DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: September 18, 2017 10:58 AM CASE NUMBER: 2014CV34530
Plaintiff(s) ST OF COLO et al. v. **Defendant(s)** CENTER FOR EXCELLENCE IN HIGHER EDUCATIO et al.	⚠ COURT USE ONLY ⚠
	Case Number: 2014CV34530 Division: 275 Courtroom:

Order: JOINT STIPULATED TRIAL MANAGEMENT ORDER

The motion/proposed order attached hereto: SO ORDERED.

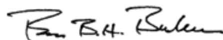
THIS MATTER comes before the Court on the parties' JOINT STIPULATED TRIAL MANAGEMENT ORDER. The Court, having reviewed the Proposed Joint Stipulated Trial Management Order, the court file, and being otherwise fully informed in the premises, HEREBY ORDERS as follows:

The attached Proposed Joint Stipulated Trial Management Order is ADOPTED as an Order of the Court with the following additions:

On exhibits, Plaintiffs shall mark exhibits starting at 1, and Defendants shall mark exhibits starting at 1000.

Findings of fact and conclusions of law shall be due on or before November 28, 2017.

Issue Date: 9/18/2017



ROSS B BUCHANAN
District Court Judge

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DISTRICT COURT, DENVER CITY AND COUNTY, COLORADO 1437 Bannock Street Denver, Colorado 80202 STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL, AND JULIE MEADE, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, Plaintiffs, v. CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC., et al., Defendants.	▲ COURT USE ONLY ▲
Attorneys for Plaintiff: CYNTHIA H. COFFMAN Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General OLIVIA D. WEBSTER, 35867* MARK T. BAILEY, *36861 Senior Assistant Attorneys General BENJAMIN J. SAVER, *47475 HANAH HARRIS, *47485 Assistant Attorneys General 1300 Broadway, 7th Floor Denver, CO 80203 Libby.webster@coag.gov Mark.bailey@coag.gov (720)508-6209 (720)508-6040 Fax *Counsel of Record	Case No.: 2014cv34530 Div: 275

[PROPOSED] JOINT STIPULATED TRIAL MANAGEMENT ORDER

Plaintiffs the State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, and Julie Meade, Administrator of the Uniform Consumer Credit Code, [hereinafter "The State"], and Defendants Center for Excellence in Higher Education, Inc., CollegeAmerica Denver, Inc.,

CollegeAmerica Arizona, Inc., Stevens-Henager College, Inc., College; College America Services, Inc., Carl Barney, Chairman; And Eric Juhlin, Chief Executive Officer [hereinafter "Defendants"] [collectively the "Parties"] hereby submit this *[Proposed] Joint Trial Management Order.*

I. STATEMENT OF CLAIMS AND DEFENSES

A. THE STATE'S CLAIMS REMAINING FOR TRIAL

This matter is a civil law enforcement action under the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.* ("CCPA"), and the Uniform Consumer Credit Code, Colo. Rev. Stat. §§ 5-1-101, *et seq.* ("UCCC").

Since at least 2007, Defendants have misrepresented the likelihood that Colorado consumers would find a "better job and a higher salary" and attain a certain level of earnings if they chose to enroll at a degree program at one of CollegeAmerica's three campuses in Denver, Fort Collins, and Colorado Springs. Defendants knew, based, in part, on their own documents, that CollegeAmerica's advertisements about employment and wages were not representative of CollegeAmerica graduates' outcomes. Complaint pp. 8-17, 29-30. Further, graduates did not obtain the careers that CollegeAmerica advertised, as is starkly illustrated by comparing the advertised careers with actual results from Defendants' Graphic Arts and Healthcare Administration programs. Defendants' affirmative misrepresentations were exacerbated by failing to disclose the outcomes of actual graduates.

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Since at least 2011, Defendants have misled students about the percentage of CollegeAmerica graduates who attained employment in their “field of study.” Defendants knowingly inflated the employment placement statistics they were required to maintain and disclose to students.

From at least 2008 through approximately 2014, Defendants misled students to believe that Defendants would prepare them to sit for Colorado’s Limited Scope X-ray Operator (LSO) certification test. Id. at pp. 17-19; 29-30. From at least 2007 until 2010, Defendants advertised training toward certification in Emergency Medical Technician (EMT), even though Defendants never offered such training. Id. at pp. 25-26; 29-30.

