 1, 2009 through June 30, 2013 indicates [redacted]

[291] See, e.g., [redacted]; [redacted] (told Defendants several times that he was not using [redacted] as a [redacted] yet was reported "placed"); [redacted] (counted as a "placed" [redacted] t graduate for a job she had prior to enrolling, which did not require or prefer a [redacted]); [redacted] Aff. ¶ 10 (counted as "placed" for a [redacted] that does not require or prefer a degree); Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet indicates [redacted]).

not consider a job's earnings or prerequisites when determining whether to count a student as placed.[292] Former employees testified that not considering such factors often led to absurd results, including counting a business graduate working as a receptionist as "placed" if "she was working for a business" and a veterinary technician graduate as "placed" if she was working for a pet store."[293]

Other examples include [redacted] who told Defendants she remained employed in the job she had for years before enrolling[294] and asked Defendants for help finding a job.[295] Defendants twice questioned whether it was appropriate to count her as placed as a [redacted],[296] but did so anyway.[297] [redacted] told Defendants she was not utilizing her [redacted] training as a [redacted] for a [redacted], a job she took before enrolling at MSB.[298] [redacted] of Rochester told MSB that he worked [redacted] in an entry-level position at [redacted],[299] for which Defendants counted him as a "placed" [redacted]

[292] Poupore Aff. Ex. 38 at pp. 97-98 (Deposition testimony of COO Herrmann); Ex. 115 at pp. 13-14, 137 (Deposition testimony of Corporate Manager of Career Services Boisjolie-Rosen).

[293] See affidavits of former career services workers M. Scheel Aff. ¶ 7; B. Weller Aff. ¶ 5. See also A. LeGrande Aff. ¶ 14 (affidavit of former recruiter); H. Von Bank Aff. ¶ 14 (affidavit of former recruiter).

[294] [redacted]

[295] [redacted]

[296] [redacted]

[297] [redacted]

[298] [redacted]

[redacted] graduate.[300] Other students have had similar experiences.[301] Defendants counted all of these students as "placed."[302]

Defendants sometimes completed forms on behalf of students that incorrectly indicated they were utilizing their training at their jobs. For instance, [redacted], who took out [redacted] in student loans to attend MSB, told Defendants that her only job duty [redacted][303] Defendants acknowledged that [redacted] job was entry-level,[304] but circled "Yes" and added job duties that [redacted] did not have.[305] Defendants completed a form on [redacted] behalf stating that he was utilizing his [redacted] degree in a weeklong, entry-level [redacted] position outside the [redacted]

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[300] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates [redacted].

[301] See, e.g., [redacted] (Defendants counted her as a "placed" [redacted] graduate for a position at [redacted], which did not require an [redacted] education and did not use [redacted] skills); [redacted] she advised Defendants that she was not utilizing her [redacted] associate's degree earning [redacted]. She had previously advised Defendants that this job was "not at all in [her] field of study," [redacted]; [redacted] (she circled "No" because she was not using her [redacted]); [redacted] (she circled "No" to indicate that she was not utilizing her [redacted] as a [redacted]); [redacted] (he circled "No" to indicate that he was not utilizing his [redacted] training in a part-time, entry-level job paying less than [redacted] hour); [redacted] (she circled "No," as she was not using her [redacted] r, an [redacted] position she held for several years before enrolling at Globe); [redacted] (she circled "No" because she was not utilizing her [redacted] training in her [redacted] job that required a high school diploma); [redacted] (reported her as a "placed" business graduate when she was [redacted] (counted as "placed" for a job that required only a high school diploma); [redacted] counted [redacted] program graduate as "placed" for job that requires no [redacted] coursework or [redacted] degree); [redacted] (Defendants indicated he is using his degree in current job, which is untrue); [redacted] (reported as using her [redacted] degree [redacted] job).

[302] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates [redacted]).

[303] [redacted] so

[305] [redacted]

that paid [redacted].[306] MSB completed an employment form for bachelor degree [redacted] graduate [redacted] stating that she was using [redacted] skills in her entry-level, [redacted][307] Other students relate similar experiences.[308] Defendants counted all of these students as "placed."[309]

D. Many Students Did Not Receive the Job Placement Services They Expected.

It is especially ironic that Defendants artificially boosted their job placement numbers, when many students say they did not receive the job placement help they expected. In an undated memo, Defendants admonished their employees: "**Do not say 'placement' services**—it implies a guarantee of a job or relationships with employers. We do give lifelong 'job-search assistance' or career services."[310] Yet, from at least 2009 to 2013, the schools aggressively marketed "career placement" services to students. Defendants advertised that they had an "excellent job placement record"[311] and provided "extensive career placement services,"[312] and

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[306] [redacted]

[308] See, e.g. [redacted] Defendants indicated that he was "placed" even though he was an [redacted]); [redacted] (Defendants filled in her employment information, circling "Yes" she was utilizing her [redacted] training as a [redacted], the same job she had before enrolling and for which she was not using her degree); [redacted] (Defendants indicated that she was "somewhat" utilizing her [redacted] as an [redacted] y.); [redacted] Defendants completed an employment form in her name indicating that she was "Somewhat" using her training as a [redacted], even though she said she wasn't); [redacted] (she worked a weeklong [redacted] stint that did not require a college education, and Defendants said that she was using her training. [redacted] (Defendants completed her form, indicating that she was "somewhat" utilizing her [redacted] training in her [redacted] that required a high school diploma); [redacted] (Defendants circled "yes" on her employment form to indicate that she was utilizing her training when she is not using her training in her current job); [redacted] (MSB filled out his form to indicate that he was "somewhat" using his training, which is untrue).

[309] Poupore Aff. Ex. 49 (Defendants' job placement spreadsheet for January 1, 2009 through June 30, 2013 indicates [redacted]

[310] *Id.* Ex. 135.

[311] *Id.* Ex. 3 (2013 webpage).

"lifetime career placement."[313] Recruiters similarly told prospective students that the schools "placed" graduates in jobs in their fields of study.[314]

For many students, Defendants' assistance consisted primarily of sending mass emails with publicly-available job postings for positions that often require no college education or were unrelated to graduates' fields of study.[315] Two former student workers of Defendants, **Brittany Weller** and **Margaret Scheel**, state that the schools had them cut and paste job postings from public sources into emails to send to graduates, regardless of whether the jobs required a college degree or were related to graduates' fields of study.[316] For example, Defendants sent **Leanne Mahnke** job postings for part-time and/or temporary jobs that were low-paying and did not require college education,[317] even though Leanne had a full-time job and could not afford to take a low-paying part-time and/or temporary job.[318] Other students have indicated that Defendants' "career placement" services were far from that which was promised.[319]

V. BECAUSE DEFENDANTS' TUITION EXCEEDED FEDERAL STUDENT LOAN LIMITS, DEFENDANTS DIRECTLY MADE LOANS TO ALMOST 6,000 STUDENTS, SOME WITH INTEREST RATES AS HIGH AS 18 PERCENT.

A. Federal Loans Don't Cover Tuition for Most Students.

Defendants acknowledge that federal student loans will not cover all the necessary educational expenses for most students.[320] This is because of the amount of their tuition. As

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[312] *Id.* Ex. 136 (undated).
[313] *Id.* Ex. 107 at 101931 (2009 email solicitation).
[314] **Jenny Karl** Aff. ¶ 4.
[315] See, e.g., **Brooke Rolfe** Aff. ¶¶ 2, 5.
[316] Brittany Weller Aff. ¶ 4; Margaret Scheel Aff. ¶ 5.
[317] L. Mahnke Aff. ¶ 4.
[318] *Id.*
[319] See, e.g., **Andrea Perez-Lujan** Aff. ¶ 4; **Joy Rud** Aff. ¶¶ 3, 8.
[320] Poupore Aff. Ex. 137 ("Potential Pitfall: most students are not completely covered by financial aid for all expenses and will need additional loans to cover the gap of which the federal government will

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noted above, Defendants charge enrollees between $35,000 and $42,000 for an associate's degree and between $70,000 and $89,000 for a bachelor's degree.[321] This is almost four times higher than tuition rates charged by Minnesota community colleges[322] and 2.5 times the tuition rates charged by MnSCU universities.[323]

Most students' tuition payments to Defendants is financed by debt. In 2013, associate degree recipients had a median student-loan debt of $35,132 and $34,291, respectively (compared to $15,850 for public two-year colleges and $24,702 for nonprofit colleges in Minnesota).[324] Bachelor-degree recipients had a median debt of $48,834 and $52,791, respectively (compared to $25,424 for MnSCU colleges and $27,632 for nonprofit colleges).[325] Defendants' enrollment agreement only disclosed the cost per credit, not the full cost of a degree or diploma.[326] Twenty five percent of Globe's and 41 percent of MSB's first-time, full-time students graduate.[327]

Recruiters were trained to overcome "cost objections" by telling prospective students that Defendants offer "an excellent financial aid program . . . that strives to make this program

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not cover."); see also the corporate deposition testimony of Defendants, Poupore Aff. Ex. 138 at p. 46 (stating that a student could not finance the cost of Defendants' bachelor's degree with federal student loans).

[321] Am. Compl. ¶ 27; Am. Answer to Am. Compl. ¶ 27.

[322] Poupore Aff. Ex. 139 (Minnesota Office of Higher Education, Minnesota Tuition and Fees: 2015-2016).

[323] *Id.*

[324] Am. Compl. ¶ 27; Am. Answer to Am. Compl. ¶ 27; Poupore Aff. Ex. 140 at 14, 37 (Minnesota Office of Higher Education, Cumulative Student Loan Debt in Minnesota 2011-2013).

[325] Am. Compl. ¶ 27; Am. Answer to Am. Compl. ¶ 27; Poupore Aff. Ex. 141 at 16, 40 (Minnesota Office of Higher Education, Cumulative Student Loan Debt in Minnesota 2011-2013).

[326] *Id.* Ex. 72 at 28147.

[327] *Id.* Ex. 141 at 36, 46 (Minnesota Office of Higher Education, Choosing a College 2014-2015). Many of Defendants' students are not first-time, full-time students, and as such, even these low graduation rates may be substantially overstated.

affordable."[328] Defendants told many students that "financial aid" would cover the cost of their programs. [329] Defendants' records acknowledge that representations were made to students "in the field," even though "most students are not completely covered...and will need additional loans."[330]

Students did not meet with Defendants' financial aid department until *after* they signed an enrollment agreement.[331] Recruiters were trained to complete the financial aid process as quickly as possible so the student would not have time to reconsider their decision.[332] Students report that Defendants encouraged them to rely on financial aid representatives, who hurried them through the financial aid process and left them uninformed about the financial obligations of enrolling.[333]

B. Defendants Issued Their Own Loans To Students With Interest Rates Of Up To 18 Percent.

When students ran out of federal and private loan options before completing their programs, Defendants directly provided loans of so-called "last resort."[334] This is another practice consistent with trends in the for-profit college industry:

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[328] *Id.* Ex. 142 at 015925 (2010 Admissions Script).

[329] See, e.g., E. Fishbein Aff. ¶ 11 ("MSB instructed representatives to tell veterans that their GI Bill would cover the cost of MSB's tuition"); **Cathie Baker** Aff. ¶¶ 3-4 ("Before I enrolled, Globe's financial aid representative promised me that federal financial aid would cover the cost of my bachelor's degree. . . . [After enrollment], Globe's academic advisor . . . told me that I had run out of financial aid, and asked me how I planned to finance my education."); **Shannon Gillespie** Aff. ¶¶ 4, 7 ("MSB promised me that financial aid would cover my bachelor degree. . . . When I was 3/4 of the way done with my MSB criminal justice bachelor's degree program, MSB put a hold on my student account and told me that I had run out of financial aid.").

