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[EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

ASHFORD UNIVERSITY, LLC, a California limited liability company; ZOVIO, INC., a Delaware corporation, f/k/a/ BRIDGEPOINT EDUCATION, INC.; and DOES 1 through 50, INCLUSIVE,

Defendants.

Case No. 37-2018-00046134-CU-MC-CTL

[PROPOSED] STATEMENT OF DECISION

Action Filed: November 29, 2017
Judge: Hon. Eddie C. Sturgeon
Dept.: C-67
Trial Date: November 8, 2021

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I. OVERVIEW

The Court concludes that the People of the State of California ("the People") have proven by a preponderance of the evidence that Defendants Ashford University, LLC and Zovio, Inc. (formerly known as Bridgepoint Education, Inc.) (collectively, "Defendants") violated the law by giving students false or misleading information about career outcomes, cost and financial aid, pace of degree programs, and transfer credits, in order to entice them to enroll at Ashford, and by engaging in illegal debt collection practices. The Court finds in favor of the People and awards $75 million in civil penalties, $25 million in restitution as set forth in the Court's separate Restitution Order, and injunctive relief as set forth in the Court's separate Injunction Order.

II. PROCEDURAL BACKGROUND

The People filed their complaint on November 29, 2017, claiming that Defendants misled students in violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) ("UCL") and the False Advertising Law (Bus. & Prof. Code, § 17500 et seq.) ("FAL"). The People requested an injunction and restitution pursuant to Business and Professions Code sections 17203 and 17535, and civil penalties pursuant to Business and Professions Code sections 17206 and 17536. Prior to this action, the parties signed a tolling agreement with an effective date of February 6, 2013. (Ex. 3654.) Accordingly, the People's UCL claims were tolled to February 6, 2009. (Bus. & Prof. Code, § 17208; *People v. Overstock.com, Inc*. (2017) 12 Cal.App.5th 1064, 1077 [four-year statute of limitations for UCL claims].) The People's FAL claims were tolled to February 6, 2010. (Code Civ. Proc., § 338 subd. (h); *Overstock.com*, *supra*, 12 Cal.App.5th at p. 1074, n. 8 [three-year statute of limitations for FAL claims].)

Under the terms of the Asset Purchase and Sale Agreement between Ashford, Zovio, and the University of Arizona Global Campus (among other entities), Zovio agreed that it would pay any liabilities arising from the operation of Ashford prior to December 2020. (Ex. 1320.0005.) The parties agreed that the Court may return a single judgment enforceable against Ashford and Zovio. (ROA 566 [Joint Trial Readiness Conference Statement].)

III. STATEMENT OF FACTS

A. Ashford University's History and Student Population

In 2005, Zovio, which had never before offered any degree programs, (Ex. 3743, Tr. 26:21-23 [Clark]), purchased a small campus-based religious institution in Clinton, Iowa called the Franciscan University of the Prairies. (Ex. 3743, Tr. 21:25-22:11 [Clark].) Zovio needed the Franciscan University's accreditation because only students that attend an accredited university are eligible for federal financial aid. (12/6/21 Tr. 224:14-17 [Pattenaude].) Zovio renamed the school Ashford University (Ex. 3743, Tr. 22:4-7 [Clark]) and adopted the legacy of the Franciscan University of the Prairies to market Ashford as a traditional university. (E.g., Ex. 1154.0040-41; 11/9/21 Tr. 47:7-48:20 [Dean].) Zovio then transformed the school into an enormous non-religious, online institution, with more than 80,000 students at its peak. (Ex. 9017.0012.) Ashford has generated hundreds of millions of dollars for Zovio annually—the vast majority from tax-payer-funded sources like Title IV loans, income-based grants, and GI Bill funds. (See Exs. 9011-9024; see also 12/6/21 Tr. 70:18-24 [Cellini].)

As Ashford's former Presidents testified, Defendants enroll vulnerable students who lead "complex" and "difficult lives," which "heightens" the need for accurate college advising. (12/6/21 Tr. 195:23-27 [Pattenaude]; 12/7/21 Tr. 68:12-15 [Pattenaude]; 12/14/21 Tr. 196:20-23 [Swenson].) Based on Zovio's own assessments from 2009 through 2020, Ashford students typically are older than traditional college students (Exs. 9013-9034 [average age 35-37]); and are low income (Exs. 9030-9048 [between 55% and 76% receive Pell Grants, which require significant financial need].) Around half of Ashford students identify as minorities (Exs. 9013-9023 [between 47% and 56%].) Defendants enroll students primarily through sales people (whom Defendants referred to as "admissions counselors")[1] who are trained to build trust and rapport. (E.g., 11/9/21 Tr. 56:3-57:5 [Dean testifying that counselors would "use that friendship almost against [students] as a weapon"].) A typical Ashford bachelor's degree has cost between $40,000 and $60,000 during the statutory period. (See Exs. 9030-9048 [Academic Catalogs 2009-2021].)

[1] Admissions counselors have also been called enrollment advisors and enrollment services advisors during the statutory period, but the job functions remained the same. (12/10/21 Tr. 12:27-13:20 [Parenti].)

Only a quarter of Ashford students graduate (12/6/21 Tr. 44:9-18 [Cellini]; see also 12/9/21 Tr. 163:12-14 [Nettles]), and many default on their student loans (12/6/21 Tr. 51:3-5 [Cellini]).

In December 2020, a California non-profit entity affiliated with the University of Arizona acquired Ashford and rebranded the online school as the University of Arizona Global Campus ("UAGC"). (Ex. 1320 [Asset Purchase Agreement].) In exchange for paying $54 million to "sell" Ashford to UAGC, Zovio will now receive 15.5-19.5% of UAGC's tuition revenue for the next 7-15 years. (Ex. 735.0002-3.) Zovio continues to provide many of the services to UAGC that it provided to Ashford, including the recruiting functions that are at the heart of this case. (Ex. 1320.0138; Ex. 3742, Tr. 29:6-19, 39:13-22, 43:10-17, 47:21-48:9 [Clark].)

B. Defendants Created a High Pressure Culture in Admissions that Prioritized Enrollment Numbers Over Compliance.

The Court heard substantial evidence that over the last decade, Defendants created a high-pressure admissions department whose north star was enrollment numbers. Admissions counselors were expected to call hundreds of leads a day, and managers would threaten to fire those who failed to enroll enough students—warning that "'Someone can fill your chair'" if counselors did not meet their numbers. (Ex. 3753, Tr. 107:15-108:24 [Stewart]; Ex. 792; 12/1/21 Tr. 136:7-15, 137:8-21, 139:5-12, 141:15-142:6, 143:10-21, 149:1-6, 179:7-18, 216:20-25 [McKinley explaining that counselors who "did not sell" were publicly "mocked"].) As stated by one employee of the training department, "From my perspective, based on trainings and coaching, the emphasis for [admissions counselors] is still on submitting applications as quickly as possible." (Ex. 1362.) The high-pressure culture went beyond rhetoric: Defendants put their words into action by creating "lowest performer lists" and then firing the bottom ten percent of admissions counselors based, in part, on enrollment numbers. (12/7/21 Tr. 59:3-17 [Pattenaude]; Ex. 1217; Ex. 3753, Tr. 107:15-109:7 [Stewart]; Ex. 792; 11/10/21 Tr. 22:10-23:1 [Parenti]; Ex. 3739, Tr. 107:2-108:24 [Bennett].) Top executives' testimony that Defendants had no quotas (e.g. 12/7/21 Tr. 37:9-11 [Pattenaude]; 11/10/21 Tr. 120:21-24 [Parenti]) is not consistent with this evidence and is contradicted by the testimony of former admissions counselors who testified to their job expectations first-hand. Indeed, many defense witnesses admitted having little or no

direct knowledge of the admissions department. (E.g., Ex. 3759, Tr. 26:3-16 [Abe]; 12/09/21 Tr. 159:23-160:10 [Nettles]; 12/7/21 Tr. 156:1-157:14 [Ogden]; 12/9/21 Tr. 44:1-6 [Farrell].)

Defendants' line-level admissions counselors testified to a work environment permeated by fear, where closing the sale was prioritized above providing students with accurate information. For example, as former employee Wesley Adkins testified, "The job was a numbers game and not a – not as advising or a counseling position . . . ." (Ex. 3769, Tr. 31:13-17, 36:25-37:9, 46:4-5 [Adkins]; see also 11/9/21 Tr. 29:9-16, 65:19-22 [describing the job as a "numbers game" where you "needed to enroll a certain amount in order to feel safe at [y]our job"], 73:13-74:4 & Ex. 611, 78:2-10 [Dean]; 12/1/21 Tr. 136:7-15, 142:4-6, 149:1-6, 204:8-11 [McKinley].) While Defendants' executives testified that the admissions department did not have a high pressure "boiler room" environment (see, e.g., 11/10/21 Tr. 146:15-21 [Parenti]; 12/1/21 Tr. 60:7-21 [Hallisy]), a paper trail shows that company executives were well aware of that department's fear-based culture. Ashford's former President Dr. Richard Pattenaude received emails warning that the admissions department was a place where fear was "abundant" and where numbers were seen as the "end-all-be-all." (12/7/21 Tr. 53:3-55:12 [Pattenaude]; Ex. 1214; 12/7/21 Tr. 56:17-57:28 [Pattenaude]; Ex. 1213; Ex. 1359.0020.) Yet Dr. Pattenaude could not recall taking any specific steps to address these warnings. (12/7/21 Tr. 53:3-55:12; 56:17-57:28.)

Defendants' own employee exit surveys, which they relied on (see Ex. 3767, Tr. 69:19-21, 69:24 [Putrus]), further confirm the problematic culture in admissions. For example, in one 2011-2012 survey, over half of respondents said "no" when asked if Bridgepoint "adheres to its core values of ethics, integrity, service, and accountability." (Ex. 1399B [Tab "Question 7"].) One employee explained: "The only objective is to enroll as many students as possible. Employees fear for their jobs every day if they are not enrolling enough students." (*Id.* [Tab, "Question 7," cell C17]; see also cell C21 ["the boiler room mentality is still alive and well"]; see also Ex. 1083 [CEO Andrew Clark directing staff in 2020 to "overcome [] objections" of students wanting to withdraw due to COVID, including due to healthcare job demands or kids at home].) Although Defendants' high-level executives testified that they always put students first (see 12/7/21 Tr. 34:20-35:13 [Pattenaude]; 12/14/21 Tr. 188:27-190:7 [Swenson]; 12/1/21 Tr. 117:13-25

[Hallisy]), the Court finds that testimony lacks credibility because it is contradicted by those with direct admissions experience. As one employee summarized in an exit survey: "When employed I was told the motto of Ashford University was student first, Ashford second, and yourself last. This does not work when a quota must be met. An employee will be reprimanded if the quota is not met, therefore, the employee will always put herself first." (Ex. 1403 [cell AQ19].)

C. Defendants Misled Students on Four Topics Critical to Decisionmaking.

The People presented substantial evidence that, as a result of the high-pressure, fear-based culture in the admissions department, counselors made misrepresentations to students in four main areas: the ability to obtain careers requiring licensure with an Ashford degree, the cost of Ashford degrees and financial aid available to pay for them, the pace of Ashford's degrees, and the ability to transfer credits in and out of Ashford (the "Relevant Topics"). (11/15/21 Tr. 72:6-16; 74:7-10 [Lucido].) Within the Relevant Topics, the People presented evidence of 11 specific categories of misrepresentation. (11/15/21 Tr. 74:15-76:13 [Lucido].)

Each misrepresentation category was supported by four primary types of evidence. First, the Court heard the testimony of student victims who experienced the misrepresentations and relied upon them in deciding to enroll at Ashford. (Testimony of Alison Tomko, Roberta Perez, Pamela Roberts, Jessica Ohland, Rene Winot, Loren Evans, Crystal Embry, Joseph Ybarra, and Jasmine Cox.) Second, the Court heard the testimony of former Ashford employees, who explained how the pressure to meet their enrollment numbers, the instructions of their managers, and guidance from high performers on their teams all led them to deceive students to overcome objections and promote enrollment. (Testimony of Eric Dean, Lee Bennett, Wesley Adkins, and Molly McKinley.) Third, the Court heard the testimony of Dr. Jerome Lucido, an expert in college admissions with over forty years of experience setting industry standards for college advising and leading the admissions, financial aid, and registrar departments of four major universities. (11/15/21 Tr. 50:11-70:22.) Dr. Lucido conducted a methodical and well-documented study of 561 phone calls between students and admissions counselors, through which he identified, categorized, and explained misrepresentations within the Relevant Topics. (11/15/21 Tr. 73:18-74:10; 92:7-95:22.) Dr. Lucido's testimony regarding exemplar calls and the

role of the admissions counselor was well supported by his experience, and corroborated by the testimony of the student and employee witnesses.[2] The Court therefore finds Dr. Lucido's expert testimony credible and gives it significant weight. Fourth, the People presented internal company documents and testimony of company witnesses, which corroborated Dr. Lucido's assessment of misrepresentations in the four topical areas. (E.g., testimony of former Ashford Presidents, testimony of Defendants' compliance officials, training documents.) The Court describes this evidence in greater detail with respect to each category of misrepresentation in Part V(A), below.