In 2010, Defendants misrepresented the availability of a bachelor’s degree program in sonography, leading prospective students to believe that the program would be forthcoming, and encouraging students to enroll in other degree programs with the promise they could transfer in to the sonography degree program, which never materialized. From March 2012 through September 2014, Defendants advertised the sonography program in their Colorado catalogs. Defendants never offered the advertised sonography training.

Finally, since at least 2002, Defendants have engaged in deceptive, fraudulent and unconscionable conduct tied to their tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or ARM Loan. Id. at pp. 21-23; 30-33. Defendants misrepresented EduPlan as “affordable” to prospective students when in fact Defendants knew that the majority of students

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were unable to repay the loan. Through at least mid-2012 Defendants sent delinquent student borrowers to aggressive collection agencies that sought judgments and sent negative reports to credit bureaus. Even though Defendants supposedly moved their collection efforts in-house, student borrowers who were sent to outside collections previously continue to be subject to aggressive collection practices and negative credit reporting.

Defendants also engaged in unconscionable conduct by inducing students to sign up for EduPlan even though Defendants knew or should have reasonably believed there was no reasonable probability of payment in full of the obligation by the students; reasonably should have known of the inability of the students to receive substantial benefits from the loan; the gross disparity between the price of the transaction and its value measured by the price at which similar transactions are readily obtainable by like consumers; the fact that Defendants knowingly took advantage of the inability of consumers reasonably to protect their interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors. Id.

Through this conduct, Defendants engaged in the following violations of the law:

1. Defendants have violated the CCPA:

Defendants knowingly made a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services or property or a false representation as to the sponsorship, approval status, affiliation, or connection of a person therewith. C.R.S. §6-1-105(1)(e) (Second claim for relief).

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Defendants represented that goods, food, services, or property were of a particular standard, quality, or grade, or that goods were of a particular style or model, when they knew or should have known that they are of another. C.R.S. 6-1-105(1)(g) (Third claim for relief).

Defendants failed to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if when such failure to disclose such information was intended to induce the consumer to enter into a transaction. C.R.S. §6-1-105(1)(u) (Fifth claim for relief).

2. Defendants have violated the UCCC:

Defendants, as the creditor of CollegeAmerica's tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or "ARM Loan," engaged in in a course of fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions, and making and enforcing unconscionable terms or provisions of such transactions. C.R.S. §5-6-112 (Seventh claim for relief).

B. DEFENDANTS' STATEMENT OF CLAIMS & DEFENSES:

Defendants have several defenses to the State's claims, including:

The State cannot establish the elements of its claims.

Advertisements. Defendants' advertisements are true. And, they are not false or misleading. Defendants' advertisements are unexceptional, common-sense, well-known, and generic; many universities and community colleges in Colorado and across the country use almost identical advertisements. Defendants'

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advertisements are puffery and protected commercial speech. Defendants' advertisements have been reviewed and approved by CollegeAmerica's accreditor, ACCSC, and by the Colorado Division of Private Occupational Schools ("DPOS"). The advertisements include prominent, clear, and readily understandable disclosures that negate any possible confusion. 'The State has not provided any evidence that a single student believed the advertisements were false or misleading. Accordingly, the State cannot demonstrate a violation of the CCPA.

Value of a CollegeAmerica Education: The State's opinion on the value of a CollegeAmerica education is refuted by a comprehensive analysis of real data performed by Dr. Jonathan Guryan, a professor of economics at Northwestern University with a doctorate from M.I.T. Dr. Guryan's analysis reveals that graduates of CollegeAmerica on average experience significant earnings gains after graduation relative to their earnings prior to enrolling at CollegeAmerica. Further, Dr. Guryan found that on average the earnings gains experienced by CollegeAmerica graduates over their lifetimes will accumulate to more than $179,800 for Associate degree recipients and to more than $491,000 for Bachelor degree recipients. Furthermore, to the extent the State intends to question the value of a CollegeAmerica education, its claims run afoul of the educational malpractice doctrine, and this Court therefore cannot entertain them.