[330] Poupore Aff. Ex. 137 (DOA [Director of Admissions Training Program]: Compliance and Admissions File Audits).

[331] *Id.* Ex. 143 (2009 Financial Aid Appointment Scheduling Policy).

[332] H. Von Bank Aff. ¶ 22; J. Jensen Aff. ¶ 19.

[333] See, e.g., **Jennifer Kociemba** Aff. ¶ 5; **Frank Diaz** Aff. ¶ 4; **Erin Cavanaugh** Aff. ¶ 4.

[334] Poupore Aff. Ex. 144 at p. 37 (Deposition of Kenneth McCarthy, Defendants' Chief Financial Officer) ("As you've heard in prior testimony, our institutional loans are designed to be a loan of last resort, when you have no other alternatives"); Ex. 138 at pp. 176, 282 (Deposition testimony of (Footnote Continued on Next Page)

> [P]rivate lenders (led by Sallie Mae) made the decision that they would no longer provide third party private loans to most for-profit college students. The result was the creation of institutional loan programs operated by for-profit education companies themselves.[335]

Defendants are not licensed by the Minnesota Department of Commerce to provide loans in the State of Minnesota.[336] Moreover, Defendants are not banks, savings associations, trust companies, licensed pawnbrokers, or credit unions.[337]

Since January 2009, at least 6,000 students financed their tuition with Defendants' Educational Opportunities ("EdOp") and Student Access ("StA") loans, the majority of which are EdOp loans.[338] Many students have multiple institutional loans, one for each academic year.[339] EdOp loans accrue interest at 18%.[340] StA loans carry a 12% or 8% interest rate.[341] Defendants require that at least 50% of a student's tuition be paid from other sources (primarily federal loans) before an institutional loan is provided.[342] Thus, Defendants' institutional loans

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Defendants' corporate designees); **Jesily Abrahamson** Aff. ¶ 3; **Chelsea Adams** Aff. ¶ 4; **Melissa Adreon** Aff. ¶ 8; **Madalena Alameda** Aff. ¶ 7; **Emalee Bamberg** Aff. ¶ 3; **Jon Gardner** Aff. ¶ 5; **Morgan Gloe** Aff. ¶ 6; **Angela Harshe** Aff. ¶ 4; **Alicia Harvey** Aff. ¶ 9; **Ivette Hodge** Aff. ¶ 6; **Sheena Janusch** Aff. ¶ 5; **Tamara Jergenson** Aff. ¶ 5; **Krissy Johnson** Aff. ¶ 4; **Amy Kunkel** Aff. ¶ 6; **Laci LaPoint** Aff. ¶ 6; **Tiffany Mbaluka** Aff. ¶ 6; **Christopher McCoy** Aff. ¶ 3; **Colton Moore** Aff. ¶ 3; **Tracy Nicholas** Aff. ¶ 6; **Kate Schmitz** Aff. ¶ 9; **Amanda Skoriuchau** Aff. ¶ 5; **Ashley Thompson** Aff. ¶ 3; **Levi Waltz** Aff. ¶ 4; **Brittany Weller** Aff. ¶ 6; **Wendy Winestorfer** Aff. ¶ 3.

[335] Poupore Aff. Ex. 35 at pp. 117-18 (Senate HELP Rep.).

[336] Am. Ans. Am. Compl. ¶ 171.

[337] Poupore Aff. Ex. 138 at pp. 182-83 (Deposition testimony of Defendants' corporate designees).

[338] Am. Ans. to Am. Compl. ¶ 145 (these loans were in effect on or after January 1, 2009); Poupore Aff. Exs. 145, 146 (spreadsheets detailing loan and payment information for EdOp and StA loans).

[339] Poupore Aff. Exs. 145, 146 (spreadsheets detailing loan and payment information for EdOp and StA loans).

[340] *Id.* 147 at 4182 (Dec. 2011 EdOp Loan Application and Promissory Note).

[341] *Id.* Ex. 148 at 4765 (June 2013 StA note); Ex. 149 at 4801 (Dec. 2014 StA note).

[342] *Id.* Ex. 144 at p. 36 (Deposition of Chief Financial Officer Kenneth McCarthy);

are a critical component that allows Defendants to receive the benefit of other lucrative financing, that being, tens of millions of federal and private student loans.

[redacted][343] Students were counseled by Defendants' that the EdOp and StA products were "loans."[344] For example, in issuing EdOp and StA loans, Defendants warned students that their "loans" may not be dischargeable in bankruptcy,[345] and told students that their "loan[s]" may be used "for educational purposes only."[346] Defendants also created an explanatory video for students regarding EdOp, which referred to this product as a "loan" seven times.[347] Many of Defendants' employees referred to EdOp and StA as "loans" throughout their

[redacted]

[344] *Id.* Ex. 138 at p. 110 (Deposition testimony of corporate designee) (Defendants would tell students that EdOp "is a loan [that] needs to be repaid"). [redacted]

[345] *Id.* Ex. 147 at 4185 (EdOp Promissory note) ("I understand that this is an educational loan . . . and as such, may not be dischargeable in bankruptcy[.]"); Ex. 148 at 4765 (StA note) ("If I file for bankruptcy, I may still be required to pay back this loan."); Ex. 156 (StA 2 Loan Checklist) ("I have been counseled on the borrower benefits that coincide with the Student Access Loan and bankruptcy laws that prevent discharge of the debt.").

[346] Id. Ex. 156 (StA 2 Loan Checklist); Ex. 157 (StA Loan Addendum); Ex. 158 (Educational Opportunities Loan Addendum).

[347] *Id.* Ex. 159.

depositions.[348] Finally, the lending contracts and disclosures also refer to these products as "loans."[349]

Unlike most educational loans, EdOp and StA loans require students to make monthly payments while still in school.[350] On default, the loan documents allowed Defendants' to charge late fees and collection costs, including attorneys' fees.[351] The loan contracts allow Defendants to "call" the loan, requiring the student to immediately pay "the whole sum of principal and interest[.]"[352] The schools hired debt collectors to collect on the loans.[353]

Defendants' high interest rates can cause loan amounts to more than double.[354] Defendants barred students who were unable to make interest payments on these institutional loans while still in school from accessing their online classes or registering for the upcoming quarter.[355] In some cases, students were forced to withdraw from school if they did not take out

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[348] *Id.* Ex. 160 at pp. 14-15 (Deposition testimony of Tina Kukowski, Defendants' former corporate financial aid trainer) ("I provided training to all new staff that would discuss all loan programs that we had available, and then as any changes or- came out, then we would be doing some updated training to inform all staff.") and p. 35 ("This was our loan of last resort."); Ex. 161 at pp. 10-12, 31 (Bonnie Riley, Defendants' former corporate collections manager, testified: "The training I did was basically just to – was an informational training of what the loan was…Each loan had a period of time, and they could go through the entire loan and get disbursements but they could not sign a new loan."); Ex. 144 at 13, 37 (Defendants' Chief Financial Officer testified: "I certainly work with Tuition Options in analyzing our portfolio. I provided guidance for ownership as they were making certain adjustments to their loan programs…As you've heard in prior testimony, our institutional loans are designed to be a loan of last report, when you have no other alternatives.").

[349] *Id.* Ex. 147 at 4185 (EdOp Promissory note) ("I understand this loan is an educational loan."); Ex. 148 at 4765 (June 2013 StA note) ("If I file for bankruptcy, I may still be required to pay back this loan"); Ex. 149 at 4801 (Dec. 2014 StA note) (same); Ex. 156 (StA 2 Loan Checklist) ("I understand that this loan is for educational purposes only[.]"); Ex. 157 (StA Loan Addendum) (same); Ex. 158 (EdOp loan addendum) (same).

[350] *Id.* Ex. 147 at 4182 (EdOp promissory note); Ex. 156 (StA 2 Loan Checklist); Ex. 157 (StA Loan Addendum).

[351] *Id.* Ex. 147 at 4183 (EdOp promissory note); Ex. 148 at 4765 (June 2013 StA note); Ex. 149 at 4801 (Dec. 2014 StA note).

[352] *Id.*

[353] Poupore Aff. Ex. 138 at pp. 137-38, 154 (Deposition of Defendants' corporate designees).

[354] See e.g., **Jesily Abrahamson** Aff. ¶¶ 3-6.

[355] [redacted]

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an institutional loan, and therefore, felt they had no other choice but to take the loan.[356] Students who fell behind on their loan payments suffered damaged credit.[357]

Not surprisingly, these loans have high delinquency and default rates. [redacted][358]

LEGAL ARGUMENT

Summary judgment is proper under Minnesota Rule of Civil Procedure 56.02 when the evidence "show[s] that there is no genuine issue of material fact" and a party is entitled to a judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue of material fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

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[redacted] **Madalena Alamada** Aff. ¶ 12 (MSB froze her access to her online courses and told her she couldn't graduate unless she became current on her EdOp loan).

[356] [redacted] Ex. 138 at pp. 137, 141 (Deposition transcript of Defendants' corporate designees); **Morgan Gloe** Aff. ¶¶ 4-5 (MSB pulled her out of class and told her she had run out of federal student loans, stating that she "could not take [her] final exams or receive course credit" unless she paid; school then recommended StA loan); **Madalena Alamada** Aff. ¶ 7 (same); **Alicia Harvey** Aff. ¶ 9 (MSB said she needed to take out the school's institutional loan to complete her program); **Colton Moore** Aff. ¶ 3 (MSB recommended the EdOp loan, at 18% interest, telling him he would have to withdraw if he couldn't pay since his federal financial paid had run out); **Laci LaPoint** Aff. ¶ 6 ("MSB convinced me that the only way to finish my bachelor's degree was to take out one of MSB's Educational Opportunities (Ed Op) loans, which required that I make monthly payments to MSB while I was still in school.").

[357] Poupore Aff. Ex. 147 at 4184 (EdOp) ("If I default on my loan, disclosure of information about my loan to consumer reporting agencies may adversely affect my credit rating."); Ex. 156 (StA 2 Loan Checklist); Ex. 157 (StA Addendum Checklist); **Chelsea Adams** Aff. ¶ 6; **Madalena Alameda** Aff. ¶ 12; **Sheena Janusch** Aff. ¶ 7; **Krissy Johnson** Aff. ¶¶ 9-12; **Tiffany Mbaluka** Aff. ¶ 6; **Jodi Pugh** Aff. ¶ 6; **Christopher McCoy** Aff. ¶ 3.

[358] [redacted]

I. THE COURT SHOULD GRANT THE STATE'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY UNDER THE MINNESOTA CONSUMER FRAUD ACT (CFA) AND THE DECEPTIVE TRADE PRACTICES ACT (DTPA).

Based on the overwhelming evidence of Defendants' false and misleading marketing and recruitment practices, the Court should determine as a matter of law that Defendants violated the CFA, Minn. Stat. §§ 325F.69, and DTPA, Minn. Stat. § 325D.44.

A. Defendants Made Numerous False And Misleading Statements To Consumers, Including Their Omissions Of Material Fact.

The CFA prohibits "any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." Minn. Stat. § 325F.69, subd. 1. The term "merchandise" includes "services," Minn. Stat. § 325F.68, subd. 2, such as educational training. *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 474-76 (Minn. App. 1999). "[T]he target of the CFA is deceitful conduct in connection with the sale of any merchandise," and "the term 'deceptive practice' refers to conduct that *tends to deceive or mislead a person*." *CVS Caremark Corp.*, 850 N.W.2d at 694-95 (emphasis added). The deception need not be intentional to be actionable under the CFA. *301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n.*, 783 N.W.2d 551, 563 (Minn. App. 2010) ("Liability [under the CFA] does not require that the false statement be intentional.").