IV. STATEMENT OF APPLICABLE LAW

A. Deception Under the UCL and FAL Means "Likely to Deceive".

To prove a cause of action under the fraudulent prong of the UCL and under the FAL,[3] "it is necessary only to show that 'members of the public are likely to be deceived.' [Citation]." (*Com. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 211.]) "'Intent of the disseminator and knowledge of the customer are both irrelevant.'" (*Overstock.com*, *supra*, 12 Cal.App.5th at p. 1079, citing *Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.) This is because the UCL and FAL "afford[] protection against the probability or likelihood as well as the actuality of deception or confusion. [Citation]." (*Ibid*.) Unlike the UCL, the FAL has an additional requirement that the misleading nature of the communications "is known, or . . . by the exercise of reasonable care should be known" by the defendant. (Bus. & Prof. Code § 17500.) By their plain language, the UCL and FAL apply to single acts of misconduct—no pattern or practice of misconduct is required for liability. (See *Klein v. Earth Elements, Inc.* (1997) 59 Cal.App.4th 965, 968 fn. 3 [UCL "covers single acts of misconduct."]; *United Farm Workers of America, AFL-CIO v. Dutra Farms* (2000) 83 Cal.App.4th 1146, 1163 [same].)

"'[T]he primary evidence in a false advertising case is the advertising itself." (*Brockey v.*

[2] The fact that Dr. Lucido did not review any phone calls between Defendants and the testifying students is not relevant. The Court finds significant similarities between the deception identified by Dr. Lucido in the phone calls and the stories of the testifying victims.

[3] Courts have consistently held that the "likelihood of deception" standard applies equally to the FAL and fraudulent prong of the UCL. (See, e.g., *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951.) Additionally, a violation of the FAL is also a violation of the UCL under the latter's unlawful prong, which "'borrows' violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. [Citation.]" (*Cel-Tech Comms., Inc. v. L.A. Cell. Tel. Co.* (1999) 20 Cal.4th 163, 180.)

Moore (2003) 107 Cal.App.4th 86, 100.) Each deceptive statement must be assessed in the context of the full advertisement in which it is conveyed. (*Hill v. Roll Int'l Corp.* (2011) 195 Cal.App.4th 1295, 1304-1305; *Freeman v. Time, Inc.* (9th Cir. 1995) 68 F.3d 285, 290.) However, there is no authority for the proposition that this Court must consider every sequential communication a defendant has with a consumer in order to determine whether a particular communication is deceptive. (See Part VI(B), *infra*, for additional discussion.)

B. Written Disclaimers or Other Truthful Information Cannot Cure Deception on the Phone.

California law also makes clear that a deceptive statement cannot be cured by separate disclosures. (See *Prata v. Super. Ct.* (2001) 91 Cal.App.4th 1128, 1145 ["The fact that disclosures and the credit agreement issued by Bank One stating the 'details' of the program may have explained that the program was, in fact, not as advertised, does not ameliorate the deceptive nature of this advertising."]; *Chern, supra*, 15 Cal.3d at p. 876 ["Moreover the fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant's practice of quoting a lower rate in its initial dealings with potential customers."]; *Brady v. Bayer Corp.* (2018) 26 Cal.App.5th 1156, 1172 ["You cannot take away in the back fine print what you gave on the front in large conspicuous print."].) This is true even when the later disclosure is made in writing and acknowledged by the consumer. (*Chern*, *supra*, 15 Cal.3d at p. 876.) The no-cure rule flows logically from the established principle that a "reasonable consumer need not be exceptionally acute and sophisticated and might not necessarily be wary or suspicious of advertising claims. [Citation.]" (*Hill v. Roll Internat. Corp.* (2011) 195 Cal. App. 4th 1295, 1304.)

C. No Individualized Showing of Actual Deception, Reliance, or Harm Is Required Under the UCL or FAL.

Neither the UCL nor FAL require a showing of causation, reliance, or a specific injury; rather, "the only requirement is that defendant's practice is unlawful, unfair, deceptive, untrue, or misleading." (*Prata*, *supra*, 91 Cal.App.4th at p. 1144; *People v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 532 [noting "the rule that restitution under the UCL may be ordered *without individualized proof of harm* is well settled"] [emphasis added]; *Day v. AT&T Corp.* (1998) 63

Cal.App.4th 325, 332 ["[A]llegations of actual deception, reasonable reliance, and damage are unnecessary."].) As the California Supreme Court explained, this distinction with the common law "reflects the UCL's focus on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices. [Citation.]" (*In re: Tobacco II Cases* (2009) 46 Cal.4th 298, 312.)

D. A Defendant's Right to Control Its Employees Is Dispositive.

Neither the UCL nor FAL require the People to separately prove that Defendants authorized deception by their admissions counselors. Rather, deceptive statements by employees are treated as acts by the business's agents for which the business is liable. (*Ford Dealers Assn. v. Dept. of Motor Vehicles*[4] (1982) 32 Cal.3d 347, 360-361 [citing *Chern*, *supra*, 15 Cal.3d at p. 866, *People v. Super. Ct. (Jayhill)* (1973) 9 Cal.3d 283, and *People v. Conway* (1974) 42 Cal.App.3d 875 as examples of cases in which a corporation was held liable for the acts of its employees]; see also *Goodman v. FTC* (9th Cir. 1957) 244 F.2d 584, 592 ["[T]he courts take the view that the principal is bound by the acts of the salesperson he chooses to employ."].) That is, so long as the defendant has the right to control the activities of its employees, it is liable for their misrepresentations. (See *Ford Dealers*, *supra*, 32 Cal.3d at p. 361 & fn. 8; *People v. JTH Tax, Inc.* (2013) 212 Cal.App. 4th 1219, 1242 [UCL/FAL liability available on agency theory where defendant has the ability to control its agent, whether defendant exercised that authority or not]); see also *Conway*, *supra*, 42 Cal.App.3d at p. 886 [defendant in "position to control" employees was liable for false advertising]; *People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 735 [same].)

Nor does a Defendant immunize itself from liability by having policies prohibiting the misrepresentations; rather, it is the efficacy of these polices that matters. (See *JTH Tax*, *supra*, 212 Cal.App.4th at pp. 1248-1249 [company liable for agents' misrepresentations even though they were prohibited]; *Goodman*, *supra*, 244 F.2d at p. 592.) Further, a company is liable for misrepresentations it fails to prevent that it knows of or, by exercise of reasonable care, should have known of. (*People v. Forest E. Olson, Inc.* (1982) 137 Cal.App.3d 137, 139-140; *Conway*, *supra*, 42 Cal.App.3d at p. 886 [defendant liable who knew of misrepresentations and permitted

[4] The Court discusses *Ford Dealers* at greater length in Part VI(A), *infra*.

them to continue]; *First Federal Credit Corp.*, *supra*, 104 Cal.App.4th at p. 735 [same].)

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Evidence Shows Defendants Deceived Students On Topics Critical to Student Decisionmaking.

The Court finds that Defendants operated a high-pressure admissions department where the primary focus was enrollment numbers rather than truthful advising. (See Part III(B), *supra*.) In this environment, admissions counselors would cross a "gray line" ethically or "do things they wouldn't normally do" to boost their numbers to keep their jobs. (Ex. 3769, Tr. 216:5-218:1, 276:11-18 [Adkins]; Ex. 3739, Tr. 194:17-195:10 [Bennett]; 12/1/21 Tr. 202:25-203:5, 204:8-11, 216:18-25 [McKinley].) As multiple former Ashford employees testified, they gave only a half-truth, or even outright lied, in order to "overcome objections" that risked derailing enrollment. (Ex. 3739, Tr. 146:1-149:6, 150:23-155:5, 174:17-177:6, 180:16-21 [Bennett]; Ex. 3769, Tr. 55:7-57:22 [Adkins]; 11/9/21 Tr. 28:2-28, 39:2-16, 42:28-43:7, 46:4-15, 50:11-14 [Dean] & Ex. 3680 ["Rebuttals" training document]; 12/1/21 Tr. 153:1-192:28 [McKinley] & Exs. 474, 2038, 2043, 3734.) Specifically, the Court finds that Defendants engaged in misrepresentations in each of the 11 categories within the Relevant Topics.

1. Defendants Misled Students About Their Ability to Become Teachers Using Ashford Degrees.

The evidence shows that Defendants falsely promised students they could use an Ashford degree to become teachers. In fact, Ashford degrees do not qualify Ashford graduates for most teaching positions, which require teacher licensure. (11/15/21 Tr. 102:8-11 [Lucido].) This includes public school teaching jobs, which in California comprise 85% of teaching positions, and many private schools, which may require or prefer licensure. (11/15/21 Tr. 102:11-25 [Lucido]; 12/9/21 Tr. 47:12-19, 49:7-28 [Farrell].) To obtain licensure, aspiring teachers must attend a state-approved teaching program. (11/15/21 Tr. 103:24-104:2 [Lucido].) Not a single online Ashford degree has ever been state approved for teaching.[5] (Ex. 911 [Defs. Second Am. Resp. to

[5] In California, Ashford's Education Studies degree did not even satisfy the state's basic bachelor's degree requirement for teachers because, until 2018, California required teaching credential applicants to have a bachelor's degree in a subject other than education. (Former Ed. Code, § 44225, subd. (a)(1) added by Stats. 1988, ch. 1355, § 6, p. 4473.) The law was amended

Set 1 RFA 1, 2, 3].) As a result, students who are deceived into enrolling at Ashford must invest significant additional time (1-2 years) and money in a state-approved teaching program. (11/15/21 Tr. 105:27-107:12 [Lucido].)[6]

Between 8,000 and 10,000 students enroll in Ashford's College of Education every year (12/09/21 Tr. 46:16-19 [Farrell]), including students with teaching goals. (12/09/21 Tr. 45:24-46:19 [Farrell]; Ex. 3757, Tr. 116:16-18 [Farrell].) The testimony of Alison Tomko and Crystal Embry demonstrate how Defendants misled these aspiring teachers. Ms. Tomko enrolled at Ashford because her admissions counselor reassured her that Ashford was part of an "interstate agreement" that meant her degree would "carry over" to Pennsylvania so long as she completed her student teaching and passed the state teaching exams. (11/8/21 Tr. 131:14-133:13, 136:27-137:1 [Tomko]; Ex. 165.)[7] Only after graduating did Ms. Tomko learn that she would need to complete an additional 60-90 credits before she could even begin her student teaching. (11/8/21 Tr. 148:18-149:14, 151:13-23 [Tomko]; Ex. 170.) Because Ms. Tomko could not afford those credits, she never became certified, and now works as a phlebotomist, which does not require a bachelor's degree. (11/8/21 Tr. 154:5-159:9 [Tomko].) Similarly, Crystal Embry was misled into enrolling at Ashford and withdrawing from a different school that would, in fact, have led to teacher licensure, because Defendants told her they offered the "same program," just online. (11/30/21 Tr. 80:18-25, 82:11-22 [Embry].) Only after graduating did Ms. Embry learn that her Ashford education did not qualify her to take the state teaching exam. (11/30/21 Tr. 90:2-25 [Embry].) This testimony is corroborated by Dr. Lucido's call analysis, which identified 10 calls with at least one teaching misrepresentation. (11/15/21 Tr. 77:19-25 [Lucido].) Had Ashford not

in 2018, but the ban on education bachelor's degrees remains in place for middle and high school teachers. (Ed. Code, § 44225, subds. (a)(1)(A)-(a)(1)(B), as amended by Stats. 2017, ch. 123, § 1, p. 1898, eff. Jan. 1, 2018.) Ashford Dean Dr. Tony Farrell was not aware that any restrictions on education degrees currently exist in California. (12/9/21 Tr. 68:6-8 [Farrell].)

[6] While alternative certification programs may exist, those programs have their own requirements (Ex. 3757, Tr. 64:14-64:21 [Farrell]), and there is no evidence that any Ashford student successfully completed one. (12/9/21 Tr. 49:3-6 [Farrell].)

[7] The Court finds credible Ms. Tomko's testimony that her advisor told her to contact the state Department of Education closer to graduation. (11/8/21 Tr. 134:13-135:7, 137:2-14, 193:9-16 [Tomko].) In any event, the specifics of this warning do not change the fact that Ms. Tomko's advisor also gave her false information regarding Ashford's membership in an "interstate agreement" that would allow Ms. Tomko to move directly to student teaching after graduation.

led these students to believe that their degrees were in the type of program that leads to licensure, they instead could have attended a "two-in-one" teaching program: a four-year bachelor's degree program that is *also* approved for state teaching. This is an option offered, for example, at many of the California State University campuses. (11/15/21 Tr. 104:19-27 [Lucido].)[8]

The Court concludes that, as Dr. Lucido explained, counselors likely misled students with statements like, "What this means in a nutshell is that you get your teaching degree from us," because such statements convey that Ashford's degrees have the kind of state approval that allows students to move directly to student teaching or state teaching exams, when they do not. (11/15/21 Tr. 109:9-110:8 [Lucido]; Ex. 2380.) That is precisely what Ms. Tomko and Ms. Embry reasonably believed. Further, evidence from Defendants' own training documents and witnesses confirms they knew it was likely to deceive students to suggest Ashford degrees lead to teaching careers. (Ex. 1040 ["Don't say 'You will need your Bachelor's first, then you can take more steps to get your license'"]; 12/9/21 Tr. 56:3-57:4 [Farrell].)

2. Defendants Misled Students About Their Ability to Become Nurses, Social Workers, and Drug and Alcohol Counselors.

There is also ample evidence that Defendants misled students about their ability to use an Ashford degree to pursue a career as a nurse, drug and alcohol counselor, or social worker ("the helping careers"). Like teaching, these professions require attending an approved program and obtaining licensure or certification.[9] Ashford degrees are not state-approved for any of the helping careers. (Ex. 3575 [Defs. Resp. to Set 5 RFA 86, 89, 90, 91]; Ex. 3753, Tr. 215:22-216:14 [Stewart]; 11/10/21 Tr. 56:19-27 [Parenti].) Yet Defendants repeatedly encouraged students with those career aspirations to enroll at Ashford. As Dr. Lucido explained, affirmatively describing Ashford as "perfect" or "geared for" students who aspire to the helping careers is

[8] Dr. Farrell's testimony that these blended programs take "longer" than four years is not credible given that he was unaware of these California State University programs. (12/9/21 Tr. 50:24-27 [Farrell].)