Admissions: The State claims that the College does not inform prospective students of facts they need to know before enrolling. However, as Judge Mullins found after the Preliminary Injunction proceeding:

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> Enrollment in CollegeAmerica is a multi-step process which takes place over several weeks. It is designed to provide students with accurate information about the considerations most students find material in deciding whether to attend CollegeAmerica. The process is also designed to provide information and disclosures deemed necessary and appropriate by state, federal, and accrediting oversight agencies. The series of mutually-reinforcing steps provides progressively more information to prospective students as they advance through the enrollment process. No student incurs any financial obligation until after completing the enrollment process and attending the first three weeks of classes, which do not start until at least one week after the student signs the Enrollment Agreement, and several weeks after the student first saw any CollegeAmerica advertisement.
>
> The process provides institutional safeguards to ensure that prospective students get the accurate information they need to make an informed decision about whether to enroll.

Dkt. 110 at 7.

Graduate Employment. The State's claim that CollegeAmerica intentionally misrepresented its employment rates is specious. The State does not analyze whether graduates obtained jobs after graduation. Rather, its analysis is premised on its view of how the College should have reported its employment results to its accrediting body, ACCSC.

This analysis if flawed for many reasons. As an initial matter, ACCSC obtained and reviewed the data CollegeAmerica provided. CollegeAmerica would provide its documentation to ACCSC, which would evaluate that documentation and find that it met accreditation standards. Second, the State's expert has never interacted with ACCSC, and his opinions demonstrate a lack of understanding of ACCSC's policies and procedures. For example, if the State's expert finds a form missing, he presumes the graduate did not obtain a job. Someone familiar with ACCSC's standards and attempting a similar analysis in conformance to these

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standards would have continued searching for more information rather than leaping to conclusions as the State's expert did. Third, the College calculated and reported its graduate employment results in accordance with its understanding of ACCSC's accreditation standards. These results are based on decades of interactions with the accreditor, often occurring multiple times per month. Fourth, the State's claim ignores the massive impact that the Great Recession had on college graduates across the nation.

The State's claim is also premised on the College's admissions PowerPoint, which was presented to students during the admissions process. The State claims that some graduates obtain jobs outside of those described in the presentation. The jobs listed in the PowerPoint are not intended to be a comprehensive list of jobs that graduates might obtain; ACCSC requires its accredited institutions to describe career options to students. Moreover, the State's position is based on the untenable assumption that the career opportunities identified by Defendants are promises that graduates will get particular jobs. No reasonable person would interpret potential "opportunities" as promises, and even if they did, the College's enrollment documents and other materials are replete with notices that the College does not and cannot guarantee a job at all, let alone a particular job.

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Limited Scope X-Ray Operator Certification. The CollegeAmerica Medical Specialties associate degree may lead to a number of certifications, including (until 2014, when it stopped offering this portion of the program) the Colorado examination for Limited Scope X-Ray Operator certification. The State's assertion

that some students were misled regarding the need for 480 hours of clinical training before they can sit for the limited scope certification exam is unsupported. None of the College's advertisements ever represented that graduates would be able to sit for the exam at or before graduation. The ads simply state that the Medical Specialties program may "lead to" a job in radiology. And, in fact, when the program was offered, it did. To sit for the limited scope radiology exam in Colorado, 80 hours of classroom training were required. CollegeAmerica's Medical Specialties program satisfied this requirement. The applicant was also required to have 480 hours of practical experience (of which a student could obtain up to 160 hours through his or her externship, also offered through the Medical Specialties program). Thus, the Medical Specialties program provided all of the didactic hours, and potentially some of the clinical hours, required to sit for the exam, and students interested in the Limited Scope certification generally could obtain the necessary hours to sit for the exam within only a few months after graduation. The College explained all of these facts to students in many ways, including during the very first radiology course students took. The Enrollment Agreement and other documents also specifically (i) require each enrolling student to initial next to a disclosure which provides that "I understand certifications and licenses may require additional study and cost," and (ii) provide, in bold font, "**We do not guarantee that our educational programs will necessarily be sufficient to obtain any certification or license .... Certifications and licenses may require additional study and cost.**" (emphasis in original). Other documentation contains similar disclaimers.