The DTPA similarly prohibits deceptive trade practices which include, among other things:

- "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services" or "as to affiliation, connection, or association with . . . another,"
- "represent[ing] that goods or services are of a particular standard, quality, or grade . . . if they are of another,"

- "advertis[ing] goods or services with intent not to sell them as advertised," or
- engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."

Minn. Stat. § 325D.44, subd. 1(1)-(13). Liability under the DTPA is, like the CFA, based on "the conduct of the defendant that is prohibited," and not on reliance by a consumer. *See Group Health Plan,* 621 N.W.2d at 12.

The CFA and DTPA must be very broadly and liberally construed in consumers' favor. *State v. Philip Morris, Inc.*, 551 N.W.2d 490, 496 (Minn. 1996) ("These statutes are generally very broadly construed to enhance consumer protection."); *Boubelik v. Liberty State Bank*, 553 N.W.2d 393, 402 (Minn. 1996) ("Consumer protection statutes are remedial in nature and are to be liberally construed in favor of protecting consumers."). As the Supreme Court reiterated in *Philip Morris*, these statutes "reflect a clear legislative policy encouraging aggressive prosecution of statutory violations." 551 N.W.2d at 495. Accordingly, the Attorney General has "broad enforcement authority" to remediate violations. *Ly v. Nystrom*, 615 N.W.2d 302, 308 (Minn. 2000); *see also, e.g.*, Minn. Stat. § 8.31.

Defendants are liable for their affirmative misrepresentations, as well as their misleading statements based on a material omission of fact. In the *CVS Caremark* case, the Minnesota Supreme Court recognized a cause of action under the CFA based on an omission of material fact if a "special circumstance" exists. 850 N.W.2d at 695-96. Special circumstances include: (1) when a person undertakes a confidential or fiduciary relationship with the consumer, (2) when the person has "special knowledge of material facts to which the other party does not have access," or (3) when "a person who speaks must say enough to prevent the words communicated from misleading the other party." *Id.* All of these special circumstances apply to representations made by Defendants.

First, a confidential relationship arises when a party "knows or has reason to know" that the consumer "is placing his trust and confidence in [that party] and is relying on [the party] to counsel and inform him." *Klein v. First Edina Nat. Bank*, 196 N.W.2d 619, 623 (Minn. 1972). "Disparity of business experience" and "invited confidence" also create a fiduciary relationship. *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 512 (Minn. 1976). As discussed *supra* at pages 4 through 9, Defendants specifically held their recruiters out as career counselors and advisors, and intended for students to rely on them as such; "invited confidence" in the reruiters; and knew students had less knowledge then Defendants about higher education. Defendants are also required to "act[] in the nature of a fiduciary in the administration of" Title IV (federal student loan) programs. 34 C.F.R. § 668.82(a) (imposing fiduciary duty). The DOE holds that this undertaking includes an obligation to accurately disclose information to prospective students and refrain from making material omissions of fact.[359]

Second, Defendants, as an educational institution, also had special knowledge of material information and held their recruiters out as having special knowledge about careers and educational paths that will lead to those careers. For example, Defendants knew it was common practice in the higher-education sector for other schools to deem their credits non-transferable and non-recognizable for advanced education. *See supra* notes 200 through 202. Defendants also knew about the methodology and practices they used in compiling job placement rates. *See supra* notes 242 through 309. Defendants similarly knew that their criminal justice program provided no portion of the required education or training to become a Minnesota police officer. *See supra* notes 113-121.

[359]April 14, 2015 Notice of Intent to Fine (Poupore Aff. Ex. 122).

Third, the need to "prevent" statements "from misleading" the consumer is also a "special circumstance" requiring Defendants to disclose material facts. As discussed *supra* throughout pages 4 through 48, Defendants' affirmative statements commonly misled students about various issues, as confirmed by the affidavits submitted by the State in this case, and Defendants' own documents.

Defendants should be held responsible for both their material omissions and affirmative misrepresentations. The Court should order injunctive relief and statutory penalties, as well as restitution to students. Indeed, Defendants' sales practices over many years not only "tend[ed] to deceive or mislead," *see CVS Caremark*, 850 N.W.2d at 694-95, but they actually deceived and misled innumerable students resulting in a "causal nexus" between Defendants' unlawful conduct and harm to students. *See Group Health*, 621 N.W.2d at 12 (concluding that violation of consumer protection statutes, such as the CFA, is based on the defendant's conduct, without regard for whether a consumer relied on the conduct, but a "causal nexus" must exist between the unlawful conduct and consumer harm for monetary relief to be awarded.). See also *infra* at pages 76 through 79.

B. Defendants Made False And Misleading Statements Regarding Their Criminal Justice Program.

Courts around the country have recognized consumer fraud claims based on a college's misrepresentations relating to a graduate's eligibility to engage in certain professions. *Enzinna v. D'Youville Coll.*, 946 N.Y.S.2d 66 (N.Y. Sup. Ct. 2010) (recognizing claim for college's misrepresentation of graduates' eligibility to practice chiropractic medicine), *aff'd* 84 A.D.3d 1744 (N.Y. App. Div. 2011); *Suarez v. E. Intern. College.*, 50 A.3d 75, 89-90 (N.J. Super. 2012) (recognizing cause of action for college's misrepresentations regarding graduates' eligibility to be sonographers); *Ind. Bus. Coll. v. Hollowell*, 818 N.E.2d 943, 952 (Ind. Ct. App. 2004)

(affirming class certification of students claiming school misrepresented medical coding program's "preparation of students for employment"). FTC consent decrees have also identified such representations as deceptive and material. *See, e.g., In re Univ. Training Serv., Inc.*, 94 F.T.C. 167, 1979 WL 199009, at *1 (FTC 1979) (consent order requiring defendants to disclose requirements for entry-level positions in areas offered).

Provisions of the DTPA relevant to this issue also prohibit misrepresentations regarding the "certification" or "approval" of services, as well as misrepresentations regarding the "standard, quality, or grade" of a service, or "any other conduct which similarly creates a likelihood of confusion or of misunderstanding." Minn. Stat. § 325D.44, subd. 1(2), (7), (13).

Whistleblower Heidi Weber, one of Defendants' associate deans, who successfully sued the school for retaliatory discharge, expressed concern to Defendants regarding, among other things, the schools' misrepresentations that graduates from a particular program of Defendants would qualify for certain jobs. See *supra* at pages 16 and 38. A prior lawsuit against MSB brought by former students under the CFA and DTPA similarly alleged false statements representing that graduates of a particular program qualified to work in certain jobs. *Collins v. Minn. Sch. of Bus.*, 655 N.W.2d 320, 322 (Minn. 2003). That case settled. *Id.* at 324.

Police Officers. As discussed *supra* at pages 17 through 25, Defendants made false and misleading statements regarding the eligibility of their criminal justice graduates to become Minnesota police officers. Defendants targeted their criminal justice program to students interested in careers as a police officer; advertised that their program could make graduates eligible to become police officers or participate in skills training; and had recruiters recommend the program to students so that they could purportedly become police officers. But Defendants' program was not regionally accredited and thus could not be used to qualify students for post-

graduation skills training. Nor was Defendants' program certified by the Minnesota Post Board, and thus did not satisfy the academic skills training requirements for police licensure in Minnesota. Many affiants have verified these false and misleading statements and how students were injured by them.[360]

Defendants tried to evade liability for their unlawful conduct by burying a disclaimer in their enrollment agreement. However, the Minnesota Supreme Court held in *Wiegand v. Walser,* 683 N.W.2d 807, 813 (Minn. 2004), that a written disclaimer in a contract does not negate liability for misrepresentations that violate the CFA. *See also Group Health*, 621 N.W.2d at 12 (recognizing that Minnesota's "misrepresentation in sales statutes," including the CFA and DTPA, define violations based on the defendant's prohibited conduct).[361] This principle also serves one of the "central purposes of the CFA [which] is to address the unequal bargaining power that is often found in consumer transactions." *Wiegand*, 683 N.W.2d at 812.

Moreover, as long as there is a "causal nexus" between the alleged false and misleading statements and harm to consumers, which clearly exists in this case, see, e.g., *supra* at pages 75

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[360] See *supra* note 158 and accompanying text.

[361] *See also, e.g., FTC v. EMA Nationwide*, 767 F.3d 611, 631-33 (6th Cir. 2014) (affirming summary judgment for FTC and holding contractual disclaimers do not absolve seller's liability for false and deceptive practices); *Gaidon v. Guardian Life Ins. Co.*, 725 N.E.2d 598, 604 (N.Y. 1999) (holding that contractual disclaimers do not obviate liability under New York consumer fraud statute and reasoning that statute prohibits "deceptive business practices" regardless of what final agreement says); *Missouri v. Areaco Inv. Co.*, 756 S.W.2d 633, 636 (Mo. App. 1998) (affirming judgment against seller in attorney general enforcement action and explaining that "[i]f [] misrepresentations or deceptions are made, the statute has been violated whether or not the final sales papers contain no misrepresentation or even correct the prior misrepresentation"); *Wall v. Planet Ford, Inc.*, 825 N.E.2d 686, 692 (Ohio App. 2005) (holding that contractual provision does not obviate liability under Ohio consumer fraud statute because "the claim is based not on the contract, but on oral or other misrepresentations"); *Teague Motor Co. v. Rowton*, 733 P.2d 93, 96 (Or. App. 1987) (affirming judgment against seller under Oregon consumer fraud statute and holding that statute punishes "misleading representations" regardless of what final agreement says); *FTC v. Gill*, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999) (granting FTC summary judgment and holding that contractual disclaimers could not obviate liability for misrepresentations); *Ward v. TheLadders.com.*, 3 F. Supp. 3d 151, 169 (S.D.N.Y. 2014) (holding that liability under New York consumer-fraud statute not affected by contractual disclaimers).

through 78, a disclaimer does not defeat a claim for monetary relief to consumers under the CFA. *See Clifton*, 783 N.W.2d at 564 (citing *Wiegand* and concluding that a statutory consumer fraud claim for damages is not negated by a "conflicting contract with an integration clause.").

Regardless, the enrollment agreement's purported criminal justice disclaimer would only have reinforced the deception or further confused students. In 2010, Defendants' online enrollment agreement added a fine-print statement that the program is "not POST certified" and that "this prevents me from being eligible to participate in skills training required to be a sworn police officer." As discussed *supra* at pages 24 and 33 to 33, students were rushed through the enrollment agreement after they had already agreed to apply to the school and were "recommended" for the criminal justice program. Even if a student actually read the fine print, and understood what "POST" means, the disclaimer is incomplete. Most importantly, it omits the material fact that graduation from Defendants' program does nothing to make a student eligible for licensure as a Minnesota police officer. In any event, as discussed above, Defendants' disclaimer does not negate liability, including the award of monetary relief to consumers, for violations of the CFA or DTPA.

Defendants' attempted disclaimer is actually further evidence of their deceptive conduct. They falsely recommended and enrolled students who desired to be Minnesota police officers in an inappropriate program, but tried to absolve themselves of liability in the fine-print of the enrollment agreement. Indeed, Defendants should not have even recommended and enrolled those students in the criminal justice program, especially in light of Defendants' holding out their recruiters as "advisors" and "counselors" who would act in students' best interests and Defendants' obligation under federal law to act as fiduciaries. The victimized students incurred

substantial expense and debt and were no closer to being licensed as a Minnesota police officer. There is no excuse, let alone a legal justification, for Defendants' conduct.