[9] Bus. & Prof. Code §§ 4996.1, 4996.2, subd. (b), 4996.18, subd. (b)(1), 4996.23 (requiring accredited social work program for social work licensure); Health & Saf. Code, §§ 11755, subd. (k), 11833, subd. (b)(1); Cal. Code Regs., tit. 9, §§ 13035-13040 (requiring program endorsed by a state certifying organization to obtain certification and provide counseling); Bus. & Prof. Code, §§ 2701, 2732, 2736, 2785, 2786 (requiring state-approved nursing program to obtain nursing license and practice as a nurse).

deceptive because Ashford's programs lack the programmatic accreditation required for licensure. (11/15/21 Tr. 113:17-115:5 [Lucido]; Ex. 2323 [helping career call].)

Again, the testimony of Ashford's victims shows how statements like those Dr. Lucido identified are likely to deceive students about their ability to achieve the helping careers with an Ashford degree. For example, Roberta Perez testified that her admissions counselor told her a master's in Psychology would allow her to work in "[c]ounseling, social work, therapy, [and] human services" so Ms. Perez reasonably believed her Ashford degree would meet the degree requirements for a therapy license. (11/17/21 Tr. 18:21-27, 19:14-22, 42:10-43:23 [Perez].) Only after graduating with $40,000 in student loans did Ms. Perez discover that she would need to complete an entirely separate program. (11/17/21 Tr. 27:20-30:6, 36:22-37:8 [Perez]; Ex. 331 [Perez rejection letter].) Similarly, Pamela Roberts's counselor told her it would be "no problem" to become a certified substance abuse counselor with an Ashford degree. (11/18/21 Tr. 17:3-18:16, 19:7-18 [Roberts].) A week before graduation, Ms. Roberts learned that her degree did not meet any of the requirements to become a certified substance abuse counselor. (11/18/21 Tr. 23:11-20, 24:22-25:26, 72:20-24 [Roberts].) And Jasmine Cox's counselor told her that an Ashford degree would "allow [her] to be a nurse." (Ex. 3766, Tr. 20:6-9, 21:12-17 [Cox].) Dr. Lucido identified 7 calls with similar helping careers misrepresentations. (11/15/21 Tr. 77:22-78:1 [Lucido].)

As with teaching, Defendants knew it was likely to deceive students to suggest Ashford degrees lead to the helping careers. (Ex. 1035.0005 ["Ashford University cannot prepare students for licensure or certification"].) Yet the evidence shows that this form of deception was widespread. For example, Jenn Stewart, whom Defendants promoted to lead their training department, suggested an Ashford degree to a student clearly interested in nursing. (Ex. 3753, Tr. 216:17-218:16, 219:2-4 [Stewart]; Ex. 815 [email with student].) Similarly, Ms. McKinley testified that her team frequently misled students into thinking they could become social workers or nurses the "moment after getting the degree from" Ashford. (12/1/21 Tr. 162:28-174:5 [McKinley]; Ex. 2038; Ex. 2043.) Lee Bennett, who worked in Defendants' Student Inquiry Center, explained that he was trained to transfer students with nursing or counseling interests to

the "perfect" counselor, who would attempt to enroll the student despite Ashford's lack of counseling or nursing programs. (Ex. 3739, Tr. 184:23-185:4; 194:17-25 [Bennett].) The Court finds that Defendants routinely misled students regarding their ability to pursue the helping careers with an Ashford degree.

3. Defendants Misled Students About How Much Financial Aid They Would Receive and the Costs It Would Cover.

Defendants misrepresented the amount of financial aid that students would receive and the costs that aid would cover. As Dr. Lucido explained, "unless an admissions officer is holding a [] financial aid award letter," they "cannot fairly characterize" whether or how much financial aid any given student will receive, and it is misleading to do so. (11/15/21 Tr. 119:13-120:7 [Lucido].) This includes misrepresentations that students will receive a specific type or amount of aid (grants or loans) (17 calls), that aid will cover specific costs (3 calls), that students will receive a stipend (15 calls), or that students would have no, or only limited, out-of-pocket costs (11 calls).[10] (11/15/21 Tr. 120:11-121:8 [Lucido]; Ex. 3728.)

Student and former employee testimony again confirms that statements like these were likely to deceive. For example, Loren Evans testified that her admissions counselor promised that financial aid would cover the costs of her degree so that she would not have out-of-pocket costs until after graduation. (11/30/21 Tr. 34:14-27 [Evans].) Ms. Evans discovered this promise was false when she reached her lifetime loan limit just a few classes shy of graduating and was forced to drop out, leaving her with massive debt but no degree. (11/30/21 Tr. 41:3-48:20, 50:22-51:2 [Evans].) Ms. Cox testified to a similar experience: though her Ashford advisor promised that financial aid would fully cover her costs, she discovered two years into her degree that she owed an out-of-pocket balance because she had exceeded her lifetime loan limit. (Ex. 3766, Tr. 23:2-15, 28:20-29:7, 29:20-30:1 [Cox].) Unable to afford her remaining classes, she—like Ms. Evans—was forced to withdraw. (Ex. 3766, Tr. 33:23-25 [Cox]; see also Ex. 3765, Tr. 52:2-16, 59:21-60:2, 108:15-21 & Ex. 194 [Ybarra was promised $5,000 in Pell Grants]; 12/1/21 Tr. 188:4-189:2 [McKinley and "everyone around" her told students "it was very likely" they would

[10] In none of these calls did the admissions counselor reference a final award letter. (11/15/21 Tr. 124:12-18 [Lucido].)

receive Pell Grants"].) Making unsupported representations about aid and out-of-pocket costs is misleading because only Ashford's financial services department is responsible for packaging financial aid, issuing award letters, and answering specific financial aid questions. (11/10/21 Tr. 25:3-8 [Parenti].) Indeed, on average, over 75% of students who ultimately received financial aid did not receive their award letter until after enrollment, and one-third of students who received financial aid did not receive their award letter until after the Ashford Promise[11] expired and they were financially liable. (Ex. 3597; see also 12/8/21 Tr. 198:19-199:18 [Curran], Ex. 1063.0003.)

Defendants plainly recognized that it was misleading for admissions counselors to predict aid awards or out-of-pocket costs. (See, e.g., Ex. 1328 ["Don't say" "Based on my experience, you will receive the Pell Grant" or that "Financial aid will cover all of your costs for your program."].) The Court finds statements in this category deceptive.

4. Defendants Misled Students by Downplaying Their Debt.

The Court finds that admissions counselors also misled students by downplaying their future debt. For example, counselors deceptively quoted students' loan payments at a small fraction of their potential magnitude. (11/9/21 Tr. 32:18-33:8 [Dean testifying he would downplay debt].) As Dr. Lucido testified, the four calls he identified in this category were misleading because admissions counselors cannot know how much debt a student will take on, what a student's loan payments will be, or the student's ultimate ability to make those payments. (11/15/21 Tr. 78:6-8, 134:11-135:2 [Lucido].) More specifically, assurances to students that their payments "might be like $50 a month or it might be $75" are misleading because they minimize student debt and the actual payment could easily be several hundred dollars. (11/15/21 Tr. 135:8-28 [Lucido]; Ex. 2356.0021; 11/30/21 Tr. 107:15-25, 143:27-144:3 [Embry was told her loan payments would be minimal and that her loans would be forgiven if she taught for ten years].) Defendants admit that this type of statement is deceptive. (11/10/21 Tr. 41:26-43:13 [Parenti].)

[11] The Ashford Promise provides a 100% tuition refund for first course if student drops within the first three weeks. (Ex. 3572.0010-0011 [Defs. Am. Resp. to Set 3 RFA54, 55].)

5. Defendants Misrepresented Federal Financial Aid Rules.

Substantial evidence shows that Defendants misled students about the rules and requirements governing federal financial aid, which Dr. Lucido testified limits students' ability to understand how to access financial aid and when they might receive their financial aid. (11/15/21 Tr. 141:16-142:2 [Lucido].) Dr. Lucido identified 8 calls with these misrepresentations (11/15/21 Tr. 78:9-11 [Lucido]), including: stating that the government will subsidize interest on all loans when it will not (Ex. 1514; Ex. 2265)[12], stating that Pell Grants are given to any actively enrolled student when there are significant need-based restrictions (Ex. 2366), and misstating other eligibility requirements for various types of financial aid (Ex. 2262; Ex. 2390). (11/15/21 Tr. 142:19-144:12 [Lucido].) Defendants knew it was deceptive to misstate these financial aid rules. (E.g., 11/10/21 Tr. 29:12-25 [Parenti agreeing that excess funds cannot be used for any purpose].)

6. Defendants Misrepresented the Feasibility of "Doubling Up".

The evidence shows that Defendants misled students about the feasibility of "doubling up," or taking two classes simultaneously, rather than the standard one class at a time. As Dr. Lucido explained, doubling up can generate out-of-pocket costs of over $1,000 per Ashford class because financial aid is limited per academic year. (11/15/21 Tr. 148:18-150:1 [Lucido].) Defendants' own internal documents and witnesses confirm that Defendants knew it was misleading to tell students about doubling up on classes without also disclosing the additional costs. (See, e.g., Ex. 1330 ["[F]inancial aid may not be applied to the cost of the second course and will be an out-of-pocket expense."]; 11/10/21 Tr. 47:6-9 [Parenti].) Vice President of Financial Aid and Student Services Kyle Curran testified that counselors should inform students that doubling up creates out-of-pocket costs. (12/8/21 Tr. 151:19-152:17 [Curran].) Nevertheless, Dr. Lucido's call analysis identified 30 calls with this misrepresentation. (11/15/21 Tr. 78:12-14 [Lucido]; see, e.g., Ex. 2350 [representative said student could double up and graduate in two years, which would generate significant out-of-pocket costs]; 11/15/21 Tr. 151:3-152:5 [Lucido];

[12] While Dr. Lucido noted and explained this misrepresentation in his Appendix E (Ex. 1495.0030), Defendants' expert Dr. Yoram (Jerry) Wind was not even aware of the difference between subsidized and unsubsidized loans when he conducted his call review, and therefore failed to identify this misrepresentation. (12/13/21 Tr. 224:23-26 [Wind].)

see also 12/1/21 Tr. 189:10-17 [McKinley testifying that advisors commonly offered students the option of doubling up].) The Court agrees that this category of misrepresentation was deceptive.

7. Defendants Understated the Costs of Attendance.

The Court finds that the People presented ample evidence that Defendants misled students about the cost of an Ashford degree. First, counselors led students to believe tuition costs represented the entire cost, when in fact costs include significant books and fees expenses. (11/15/21 Tr. 155:9-156:15 [Lucido]; Ex. 2386; Ex. 3728 [Lucido identified 15 calls in Category 4a[13]]; 12/8/21 Tr. 149:16-25 [Curran admitting that when quoting costs, counselors should include books and fees].) Second, counselors quoted costs that did not match the academic catalog, for example by understating the cost of a degree program by more than $8,000.[14] (11/16/21 Tr. 123:19-124:23 [Lucido]; Ex. 2399; Ex. 3728 [Lucido identified 4 calls in Category 4b].) Third, counselors inaccurately compared Ashford's price with other schools, for example by claiming that U.C. Berkeley is more expensive than Ashford, when in fact Ashford costs more for the same number of credits. (11/15/21 Tr. 157:22-159:14 [Lucido]; Ex. 2312; Ex. 3728 [Lucido identified 2 calls in Category 4d].) Finally, Defendants misled students about the total cost of an Ashford degree by quoting the cost per "academic year." As Dr. Lucido explained, students reasonably believe one academic year represents one fourth of the cost of a bachelor's degree, when it fact in is only one fifth of the cost at Ashford. (11/15/21 Tr. 161:4-162:5 [Lucido].) That is because, unlike a traditional 4-year school, Ashford divides its bachelor's degrees into 5 "academic years," so students must multiply by 5 to determine their total cost, not by 4. (*Id.*; Ex. 3572 [Defs. Am. Resp. to Set 3 RFA 58, 60]; Ex. 9036.0213.) Alison Tomko testified that when her admissions counselor quoted the cost of Ashford at around $10,000 per academic year, Ms. Tomko reasonably believed that her degree would therefore cost around $40,000, when in fact it cost more than $50,000. (11/8/21 Tr. 161:5-162:19, 165:6-9 [Tomko]; Ex. 172.) Dr. Lucido identified 12 calls where quoting the cost per academic year likely led students like Ms. Tomko to

[13] Ex. 1495.0001-8 shows which categories correspond to which misrepresentations.

[14] Again, by contrast, defense expert Dr. Wind did not know the cost of Ashford's degree programs (and did not give his coders that information), and so he failed to identify this misrepresentation in his call review. (12/13/21 Tr. 238:3-5 [Wind].)

believe their degree would cost less than it actually would. (Ex. 3728 [Category 4c]; e.g., Ex. 2395.)

8. Defendants Misled Students About the Pace and Time Commitment of an Ashford Degree.

The evidence demonstrates that Defendants misrepresented the pace of completing an Ashford degree by wrongly characterizing their bachelor's degree programs as accelerated and akin to traditional four-year programs. In fact, Ashford degrees take *longer* than degrees at a traditional university. (11/15/21 Tr. 167:16-26 [Lucido].) At a traditional school, students earn a total of 30 credits between September and May, which allows them to finish a 120-credit degree in four calendar years, with summers off. (11/15/21 Tr. 168:17-169:19 [Lucido].) By contrast, a typical Ashford student must take classes for 50 weeks per year – with no summer break – to earn the same 30 credits. (11/15/21 Tr. 168:17-169:11 [Lucido]; Ex. 3572.0012.) This is substantially more weeks per year to earn the *same* 120-credit degree. (11/15/21 Tr. 169:24-28 [Lucido].)