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EMT Program. The State's claims relating to the EMT courses fail for many reasons. They are premised on a couple of students who believed they could obtain EMT certification after they graduated. The College never offered EMT training in Colorado (like it does in some locations outside of Colorado). The few people who have raised this issue does not come anywhere close to establishing a "significant public impact," as required for any CCPA claim. This conduct also falls far outside of the statute of limitations.

Sonography Program. In 2012, the Department of Private Occupational Schools contacted CollegeAmerica and asked it to consider opening a Sonography program because another program at Mile High Academy in Denver was closing and there was a potential for displaced graduates. The College considered the program, even going so far as to obtain approval from ACCSC to teach the program. However, CollegeAmerica never advertised nor offered the program because it was not convinced that there was enough demand in the job market for graduates with a sonography degree. When students would contact the College expressing interest in sonography, they would be told that the College does not offer such a degree. Ultimately, after significant consideration of the job market for sonography graduates, CollegeAmerica decided not to offer the program. These facts also do not establish a claim under the CCPA for many reasons, including that they do not prove that the conduct "significantly impact[ed] the public." Finally, there is no evidence that any Defendant knowingly made any misrepresentation regarding the sonography program.

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EduPlan Loan Program. Without EduPlan loans many students would not be able to pay for college. Defendants' EduPlan loan program is modeled on the federal Stafford loan program and is provided on comparable terms. Its purpose is to provide low-interest financial assistance beyond that provided by the federal government in order to cover the gap between the cost of tuition and financial aid for which a student may qualify. As with Stafford loans, interest does not accumulate while the student is in school, and the College does not require a credit check, since that would defeat the purpose of a program seeking to provide financial assistance to low-income students with no other options for financing their education.

To sustain its UCCC claim, the State must prove the EduPlan loans are unconscionable or were fraudulently induced. There is no factual basis to support either notion. The loan's substantive terms are unquestionably fair, contain all disclosures required by the Truth in Lending Act, and are favorable to the borrowers, including an interest rate of just 7%. Given these facts, it is impossible to understand how EduPlan does not help make college more "affordable."

Moreover, the use of commercially reasonable collection practices does not make EduPlan loans unconscionable. The State does not allege, let alone have evidence to prove, that Defendants use any of the techniques that establish unconscionable collection practices under the UCCC. *See* C.R.S. § 5-5-109(4). And the fact that Defendants attempt to collect on EduPlan loans indicates both a desire for and expectation of repayment, which defeats the State's claim that Defendants

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"reasonably believed there was no reasonable probability of payment in full" of the EduPlan loan obligations.

II. STIPULATED FACTS

The Parties stipulate to the following:

1. Cynthia H. Coffman is the duly-elected Attorney General for the State of Colorado.
2. Cynthia H. Coffman is authorized under§ 6-1-103, C.R.S. to enforce the provisions of the Colorado Consumer Protection Act ("CCPA").
3. Julie Meade is the Administrator of the Uniform Consumer Credit Code ("UCCC").
4. Julie Meade is authorized to enforce compliance with the Uniform Consumer Credit Code.
5. Carl B. Barney ("Barney") is an individual.
6. Eric Juhlin ("Juhlin") is an individual.
7. Effective December 31, 2012, Center for Excellence in Higher Education, Inc. ("CEHE") executed merger agreements to merge Stevens-Henager College, Inc., CollegeAmerica Denver, Inc., CollegeAmerica Arizona, Inc., California College San Diego, Inc., California College, Inc., and CollegeAmerica Services, Inc. (collectively "merged corporations") with CEHE as the surviving organization.
8. Prior to December 31, 2012, the merged corporations were for-profit corporations.

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9. The Carl Barney Living Trust was the sole stockholder of the merged corporations.
10. Barney is the sole trustee of the Carl Barney Living Trust.
11. Since December 31, 2012, Mr. Barney has been Chairman of the Board of Directors of CEHE.
12. Since the merger, Mr. Juhlin has served as Chief Executive Officer of CEHE.
13. At the relevant times, CollegeAmerica campuses operated in Colorado by both the merged corporations and CEHE have been accredited by Accrediting Commission of Career Schools and Colleges ("ACCSC").
14. At the relevant times, CollegeAmerica campuses operated in Colorado by both the merged corporations and CEHE have been regulated by the Colorado Division of Private Occupational Schools ("DPOS").
15. CollegeAmerica has three campuses in Colorado: Denver, Colorado Springs and Fort Collins. For a short time, there was a satellite campus in Colorado Springs.