Probation Officers. As discussed *supra* at pages 25 through 28, Defendants deceived students who wanted to be probation officers. Defendants knew that a bachelor's degree was required to become a probation officer in Minnesota. Yet, Defendants recommended that people who wanted to be probation officers obtain an associate's degree in criminal justice to work in that profession. Numerous affiants were harmed by this practice.[362]

Other Professions. As discussed *supra* at pages 28 through 30, Defendants recommended and enrolled students in the criminal justice program who wanted to be social workers, even though a social-work degree is needed to become a social worker in Minnesota. (Defendants did not have a social worker degree.) Defendants also promoted their criminal justice program as a means for students to become crime-scene investigators, FBI agents, and Border Patrol agents, even though not a single one of Defendants' graduates was hired as an FBI, Border Patrol, or other federal agent. Students have confirmed these representations and the harm they have been caused by them.[363]

Defendants used their criminal justice program to shamelessly take advantage of students who only wanted to better their lives. In so doing, Defendants blatantly violated the CFA and DTPA.

C. Defendants Made False And Misleading Statements Regarding The Transferability Of Their Credits.

The transferability of credits is a very important consideration for many students, and Defendants knew it. Their advertisements and presentations to students sold their programs as

[362] See *supra* notes 171-182 and accompanying text.
[363] See *supra* notes 185-189 and accompanying text.

offering course credits capable of recognition by, and readily transferable to, other higher-education institutions around the State. Defendants engaged in a pervasive practice of misleading prospective students about the transferability of their credits, and students have been harmed substantially by this deception.

An educational institution is liable under the CFA when it misleads students about the effect of accreditation and resulting transferability of credits. *See Alsides*, 592 N.W.2d at 473 (recognizing actionable consumer fraud claim for student alleging misrepresentation about certification and accreditation of degree) (citing *Malone v. Acad. of Ct. Reporting*, 582 N.E.2d 54, 56-59 (Ohio App. 1990)); *Till v. Delta Sch. of Commerce*, 487 So. 2d 180, 182-83 (La. Ct. App. 1986) (affirming verdict that school misrepresented that program credits were transferable); *Kerr v. Vatterott Educ. Ctrs, Inc.*, 439 S.W.3d 802, 807-08, 818 (Mo. App. 2014) (affirming jury award and punitive damages based on misrepresentation regarding transferability of credits); *Behrend v. Ohio*, 379 N.E.2d 617, 620-21 (Ohio App. 1977) (denying summary judgment in breach-of-contract action based on lack of accreditation and transferability of credit); *Daghlian v. DeVry Univ.*, 461 F. Supp. 2d 1121, 1156 (C.D. Cal. 2006) (denying motion to dismiss claim regarding credit-transferability misrepresentations); *Guzman v. Bridgepoint Educ.*, No. 11cv69, 2012 WL 1944822, at *5-7 (S.D. Cal. May 30, 2012) (recognizing cause of action for misrepresenting, *inter alia*, accreditation and credit transferability).

As noted above, the DTPA also specifically proscribes misrepresentations regarding the quality, certification, approval, benefits, and grade of services, or any similar conduct that creates a likelihood of confusion or misunderstanding, as deceptive. Minn. Stat. § 325D.44, subd. 1(2), (3), (5), (7), (13).

As discussed *supra* at page 16, whistleblower Heidi Weber expressed concerns to Defendants regarding the schools' misrepresentation of the transferability of Defendants' credits; and a prior lawsuit against a predecessor of Defendants similarly contended that the school falsely represented that a program's credits were transferable.

In this case, as discussed *supra* at pages 30 through 34, Defendants affirmatively misled students to believe that Defendants' credits were readily transferable. Indeed, Defendants trained their salespeople to mislead prospective students regarding the differences between national and regional accreditation and to dispel what Defendants incorrectly referred to as the "myth" that regionally accredited schools do not accept their credits. Defendants' advertisements said that "[national] accreditation is an important consideration for smooth transfer of courses and programs between colleges and universities."[364]

Defendants trained their salespeople to say that "[r]egionally accredited universit[ies] do accept our credits."[365] Former sales staff confirm these instructions, and students confirm being told by recruiters that Defendants' credits would transfer to other schools across the State.[366] These statements to students were false and misleading: credits from nationally accredited schools like MSB and Globe almost never transfer to regionally accredited schools, such as public and nonprofit colleges in Minnesota. Numerous students were harmed by Defendants' false and misleading statements, and Defendants should be held accountable.

Defendants' attempt to disclaim their illegal conduct in the fine print of their enrollment agreement is ineffective. *See Wiegand*, 683 N.W.2d at 813; *Clifton*, 783 N.W.2d at 564-66; *see supra* pages 60 through 62. In any event, the attempted disclaimer merely states that the

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[364] See *supra* note 204.
[365] See *supra* note 205.
[366] See *supra* notes 200 through 220 and accompanying text.

transferability of credits was "up to the receiving institution."[367] The disclaimer does not contradict Defendants' false and misleading statements regarding credit transferability. Rather, it actually implies that Defendants' credits are just as likely as any other school's credits to transfer, which is untrue. *See Clifton*, 783 N.W.2d at 564 (noting that disclaimer in contract did not contradict misrepresentations).

D. Defendants' Representations About Their Recruiters As "Counselors" And "Advisors," The Nature Of Their "Recommendation," And The School's Selectivity, Were False And Misleading.

Defendants' various false and misleading statements were premised on their exploitative brand of marketing, which deceived students and caused them to rely on supposed expert career advisors. To increase sales, Defendants' salespeople played this advisor role, culminating in a "recommended" program and career path that students were made to believe was informed and in their best interests. However, Defendants exploited this relationship to generate sales, using false messaging about their schools' selectivity and prestige in the process.

The CFA prohibits misrepresentations regarding the nature of a businesses' sales representations and a school's admission selectivity and process. *See Manley v. Wichita Bus. Coll.*, 701 P.2d 893, 898-99 (Kan. 1985) (affirming verdict finding school salesperson misrepresented himself as "career counselor"); *see also State v. Am. Family Prepaid Legal Corp.*, No. A11–1848, 2012 WL 2505843, at *2, 6 (Minn. App. Jul. 2, 2012) (affirming consumer-fraud verdict finding that purported advisors misrepresented their sales intent). The FTC has also entered several consent decrees prohibiting schools from misrepresenting admissions selectivity. *E.g., In re Bell & Howell Co.*, 95 F.T.C. 761, 1980 WL 339008, at *1, 4

[367] See *supra* note 212.

(FTC 1980) (preventing misrepresentations about, *inter alia*, school's selectivity).[368] Similarly pertinent is the DTPA, which proscribes conduct misrepresenting that "services are of a particular standard, quality, or grade," and other similar conduct which "creates a likelihood of confusion or of misunderstanding." Section 325D.44, subd. 1(7), (13).

As discussed *supra* at pages 4 through 9, Defendants' internal documents plainly show that Defendants' marketing strategy was premised on holding out their sales staff as career counselors from a selective university who "recommend" the school, the program, a student's career path, and enrollment in their program only if it is in the student's best interest. Defendants marketed their sales staff this way in advertisements, on the internet, and in meetings with students.

The schools' training manual explained this tactic as follows: "[m]ost people are not aware of the sales involvement when it comes to education. In fact if you look at our business cards, they don't say sales representatives. You are an admissions representative or a career advisor."[369] The training manual further stated that "[i]f [the student] trusts you and you tell him in a convincing way this is the best career option for him, you will have a sale."[370] Defendants also trained recruiters to find and exploit "pain points" to secure sales, and to express "concern" about students' commitment if they questioned Defendants' advice that they enroll in a particular program right away.[371]

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[368] *See also In re Art Instruction Schools, Inc.*, 93 F.T.C. 32, 1979 WL 199184, *4-5 (FTC 1979) (preventing representations about selectivity because the school "is not selective" and "accepts most persons . . . who are willing to execute a contract and pay . . . tuition"); *In re Weaver Airline Personnel School, Inc.*, 85 F.T.C. 237, 1975 WL 172195, *1, 3 (FTC 1975) (preventing representations about selectivity when defendant "is not selective and does not limit the number of prospective purchases that its salesman can enroll").

[369] See *supra* note 34.

[370] See *supra* note 40.

[371] See *supra* notes 209-211 and accompanying text.

Defendants hired, trained, and required recruiters to be aggressive salespersons motivated to make sales and increase enrollment volume. Defendants preferred recruiters who had sales experience. Defendants imposed quotas for their sales people, and disciplined or fired recruiters who did not meet those quotas.[372]

The schools' scripted sales pitch told students that they had to "prove their worthiness of being accepted," and required recruiters to artificially "[c]hallenge the prospect's grades [etc.]" and to "cast yourself into the role of deciding if he should be considered for acceptance."[373] The manual instructed recruiters to tell students that they were only accepting "a small number of students" from each high school. Numerous salespeople of Defendants confirm that they were taught to use these tactics, and students confirm receiving the representations.[374]

Not surprisingly, Defendants' "recommendation" was always to enroll prospective students in one of their programs. Contrary to representations that Defendants' programs were selective—they trained their salespeople to accept and enroll every student regardless of their actual career interest, program availability, and program applicability to a student's chosen career.[375]

As discussed above, courts have recognized these same tactics as being false and misleading. For example, in *Manley*, a former business college student filed an action for violation of Kansas's Consumer Protection Act, claiming it was deceptive for the college to represent their representative as a "career counselor" when in fact he was a salesperson paid on commission. 701 P.2d at 898. Like Defendants' strategy here, the consumer in *Manley* "assumed [the representative's] job was to make assessments of student skills and vocational

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[372] See *supra* pages 5, 12-14.
[373] See *supra* note 55.
[374] See *supra* notes 9-84 and accompanying text
[375] See *supra* notes 53-60 and accompanying text.

aspirations and advise [students] on career choices." *Id.* The Kansas Supreme Court affirmed a jury verdict concluding that this representation was deceptive and harmed the consumer. *Id.* at 901. Defendants' training manual, presentations, and advertisements portraying their recruiters as "advisors" making a "recommendation" for the students' best career path, program and school is the same practice found to be false and misleading in *Manley*.

This District Court found similar conduct to be false and misleading in *American Family Prepaid Legal*—a ruling affirmed by the Court of Appeals in 2012. *State v. Am. Family Prepaid Legal Corp.*, No. 27-CV-07-4102, 2010 WL 1558133 (Minn. Dist. Apr. 8, 2010), *aff'd Am. Fam.*, 2012 WL 2505843. In that case, the district court recognized a deceptive marketing scheme that drew in customers by sending an "advisor" to provide estate-planning assistance. 2010 WL 1558133, at ¶ 31. The "advisor" was scripted to make consumers believe they needed to purchase the defendant's legal service. *Id.* ¶¶ 33-47. The court found that the "advisor" was "trained in the company's unique brand of subtle high-pressure sales tactics" revealed in training manuals through which the court could discern "what routinely occurred" in consumer interactions with the defendant. *Id.* ¶¶ 34, 40.

The court noted specific instructions to "overcome [consumers'] objections" so they arrive at the "right decision," which was "invariably to purchase the legal plan and a living trust" from defendants. *Id.* ¶ 44. Above all, the "most important task" for these "advisors" was "making a sale." *Id.* ¶ 45. The court found this strategy, and related representations, deceptive. *Id.* at Conclusions of Law ¶¶ 7-36. The Court of Appeals affirmed the "finding that appellants' real business objective was to sell long-term annuities and its findings concerning the many ways that appellants deceived consumers in order to hide their true objective[.]" *Am. Fam.*, 2012 WL 2505843, at *3.