Dr. Lucido identified 27 calls in which admissions counselors falsely described Ashford's program as a 4-year program, and 2 calls describing it as accelerated. (11/15/21 Tr. 78:19-25 [Lucido]; Ex. 3741.) For example, Dr. Lucido identified a representative stating, "you would be taking eight classes a year and that you'll maintain that pace for, you know, an average graduation rate of four years, so 120 credits." (Ex. 2285.) This is false because taking 8 courses for 4 calendar years would leave the student 24 credits short. (11/15/21 Tr. 171:7-27 [Lucido]; Ex. 2285.) As falsehoods, these statements are likely to deceive Ashford's students about the pace of their degrees. (11/15/21 Tr. 166:1-25, 170:1-7 [Lucido].) Defendants admit that it is "inaccurate" to describe their degrees as "accelerated," but their own records show counselors told students this misleading information. (11/10/21 Tr. 72:1-21 [Parenti]; Ex. 3735.)

9. Defendants Misrepresented Students' Ability to Transfer Credits.

The evidence shows that Defendants misled students about the ability to transfer credits in and out of Ashford. As explained by Dr. Lucido and several students, transfer credits matter because they can reduce the time and cost of a degree. (11/15/21 Tr. 174:9-175:5 [Lucido]; 11/30/21 Tr. 95:8-12 [Embry testifying that credits accepted meant "a shorter amount of time for

me to be in school."].) Admissions counselors routinely made inaccurate promises that students' prior credits or life experience would transfer before the student received an evaluation from the responsible department: Ashford's Registrar. (11/15/21 Tr. 83:5-12 [Lucido]; Ex. 3573 at 9:20-27, 12:6-18, 69:18-25; see also 11/10/21 Tr. 48:18-50:22 [Parenti].) For example, Jessica Ohland's admissions counselor stated that at least half of her prior credits would transfer into Ashford "no matter what." Only after Ms. Ohland completed her first class did she learn that just 20 of her 69 prior credits had transferred, extending the time to degree completion. (Ex. 3771, Tr. 18:12-20:4, 25:12-26:11, 27:4-6, 85:17-25 [Ohland]; Ex. 3705 [Ohland]; see also Ex. 3765, Tr. 146:17-147:25 [Ybarra] [12 of 59 credits applied to Ashford degree].)

The testimony of students like Ms. Ohland mirror the 39 calls that Dr. Lucido identified with at least one misrepresentation about students' ability to transfer credits into Ashford. (11/15/21 Tr. 78:26-79:4 [Lucido].) As Dr. Lucido explained, statements like "we'll make sure to apply that" are likely to deceive students into thinking their credits or experience will be accepted (11/15/2021 Tr. 180:11-27 [Lucido]; Ex. 2316), when in fact students receive official credit evaluations no earlier than four weeks after enrolling. (Ex. 3754, Tr. 183:2-17, 183:20-184:20 [Scheie]; Ex. 3746, Tr. 308:3-312:2 [Nettles]; Ex. 760-B.)

Dr. Lucido also explained why Defendants should not tell students that their Ashford credits will transfer out and apply elsewhere: because Defendants do not know the transfer rules of other institutions. (11/15/21 Tr. 79:2-4 [Lucido identifying 4 calls]; 11/15/21 Tr. 183:17-184:3 [Lucido].) In fact, transferring Ashford credits out is far from assured. (See Ex. 3762, Tr. 59:24-60:11 [none of Ms. Winot's credits transferred out]; 11/30/21 Tr. 49:1-10 [less than half of Ms. Evans's credits transferred out].)

Defendants knew it was misleading to promise or imply credits would transfer. (Ex. 1332 [Say This Not That training document]; 12/1/21 Tr. 33:25-28 [Hallisy].) Nevertheless, multiple former employees testified that misrepresentations like the ones Dr. Lucido identified were routinely made and encouraged by managers. (11/9/21 Tr. 44:25-45:3, 50:11-14 [Dean testifying he suggested transfer into Ashford was guaranteed]; 12/1/21 Tr. 180:25-181:13, 185:25-186:3 [McKinley testifying she would "sell it as though [credits] were going to transfer"]; 12/1/21 Tr.

177:22-178:1 [McKinley testifying her manager liked statements that Ashford credits would transfer "to any other schools"] & Exs. 474, 2005 [template emails promising credit transfer].)

B. The Evidence Shows that Defendants Knew of Extensive Deception Within the Admissions Department.

Defendants were well aware of the deception pervading their admissions department. Over the last decade, Defendants amassed an extensive paper trail documenting the same misrepresentations identified by Dr. Lucido. The People's expert Greg Regan, a forensic accountant, conducted an analysis of Defendants' own scorecard data[15] to determine the frequency and type of non-compliant statements in their admissions calls. (12/2/21 Tr. 14:18-15:16 [Regan].) Mr. Regan's de-duplication efforts (12/2/21 Tr. 23:20-25:11), consolidation of Defendants' Excel[16] and SQL scorecards (12/2/21 Tr. 26:8-28:22), and tabulations of the rates and numbers of non-complaint scorecards (12/2/21 Tr. 37:19-21, 38:11-42:22, 58:2-59:9, 126:11-127:4), were adequately explained and the Court gives Mr. Regan's analysis weight.

At a high level, Mr. Regan's analysis revealed that admissions counselors made non-compliant statements in 20.5% of scorecards discussing a topic relevant[17] to this case, for a total of 749,981[18] non-compliant calls nationwide.[19] (12/2/21 Tr. 45:2-47:12, 58:19-59:9, 126:11-

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[15] Scorecards are documents that the compliance department used to assess calls between students and employees. (11/10/21 Tr. 65:24-28, 67:10-68:8 [Parenti]; see, e.g., Ex. 9002.)

[16] The Court finds that Mr. Regan's use of Excel scorecards is reasonable because they were the only data source for part of the statutory period and the percentage of calls with a relevant non-compliant statement does not materially change when using Regan's consolidated data set versus only SQL (20.5% v. 20%). (12/2/21 Tr. 23:22-28, 25:21-27, 47:17-49:7 [Regan] & Ex. 3423; see also 12/13/21 Tr. 60:16-19 [Chappell] [only Excel available until 2012].)

[17] The Court finds that it was reasonable for Mr. Regan to rely on the Attorney General's determination of which scorecard verbiages were relevant. (12/2/21 Tr. 37:22-38:2 [Regan].) This identification allowed Mr. Regan to exclude verbiages regarding problems not relevant to this case like missing FERPA verification (Ex. 3416 [list of relevant verbiages for Mr. Regan's analysis].) Moreover, the rate of non-compliance was *higher* – 25% – for all call scorecards versus those with relevant verbiages, which demonstrates that the relevance limiter did not bias the results in the People's favor. (12/2/21 Tr. 38:15-41:28 [Regan].) Finally, to the extent any verbiages were included in error, there is no evidence they would have materially impacted Mr. Regan's results. (12/2/21 Tr. 131:14-135:7 [Regan] [verbiages raised during cross examination occurred on ten or less scorecards out of 157,000 scorecards].)

[18] This includes only scorecards from 2013 to 2020. (12/2/21 Tr. 57:18-58:5 [Regan].)

[19] The Court finds that Mr. Regan appropriately classified statements rated "development opportunity" or "coaching" as non-compliant, in addition to "issues." Defendants frequently used the "development opportunity/coaching" rating and the "issue" rating for identical or nearly identical statements, such as "guaranteed student's credits will transfer into their program." (12/2/21 Tr. 34:16-35:2 [Regan].) The "development opportunity/coaching" rating was also used

127:4 [Regan]; Ex. 3420.) Further, the evidence showed that compliance personnel were trained to, and in fact did, comprehensively mark *both* compliant and non-compliant verbiages when completing scorecards (12/13/21 Tr. 34:13-16; 36:14-37:5 [Chappell]), supporting Mr. Regan's testimony that the 20.5% rate accurately captures the percentage of calls with at least one relevant non-compliant statement, and rebutting Defendants' contrary assertions. (12/2/21 Tr. 38:11-39:2, 126:11-127:4 [Regan]).[20]

Defendants had the capacity to and did analyze their own compliance data. (Ex. 3749, Tr. 84:19-87:25 [Chappell].) Indeed, at trial, Defendants presented their own analysis of their call scorecards, touting a compliance rate that rose from 75% in 2012 to 94.7% in 2018. (Ex. 942.0014 & 12/9/21 Tr. 209:12-211:18 [Chappell].) The Court gives this evidence little weight, however, because it does not include statements rated as "development opportunity" or "coaching" since Defendants did not consider these problematic statements to be non-compliant. (12/9/21 Tr. 210:15-211:18 [Chappell].) In addition, Defendants' analysis excludes multiple years in the statutory period: 2009-2011 and 2019-2021.

From 2012 to 2014, Defendants also received mystery shopper reports from a company called Norton Norris, which documented specific misrepresentations regarding financial aid and transfer credits. (Ex. 3760, Tr. 17:7-14, 26:3-26:7, 115:23-116:2 [Norton], Exs. 285, 289, 1285, 1286, 1408–1425.) These reports, which Mr. Norton testified were the "gold standard" for mystery shopping[21] (Ex. 3760, Tr. 35:6-8 [Norton]), revealed systematic deception in admissions. In one 2014 report, every single call was rated either "untruthful or unethical" or "incomplete or potentially misleading." (Ex. 1414.0001-2; see also Ex. 3760, Tr. 35:6-7 [Norton]; Exs. 285, 289, 1285, 1286, 1408-1425.) These were not sporadic or isolated statements of which management

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for statements that cannot reasonably be classified as compliant, including "Representative advised that financial aid will cover the student's entire cost of tuition" and "Representative advised the student that [Ashford's] academic program or programs can lead to becoming a social worker." (12/13/21 Tr. 51:9-53:17 [Chappell]; see also Ex. 7668.) Even compliance leader Jeanne Chappell described these ratings as "dangerously close" to an "issue." (12/9/21 Tr. 205:2-4 [Chappell].)

[20] Moreover, 12,000 SQL call scorecards include both compliant and non-compliant statements. (Ex. 9010 [Tableau database containing SQL call scorecards].)

[21] By contrast, Mr. Norton admitted he never spoke to an admissions counselor and that he "didn't have [the] kind of insight" needed to evaluate the compliance program. (Ex. 3760, Tr. 104:4-104:10, 115:2-8, 130:25-131:1 [Norton].)

was unaware. Yet management failed to take Norton Norris's findings seriously, testifying that it was "consistent with a zero-tolerance approach to compliance" to have nearly one-third of counselors guaranteeing transfer credits. (11/10/21 Tr. 108:8-15 [Parenti].) Rather than fix these problems, Defendants discontinued the mystery shopper program. (Ex. 3760, Tr. 115:23-116:2, 148:24-149:7 [Norton].)

Internal documents further demonstrate that Defendants understood the extent of the deception emanating from the admissions department. For example, Defendants' Associate Director of Compliance, Matthew Hallisy, observed "areas where the level of negligence is astonishing" in his role overseeing admissions call monitoring. (Ex. 259.) As one manager under Mr. Hallisy put it, he felt "weary of identifying the same repetitive non-compliant behavior on the phones," and urged the company "do something radically different to stop this seemingly endless cycle." (Ex. 262.0002-3.) Yet Mr. Hallisy testified he saw no need to take action. (11/30/21 Tr. 238:7-14 [Hallisy].) Similarly, a report from Defendants' internal ombudsman office, which was circulated to dozens of top executives, reported that counselors were "telling potential students that we offer fully certified teaching degrees" and "guaranteeing as to [financial aid] amounts that would be received or credits that will be transferred." (Ex. 1359.0012-13.) Yet Ms. Alice Parenti, then the Divisional Vice President of Admissions, could not recall taking any steps to address the ombudsman's concerns. (11/10/21, Tr. 202:12-205:21 [Parenti].) Finally, executives received troubling complaints directly from students, yet failed to take appropriate action. (E.g., Exs. 1033, 1034, 1048 [student complaints about teaching misrepresentations] & 12/9/21 Tr. 61:1-63:4 [Farrell testifying he did not report these complaints to admissions or compliance].)

C. Defendants Tolerated or Promoted Repeat Compliance Offenders.

Defendants' treatment of repeat compliance offenders also illustrates their knowledge and acceptance, even approval, of misrepresentations. Mr. Regan's expert testimony revealed that nearly 1,000 admissions counselors accumulated at least 10 non-compliant calls, some many more. (12/2/21 Tr. 51:1-25 [Regan].) For example, Michael Corner and Corey Howard accumulated 94 and 83 non-compliant scorecards. (12/2/21 Tr. 137:18-24, 138:25-139:17 [Regan].) Given that Defendants scored less than 1% of their calls, the true scope of non-

compliance suggested by Defendants' own data is much greater. (12/2/21 Tr. 50:2-19 [Regan].)

This expert testimony was corroborated by the testimony of current compliance leader Jeanne Chappell. (12/9/21 Tr. 188:27-28 [Chappell].) Ms. Chappell admitted repeating the same corrective action for admissions counselor Ralph Mastracchio for two non-compliant statements to students, despite being aware that Mr. Mastracchio had previously accumulated approximately *fifty* non-compliant statements during his tenure. (12/13/21 Tr. 77:13-83:27 [Chappell]; Ex. 3443 [email documenting Mastracchio history].)