III. <u>PRETRIAL MOTIONS</u>

1. The State's pretrial motions:

The State has filed *Shreck* motions challenging the expert testimony of Dr. Jonathan Guryan and Ms. Diane Auer Jones.

The State intends to file motions in limine, which it has discussed with Defendants.

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The State intends to file a motion to permit telephonic testimony for witness Oona Mankin at trial. She lives near Fort Collins and is bedridden. The State offered to have someone drive her down from Fort Collins and she said the movement from the car would be too painful. Defendants do not intend to oppose this motion.

The State anticipates filing pretrial motions on September 11.

2. Defendants' pretrial motions:

Defendants have filed three motions for summary judgment on which the Court will need to rule prior to the start of trial: 1) Defendants' Motion for Summary Judgment on Count VII Alleging Violations of the Colorado Uniform Consumer Credit Code (UCCC); 2) Defendants' Motion for Summary Judgment on Claims Relating to the Sonography Program and EMT Training; and, 3) Defendants' Motion for Partial Summary Judgment on Advertisements Containing Starting Salary Information and Statements that EduPlan Loans "Can … Help Re-Establish Your Credit". Each motion has been fully briefed and is ripe for determination by the Court.

Defendants have filed *Schreck* motions challenging the expert testimony of State witnesses Regan and Harvey.

Defendants intend to file motions in limine. It has discussed at least some of the motions that it intends to file, and will discuss the remainder, if any, with the State.

Defendants anticipate filing pretrial motions on September 11.

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IV. TRIAL BRIEFS

Any trial briefs shall be filed no later than 7 days before trial.

V. ITEMIZATION OF DAMAGES OR OTHER RELIEF SOUGHT

The State seeks the following relief:

1. **Injunctive Relief:**
   a. The State seeks the following injunctions against Defendants, pursuant to C.R.S. §6-1-110(1):

Making any representation that Defendants know is inaccurate, false or misleading in connection with advertising, recruitment or enrollment of students.

Making any representation to a prospective student that contradicts or minimizes written disclosures.

Representing, impliedly or expressly, that a certificate or degree from CollegeAmerica leads to outcomes, (*e.g.* wages and employment rates) comparable to national averages for certificate or degree holders (*e.g.* Bureau of Labor Statistics), unless Defendants can substantiate that such outcomes are reasonably likely for CollegeAmerica graduates.

Making or causing to be made any untrue or misleading statements about the certification, employment, and earning prospects that students will or may be eligible for after enrolling in or completing any one of Defendants' programs of study. Prohibited statements include, but are not limited to (i) any statement related to potential certification, employment or earnings that is not substantiated by Defendants' records; and (ii) any statement to a prospective student that contradicts or minimizes written disclosures that Defendants provide or make available about certification, employment and earning prospects.

Representing, impliedly or expressly, that particular training or a program of study is available at a particular campus in Colorado unless the particular training or program of study is in fact available for students at such campus.

Making or causing to be made any untrue or misleading representations about the ability of prospective students to repay student loans, including but not limited to, federal financial aid loans and Defendants' tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or ARM Loan.

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Making or causing to be made any untrue or misleading representations that Defendants' tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or ARM Loan, is "affordable."

b. The State seeks the following affirmative disclosures, pursuant to C.R.S. §6-1-110(1):

Prior to enrolling a prospective student into a program of study, Defendants must ensure the prospective student receives written or electronic disclosures that show the following estimates specific to the student: anticipated total direct costs to attend CollegeAmerica, the total debt at the time of repayment and the corresponding monthly loan payments over a term of years based on current interest rate information, the prospective student's income if he/she successfully graduates from the program of study, and the prospective student's post-graduation expenses, including personal financial obligations such as rent or mortgage payments, car payments, child care expenses, utilities, etc. The disclosure shall also show the relevant program of study's completion rate, median debt for completers, and program cohort default rate. Use of the Consumer Financial Protection Bureau's Electronic Financial Impact Platform (EFIP) will comply with this affirmative disclosure.

c. The State seeks the following injunctions against Defendants, pursuant to C.R.S. §5-6-112:

Collecting upon any prior debt tied to the Defendants' tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or ARM Loan.