Like in *American Family Prepaid Legal*, Defendants drew in students based on representations that an educational "counselor" or "advisor" would advise them in the students' best interests. The scheme was always to "overcome objections" and make a "recommendation" for the student to enroll in one of Defendants' programs. The salespeople were hired and trained to maximize sales, not to provide expert academic and career counseling, and they were punished or terminated based on failure to make sales. A marketing scheme founded on such deception is repugnant to Minnesota's consumer fraud laws.

E. Defendants Made False And Misleading Statements Regarding Their Graduate Job Placement Rates.

An educational institution is liable when it publishes job placement rates based on flawed methodology or omits material information about that methodology. This conclusion is strongly supported by the DOE's recent findings that Corinthian Colleges misled its students by, among other things, failing to disclose: (1) that it omitted students deemed "unavailable" or deferring employment, (2) that it counted as "placed" students who began employment before graduating or even attending school, and (3) that it counted as "placed" students who were employed outside of the student's field of study.[376] Defendants engaged in the same deceptive scheme.

Other authorities around the country have similarly recognized consumer fraud claims based on false job placement rates. *Bobbitt v. Acad. of Ct. Reporting, Inc.*, 252 F.R.D. 327, 332-33, 345 (E.D. Mich. 2008) (certifying class based on claim of false job-placement rates); *Guzman*, 2012 WL 1944822, at *5-7 (S.D. Cal. May 30, 2012) (denying motion to dismiss claims for misrepresenting, *inter alia*, employability of graduates); *Beckett v. Comp. Career Inst., Inc.*, 852 P.2d 840, 843-44 (Or. App. 1993) (affirming jury verdict concluding that school misrepresented job placement rates under Oregon Unlawful Trade Practices Act); *Cullen v.*

[376] Poupore Aff. Ex. 122.

Whitman Med. Corp., 197 F.R.D. 136, 142, 151-61 (E.D. Penn. 2000) (approving class settlement of fraud claims based on, *inter alia*, false job placement rates). The FTC has also entered several enforcement decrees with educational institutions that similarly misrepresented employment opportunities. *Bell & Howell*, 1980 WL 339008, at *1 (consent order preventing defendant from misrepresenting, *inter alia*, "employment opportunities" and "the need or demand for their graduates").[377]

As discussed *supra* at pages 35 through 48, Defendants misrepresented their success in placing graduates in jobs within their field of study. Defendants, knowing that students rely heavily on promises of job placement, advertised very high graduate job placement rates (around 90%) for their programs. But these rates were manufactured by: (1) counting placements where Defendants' altered forms in which students said they were not using their training, (2) excluding large numbers of unemployed students deemed "unavailable" by Defendants, (3) counting students as "placed" who had their jobs before enrolling, and (4) counting students as "placed" whose jobs did not require a college degree or in which students were not using their education. Defendants failed to disclose these material facts to prospective students. As a result, Defendants falsely represented their graduate job placement rates as a percentage of all graduates from a particular program, and otherwise deceptively inflated the precentage.

Defendants also misrepresented their graduate job placement services, a problem recognized within Defendants' industry by the courts and federal authorities. *Malone v. Acad. of*

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[377] *See also In re Universal Training Serv., Inc.*, 94 F.T.C. 167, 1979 WL 199009, at *1 (FTC 1979) (consent order to cease and desist misrepresentations regarding, inter alia, "employment opportunities and demand for graduates of their respective courses"); *In re Art Instruction Schs., Inc.*, 93 F.T.C. 32, 1979 WL 199184, at *1 (FTC 1979) (consent decree to cease misrepresenting demand and employment opportunities of graduates); *In re Comm. Programming Unlimited, Inc.*, 88 F.T.C. 913, 1976 WL 180782, at *2-6 (FTC 1976) (same); *In re Lafayette United Corp.*, 88 F.T.C. 683, 1976 WL 180018, at *1 (FTC 1976) (same).

Ct. Reporting, 582 N.E.2d 54, 56, 58-59 (Ohio App. 1990) (recognizing cognizable claim based on false promise of job placement services); *Mountain State Coll. v. Holsinger*, 742 S.E.2d 94, 102-03 (W. Va. 2013) (same); *Stad v. Grace Downs Model & Air Career Sch.*, 319 N.Y.S.2d 918, 1098-99 (N.Y. Civ. 1971) (granting judgment based on false promise of job placement).[378] *See also* Minn. Stat. § 325D.44, subd. 1(7) & (13) (prohibiting misrepresentation of the quality of services or which creates a likelihood of similar confusion or misunderstanding).

Defendants knew that prospective students were understandably interested in knowing the likelihood of finding a job in a particular field of study, especially since Defendants marketed themselves as career schools that would help place students in jobs. Whistleblowers Weber and St. Claire expressed concern to Defendants regarding the schools' fraudulent job placement rates, but Defendants fired them instead of correcting their false and misleading job placement rate practices.

Defendants deceptively recruited students with their graduate job placement rates and promises of job placement assistance. Like the DOE's determination in the Corinthian matter, this Court should find that Defendants' practices were false and misleading.

F. The Court Should Grant Summary Judgment Against Defendants As To Liability.

As discussed above, the CFA prohibits Defendants from making false and misleading statements "with the intent that others rely thereon in connection with the sale of" Defendants'

[378] The FTC has similarly imposed consent decrees prohibiting such deceptive promises. *Bell & Howell*, 1980 WL 339008, at *1 (preventing defendant from misrepresenting, inter alia, the nature of "the effectiveness of their job placement service"); *In re Univ. Training Serv.*, 1979 WL 199009, at *1 (consent order to cease and desist misrepresentations regarding, inter alia, "the effectiveness of their job placement service"); *Art Instruction Schs.*, 1979 WL 199184, at *1 (FTC 1979) (consent decree to cease misrepresenting "job placement assistance available to graduates"); *In re Driver Training Institute, Inc.*, 92 F.T.C. 235, 1978 WL 206506, at *1 (FTC 1978) (consent decree to cease and desist misrepresentations regarding "the effectiveness of their job placement activities"); *In re Commercial Programming Unlimited*, 1976 WL 180782, at *1 (same); *In re Lafayette*, 1976 WL 180018, at *1 (same).

educational services, "whether or not any person has in fact been misled, deceived or damaged thereby[.]" Section 325F.69, subd. 1. *See also Group Health*, 621 N.W.2d at 12 (recognizing that CFA "defines the conduct proscribed essentially as any misrepresentation made with the intent that others rely on it in connection with the sale of any [service]"); *Clifton*, 783 N.W.2d at 563 (stating CFA "penalizes fraud or misrepresentation 'with the intent that others rely' on the false promise in purchasing any [services]"). Indeed, any such representation by Defendants to their students that "tends to deceive or mislead," creates liability under the CFA. *See CVS Caremark*, 850 N.W.2d at 694-95. The DTPA similarly defines a violation based on Defendants' conduct without reference to a student's reliance on that conduct. *See Group Health*, 621 N.W.2d at 12.

The overwhelming evidence establishes that Defendants have made numerous false and misleading statements prohibited by the CFA, as well as the DTPA, and the statements were made with the clear intent that students rely on those statements in connection with Defendants' sale of their educational services. As such, the Court should grant the State's motion for summary judgment as to liability because the undisputed facts establish that Defendants engaged in conduct proscribed by the CFA and DTPA.

G. The Court Should Provide For A Process To Consider Restitution For Individual Students.

In addition to an injunction and statutory penalties (see *infra* at pages 83 to 84), the Attorney General may obtain "other equitable relief," including restitution for consumers. Minn. Stat. § 8.31, subds. 2c, 3a, 3c; *Alpine Air*, 490 N.W.2d at 896 n.4; *State v. Ri-Mel, Inc.*, 417 N.W.2d 102, 112-13 (Minn. App. 1987). To obtain monetary relief on behalf of individual students, a "causal relationship," referred to as a "causal nexus," must exist between the unlawful conduct and harm sustained by a student. *See Group Health*, 621 N.W.2d at 13-15. There is

overwhelming evidence of a causal nexus between Defendants' false and misleading statements and harm to Defendants' students.

1. The Court should provide a process to determine restitution for student affiants.

Such a causal nexus is established in 137 student affidavits filed in support of the State's motion.[379] Defendants, who deposed only six of the students, have not and cannot refute the testimony and individual harm to the affiants. The Court (with the assistance of a Special Master if it so chooses) should proceed to determine an appropriate amount of restitution for each of these students.

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[379] These affidavits are those of the following individuals: Jesily Abrahamson, Chelsea Adams, Melissa Adreon, Ana-Katherine Anderson, Kristina Anderson, Hayley Anderson, Christina Arvis, Cathie Baker, Anne Bates-Edwards, Amber Becker, Ashley Beckman, Lori Beise, Rhonda Bell, Michael Bengson, Timothy Bennett, Bonnie Berg, Tamara Blanchette, Robert Boleen, Cole Bougie, Fred Brett, Carolyn Brooks, Wendy Brown, Joshua Brown, Erin Cavanaugh, Brittany Celski, Shannon Chapin, Anthony Cincoski, Elisha Clairborne, Bill Cloak, Rodney Coons, Frank Diaz, Dirk Drake, Katie-Ann Dryden, Phillis Dudley-Martin, Wendy Duel, Laurel Duerwachter, Amanda Enright, Abigail Erb, Timothy Erickson, Matthew Fetzer, Krystin Fetzer, Emma Finkenaur, Jennifer Fisher, Sheena Fransway, Lori Ganey, Elizabeth Romero-Castro f/k/a Elizabeth Garcia, Jon Gardner, Shannon Gillespie, Morgan Gloe, Melanie Gonsior, Barbara Gramling, Tracy Green, Elisabeth Grossman, Jennifer Hallman, Christina Harness, Angela Harshe, Ivette Hodge, David Holmes, Tracey Hovland, Bridget Jackson, Sheena Janusch, Tamara Jergenson f/k/a Tamara Jandro, Amanda Johnson, Krissy Johnson, Jenny Karl f/k/a Jenny Conroy, Vanessa Keen, Alyssa Kellner f/k/a Alyssa Davidson, Octavia Killion, Jennifer Kociemba, Heather Kostel, Laura Kuhl, Amy Kunkel, Jesse LeFebvre, Jeffrey Lehman, Wendy Lehman, Crystal Lemke, Jennifer Lipkie, Rhonda Litke, Lewis Lumley, Angel Mader, Nicole Manderscheid, Tammy Marquardt, Lisa McCarthy, Tyron McMiller, Drew Mehling, Joshua Miller, Karen Miller, Jason Miske, John Moen, Colton Moore, Kurtis Nahl, Tracy Nicholas, Terran North-Simpson, Clarissa Overend, Kati Pantekoek, Carolina Pedroso, Andrea Perez-Lujan, Allyson Pritchett, Travis Pritzl, Magan Pritzl, Jodi Pugh, Ralph Rainville, Nicholas Reeve, Jamila Reid, Ashley Rioux, Brooke Rolfe, Joy Rud, Melissa Savage-Heinkel, Gina Schaber, Margaret Scheel, Anna Schmisek, Kate Schmitz, Perry Schramm, Linda Serfling, Brandon Shimpa, Amanda Skoriuchow, Tony Smith, Angela Spike, Christopher St. John, Crystal Steffens, Rachel Steinbock, Jennifer Strahl, Jesup Studer, Katie Gerads f/k/a Katie Sundquist, Nicholas Thomas, Ashley Thompson, Emily Tomlin, Denise Traylor, Emily Soule Truax, Gary Ussery, Michelle Vollmuth, Levi Waltz, Brittany Weller, Neil Werdal, Wendy Winestorfer, Melinda Woglast, and Dillon Zerwas. These students' charges and payments are identified in Poupore Aff. Ex. 165.

2. The Court should also provide a process for other students who attended Defendants' Minnesota schools during the time period in question to make a claim for restitution.