This level of non-compliance among line-level admissions employees follows logically from Defendants' promotion decisions. For example, Mr. Regan testified that Defendants promoted 87 counselors who made relevant non-compliant statements in at least *half* of their monitored calls. (12/2/21 Tr. 54:8-16 [Regan].) Mr. Regan also explained that 131 admissions managers supervised teams that made relevant non-complaint statements in at least half of their calls. (12/2/21 Tr. 55:18-56:18 [Regan] [also noting 94 of those 131 continued to supervise for multiple years].) Defendants' decision to promote, rather than meaningfully discipline, repeat offenders undermines their claims that students' interests were put first and that deception was not tolerated (see, e.g., 12/6/21 Tr. 206:9-207:8 [Pattenaude]; 12/7/21 Tr. 41:21-42:5 [Pattenaude[22]); 11/10/21 Tr. 73:8-10 [Parenti]), particularly juxtaposed against their practice of firing the bottom 10% of employees based in part on enrollment numbers. (Ex. 3753, Tr. 107:15-108:25 [Stewart]; Ex. 792; 11/10/21 Tr. 22:10-23:1 [Parenti].)[23]

As multiple former employees testified, one result of Defendants' approach to compliance was an admissions floor where counselors worried frequently about meeting their numbers, and rarely about compliance. (Ex. 3769, Tr. 85:4-11 [Adkins] ["We never -- there was never a

[22] Dr. Pattenaude's testimony regarding compliance also lacks credibility given that he could not recall being made aware of a "single instance" of non-compliance while President. (12/7/21 Tr. 46:6-14 [Pattenaude].)

[23] There is also evidence that Defendants failed to contact students that call monitoring indicated were likely misled. As Wesley Adkins testified, when he received a non-compliant scorecard, nobody asked him to call back the student to provide corrected information. (Ex. 3769, Tr. 80:18-24 [Adkins].) Defendants' assertion that they had an "unwritten policy" to follow up with certain students (11/10/21 Tr. 198:28-199:10 [Parenti]) is not credible given that Defendants generally comitted counselor training to writing, and given Mr. Johnson's testimony that written training was "valuable" because "humans can forget." (12/14/21 Tr. 138:12-23 [Johnson].)

concern about compliance. There was always a concern about meeting your matrix numbers."]; 12/1/21 Tr. 214:6-7 [McKinley] ["I really wasn't even aware that we had a compliance department."].) The evidence that these employees did receive some compliance-related corrective action, (e.g., 11/9/21 Tr. 137:22-25 [Dean]; Ex. 3769, Tr. 221:8-12 [Adkins]), is not entitled to significant weight if actions by compliance were not perceived as serious.

The failures of the compliance department were likely exacerbated by its diminished capacity over time. (12/9/21 Tr. 170:17-171:4 [Chappell testifying that compliance personnel fell from 32 to 6]; 12/13/21 Tr. 32:16-19 [Chappell testifying that minutes monitored per counselor fell from 75 to 30 after Iowa monitorship, see Part IV(C), *infra*, ended]; 12/14/21 Tr. 125:2-18 [Johnson testifying he was laid off and told his position as VP of Ethics and Compliance was "redundant"].)

D. Zovio Unlawfully Threatened, Assessed, and Collected a Prohibited Cost-of-Collection Fee.

The law prohibits fees that pass the costs of debt collection to the debtor. Specifically, under the Rosenthal Fair Debt Collection Practices Act ("Rosenthal"), "[n]o debt collector shall . . . (b) Collect[] or attempt[] to collect from the debtor the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt[.]" (Civ. Code, § 1788.14, subd. (b).) Rosenthal also prohibits *threats* of unlawful fees. (Civ. Code, §§ 1788.10, subd. (f); 1788.13, subd. (e).) Likewise, the Supreme Court held in *Bondanza v. Peninsula Hospital & Medical Center* (1979) 23 Cal.3d 260 that cost-of-collection fees violate Civil Code section 1671's prohibition on liquidated damages and the UCL. These rules are actionable under the UCL's unlawful prong. (*Cel-Tech*, *supra,* 20 Cal.4th at p. 180.) Zovio violated Rosenthal and *Bondanza* by threatening, assessing, and actually collecting an illegal cost-of-collection fee from Ashford's students.

1. Zovio Was a Debt Collector for Purposes of Rosenthal.

Rosenthal applies to "any person who, in the ordinary course of business, regularly, on behalf of that person or others, engages in debt collection [of consumer debts]." (Civ. Code,

§ 1788.2, subds. (b) & (c).)[24] The Court finds that Zovio is subject to Rosenthal because it regularly collected debts owed by Ashford students. (Civ. Code, § 1788.2, subd. (c); Ex. 3642 [Fact Stipulation], ¶4; accord Ex. 3758, Tr. 84:3–14 [Moore]; see also Ex. 643 [Collections Process Workflow]; Ex. 3758, Tr. 89:4-12, 89:22-90:7, 90:23-91:3 [Moore]; Ex. 641 [PMQ Notice].) Because education is for a "personal" purpose, the debt Zovio collected was consumer debt under Rosenthal. (See Civ. Code, § 1788.2, subds. (b), (e), & (f).)

2. Zovio Violated Rosenthal and *Bondanza* 28,465 Times.

Defendants stipulated that from 2008 through December 19, 2013, "pursuant to a policy developed by Defendants, third party debt collection agencies under contract with Defendants charged students a debt collection fee, calculated to pass along the cost of the agency commission for the account to the student." (Ex. 3642, ¶ 6.) As Collection Manager Scott Moore testified, Defendants instructed the collection agencies to add that fee to every student account, and the agencies did. (Ex. 3758, Tr. 208:7-209:9, 211:20-24, 265:21-266:17 [Moore].) Typically, the fee totaled 33% of the student's balance. (Ex. 3758, Tr. 194:15-196:16 [Moore].) Prior to referring an account to a collections agency, Defendants sent students a final demand letter, indicating that unless the student paid immediately, collection fees would accrue. (Ex. 3758, Tr. 210:25-212:6 [Moore]; Ex. 647.)

The Court finds that Zovio's cost-of-collection fees were unlawful and resulted in tens of thousands of UCL violations. Zovio sent 16,401 final demand letters to California students, threatening to assess such fees, in violation of Civil Code sections 1788.10, subdivision (f) and 1788.13 subdivision (e). (Ex. 648 at 12:7-8 [SROG 4 response]; Ex. 3758, Tr. 210:25-213:24, 214:20-215:2 [Moore].) The fact that no student testified that these letters induced their payment is irrelevant because *attempted* collection alone violates the law. (Civ. Code, § 1788.14 subd. (b) [prohibiting "collecting or *attempting* to collect" cost-of-collection fee].) Additionally, the

[24] Rosenthal defines (1) "debt collection" as "any act or practice in connection with the collection of consumer debts"; (2) "consumer debt" as "money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction;" and (3) "consumer credit transaction" as "a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person primarily for personal, family, or household purposes." (Civ. Code, § 1788.2, subds. (b), (e), & (f).)

company's policy of requiring its agents—the collection agencies it contracted with—to assess and collect cost-of-collection fees, violated Civil Code section 1788.14(b). The assessments also violated the rule of *Bondanza*, which held that it was "plainly unlawful" to assess a fee of one-third of consumers' debt balance, in order to compensate for the agency's commission. (*Bondanza*, *supra*, 23 Cal.3d. at 267.) 12,064 California students were assessed an unlawful cost-of-collection fee. (Ex. 648 at 11:9 [SROG 3 response]; Ex. 3758 Tr. 219:1-5 [Moore]; Ex. 3642, ¶ 9.) Adding these figures, the Court finds 28,465 collection-related violations.[25]

VI. DEFENDANTS' DEFENSES FAIL.

A. Zovio Is Liable for the Deception of Its Admissions Counselors.

Defendants are liable for their admissions counselors' misrepresentations because Defendants indisputably had the right to control their activities. (See *Ford Dealers*, *supra*, 32 Cal.3d at pp. 360-361; *JTH Tax*, *supra*, 212 Cal.App.4th at p. 1242; see, e.g., 11/10/21 Tr. 119:1-5 [Parenti]; 12/9/21 Tr. 217:21-218:12 [Chappell].) The right to control is sufficient for UCL and FAL liability, even if Defendants did not exercise that control to prevent deceptive practices. It is also common sense that an employer can condone deception without uttering the words, "You are authorized to lie." Indeed, the evidence shows that despite formal training, (see, e.g., 12/9/21 Tr. 190:11-19 [Chappell]; 12/1/21 Tr. 43:2-22 [Hallisy]), the pressure to enroll created an environment in which misrepresentations were tolerated and even encouraged.[26] (See Part V(C), *supra.*) Moreover, Defendants knew of deception at unacceptable levels for a decade. (See Part V(B), *supra.*) This is more than sufficient to hold Defendants liable. (See, e.g., *Conway*, *supra*, 42 Cal.App.3d at p. 886; *First Federal Credit Corp.*, *supra*, 104 Cal.App.4th at p. 735.)

Nor do Defendants fall into the narrow exception identified in dicta in *Ford Dealers*, specifically that case's footnote that a company might be able to avoid liability for its agents' misrepresentations if *all* of the following conditions were met: the company (1) made every effort

[25] Although making a profit on the unlawful fee is not a requirement under Rosenthal, the Court finds that Zovio in fact earned such a profit. (Ex. 3758, Tr. 182:5-184:16 [Moore testifying that without the fee, Zovio absorbed the collection agencies' commissions].)

[26] The Court affords little weight to the testimony by Defendants' managers and executives that deception was not authorized, because they had superficial knowledge of the day-to-day experience of admissions counselors. (See, e.g., 12/7/21 Tr. 32:1-19, 42:1-18 [Pattenaude]; 12/14/21 Tr. 89:6-8, 123:7-18 [Johnson].)

to discourage misrepresentations, (2) had no knowledge of its agents' misleading statements, and (3) when so informed, refused to accept the benefits of any sales based on misrepresentations and took action to prevent a reoccurrence. (*Ford Dealers*, *supra*, 32 Cal.3d at p. 361, fn. 8.) No subsequent case has applied the dictum in *Ford Dealers* to defeat liability. To the contrary, the two appellate courts that have considered the exception concluded it did not apply. (See *JTH Tax*, *supra*, 212 Cal.App.4th at pp. 1247-1248 [noting exception would only apply in "unusual circumstances"]; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 798-799 [same].) In any case, the exception does not apply here. The evidence shows that first, Defendants knew of misleading statements, including through their own scorecards, the Norton Norris mystery shopping reports, their exit surveys, their ombudsman, and other whistleblowers. (See Part V(B), *supra.*) Second, Defendants made scant "effort to discourage" the misrepresentations. They terminated Norton Norris, promoted employees with repeated compliance infractions, continuously ran a high-pressure admissions floor, and did not heed whistleblowers' warnings. (See Part V(C), *supra*.) Third, with one or two isolated exceptions, Defendants did not refuse to accept the benefits of enrollment based on misrepresentations. (Compare 12/7/21 Tr. 26:21-27:7 [Pattenaude testifying to forgiving one student's balance]; with *Rob-Mac*, *supra*, 148 Cal.App.3d at p. 799 [defendant liable who refunded purchaser's money in only one of seven sales]).

B. Defendants' Written Disclaimers Cannot Cure the Deception in Their Phone Calls, Legally or Factually.

The fact that Defendants' enrollment agreements (over 30 pages, see, e.g., Ex. 166), academic catalogs (over 300 pages, see, e.g., Ex. 9043), website (30,000 pages, 12/8/21 Tr. 173:8-11 [Curran]), or other written materials may contain truthful information about Ashford does not immunize Defendants for their misrepresentations over the phone. The first reason is legal: under California law, a deceptive statement cannot be cured by separate disclosures. (See *Prata*, *supra*, 91 Cal.App.4th at p. 1145; *Chern*, *supra*, 15 Cal.3d at p. 876 [accurate written disclosures do not cure misleading quotes made in initial dealings with customers]; *Chapman v. Skype Inc*. (2013) 220 Cal.App.4th 217, 227-28 [fine-print disclosures about plan limits in a footnote do not, as a matter of law, cure characterization of phone plan elsewhere on website as

"unlimited"].) The law requires honesty in all consumer interactions, not just in fine print. (*Brady*, *supra*, 26 Cal.App. 5th at p. 1172.) This maxim applies just as forcefully to agreements signed by students as it does to Ashford's website. And if Defendants' oral misrepresentations cannot be undone by their written disclaimers, they also cannot be undone by sources a student may encounter separate from Defendants. For that reason, the Court gives no weight to Dr. Wind's opinion that students are "active consumer[s] . . . doing searches . . . talking with friends . . . [and] competitors." (See 12/13/21 Tr. 171:16-19 [Wind].) Moreover, as Defendants' own witnesses admitted, students are entitled to trust their counselors. (Ex. 3743, Tr. 104:18-21 [Clark]; 12/7/21 Tr. 49:5-9 [Pattenaude]; 12/9/21 Tr. 182:7-16 [Nettles]; Ex. 3754, Tr. 26:15-26:19 [Scheie].)

The second reason is factual. In over a dozen calls, Dr. Lucido identified Ashford admissions counselors discouraging students from reviewing Ashford's catalogs with statements like, "Don't click it. Let me tell you why you don't click it right now. The catalog is almost 300 pages." (11/15/21 Tr. 88:21-89:27 [Lucido]; Ex. 3248; see also Ex. 807 [template email sent by Stewart stating, "The seventh section is a link to our university catalog. There is no need to download it, it's over 300 pages."].) As Eric Dean testified, his manager instructed him to "spit []out" financial information in the enrollment agreement as fast as possible. (11/9/21 Tr. 62:11-63:8 [Dean]; Ex. 3681.) These practices leave students more reliant on their counselors. (11/15/21 Tr. 87:17-25 [Lucido].) Indeed, multiple students testified that they did not read the enrollment agreement or catalog carefully if at all, instead trusting the information already provided by their counselor. (See, e.g., 11/30/21 Tr. 84:23-86:6 [Embry]; Ex. 3771, Tr. 19:1-6, 24:1-15 [Ohland]; 11/18/21 Tr. 44:6-8, 44:16-45:9 [Roberts].) Others raised concerns about the fine print only to be reassured and further misled. (See 11/8/21 Tr. 140:9-141:19 [Tomko testifying she asked counselor about licensure disclaimer and was told, "there would be no issue."].)