Reselling, transferring, or assigning debt tied to Defendants' tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or ARM Loan.

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Defendants' Response:

CollegeAmerica's ads were neither false nor misleading. Nor can the State show that any consumer was or will be harmed by the conduct covered by the requested injunctions. But even aside from these dispositive points, the statements the State challenges, such as that a CollegeAmerica degree is "valuable" or can lead

to "better jobs" and "better salaries," are not subject to measure or calibration; they are the types of generic statements of opinion commonly found in advertisements for virtually any product or service. The State's proposed injunctions are overbroad, inexact, and would prove difficult if not impossible to oversee and enforce, even to the extent they do not merely serve to reiterate already extant law or regulations or run afoul of the educational malpractice doctrine. The State has no evidence that there is a likelihood of future irreparable harm. The State cannot establish that the proposed injunctions would not disserve the public interest and that the balance of equities favors granting the injunctions.

Furthermore, the State's request that the Court require affirmative disclosures of Defendants above and beyond those already required of Defendants is plainly unwarranted. Defendants addressed this very subject in their Motion for Summary Judgment on Count VII Alleging Violations of the Colorado Uniform Commercial Credit Code ("UCCC") (Dkt. 215). As Defendants noted in their motion, it is undisputed that CollegeAmerica provides its students with disclosures complying with federal regulations, including Regulation Z from the Federal Truth in Lending Act, which is expressly incorporated into the UCCC. C.R.S. § 5-3-101(2). Neither the United States nor the Colorado legislature has required additional disclosures. *See* C.R.S. § 6-1-106(1)(a) (CCPA does not apply to "[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency"). No claim may rise from the failure to provide such disclosures. *See Baldwin v. Laurel Ford Lincoln-Mercury, Inc.*, 32 F. Supp. 2d 894,

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905–906 (S.D. Miss. 1998) (dismissing fraud and consumer fraud claims because defendants disclosed as required by Regulation Z, and the law did not require additional disclosures); *MorEquity, Inc. v. Naeem*, 118 F. Supp. 2d 885, 893 (N.D. Ill. 2000) ("[T]he Consumer Fraud Act does not extend disclosure requirements beyond those already required by the federal disclosure statutes. Compliance with TILA is a defense to liability under the Consumer Fraud Act."). The question of whether additional disclosures are warranted is one for the legislature, not the courts. *See Gonzales v. Assocs Fin. Serv. Co. of Kansas, Inc.*, 967 P.2d 312, 326 (Kan. 1998).

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Nor is there any basis for Plaintiffs' request that Defendants be enjoined from collecting on legitimate debts legitimately owed to the college. To prevent CollegeAmerica from pursuing and collecting on these debts is in effect a request that these debts be cancelled. Furthermore, Plaintiffs senselessly seek to enjoin Defendants from engaging in certain conduct (i.e., referring debts to collection agencies) which is wholly lawful, and in which Defendants have not engaged for many years. The requested injunctive relief has no basis, is not necessary to avoid irreparable harm, and is well beyond the permissible scope of injunctive relief.

2. **Restitution**: Pursuant to C.R.S. §6-1-110(1), the State seeks complete restitution for all cohorts of CollegeAmerica students in Colorado who enrolled between January 2007 to the present and were charged tuition or fees.

   Specifically, the State seeks an order making Defendants pay 100% of each student's total expenses for tuition, fees, books, and any loan interest required for attending CollegeAmerica's degree program.

The State seeks an order that requires Defendants to forgive all institutional debt on all student accounts in repayment, including administratively "written-off" accounts, initiated between 2007-present; Defendants must repay student-debtors who made payments on their institutional debt from 2007-present; Defendants must cause third-party collectors to cease collections on all institutional debt and dismiss any legal actions tied to collections; Defendants must contact credit bureaus and delete negative action tied to institutional debt.