Restitutionary relief under section 8.31 and the Attorney General's *parens patriae* authority is not limited to these 137 student affiants. Rather, Minnesota appellate and federal courts have repeatedly recognized that a pattern or practice of deception justifies restitution to all consumers harmed by the unlawful conduct. *Alpine Air*, 490 N.W.2d at 896 n.4 (authorizing restitution process to provide refunds to all victims of systemic deceptive marketing); *Am. Family*, 2012 WL 2505843, at *4 (affirming restitution to "all of the Minnesota victims of appellants' unlawful conduct, regardless of whether each victim joined the lawsuit or appeared in court" because there was evidence of "a pattern or practice of deceptive behavior"); *State v. Standard Oil Co.*, 568 F. Supp. 556, 564-66 (D. Minn. 1983) (recognizing Minnesota Attorney General's *parens patriae* power to seek "recovery for . . . harm to individual [unidentified] State residents"); *c.f. FTC v. Kitco of Nev., Inc.*, 612 F. Supp. 1282 (D. Minn. 1985) (ordering restitution to unnamed consumers in FTC Act enforcement action).

Here, Defendants' deceptive pattern or practice calls for a notification-and-claims process that would redress harm that affected students of Defendants other than the 137 student affiants. Such a process—involving notice to consumers and opportunity to make a claim—is common in state attorney general actions. *See* CONSUMER PROTECTION AND THE LAW §§ 7.15, 7.16.

This process is also consistent with the equitable nature of restitution, allowing "courts [to] fashion[] remedies appropriate to the facts of each case." *Am. Family*, 2010 WL 1558133, at ¶ 89 (citation omitted). The Court has broad equitable powers to ensure consumers are recompensed in line with the purposes of the CFA and DTPA. *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) ("[T]here is inherent in the Courts of Equity a

jurisdiction to give effect to the policy of the legislature." (quotation and ellipses omitted)). The "public interest involved" in a case like this reinforces the district court's "equitable powers [to] assume an even broader and more flexible character than when only a private controversy is at stake." *U.S. Oil*, 748 F.2d at 1434; *accord Alpine Air*, 490 N.W.2d at 896 (recognizing court's equitable powers to effectuate purpose of CFA in ordering individual restitution to all affected consumers).

The Minnesota Supreme Court's decision in *Group Health* provides instruction for a case like this where the allegations involve "a lengthy course of prohibited conduct that affected a large number of consumers." 621 N.W.2d at 14. *Group Health* held that in such cases proof of "causal nexus need not include direct evidence of reliance by individual consumers." *Id.*

The Court identified methods for establishing a causal nexus as to a broad group of consumers—methods that "reflect appropriate sensitivity to the remedial goals" of Minnesota's consumer-protection laws. *Id* at 15 n.11. The presence of a broad-based, material misrepresentation serves to prove harm to a large number of consumers: "expenditure by a [defendant] of substantial funds in an effort to deceive consumers and influence their purchasing decisions justifies a presumption of actual confusion, and the burden shifts to the defendant to rebut that presumption." *Id.* (endorsing the holding in *U-Haul Int'l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1041 (9th Cir. 1986)). Such harm can also be established by the "deliberate" nature of the misrepresentation. *Id.* (citing *Resource Developers, Inc. v. The Statue of Liberty-Ellis Island Found.*, 925 F.2d 134, 140 (2d Cir. 1991)).

Defendants' deception was not the work of a single rogue employee or a one-off misstatement, but rather was orchestrated through training and marketing scripts, corporate encouragement, and misleading statements on the internet and in mass advertisements. Students

were subjected to systematic and pervasive practices over the relevant time period. *See Am. Family*, 2010 WL 1550133, at ¶¶ 5, 21 ("Defendants had a uniform training method, sales presentation, and mode of operation. . . . It is evident from these materials that Defendants routinely deceived consumers with a campaign of misleading and deceptive information.").

These systemic misrepresentations were material. They concerned the expected careers and future lives of students, the likelihood they would find a job with an education, their ability to continue their education by transferring credits to another institution, and the basic foundation of Defendants' sales presentation, all of which can affect a student's college decision, a decision that costs up to $80,000. Authorities recognize the critical nature of such misrepresentations:

- Defendants' regulators consider such information as significant enough to jeopardize eligibility for Title IV (federal student loan) funding, including "misleading statements concerning . . . [w]hether a student may transfer course credits earned at the institution to any other institution," "[w]hether successful completion of a course of instruction qualifies a student" for potential licenses or trades, the "employability of graduates," and "[t]he institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment." 34 C.F.R. § 668.71-74.

- These misrepresentations' significance has been recognized by courts, the DOE, and Congress. *See, e.g.*, *Ass'n of Proprietary Colleges v. Duncan*, No. 14–cv–8838 (LAK), 2015 WL 3404190, at *1 (S.D.N.Y. May 27, 2015) ("[P]rospective students continue to enroll at for-profit colleges and universities in droves, lured in many cases by what DOE views as 'deceptive or otherwise questionable information about graduation rates, job placement, or expected earnings.'"); Senate HELP Rep. at 44-71 (explaining "deceptive recruiting" is common in the for-profit-college industry and concluding that students continue to enroll in such schools despite poor outcomes because of those marketing practices); Notice of Intent to Fine Heald College, at 2-10 (finding that Corinthian Colleges misrepresented and omitted "essential and material" information related to placement-rate calculations that is "needed by students to inform their decision whether to attend an institution"). *See also* GAO Rep. at 7-13 (finding in undercover investigation that all for-profit schools investigated made deceptive statements about, *inter alia*, "the college's accreditation, graduation rates, and its student's prospective employment).

- Published polling recognizes that information concerning job placement is extremely important in students' choices over which college to attend. Valerie J. Calderon & Preety Sidhu, GALLUP, *Americans Say Graduates' Jobs Status Key to College Choice* (June 28, 2013).[380]

See also Collins v. Minn. Sch. of Bus., 655 N.W.2d at 330 (recognizing that based on the school's advertising, and "numerous sales and information presentations," MSB "presented its program to the public at large" and the students' "successful prosecution of their claims benefitted the public").

Defendants' internal documents acknowledge that accreditation and credit transferability are "important" to student choices, and have confirmed so in testimony. Defendants' materials tell recruiters that students "must have confidence that there are career opportunities in this career and it will help them fulfill their dreams of success," that their sales method and misstatements about admissions are effective at causing a student to enroll, and that "placement assistance is a benefit [Defendants] offer[] students [and] is one reason for choosing our school."[381] In the words of the *U-Haul* court cited in *Group Health*: "He who has attempted to deceive should not complain when required to bear the burden of rebutting a presumption that he succeeded." 793 F.2d at 1041.

The Court has before it extensive testimony verifying that students were misled by Defendants' deceptive conduct. Numerous affidavits submitted to the Court detail how students were enticed by Defendants' false and misleading statements to enroll in Defendants' programming, which caused them great loss, particularly in the form of paid tuition and crippling debt. That wealth of testimony, by itself, establishes the proof necessary to show the mass confusion created by Defendants' conduct. *See, e.g., Group Health*, 621 N.W.2d at 14 n.9

[380] Available at http://www.gallup.com/poll/163268/americans-say-graduates-jobs-status-key-college-choice.aspx.

[381] See *supra* note 221.

(recognizing that "consumer confusion may be proven through use of consumer testimony.") (citing *Lenscrafters, Inc. v. Vision World, Inc.*, 943 F. Supp. 1481, 1489 (D. Minn. 1996)).

The principles set forth in *Group Health*, a case brought by private parties, should be applied even more expansively to a consumer fraud action brought by the Attorney General. The Minnesota Supreme Court has recognized that the Attorney General has broader authority than a private litigant under section 8.31 to enforce the State's consumer protection statutes. *See, e.g., Curtis v. Altria Group, Inc.*, 813 N.W.2d 891, 899 (Minn. 2012) ("[T]he remedies available to the State Attorney General are broader than those available to a private litigant."). *Curtis* noted, for example, that unlike a private party, the Attorney General "represents the citizens of the State in a section 8.31 lawsuit" and "may bring a section 8.31 lawsuit on behalf of the State and its citizens without obtaining class certification." *Id.* at 899-900. The unique role and responsibilities of the Attorney General to enforce Minnesota's consumer protection laws on behalf of the public further supports a remedial process that gives Defendants' students the opportunity to make a claim for restitution if they so choose. Those claims can be considered by the Court pursuant to a Court-approved process.

II. THE COURT SHOULD GRANT THE STATE SUMMARY JUDGMENT AS TO DEFENDANTS' VIOLATION OF STATE LENDING LAWS, DECLARE DEFENDANTS' INSTITUTIONAL LOANS VOID AND CANCELLED, AND REQUIRE DEFENDANTS TO REFUND ALL MONEY PAID ON THE LOANS, PLUS INTEREST.

A critical part of Defendants' business is the "institutional loans" they make to their students. Without these loans, Defendants would not be able to receive tens of millions of dollars from other sources, *i.e.*, federal and private student loans. At least 6,000 students have taken out loans from Defendants that were in effect on or after January 1, 2009. Many students have multiple loans from Defendants. The interest rate on the majority of the loans is 18%. See *supra* at page 51.

Defendants' institutional loans do not comport with Minnesota lending laws. Accordingly, the Court should declare the loans void and require Defendants to refund all payments made on the loans, plus interest.

A. Defendants' Loans Violate Minnesota's Lending Laws.

Defendants' institutional loans violate Minnesota law because Defendants are not licensed to lend in Minnesota. Defendants' institutional loans, which are an important aspect of their business, meet the statutory definition of "regulated loans" under Minn. Stat. ch. 56. To provide loans up to $100,000, lenders that are not banks, savings associations, trust companies, licensed pawnbrokers, or credit unions, must obtain a license. Minn. Stat. §§ 56.002, 56.01, 56.18, 56.131; *State v. Cashcall, Inc.*, No. 27-CV-13-12740, 2013 WL 6978561, at *8 (Minn. Dist. Sep. 6, 2013) (holding that § 56.18 prohibits unlicensed persons from making loans). Defendants admit that they are not banks, savings associations, trust companies, licensed pawnbrokers, or credit unions.

In addition to their licensing violations, Defendants violate Minnesota's usury laws. Minn. Stat. § 334.01. Minnesota's usury statute provides, in relevant part:

> The interest for any legal indebtedness shall be at the rate of $6 upon $100 for a year, unless a different rate is contracted for in writing. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than $8 on $100 for one year.

Minn. Stat. § 334.01.

"Usury" is the "taking or receiving of more interest or profit on a loan or forbearance than the law allows." *St. Paul Bank for Coops. v. Ohman*, 402 N.W.2d 235, 237 (Minn. App. 1987). To conclude that a transaction is usurious under this definition, the Court must find the following four elements:

> (a) A loan of money or forbearance of a debt; (b) an agreement between the parties that the principal shall be repayable absolutely; (c) the exaction of a greater amount of interest or profit than is allowed by law; and (d) the presence of an intention to evade the law at the inception of the transaction.

Rathbun v. W.T. Grant Co., 219 N.W.2d 641, 646 (Minn. 1974) (citation omitted).

All of these elements are present here. Defendants charge and collect interest rates that are much higher than allowed under Minnesota law. Minnesota's usury law sets a baseline cap of 8% on the rate of interest that can be charged, where no other higher statutory rate of interest is allowed. *Trapp v. Hancuh*, 530 N.W.2d 879, 885 (Minn. App. 1995) (citing *Citizen's Nat'l Bank v. Taylor*, 368 N.W.2d 913, 918 (Minn. 1985)); *see also Miller v. Colortyme*, 518 N.W.2d 544, 549-50 (Minn. 1994).