Furthermore, even if disclosures on Defendants' website were pertinent to misrepresentations made over the phone, generalized testimony that counselors received website training (12/1/21 Tr. 199:12-200:5 [McKinley]), and can provide a "tour" of "all of the different things about the school" (11/10/21 Tr. 140:6-19 [Parenti]) is vague and entitled to little weight. While Defendants also introduced evidence of the "net price calculator" and program costs on

their website, (Ex. 7740.23524-25; Ex. 7740.27075), those disclosures are not only legally irrelevant to misstatements of cost over the phone, but Defendants also did not show that they were part of the "tour" or meaningfully highlighted for students. There is also evidence that portions of Defendants' website itself were misleading. For example, Dr. Tony Farrell agreed that the only credentialing disclosure on the College of Education's website landing page was embedded within the "Special Terms and Conditions" section, which a student would have to affirmatively open in order to view. (Ex. 1047 & 12/9/21 Tr. 66:22-67:13 [Farrell]; see also Ex. 7740.01826-01830 [Ashford webpage stating that "[t]hrough the program's courses, students will be able to focus on . . . social work"]; 12/8/21 Tr. 209:24-210:4 [Curran]; see discussion of EFIP tool in Part VI(C)(3), *infra*.) Other disclaimers, like emails Defendants sent to students about teacher licensure requirements *after* the students had already earned 30, 60, or 90 credits, (12/9/21 Tr. 30:6-31:25 [Farrell]; Exs. 175-177; 11/8/21 Tr. 182:6-183:7 [Tomko]), would not help a student make an informed decision about whether to choose Ashford in the first place.

The evidence clearly shows that students were misled through their phone calls with admissions counselors *despite* any written disclaimers.[27]

C. Third Party Assessments Do Not Defeat Liability.

Defendants presented evidence that they had achieved regional accreditation, and faced oversight through settlements reached with the Iowa Attorney General and the Consumer Financial Protection Bureau. The Court concludes that this third-party evidence is either immaterial, or does not outweigh the People's significant direct evidence of misrepresentations.

1. Regional Accreditation by WASC Does Not Constitute Blanket Approval of Defendants' Admissions Practices.

Defendants assert that Ashford's accreditation by the regional accreditor WASC Senior College and University Commission (WSCUC or, more commonly, "WASC") weighs against a

[27] The Court gives little weight to Dr. Wind's student survey, which he contended showed that "only" 2-5% of Ashford's students felt deceived. (See 12/13/21 Tr. 176:4-10 [Wind].) Dr. Wind's survey had an extremely low response rate of 0.4% and intentionally excluded, among other groups, students aware of litigation against Defendants. (12/13/21 Tr. 204:19-22, 210:3-7, 210:24-211:17 [Wind].) These flaws signal bias in the survey results, and Dr. Wind did not perform any analysis of non-responders to refute the likelihood of bias. (12/13/21 Tr. 215:6-9 [Wind].) Moreover, Dr. Wind's survey showed that 24.1% of students reported that an advisor's promise was key to their decision to attend Ashford. (12/13/21 Tr. 215:18-22 [Wind].)

finding of liability because WASC's accreditation process would have uncovered the misrepresentations at issue in this case. The evidence does not support Defendants' argument. Defendants did not present testimony from any WASC officials or reviewers, so there is no evidence from which to conclude that the accreditor in fact sought to uncover or would have uncovered the misrepresentations in this case when they accredited Ashford. While Defendants provided a small number of admissions calls to WASC in 2019 (Ex. 7539.00051), there is no evidence regarding how WASC chose the calls or what standard WASC used to review them. And Patricia Ogden, Defendants' former Vice President for Accreditation Services, testified that before 2019, Defendants never provided any admissions calls to WASC. (12/7/21 Tr. 84:11-23, 168:5-8 [Ogden].) The Court disagrees that WASC's accreditation implies an approval of Ashford's admissions practices, particularly since WASC continued accrediting Ashford after repeatedly expressing disapproval of its graduation and retention rates from 2012 through 2021. (Ex. 929; Exs. 7529, 7537 & 12/7/21 Tr. 160:15-164:23 [Ogden]; Exs. 7539, 7768 & 12/7/21 Tr. 171:14-174:12 [Ogden]; 12/7/21 Tr. 175:26-176:13 [Ogden].) Moreover, any WASC approval of Defendants' admissions practices would be vastly outweighed by the actual evidence of misrepresentations the Court found here and the Court declines to substitute WASC's judgment for its own.

2. The Iowa Settlement Was Limited and the Monitor's Findings Are Contradicted by the People's Evidence.

Defendants have overstated the relevance of the work of attorney Thomas Perrelli, the third-party monitor who assessed Defendants' compliance with their settlement with the state of Iowa, regarding Iowa's false advertising allegations. Defendants emphasize that Mr. Perrelli examined their business practices, including their phone calls, and found no "pattern or practice" of misrepresentations. (Ex. 3750, Tr. 49:6-8 [Perrelli].) But Mr. Perrelli's assessments do not defeat liability for several reasons. First, Mr. Perrelli's monitorship lasted only from May 2014 to May 2017 (Ex. 3750, Tr. 201:1-202:12 [Perrelli]), whereas this case ranges from 2009 to 2021. Second, Mr. Perrelli did not investigate the same range of misrepresentations that the People have proven in this case. (See, e.g., Ex. 3750, Tr. 301:11-302:12, 311:5-312:4, 325:6-13 [Perrelli].)

Third, even as to the misrepresentations that were on his radar, Mr. Perrelli's summary conclusion of no "pattern or practice" rests on uncertain analytical footing that could not be tested at trial. His call review was done primarily by junior associates at his law firm without the guidance of a statistician, and his reports are devoid of the underlying calls or data they reviewed. (Ex. 3750, Tr. 28:20-21, 215:21-217:3, 219:9-17 [Perrelli].) In contrast to Mr. Perrelli's approach, the People presented evidence of a rigorous call review conducted by a college admissions expert, Dr. Lucido, along with the testimony of a statistician, Dr. Bernard Siskin, to quantify the ramifications of Dr. Lucido's findings. Dr. Lucido's and Dr. Siskin's analyses are detailed and transparent, and deserve substantially greater weight than Mr. Perrelli's. Indeed, they show that Defendants engaged in substantial rates of misrepresentations both during and after Mr. Perrelli's tenure. (See Part VII(A)(2), *infra*.) Fourth, Mr. Perrelli's own reports contain observations that corroborate the People's case, such as Defendants' tolerance for "repeat or severe compliance infractions." (Ex. 3750, Tr. 318:6-319:15 [Perrelli]; Ex. 1154.0015 [2016 Report]; Ex. 1155.0051 [2017 Report].) Finally, while Mr. Perrelli opined about the admissions floor environment based on his occasional visits, the more reliable evidence on that issue is testimony from those with first-hand experience: Defendants' own admissions employees. (See Part III(B), *supra*.) The Court, which is charged with independently evaluating the People's claims and evidence supporting them at trial, declines to adopt Mr. Perrelli's conclusions.

3. Defendants' Settlement with the CFPB is Immaterial.

Nor does Defendants' settlement with the Consumer Financial Protection Bureau ("CFPB") provide a defense here. That settlement involved alleged violations of federal law relating to private loans that Zovio made to students which are not at issue in this case. (Ex. 1078 [CFPB Consent Order] [requiring $23 million in restitution for private loan payments].)

Defendants did elicit testimony that, under the CFPB settlement, they implemented the "EFIP" tool, developed by the CFPB, which walks Ashford students through financial information relating to their degree. (Tr. 12/8/21 Tr. 10:4-13:21 [Smith].) However, as explained in Part VI(B), *supra*, misleading statements by admissions counselors regarding financial aid and cost of attendance cannot be cured by written disclaimers like those contained in the EFIP. More

practically, the EFIP tool provides no information at all on many cost issues raised in the People's case, including: the costs of doubling up, lifetime limits on federal grants and loans, and any comparative costs between Ashford and other schools. (Ex. 7798 & 12/8/21 Tr. 101:8-102:13 [Smith].) Finally, the EFIP tool understates the cost of completing an Ashford degree by 20% by using four academic years, when in fact it takes five. (12/8/21 Tr. 76:5-18 [Smith]; Ex. 7798.)

D. There Is No Good Faith Defense to Liability, and Regardless, Defendants Did Not Demonstrate Good Faith.

Equitable defenses such as good faith cannot defeat UCL liability and are only relevant to fashioning an appropriate equitable remedy. (See *Cortez v. Purolator Prods. Co.* (2000) 23 Cal.4th 163, 179-181.) Further, the existence of a compliance program does not in itself establish good faith. In fact, the court in *JTH Tax* held that a defendant can violate the UCL and FAL even when its own internal policies forbid the false advertisements in question, if the defendant nonetheless fails to stop false advertisements after it becomes aware of them. (See *JTH Tax, supra*, 212 Cal.App.4th at pp. 1247-1249.) Here, it is clear that Defendants did not take serious action to prevent or remedy the extensive deception their compliance program identified. (See Part V(B) [Defendants' Knowledge] and Part V(C) [Defendants' Failure to Act], *supra*.) To be clear, Defendants are not being punished for having a compliance department, but for the actual misleading practices their employees engaged in, and for their failure to meaningfully respond to that misconduct.

E. Defendants' Claimed Investments in Curriculum and Student Services Do Not Negate the People's Evidence of Deception in Admissions.

Many defense witnesses at trial emphasized Ashford's investments in its curriculum, support services for enrolled students, faculty assessments, and so on. (12/7/21 Tr. 11:5-15:10 [Pattenaude]; 12/9/21 Tr. 21:2-23:27 [Farrell].) The Court gives this testimony little weight because it is contradicted by the evidence that Defendants actually spent substantially more on marketing ($4,570/student) than instruction ($2,478/student) (12/6/21 Tr. 75:2-:5, 76:27-77:5 [Cellini]), and, in any event, does not rebut the People's evidence of misrepresentations in the *admissions* department. How that department enticed students to enroll is the central question in this case. As Defendants' expert, Dr. Wind, admitted, a business can invest in its products or

services while also misleading consumers about them. (12/13/21 Tr. 199:2-7 [Wind].) This key point undermines Dr. Wind's "convergent validity" analysis, which was based largely on his unsupported contention that "a deceptive organization will . . . not invest in student learning." (12/13/21 Tr. 110:21-114:28, 116:24-117:14 [Wind].) The Court finds that Defendants' evidence regarding their academic services for enrolled students does not controvert the People's evidence that they also made misrepresentations in order to enroll students in the first place.

VII. REMEDIES

A. Penalties

1. Standard and Methodology for Calculating Penalties

Every act of deceptive marketing in violation of both the UCL and FAL carries a penalty of up to $5,000. (Bus. & Prof. Code, §§ 17206, 17536.) Civil penalties are crucial to UCL and FAL enforcement because "some deterrent beyond that of being subject to an injunction and being required to return such ill-gotten gains is deemed necessary to deter fraudulent business practices." (*People v. Bestline Products, Inc.* (1976) 61 Cal.App.3d 879, 924.) "What constitutes a violation" in a UCL and FAL action "depends on the circumstances of the case, including the type of violations, the number of victims, and the repetition of the conduct constituting the violation." (*People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1566.) Expert testimony, circumstantial evidence, and common sense all may support a penalty request. (*JTH Tax*, *supra*, 212 Cal.App.4th at pp. 1251-1255.)

Here, the Court must count both Defendants' debt-collection violations and their deceptive phone marketing. The former is easily quantifiable as described in Part V(D): the unlawful threats, assessments, and actual collection of Defendants' illegal cost-of-collection fee taken together constitute 28,465 violations. The remainder of this section describes the Court's penalty determinations with respect to Defendants' false or misleading calls. To start, the Court finds it appropriate to include in the violation counts each deceptive telephone call made by Defendants. (E.g., *People v. Morse* (1993) 21 Cal.App.4th 259, 273-274 [each deceptive mailing is a separate violation].) In light of the enormous scope of Defendants' call marketing, the People presented the expert testimony of Dr. Lucido, Dr. Siskin, and Mr. Regan, which together support a

reasonable inference that Defendants committed well over 75,000 violations in California, and over one million nationwide. Individualized proof of deception is not required to assess penalties for these deceptive calls. (*Day*, *supra*, 63 Cal.App.4th at p. 332.) Indeed, in complex cases involving numerous communications, requiring individualized proof of viewership for each communication would be "so onerous as to undermine the effectiveness of the civil monetary penalty as an enforcement tool." (*JTH Tax*, *supra*, 212 Cal.App.4th at p. 1254 [internal citations omitted].) Therefore, whether or not students who heard misrepresentations were actually deceived is not relevant to determining the number of violations.