Defendants' Response:

The State's requested remedy is unjustifiably and unforgivably overbroad. Awards of restitution under the CCPA are permitted only "as may be necessary . . . to completely compensate or restore to the original position of any person injured by means of . . . [a] deceptive trade practice." C.R.S. § 6-1-110(1). In other words, "[t]he restitution award is measured in terms of the harm caused to consumers." *In re Jensen*, 395 B.R. 472, 486 (Bankr. D. Colo. 2008). Thus, the State may seek restitution only to the extent it establishes that consumers suffered harm from the allegedly unlawful practice (and even then, only to the extent necessary to compensate for that harm). Absent a showing of harm, the State cannot seek restitution. Its request for restitution for *all* CollegeAmerica students, even those who were not harmed (and in fact greatly benefitted from their education) is therefore wildly inappropriate.

3. **Disgorgement:** Pursuant to C.R.S. §6-1-110(1), in order to restore to the original position any person inured by means of Defendants' behavior, the State seeks disgorgement from each Defendant any tuition monies received through the use or employment of any deceptive trade practice.

Defendants' Response:

As noted above, "[t]he restitution award is measured in terms of the harm caused to consumers." *In re Jensen*, 395 B.R. at 486. Insofar as the State contends that

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Defendants assessed tuition in excess of the value of the education CollegeAmerica provided, to simply seek a full refund of the whole price paid for Defendants' services without taking into account the value of those services imposes a penalty well in excess of the harm any individual suffered. Indeed, it would be impossible to determine the extent to which any individual was harmed by any allegedly unlawful practice without engaging in an evaluation of the worth of a CollegeAmerica education, placing any such analysis squarely in the territory forbidden by the educational malpractice doctrine.

4. **Civil Penalties:** Pursuant to C.R.S. §6-1-112(1), the State seeks $500,000 for each "related series" of violations of the CCPA for at least seven patterns of alleged deceptive behavior based on violations of C.R.S. §6-1-105(1), (e), (g) and (u) .

   The patterns of deceptive behavior include at least the following:

   - false and misleading representations about graduate earnings;
   - false and misleading representations about graduate jobs;
   - false and misleading representations about graduate job placement rates;
   - false and misleading representations that Defendants' tuition financing program, which is often referred to as EduPlan, an institutional payment plan, or ARM Loan, makes college more affordable when in fact it does not (*i.e.* students are unlikely to be able to repay their obligation);
   - misrepresented that completion of Defendants' medical specialties degree leads to eligibility to sit for the LSO test in Colorado;
   - misrepresented the availability of EMT training in Colorado;
   - misrepresented the availability of a sonography degree program in Colorado.

   Between 2006 and 2017, more than 8,000 Colorado consumers enrolled into a CollegeAmerica program following Defendants' standardized admissions and financial aid process. Thousands more Colorado consumers viewed Defendants' admissions representations and/or advertising but may not have enrolled.

   The State requests civil penalties in the amount of $1,500,000.00.

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Defendants' Response:

As the State ostensibly acknowledges (but in reality ignores), its claims for civil penalties are limited to a maximum of $500,000 "for any related series of violations." C.R.S. § 6-1-112(1)(a). Though the State does not expressly identify an upper limit to the civil penalties it seeks (setting forth instead a floor of "at least" $1.5 million), Defendants have received no assurance that the State has backed away from its belief, as expressed in an earlier draft of this Trial Management Order, that the seven patterns of alleged deceptive behavior are each unrelated, thus ostensibly permitting civil penalties of up to $3.5 million. The State also suggested that each of these seven patterns constitute independent violations section 105(1)(u), thus allegedly permitting the State to seek civil penalties in the amount of $7 million. Defendants are wary that the State's modified language, proposing to seek "at least" $1.5 million in civil penalties, is in fact a furtive disguise of its true and unchanged intentions to seek even greater penalties. However, many of the purported "patterns of deceptive behavior" set forth by the State herein in fact rise from a series of alleged violations that are plainly related to others for which the State already seeks to impose civil penalties. This is most obvious in the case of the alleged Section 105(1)(u) violations, each which are expressly based on other series of alleged violations. The State's claim for civil penalties thus overshoots the limits imposed by the statutory cap by millions of dollars.

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5. **Fees and costs**: Pursuant to C.R.S. 6-1-113(4), the State seeks costs and attorney fees, which shall be awarded to the Attorney General in all actions where the attorney general successfully enforces the CCPA.