As noted above, Defendants are not licensed with the Department of Commerce in any lending capacity. Accordingly, there is no applicable statutory provision under which Defendants are entitled to charge a rate of interest higher than the baseline usury rate of 8% on contractual debt. *See Cashcall,*, 2013 WL 6978561, at *8 (holding that an unlicensed lender may charge no more than an 8% interest rate). Defendants have routinely charged interest of 12-18 percent, as discussed *supra* at pages 49 through 51. Accordingly, Defendants have violated Minn. Stat. § 334.01 and should be enjoined from making or collecting on such usurious loans pursuant to Minn. Stat. § 334.05.

Defendants apparently contend that the EdOp and StA loans are not "loans." This argument is without merit. The EdOp promissory note describes the transaction numerous times as a "loan."[382] The same is true for the StA loan, despite the fact that it carries the title "Retail Installment Contract."[383]

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[382] See *supra* notes 343 through 349 and accompanying text.
[383] *Id.*

Furthermore, in determining the nature of a transaction, Minnesota courts "look through the form to the substance of the transaction." *Rathbun*, 219 N.W.2d at 649 (citation omitted). Chapter 56 applies to any loan of "money, credit, goods, or things in action," Minn. Stat. § 56.01, and Minnesota's usury statute applies to any loan or forbearance of debt, including so-called "installment contracts." *St. Paul Bank*, 402 N.W.2d at 239 ("The installment sales contract . . . is subject to Minnesota usury law.").

B. Defendants' Loans Should Be Voided And Cancelled, And All Money Paid On The Loans Should Be Returned With Interest.

The remedy for Defendants' unlawful lending is to declare the loans void and provide for the return of principal and interest and other amounts paid on the loans, plus interest. Usurious loans are void and canceled under Minnesota law. Minn. Stat. § 334.03. The same is true for loans made by an unlicensed lender. *Id.* § 56.19, subd. 3. This voiding remedy, under Minnesota law, is robust: "A void contract is no contract at all; it binds no one and is a mere nullity. Thus, an action cannot be maintained on the contract, nor can the contract later be validated." *See In re Donnay*, 184 B.R. 767, 784 (Bankr. D. Minn. 1995) (citing *Spartz v. Rimnac*, 208 N.W.2d 764, 767 (Minn. 1973)).

In *Barton v. Moore*, the Minnesota Supreme Court held that when the remedy under section 334.03 applies, "the usurious loans at issue are then void and the [debtors] are not obligated to repay the principal or interest on the loans." 558 N.W.2d 746, 751 (Minn. 1997). WILLISTON ON CONTRACTS describes Minnesota as a state that does "not require that the borrower repay anything, not even the principal" in the case of usury. 9 WILLISTON ON CONTRACTS § 20:39 (4th ed.).

Minnesota law also does not require the consumer to reimburse Defendants for value received under a voided agreement. *See, e.g.*, *Fogie v. THORN Americas, Inc.*, 190 F.3d 889,

900-01 (8th Cir. 1999) (applying Minnesota law). The voiding remedy also requires disgorgement. In *Fogie*, for example, the defendant was required to return all interest and principal paid on the unlawful loan. *Id.* at 901; *see also Maus v. Toder*, 681 F. Supp. 2d 1007, 1015 (D. Minn. 2010) (noting that under Minnesota law the voiding remedy requires forfeiture of underlying debt and "disgorgement of all payments made"). For a usurious contract, an aggrieved person can also obtain disgorgement of paid interest under Minn. Stat. § 334.02.

The Court should declare Defendants' institutional loans void, order them cancelled, and require Defendants to return all monies paid on the loans, plus interest.

III. THE COURT SHOULD IMPOSE INJUNCTIVE RELIEF, A STATUTORY PENALTY, AND PROVIDE FOR THE RECOVERY OF THE STATE'S FEES AND COSTS.

The Attorney General is authorized to obtain injunctive relief and a civil penalty for the above-established violations of Minnesota's consumer protection laws. Minn. Stat. § 8.31, subd. 3; *see also* sections 325F.69, subd. 1, .70, subd. 1. Upon a showing that these laws "[have] been or [are] being violated," the Attorney General is "entitled, on behalf of the state" to "injunctive relief in any court of competent jurisdiction against any such violation." Section 8.31, subd. 3. Injunctive relief is therefore appropriate simply upon a showing that a violation has occurred or is occurring and other usual elements for injunctive relief—irreparable harm and inadequacy of legal remedies—need not be shown. *See, e.g., id.*; *Group Health*, 621 N.W.2d at 12 (stating "reliance is not an element of a violation when seeking injunctive relief" under the CFA); *State v. Cross County Bank, Inc.*, 703 N.W.2d 562, 573 (Minn. App. 2005) (holding that because "the legislature has explicitly authorized the state to obtain injunctive relief to prevent violation of statutes that protect consumers, the legislature has obviated a showing of irreparable harm and inadequate legal remedy.").

As discussed above, there is no genuine dispute of material fact that Defendants violated the CFA and DPTA, as well as the State's lending laws. The Court should therefore issue an injunction requiring Defendants to comply with these laws. Section 8.31, subd. 3 also authorizes the Attorney General to "recover for the State from any person who is found to have violated" the CFA or DTPA, "a civil penalty, in an amount determined by the court," up to $25,000 for each violation. *See also* Minn. Stat. § 645.24 (stating that statutory "penalty" is "for each such violation"). The statutory penalty is based on factors including: (1) Defendants' bad faith, (2) the public's injury, (3) Defendants' ability to pay, and (4) the desire to eliminate benefits derived by the violations. *Alpine Air*, 490 N.W.2d 888, 896-97 (Minn. App. 1992), *aff'd* 500 N.W.2d 788.

The State requests that the Court establish a briefing schedule and hearing date to adjudicate the amount of the statutory penalty and the specific terms of injunctive relief, as well as the recovery of the State's costs, disbursements and fees under section 8.31, subd. 3a.

CONCLUSION

For the reasons stated above, the Court should grant the State's motion.

Dated: September 2, 2015

Respectfully submitted,

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EXHIBIT A

Pleadings on File with the Court

1. Plaintiff's March 20, 2015 Amended Complaint
2. Defendants April 3, 2015, Amended Answer,

Affidavit Including Documents Obtained in Discovery and Testimony

3. the September 2, 2015, Affidavit of Kirsi Poupore in Support of Summary Judgment,

Affidavits of Former Students

4. the January 7, 2015, Affidavit of Defendants' former student Jesily Abrahamson,
5. the October 6, 2014, Affidavit of Defendants' former student Chelsea Adams,
6. the October 2, 2014, Affidavit of Defendants' former student Melissa Adreon,
7. the April 9, 2014, Affidavit of Defendants' former student Madalena Alameda (filed both under seal and in redacted form),
8. the July 30, 2015, Affidavit of Defendants' former student Ana-Katherine Anderson,
9. the July 2, 2014, Affidavit of Defendants' former student Kristina Anderson,
10. the September 15, 2014, Affidavit of Defendants' former student Hayley Anderson,
11. the April 25, 2014, Affidavit of Defendants' former student Christina Arvis (filed both under seal and in redacted form),
12. the September 27, 2014, Affidavit of Defendants' former student Cathie Baker,
13. the November 22, 2014, Affidavit of Defendants' former student Emalee Bamberg,
14. the June 30, 2014, Affidavit of Defendants' former student Julie Barthelemy,
15. the October 6, 2014, Affidavit of Defendants' former student Anne Bates-Edwards,
16. the April 14, 2015, Affidavit of Defendants' former student Amber Becker,
17. the August 15, 2014, Affidavit of Defendants' former student Ashley Beckman,
18. the August 4, 2014, Affidavit of Defendants' former student Lori Beise,
19. the July 28, 2014, Affidavit of Defendants' former student Rhonda Bell,
20. the August 13, 2014, Affidavit of Defendants' former student Michael Bengson,
21. the September 30, 2014, Affidavit of Defendants' former student Timothy Bennett,
22. the April 25, 2014, Affidavit of Defendants' former student Bonnie Berg (filed both under seal and in redacted form),
23. the September 30, 2014, Affidavit of Defendants' former student Tamara Blanchette,
24. the January 16, 2015, Affidavit of Defendants' former student Dana Block,
25. the September 16, 2014, Affidavit of Defendants' former student Robert Boleen,
26. the September 19, 2014, Affidavit of Defendants' former student Cole Bougie,

27. the March 23, 2015, Affidavit of Defendants' former student Fred Brett,
28. the September 24, 2014, Affidavit of Defendants' former student Carolyn Brooks,
29. the August 12, 2014, Affidavit of Defendants' former student Wendy Brown,
30. the February 20, 2014, Affidavit of Defendants' former student Joshua Brown,
31. the September 19, 2014, Affidavit of Defendants' former student Rosa Brunson,
32. the February 23, 2015, Affidavit of Defendants' former student Rachel Camp (filed both under seal and in redacted form),
33. the February 13, 2015, Affidavit of Defendants' former student Christy Carlson,
34. the August 21, 2015, Affidavit of Defendants' former student Mitchell Carlson (filed both under seal and in redacted form),
35. the September 25, 2014, Affidavit of Defendants' former student Erin Cavanaugh,
36. the September 17, 2014, Affidavit of Defendants' former student Brittany Celski,
37. the April 4, 2014, Affidavit of Defendants' former student Shannon Chapin,
38. the August 25, 2015, Affidavit of Defendants' current student Anthony Cincoski,
39. the July 2, 2014, Affidavit of Defendants' former student Elisha Clairborne,
40. the September 22, 2014, Affidavit of Defendants' former student Bill Cloak,
41. the August 5, 2014, Affidavit of Defendants' former student Rodney Coons,
42. the August 19, 2014, Affidavit of Defendants' former student Frank Diaz,
43. the May 19, 2015, Affidavit of Defendants' former student Dirk Drake,
44. the July 30, 2014, Affidavit of Defendants' former student Katie-Ann Dryden,
45. the September 25, 2014, Affidavit of Defendants' former student Phillis Dudley-Martin,
46. the March 21, 2015, Affidavit of Defendants' former student Wendy Duel,
47. the August 26, 2014, Affidavit of Defendants' former student Laurel Duerwachter (filed both under seal and in redacted form),
48. the July 29, 2014, Affidavit of Defendants' former student Amanda Enright,
49. the August 18, 2014, Affidavit of Defendants' former student Abigail Erb,
50. the September 25, 2014, Affidavit of Defendants' former student Timothy Erickson,
51. the June 4, 2015, Affidavit of Defendants' former student Matthew Fetzer and his mother Krystin Fetzer,
52. the October 3, 2014, Affidavit of Defendants' former student Emma Finkenaur,
53. the August 29, 2014, Affidavit of Defendants' former student Jennifer Fisher (filed both under seal and in redacted form),
54. the March 23, 2015, Affidavit of Defendants' former student Kimberly Fitzpatrick (filed both under seal and in redacted form),

55. the May 2, 2014, Affidavit of Defendants' former student Sheena Fransway (filed both under seal and in redacted form),

56. the June 13, 2014, Affidavit of Defendants' former student Randee Froemming (filed both under seal and in redacted form),

57. the October 15, 2014, Affidavit of Defendants' former student Lori Ganey,

58. the August 13, 2014, Affidavit of Defendants' former student Elizabeth Romero-Castro f/k/a Elizabeth Garcia,

59. the July 22, 2014, Affidavit of Defendants' former student Jon Gardner,

60. the July 9, 2014, Affidavit of Defendants' former student Jon Gavin (filed both under seal and in redacted form),