Furthermore, the Court finds it appropriate to reach a violation count based on the scientific sampling and extrapolation conducted by the People's expert, statistician Dr. Bernard Siskin. "The essence of the science of inferential statistics is that one may confidently draw inferences about the whole from a representative sample of the whole," and it is a science that has "long been recognized by the courts." (*In re Chevron U.S.A., Inc*. (5th Cir. 1997) 109 F.3d 1016, 1019–1020 [citing statistical sampling cases]; see also *Tyson Foods, Inc. v. Bouaphakeo* (2016) 577 U.S. 442, 454–455 ["In many cases, a representative sample is 'the only practicable means to collect and present relevant data' establishing a defendant's liability."] [internal citation omitted]); *Michigan Dept. of Educ. v. U.S. Dept. of Educ*. (6th Cir. 1989) 875 F.2d 1196, 1205-1206; *U.S. v. Life Care Centers of Am., Inc.* (E.D. Tenn. 2014) 114 F.Supp.3d 549, 559-560.) "If sampling is used to estimate the extent of a party's liability, care must be taken to ensure that the methodology produces reliable results. With input from the parties' experts, the court must determine that a chosen sample size is statistically appropriate and capable of producing valid results within a reasonable margin of error." (*Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 42.) Here, Dr. Siskin's calculations of the number of misleading phone calls made by Defendants are sound: they are based on a sufficiently large random sample, and associated with small margins of error at a 95% confidence level.

2. Penalty Counts for California Phone Calls, 2013-2020

The People established the number of deceptive calls based on a transparent, three-step analysis performed by Dr. Siskin and Dr. Lucido, each according to his respective expertise. First,

Dr. Siskin selected a random sample of 2,234 phone calls from a total population of 1,573,400 calls between Defendants and their California students between 2013 and 2020. (11/29/21 Tr. 21:13-19, 26:15-27:15 [Siskin].)[28] Due to Defendants' call retention practices, the population available for sampling consisted of calls from many student-facing departments, not just admissions. (Ex. 1442.0004.) To segregate a representative sample of only the type of calls the People alleged contained misrepresentations—that is, calls by admissions employees discussing the Relevant Topics—Dr. Siskin utilized objective data coded by a document review firm that reviewed the 2,234-call random sample. (11/29/21 Tr. 22:16-23:14 [Siskin].) That data allowed Dr. Siskin to sort the sample into two groups: 1) admissions calls discussing at least one Relevant Topic,[29] and 2) all other calls (which were assumed not to contain any misrepresentations, and therefore were excluded from all violation counts). (11/29/21 Tr. 22:20-27 [Siskin].)[30] There were 561 calls in the first group ("Relevant Calls"), and 1,673 calls in the second group. (11/29/21 Tr. 23:15-21 [Siskin].)

Second, the 561 Relevant Calls were sent to Dr. Lucido,[31] an expert in higher education admissions with over four decades of experience leading admissions offices at major institutions

[28] More precisely, Defendants produced a random sample of 39,335 calls from the total population of 1,573,4000 calls, and Dr. Siskin drew a random sample of 2,234 calls from the sample Defendants produced—still a random sample of the total population. (11/29/21 Tr. 36:4-37:3 [Siskin].) While Defendants took issue with the extent of pre-trial disclosures about the technical steps in Dr. Siskin's random selection process, the Court finds his testimony regarding selection thorough and credible. (See 11/29/21 Tr. 135:20-142:2, 176:13-180:22 [Siskin].)

[29] As Dr. Siskin explained, it is common for counsel to provide parameters for a statistical study. (11/29/21 Tr. 45:5-46:28 [Siskin].) The Court finds that, contrary to Defendants' arguments, the People's counsel's role did not bias the analysis, but enabled a more meaningful analysis of the data; namely, how often the *admissions* department made misrepresentations.

[30] Defendants' attacks on the coding process lack merit. Any errors in the review firm's coding, or Dr. Siskin's sorting process, could only result in an undercount of the number of calls with misrepresentations. (11/29/21 Tr. 59:1-6 [Siskin].) For example, if a call that was not from the admissions department and/or did not discuss a Relevant Topic was mistakenly sent to Dr. Lucido for review, Dr. Lucido would not have identified a misrepresentation in it, since he was tasked with excluding non-admissions calls, and tabulated only misrepresentations about the Relevant Topics. (11/29/21 Tr. 56:23-57:27 [Siskin].) Indeed, 7 such calls were mistakenly sent to Dr. Lucido, who identified no misrepresentations in them. (11/29/21 Tr. 64:3-11 [Siskin].) Conversely, if a mistake prevented a call from being sent to Dr. Lucido for review, Dr. Lucido could not have identified it as containing a misrepresentation. (11/29/21 Tr. 58:3-28 [Siskin].)

[31] As Dr. Lucido testified, his research associate, Dr. Emily Chung, initially reviewed each call to determine whether there was a potential misrepresentation. (11/15/21 Tr. 93:7-23 [Lucido].) If so, Dr. Chung elevated the call to Dr. Lucido, who then reviewed the entire call to make the final determination. (11/15/21 Tr. 93:24-94:17 [Lucido].) The Court credits Dr.

across the country. (11/29/21 Tr. 37:9-15 [Siskin]; 11/15/21 Tr. 53:26-54:13, 60:21-61:8, 61:18-62:5 [Lucido].) Dr. Lucido's experience makes him quite capable of opining about what is likely to deceive prospective students, and there is no evidence in the record to show that Dr. Lucido's knowledge of the study's sponsor biased the results. (11/15/21 Tr. 221:13-222:7 [testifying that decades advising students informed his opinion about which calls were likely to mislead]; 11/15/21 Tr. 198:5-21 [testifying that he conducted his work "independently"].) Of the 561 Relevant Calls, Dr. Lucido identified 126 calls (22%) with at least one misrepresentation.[32] (Ex. 3728 [Appendix F].) For each call, Dr. Lucido reviewed the entire call in context, highlighted the key passages containing misrepresentations, assigned each misrepresentation a category code, and notated his rationale.[33] (11/15/21 Tr. 93:13-95:8, 190:1-191:16 [Lucido]; Ex. 1495 [Appendix E, full notated transcripts of all calls containing misrepresentations].) Defendants' critique that Dr. Lucido deemed some statements to be misleading half-truths because they "omitted critically important information," (11/15/21 Tr. 220:25-221:5 [Lucido]), lacks merit because that type of statement is clearly actionable under the UCL. (See *Day*, *supra*, 63 Cal.App.4th at pp. 332-333 ["A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable . . . "].) The fact that Dr. Lucido did not consider written disclaimers or subsequent phone calls, (11/15/21 Tr. 210:22-211:7, 261:2-12 [Lucido]), is also beside the point because the law is clear that they cannot cure the misrepresentations Dr. Lucido identified. (See Part VI(B), *supra*.) To the extent an admissions counselor provided both misleading and correct information within the same call, Dr. Lucido assessed each call individually to determine whether the advisor clearly "walked back" the misrepresentation, in which case he did not code the statement. (11/15/21 Tr. 258:25-259:24 [Lucido].) The Court finds Dr. Lucido's approach more logical than that of Dr. Wind,

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Lucido's testimony that no conflict resolution process was necessary because the ultimate decisions were his alone. (11/15/21 Tr. 235:6-21 [Lucido]; 11/16/21 Tr. 112:19-113:5 [Lucido].)

[32] The fact that, without his notes, Dr. Lucido did not recall the details of every call in the over 4,000 pages he reviewed is unremarkable and does not undermine Dr. Lucido's credibility. He easily testified to each call once provided his notes. (11/16/21 Tr. 116:5-125:18 [Lucido].)

[33] Although Dr. Lucido separately recorded a note for every misrepresentation within every call, he also testified that, among the calls in each misrepresentation category, his rationale for finding the passage deceptive was essentially the same. (11/16/21 Tr. 109:9-26 [Lucido]; e.g., 11/15/21 Tr. 111:7-23 [Lucido] [teaching misrepresentations were identified for similar reasons].)

whose call review used a formula by which clear misrepresentations could be cancelled out by vague disclaimers. (E.g., 12/13/21 Tr. 241:11-18 [Wind] ["Q. And so [if] the admissions counselor told a student that coursework or a degree from Ashford was all they would need to become a teacher, but they also stated that the student should check with their state licensing board for specific details, [the coders'] instructions were to conclude that . . . that call was not deceptive, true? A. Yes."].) In general, the Court gives Dr. Wind's call review little weight due to that flaw, as well as his lack of substantive expertise, which the Court found hampered his ability to identify misrepresentations. (E.g., 12/13/21 Tr. 223:16-226:17 [Wind testifying to no financial aid, registrar, or teacher certification experience].)[34]

Third, using Dr. Lucido's results, Dr. Siskin determined the best estimate of the total number of misleading calls in the population: 88,742. (11/29/21 Tr. 24:20-25:2 [Siskin].) Because Dr. Siskin randomly sampled 1 out of every 704.29 calls in the population (2,234/1,573,400), for each one of the 126 deceptive calls that Dr. Lucido identified there were 703.29 more in the population. Thus, Dr. Siskin's best estimate of the total number of misleading calls was 704.29 multiplied by 126: 88,742. (11/29/21 Tr. 53:9-54:26, 78:3-10 [Siskin].)

Further, the size of Dr. Siskin's sample resulted in small margins of error, which, when paired with a high confidence level, signifies high accuracy.[35] Dr. Siskin determined with 95% confidence that the true number of calls with at least one misrepresentation is between 75,097 and 102,386, and that the true percentage of misleading calls among Relevant Calls is between 19% and 25% (a 3% margin of error). (11/29/21 Tr. 64:17-65:4, 68:17-39:7 [Siskin].) The odds that the true number and rate of misleading calls lie outside of these ranges are negligible to infinitesimal—for example, the chance that the true percentage of misleading calls is only 15% or

[34] Nor did Dr. Wind provide his coders with truthful information essential to identifying misrepresentations, such as Ashford's costs. (12/13/21 Tr. 233:1-234:6, 236:3-10 [Wind].)

[35] When determining the size of the random sample he would draw at the outset, Dr. Siskin considered predictions of the rate of relevant and deceptive calls provided by the People, and a desired margin of error. (11/29/21 Tr. 30:17-35:26, 69:21-70:9 [Siskin].) The predictions did not bias the analysis because if they were wrong, the effect might simply be larger margins of error than desired, in which case Dr. Siskin would have added randomly selected calls to the analysis until the desired margin of error was reached. (11/29/21 Tr. 130:28-134:11 [Siskin].) The People's predictions at the outset had no impact on the final best estimates of the number or rate of misleading calls. (11/29/21 Tr. 205:26-207:5 [Siskin].)

lower is 37 in a million. (11/29/21 Tr. 71:2-73:4 [Siskin].) Dr. Siskin also determined that the percentage of misleading calls was relatively constant over the 2013-2020 period: 25% during the pre-Iowa monitoring period (29 misleading calls out of 117 Relevant Calls), 23% during the monitoring period (71/308), and 19% after the monitoring period (26/136), differences that Dr. Siskin concluded were not statistically significant. (11/29/21 Tr. 76:2-27 [Siskin]; Appendix A.)

3. Penalty Counts for California Phone Calls, 2009-2012

Because Defendants did not produce phone calls from March 2009 through December 2012, (Ex. 1442.0003-4), Dr. Siskin assumed that during that time, Defendants made calls to California students at the same average monthly volumes, and with the same percentage of misrepresentations, as reflected in his random sample. (11/29/21 Tr. 83:13-85:11 [Siskin].) Accordingly, since Defendants made 88,742 misleading calls over the 88-month period January 2013 to April 2020 (1,008 misleading calls/month), Defendants made another 46,386 misleading phone calls during the 2009 through 2012 period. (11/29/21 Tr. 84:27-85:3 [Siskin].)

4. Total Penalty Counts for Nationwide Phone Calls, 2009-2020

Defendants retained and produced only California calls. The People presented evidence that California students constituted 10.87%[36] of Ashford's enrollment, and Defendants offered no contrary evidence. (Ex. 1387-B.) Accordingly, to calculate the number of deceptive calls nationwide, one divides the number of deceptive California calls by 10.87%. (11/29/21 Tr. 85:15-87:26 [Siskin].) The Court therefore finds that Defendants made a total of 1,243,099 misleading calls, as detailed in Appendix A. These results converge with Defendants' own compliance data, which show that counselors made relevant non-compliant statements 749,981 times nationwide between 2013-2020, based on a 20.5% non-compliance rate. (12/2/21 Tr. 16:11-20 [Regan].)

The Court finds it appropriate to determine violations on a nationwide basis according to the well-established rule[37] that the UCL extends to conduct that emanates from California even if

[36] The People also presented, as an alternative for Defendants' California enrollment, data from the U.S. census showing that California residents comprise 12.74% of the U.S. population ages 18-50. (Ex. 3410; 11/29/21 Tr. 88:11-89:22, 91:19-22 [Siskin].)

[37] The constitutional and choice-of-law issues raised by nationwide remedies were briefed fully by the parties via Defendants' Motion in Limine #6, which the Court denied. (ROA #531 [motion]; ROA #574 [opposition]; 12/2/21 Tr. 8:20-9:8 [ruling].) The Court notes that this

victims reside out of state. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 241-244; see also *Sullivan v. Oracle Corp*. (2011) 51 Cal.4th 1191, 1208 ["[T]he UCL reaches any unlawful business act [] committed in California."]; *Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605, 613 [endorsing application of California law to non-resident victims].)