Defendants' Response:

The CCPA allows the State to recover costs and fees only to the extent that it is the prevailing party in this litigation. To the extent the State is unable to prevail on a significant issue in this litigation, it is not a prevailing party, has not successfully enforced the CCPA, and is not entitled to recover costs or fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). And if the State achieves "only partial or limited success," the State's recovery of fees and costs may be limited by "the degree of success achieved." *Hensley*, 461 U.S. at 433; *S. Colorado Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein*, 2014 COA 171, ¶ 24, 343 P.3d 1044, 1049

VI. IDENTIFICATION OF WITNESSES AND EXHIBITS

A. Witnesses

1. The Parties have attached their witness lists as Exhibit 1 (The State) and Exhibit 2 (Defendants).

B. Exhibits

1. The parties have stipulated to exchanging exhibit lists on September 12. The parties will supplement the Trial Management Order with their Exhibit Lists at that time. The Parties will exchange pre-marked copies of exhibits and demonstrative exhibits no later than September 25.

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2. The Parties will submit objections to trial exhibits on or before October 9.

C. Juror Notebooks

Not applicable.

D. Deposition and Other Preserved Testimony

1. Initial deposition and preliminary injunction hearing designations:

Per the Court's Order of December 2, 2015, the parties will exchange initial deposition and preliminary injunction hearing designations no later than September 18, 2017.

2. Responsive designations:

The parties will exchange all counter designations and objections to initial designations no later than October 2, 2017.

3. Reply designations:

The parties will exchange all reply designations no later than October 9, 2017.

4. All designations submitted to the Court:

The parties will submit to the Court all initial, counter, and reply designations and objections no later than October 12, 2017. The party that submits initial designations shall be responsible for submitting the initial, counter, and reply designations to the Court.

VII. TRIAL EFFICIENCIES AND OTHER MATTERS

TIMING

THE COURT ORDERS: Given the Veteran's Day Holiday and the Court's docket, the total time for the Parties to present evidence at trial will be

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approximately 19 days. The State will complete its case in chief on, roughly, October 27; and Defendants will complete their case in chief on, roughly, November 9. The Court plans to recess and address issues in other cases in the afternoons of October 20 and November 6. This leaves the Parties with approximately 54 hours each to present their evidence. To the extent that the Court extends a trial day, or does not need to use time in the afternoons of October 20 and November 6 for other matters, the parties shall roughly split the additional court time. Each Party will be responsible for time keeping, and coordinating the amount of time each party has used on a daily basis.

The Court will reconvene at 1:30 p.m. on November 17 for closing arguments. Each Party will have up to 90 minutes to present their closing argument and rebuttal.

ORDER OF PROOF

THE COURT ORDERS: The Parties shall file a joint Order of Proof, on or before October 16. The Parties have agreed that each party shall disclose the witnesses it intends to call on a particular day of trial four business days prior to that trial day.

DEPOSITION TRANSCRIPTS IN LIEU OF LIVE TESTIMONY

THE COURT ORDERS: If the Parties wish to submit designations of prior testimony of witnesses who are unavailable to testify in Court, they shall do so according to the procedure outlined herein for designations.

PRELIMINARY INJUNCTION RECORD

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THE COURT ORDERS: If the Parties wish the Court to consider testimonial evidence presented at the Preliminary Injunction in this matter, the Court directs the Parties to present the testimony live at trial, to the extent the witness is available to do so. If the witness is unavailable, the Party offering the testimony shall follow the procedure outlined herein for designations.

PRESENTATION OF EXHIBITS

THE PARTIES AGREE: The Parties agree to use software called Trial Director to present exhibits, video ads, video testimony, transcript excerpts and some demonstrative exhibits. All Exhibits will be loaded to Trial Director, controlled and presented on multiple monitors through one laptop that one person (for each party) will operate. The witness, the Court, and counsel and will have monitors where the exhibits will be displayed. The Parties will also likely use a screen and projector for certain demonstrative exhibits.

THE PARTIES AGREE: The parties have agreed to hire a court reporter and to split the cost.

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JOINTLY SUBMITTED AND APPROVED BY:

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Attorneys for Defendants

SO ORDERED and SIGNED this _________ day of _________________, 2017.

BY THE COURT:

____
District Court Judge

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