61. the August 25, 2014, Affidavit of Defendants' former student Shannon Gillespie,

62. the April 21, 2015, Affidavit of Defendants' former student Morgan Gloe,

63. the August 5, 2014, Affidavit of Defendants' former student Melanie Gonsior,

64. the September 17, 2014, Affidavit of Defendants' former student Jamie Gonzalez (filed both under seal and in redacted form),

65. the November 24, 2014, Affidavit of Defendants' former student Barbara Gramling,

66. the February 23, 2014, Affidavit of Defendants' former student Tracy Green,

67. the August 19, 2014, Affidavit of Defendants' former student Elisabeth Grossman,

68. the August 7, 2014, Affidavit of Defendants' former student Jennifer Hallman,

69. the October 8, 2014, Affidavit of Defendants' former student Christina Harness,

70. the April 28, 2015, Affidavit of Defendants' former student Angela Harshe,

71. the June 13, 2014, Affidavit of Defendants' former student Lori Hartman (filed both under seal and in redacted form),

72. the May 27, 2014, Affidavit of Defendants' former student Alicia Harvey (filed both under seal and in redacted form),

73. the August 27, 2014, Affidavit of Defendants' former student Ivette Hodge,

74. the April 24, 2015, Affidavit of Defendants' former student Diana Hollihan,

75. the August 20, 2014, Affidavit of Defendants' former student David Holmes,

76. the June 11, 2014, Affidavit of Defendants' former student Tracey Hovland,

77. the April 28, 2015, Affidavit of Defendants' former student Christine Hughes,

78. the September 24, 2014, Affidavit of Defendants' former student Bridget Jackson (filed both under seal and in redacted form),

79. the November 17, 2014, Affidavit of Defendants' former student Sheena Janusch,

80. the October 8, 2014, Affidavit of Defendants' former student Tamara Jergenson f/k/a Tamara Jandro,

81. the September 26, 2014, Affidavit of Defendants' former student Amanda Johnson,

82. the May 6, 2015, Affidavit of Defendants' former student Krissy Johnson,

83. the March 2, 2015, Affidavit of Defendants' former student Jenny Karl f/k/a Jenny Conroy,

84. the August 19, 2014, Affidavit of Defendants' former student Vanessa Keen,

85. the September 30, 2014, Affidavit of Defendants' former student Alyssa Kellner f/k/a Alyssa Davidson (filed both under seal and in redacted form),

86. the November 12, 2014, Affidavit of Defendants' former student Octavia Killion,

87. the August 19, 2014, Affidavit of Defendants' former student Jennifer Kociemba,

88. the January 26, 2015, Affidavit of Defendants' former student Heather Kostel,

89. the August 27, 2014, Affidavit of Defendants' former student Laura Kuhl (filed both under seal and in redacted form),

90. the August 14, 2014, Affidavit of Defendants' former student Amy Kunkel,

91. the September 4, 2014, Affidavit of Defendants' former student Laci LaPoint,

92. the August 13, 2014, Affidavit of Defendants' former student Jesse LeFebvre,

93. the February 9, 2015, Affidavit of Defendants' former student Jeffrey Lehman,

94. the August 15, 2014, Affidavit of Defendants' former student Wendy Lehman,

95. the September 4, 2014, Affidavit of Defendants' former student Crystal Lemke,

96. the July 16, 2014, Affidavit of Defendants' former student Jennifer Lipkie,

97. the August 19, 2014, Affidavit of Defendants' former student Rhonda Litke,

98. the February 4, 2015, Affidavit of Defendants' former student Allison Ludvigson,

99. the February 9, 2015, Affidavit of Defendants' former student Lewis Lumley,

100. the April 16, 2014, Affidavit of Defendants' former student Jennifer Lyman,

101. the August 6, 2014, Affidavit of Defendants' former student Angel Mader,

102. the April 7, 2015, Affidavit of Defendants' former student Nicole Manderscheid,

103. the October 9, 2014, Affidavit of Defendants' former student Tammy Marquardt,

104. the August 14, 2014, Affidavit of Defendants' former student Tiffany Mbaluka f/k/a Tiffany Hastings,

105. the February 11, 2015, Affidavit of Defendants' former student Lisa McCarthy,

106. the June 26, 2015, Affidavit of Defendants' former student Christopher McCoy,

107. the January 16, 2015, Affidavit of Defendants' former student Sarah McCoy,

108. the August 22, 2014, Affidavit of Defendants' former student Tyron McMiller,

109. the April 22, 2014, Affidavit of Defendants' former student Drew Mehling,

110. the July 31, 2014, Affidavit of Defendants' former student Joshua Miller (filed both under seal and in redacted form),

111. the September 4, 2014, Affidavit of Defendants' former student Karen Miller (filed both under seal and in redacted form),

112. the September 12, 2014, Affidavit of Defendants' former student Jason Miske,

113. the August 7, 2014, Affidavit of Defendants' former student John Moen,

114. the April 26, 2015, Affidavit of Defendants' former student Colton Moore,

115. the April 26, 2014, Affidavit of Defendants' former student Jill Myers (filed both under seal and in redacted form),

116. the August 4, 2014, Affidavit of Defendants' former student Kurtis Nahl,

117. the April 29, 2015, Affidavit of Defendants' former student Tracy Nicholas,

118. the August 28, 2014, Affidavit of Defendants' former student Terran North-Simpson,

119. the February 27, 2015, Affidavit of Defendants' former student Kayla Ostrander (filed both under seal and in redacted form),

120. the March 21, 2014, Affidavit of Defendants' former student Clarissa Overend,

121. the April 2, 2014, Affidavit of Defendants' former student Kati Pantekoek,

122. the February 26, 2014, Affidavit of Defendants' former student Carolina Pedroso,

123. the November 19, 2014, Affidavit of Defendants' former student Andrea Perez-Lujan (filed both under seal and in redacted form),

124. the April 25, 2014, Affidavit of Defendants' former student Rebecca Godwin f/k/a Rebecca Prescher (filed both under seal and in redacted form),

125. the September 10, 2014, Affidavit of Defendants' former student Allyson Pritchett,

126. the June 28, 2014, Affidavit of Defendants' former students Travis Pritzl and Magan Pritzl (filed both under seal and in redacted form),

127. the April 28, 2014, Affidavit of Defendants' former student Kent Proctor (filed both under seal and in redacted form),

128. the July 31, 2014, Affidavit of Defendants' former student Jodi Pugh,

129. the August 8, 2014, Affidavit of Defendants' former student Ralph Rainville,

130. the July 15, 2014, Affidavit of Defendants' former student Nicholas Reeve,

131. the August 13, 2014, Affidavit of Defendants' former student Jamila Reid,

132. the May 15, 2014, Affidavit of Defendants' former student Stephanie Reimers (filed both under seal and in redacted form),

133. the August 21, 2014, Affidavit of Defendants' former student Aaron Rennaker (filed both under seal and in redacted form),

134. the September 9, 2014, Affidavit of Defendants' former student Shana Rich (filed both under seal and in redacted form),

135. the April 3, 2015, Affidavit of Defendants' former student Ashley Rioux,

136. the January 27, 2015, Affidavit of Defendants' former student Phillip Rodgers (filed both under seal and in redacted form),

137. the June 3, 2014, Affidavit of Defendants' former student Matthew Rohr (filed both under seal and in redacted form),

138. the June 13, 2014 Affidavit of Defendants' former student Brooke Rolfe (filed both under seal and in redacted form),

139. the March 2, 2015 Affidavit of Defendants' former student Joy Rud,

140. the October 31, 2014 Affidavit of Defendants' former student Melissa Savage-Heinkel,

141. the May 30, 2014 Affidavit of Defendants' former student Gina Schaber (filed both under seal and in redacted form),

142. the October 3, 2014 Affidavit of Defendants' former student Anna Schmisek (filed both under seal and in redacted form),

143. the August 7, 2014 Affidavit of Defendants' former student Kate Schmitz,

144. The August 19, 2015 Affidavit of Defendants' former student Perry Schramm,

145. the August 7, 2014 Affidavit of Defendants' former student Felicia Schultz,

146. the July 15, 2014 Affidavit of Defendants' former student Linda Serfling (filed both under seal and in redacted form),

147. the April 13, 2015 Affidavit of Defendants' former student Brandon Shimpa,

148. the July 2, 2014 Affidavit of Defendants' former student Charlotte Simmons,

149. the August 8, 2014 Affidavit of Defendants' former student Amanda Skoriuchow,

150. the July 31, 2014 Affidavit of Defendants' former student Tony Smith,

151. the June 19, 2014 Affidavit of Defendants' former student Thomas Spencer,

152. the August 22, 2014 Affidavit of Defendants' former student Angela Spike,

153. the July 31, 2014 Affidavit of Defendants' former student Christopher St. John,

154. the July 2, 2014 Affidavit of Defendants' former student Crystal Steffens,

155. the August 18, 2014 Affidavit of Defendants' former student Rachel Steinbock,

156. the July 31, 2014 Affidavit of Defendants' former student Jennifer Strahl,

157. the July 25, 2014 Affidavit of Defendants' former student Jesup Studer,

158. the August 7, 2014 Affidavit of Defendants' former student Katie Gerads f/k/a Katie Sundquist,

159. the March 3, 2015 Affidavit of Defendants' former student Sheng Thao (filed both under seal and in redacted form),

160. the February 9, 2015 Affidavit of Defendants' former student Nicholas Thomas,

161. the May 4, 2015 Affidavit of Defendants' former student Ashley Thompson,

162. the April 3, 2014 Affidavit of Defendants' former student Emily Tomlin,

163. the July 28, 2014 Affidavit of Defendants' former student Denise Traylor,

164. the July 31, 2014 Affidavit of Defendants' former student Emily Soule Truax,

165. the August 28, 2014 Affidavit of Defendants' former student Gary Ussery,

166. the September 10, 2014 Affidavit of Defendants' former student Jill Lindberg f/k/a Jill Volkert (filed both under seal and in redacted form),

167. the April 28, 2014 Affidavit of Defendants' former student Michelle Vollmuth (filed both under seal and in redacted form),

168. the January 29, 2014 Affidavit of Defendants' former student Levi Waltz,

169. the August 12, 2014 Affidavit of Defendants' former student Neil Werdal,

170. the March 10, 2015 Affidavit of Defendants' former student Wendy Winestorfer,

171. the October 30, 2014 Affidavit of Defendants' former student Melinda Woglast,

172. the March 12, 2014 Affidavit of Defendants' former student Dillon Zerwas (filed both under seal and in redacted form).

Affidavits of Former Employees

173. the June 22, 2015, Affidavit of Defendants' former recruiter Elizabeth Fishbein,

174. the July 7, 2014, Affidavit of Defendants' former recruiter Ashlie LeGrande,

175. the July 29, 2014, Affidavit of Defendants' former Criminal Justice Program Chair Bradshaw Anderson,

176. the July 7, 2014, Affidavit of Defendants' former recruiter Hannah Von Bank,

177. the July 15, 2014, Affidavit of Defendants' former recruiter Jason Jensen,

178. the August 14, 2014, Affidavit of Defendants' former Career Services employee Margaret Scheel,

179. the August 28, 2014 Affidavit of Defendants' former Career Services employee Brittany Weller,

Other Affidavits

180. the August 11, 2015, Affidavit of St. Catherine's University registrar employee Cynthia Egeness,

181. the July 29, 2015 Affidavit of Senior Vice President for Academic Affairs and Provost for the University of Minnesota—Twin Cities Karen Hanson,

182. the July 24, 2014 affidavit of Director of Carver County Court Services John Klavins,

183. the July 18, 2014 Affidavit of former law-enforcement instructor at Hibbing Community College Steven Lorenz.