For the vast majority of the statutory period, Defendants' misconduct emanated from California. As its accreditor WASC summarized, Defendants' San Diego headquarters "houses its extensive online operation and is the home base for [their] leadership team and the vast majority of its faculty and staff." (Ex. 7529.0002; see also 12/6/21 Tr. 227:2-8 [Pattenaude].) Numerous employees, from admissions counselors to Ashford's former presidents, testified they worked in San Diego, where Defendants are headquartered. (See, e.g., 11/9/21 Tr. 13:18-20 [Dean]; 11/10/21 Tr. 82:4-10 [Parenti]; 12/1/21 Tr. 131:11-15 [McKinley]; 12/7/21 Tr. 43:8-11 [Pattenaude]; 12/7/21 Tr. 205:14-26 [Smith]; 12/9/21 Tr. 68:9-13 [Farrell]; 12/9/21 Tr. 159:7-14 [Nettles]; 12/13/21 Tr. 28:8-17 [Chappell]; 12/14/21 Tr. 56:17-24 [Johnson]; 12/14/21 Tr. 192:6-8 [Swenson]; see also 12/9/21 Tr. 68:14-23 [Farrell].) In fact, the majority of admissions employees were located in San Diego. (See, e.g., Ex. 1379.0002 [reporting monthly headcounts of admissions employees in 2014 and 2015]; Ex. 3743, Tr. 64:17-65:66:3 [Clark discussing Ex. 1379]; 11/10/21 Tr. 82:11-14 [Parenti testifying most admissions staff were based in San Diego from 2007 to 2016].) Moreover, Defendants' admissions counselors were trained to speak to students the same way regardless of where students lived. (See 11/10/21 Tr. 56:28-58:10 [Parenti]; see also Ex. 3749, Tr. 169:19-170:1 [Chappell testifying operations compliance department didn't perform state-specific functions].) Although Defendants moved their headquarters to Arizona in 2019, many top executives are still based in San Diego, (see 11/10/21 Tr. 82:26-83:16 [Parenti testifying admissions and compliance executives are based in San Diego], 84:1-3 [Ashford president was based in San Diego as recently as 2020], 84:4-9 [Parenti based in San Diego]; 12/13/21 Tr. 29:6-24 [Chappell testifying Zovio general counsel was based in San Diego until retirement in 2021]), and Defendants continue to employ admissions

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holding applies only to the deceptive call violation counts. The debt collection counts proved at trial related only to California consumers.

counselors and compliance staff in San Diego, (see Ex. 3737.0092; 11/10/21 Tr. 82:15-18 [Parenti testifying Zovio still employs admissions staff in San Diego], 87:5-8 [San Diego-based admissions counselors were hired in November 2020]; 12/13/21 Tr. 31:22-24 [Chappell testifying compliance staff is based in San Diego]). Given these facts, both constitutional and choice-of-law principles support an award of penalties based on deception of students nationwide.

5. The Statutory Penalty Factors Favor a Significant Award.

The Court's "duty to impose a penalty for each violation [of the UCL and FAL] . . . is mandatory." (*People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 686 [citation omitted].) "The amount of each penalty, however, lies within the court's discretion." (*Ibid.*) In exercising that discretion, the Court "shall consider any one or more" of the following non-exhaustive factors set out in both the UCL and FAL: "the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth." (Bus. & Prof. Code, §§ 17206, subd. (b), 17536, subd. (b).) The Court has considered the factors and determined that the People's requested penalty amount of $75 million is reasonable, conservative, and supported by the evidence.

First, the nature and seriousness of Defendants' misconduct, and the number of violations, weigh in favor of significant penalties. As discussed in Part VII(B)(2-4), *supra*, the Court finds that Defendants misled students nationwide over 1.2 million times. This deception was directed at low-income students about one of their most important life decisions: which college to attend. (11/15/21 Tr. 79:23-80:6 [Lucido].) As a result, the students who testified at trial were stymied in their career goals and saddled with tens of thousands of dollars of costly student loans, and their experiences were not unique. (See Part V(A), *supra*.) The average annual net cost of attendance for Ashford students in 2018 was $18,761—not including Pell grants. (12/6/21 Tr. 48:15-49:2 [Cellini].) And the median student loan debt for Ashford students in 2018 was $34,375. (12/6/21 Tr. 49:26-50:2 [Cellini].)

Further weighing in favor of substantial penalties is the fact that Defendants' misconduct was persistent, long-lasting, and willful. The proof at trial, including the analyses of Dr. Lucido,

Dr. Siskin and Mr. Regan, showed high numbers of misrepresentations during the entire statutory period, including during and after the Iowa monitorship. (See Part VII(A)(2), *supra*.) Defendants were aware of the misrepresentations that their admissions counselors were making, including from the Ombudsman Report, the Norton Norris mystery shopping reports, and their own scorecards. (See Part V(B), *supra*.) Despite this knowledge, Defendants willfully failed to prevent or remedy the misrepresentations, instead continuing to operate a high-pressure admissions department, (see Part III(B), *supra*), and to employ and promote admissions counselors with extensive records of non-compliant calls, (see Part V(C), *supra*).

Based on Dr. Siskin's analysis, which the Court credits, the People's requested penalty of $75 million would mean approximately $555 per violation in California—or approximately $60 per violation nationwide. This is far lower than the $5,000 per-violation penalty authorized by the UCL and FAL combined, and it does not even take into account the additional 28,000 debt collection violations. Defendants have not shown that Zovio's assets, liabilities and net worth support any further decrease in the penalty amount. The most recent public filing in evidence shows that Zovio has substantial assets, including tens of millions of dollars of cash reserves, (Ex. 9024.0040 [Zovio's 2020 10-K]), even after paying $54 million to UAGC to "sell" Ashford. (Ex. 735 [Zovio's 8/1/2020 8-K].) Further, that deal provides Zovio a lucrative future income stream: 15.5-19.5% of UAGC's tuition revenue for the next 7-15 years. (Ex. 735.) The Court's analysis adequately supports a civil penalty of $75 million.

B. Restitution

This Court has broad discretion to restore to persons any money or property acquired by unfair competition or false advertising. (Bus. & Prof. Code, §§ 17203, 17535; *Sarpas*, *supra*, 225 Cal.App.4th at p. 1548.) The purpose of restitution is "to deter future violations of the unfair trade practice statute and to foreclose retention by the violator of its ill-gotten gains." (*Fletcher v. Security Pacific Nat. Bank* (1979) 23 Cal.3d 442, 449.) "[T]he Legislature considered this purpose so important that it authorized courts to order restitution without individualized proof of deception, reliance, and injury." (*Bank of the West v. Super. Ct.* (1992) 2 Cal.4th 1254, 1267; *Sarpas*, *supra*, 225 Cal.App.4th at p. 1572 (holding that "the basis for and the amounts of

individual claims of restitution were unnecessary for defending the claims at trial"].)

Deceived students who enrolled at Ashford are entitled to a return of the money wrongfully collected by Defendants (Bus. & Prof. Code, §§ 17203 and 17535) regardless of whether they paid directly, used federal student loans, or used G.I. Bill funds. That is because victims need not pay money directly to the defendant for restitution to be awarded under the UCL, so long as the victims had an ownership interest in the funds acquired through misrepresentation and retention by the defendant would be unjustified. (*Shersher v. Super. Ct.* (2007) 154 Cal.App.4th 1491, 1500.) Here, victims paid money directly, are legally obligated to repay their student loans, or have lost the right to use their finite G.I. Bill funds at other schools. (See 38 U.S.C. § 3312(a) [limiting amount of educational assistance payable to veterans]; see also 11 U.S.C. § 253(a)(8) [education loans generally not dischargeable in bankruptcy].)

The UCL and FAL have a restorative purpose with a "focus . . . on the victim." (*Sarpas*, *supra*, 225 Cal.App.4th at p. 1562.) To achieve this purpose, courts may issue restitution as practical, even if imperfect. (Cf. *Jayhill*, *supra*, 9 Cal.3d at p. 286 [restitution should restore victims to their *status quo ante* only "as nearly as may be achieved"]).[38] To this end, courts have broad discretion to consider various measures of restitution so long as they are supported by substantial evidence. (See *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 700 [restitution requires quantifying "either the dollar value of the consumer impact or the advantage realized by [the defendant]"]; see also *Day*, *supra*, 63 Cal.App.4th at p. 339 [restitution can be amount defendant received from the unfair practice].) The "price paid minus value" formula is *not* the exclusive measure of restitution. (*Tobacco II Cases*, *supra*, 240 Cal.App.4th at p. 792.) Here, the Court finds the People have proposed a method for calculating restitution for victims of Defendants' deceptive phone calls that is measurable and appropriately tailored to the type of misrepresentation. As detailed below, the Court orders restitution for students who

[38] As described below, the Court finds that in this case, there are practical ways to identify an amount for, and victims who will receive, restitution. And because restitution is a component of the judgment, the Court has awarded less in penalties than would be justified in the absence of restitution. (See *Nationwide Biweekly Admin. v. Super. Ct.* (2020) 9 Cal.5th 279, 326, citing *Overstock*, *supra*, 12 Cal.App.5th at pp. 1088-1089.)

experienced misrepresentations relating to: 1) careers, 2) cost and financial aid, and 3) transfer credits.[39] The People have proven that restitution can be calculated for each student depending on the misrepresentation experienced. For those students who testified live or by video, those amounts are already in the record. Accordingly, the Court orders full restitution for each testifying student as detailed in the Restitution Order.

For all other non-testifying students who receive restitution pursuant to the claims process, the Court will set restitution at a flat amount: $10,000 for careers and $1,000 for cost/financial aid and transfer credits misrepresentations. These amounts are extremely conservative when compared with the actual harm students testified to at trial, will allow for restitution to reach a greater number of students, and will simplify the administration of restitution in furtherance of the legislature's "overarching concern" that the UCL create a "streamlined procedure" for remedying deceptive business practices. (See *Cortez*, *supra*, 23 Cal.4th at pp. 173-174.)

1. Restitution for Students with Careers Misrepresentations.

For students who were misled about whether their Ashford degree would allow them to become teachers, nurses, social workers, and counselors, a full refund is permissible. (*FTC v. Figgie Int'l, Inc.* (9th Cir. 1993) 994 F.2d 595, 606; *Makaeff v. Trump U., LLC* (S.D. Cal. 2015) 309 F.R.D. 631, 638.) For example, both Ms. Perez and Ms. Tomko spent tens of thousands of dollars relying on their admissions counselors' assurances that they could use their Ashford degrees to achieve their career goals. (11/17/21 Tr. 18:21-27, 20:10-16 [Perez]; 11/8/21 Tr. 133:5-18, 139: 9-11 [Tomko].) Neither student is using her Ashford degree for her current job, and both testified they would not have enrolled had they known the truth. (11/17/21 Tr. 34:6-11, 38:19-23 [Perez]; 11/8/21 Tr. 158:22-159:9, 160:24-27 [Tomko].)

Reducing these students' restitution by the "value" received is inappropriate because the deception went to the very *nature* of the product these students were purchasing: a state-approved program leading to licensure and their career goal (the lie) versus a general bachelor's degree with no specialized licensure or career benefits (the truth). In upholding a full-recovery award under the FTC Act, the Ninth Circuit explained why a full refund was appropriate by analogizing

[39] The People did not request, and the Court does not order, restitution relating to pace.

to a purchaser of counterfeit diamonds:

> Customers who purchased rhinestones sold as diamonds should have the opportunity to get all of their money back. We would not limit their recovery to the difference between what they paid and a fair price for rhinestones. The seller's misrepresentations tainted the customers' purchasing decisions. If they had been told the truth, perhaps they would not have bought rhinestones at all or only some.

(*Figgie Int'l, Inc.*, *supra*, 994 F.2d at p. 606.)

Courts have applied the same reasoning in cases involving promises to students. In *Makaeff v. Trump U., LLC*, *supra*, 309 F.R.D. at p. 638, Trump University students were allegedly misled into enrolling based on promises that they would be taught by Donald Trump's hand-selected real estate experts. The court found that a full-refund model might be appropriate:

> [S]tudents paid for [Trump University] programs because they believed the misleading representations that Trump had hand-picked the instructors and would share his secrets to his success. According to Plaintiffs, the issue is not the value or appeal of the classes they did not sign up for (i.e., the rhinestones)—the issue is that they did not receive what they thought they were buying (i.e., the diamonds).

(*Id*. at p. 638 [parenthesis added].) The logic of these cases shows why a value deduction would be unfair for students who did not receive their promised career-advancing degree program.

For non-testifying student victims of career misrepresentations, the Court orders restitution in the amount of $10,000 per student. This conservative flat amount is well below the full amount paid (and therefore the true harm suffered) by students like Ms. Tomko (over $50,000); Ms. Embry (over $43,000); Ms. Perez (over $18,000); and Ms. Roberts (over $60,000). (See 11/8/21 Tr. 165:6-9 [Tomko]; Ex. 172 [Tomko ledger card]; 11/30/21 Tr. 107:26-108:5 [Embry]; Ex. 3721 [Embry ledger card]; 11/17/21 Tr. 36:22-24 [Perez]; Ex. 2027 [Perez ledger card]; 11/18/21 Tr. 50:10-14 [Roberts]; Ex. 117 [Roberts ledger card].)

2. Restitution for Students with Misrepresentations Relating to Cost/Financial Aid and Transfer Credits.

For students who were misled about the cost of their degree (either directly, or through misrepresentations regarding transfer credits), the measure of restitution should be the difference between the promised cost of the education and the amount the student paid. (*Prata*, *supra*, 91

Cal.App.4th at p. 1139.) For example, Ms. Ohland was promised that 14 more of her prior credits would transfer into Ashford than actually did. (Ex. 3771, Tr. 18:10-19:6, 25:12-26:19, 85:17-25 [Ohland]; Ex. 3705.) The cost of those 14 credits—$5,782 (Ex. 9036.0076)—is appropriate restitution. Similarly, the appropriate measure of restitution for all other students who did not receive all of their promised credits should be the amount they paid to Ashford for those extra courses. This is the type of measurable restitution methodology that California law requires.

By similar logic, Ms. Evans, who enrolled based on a promise that financial aid would fully cover her degree costs, should receive restitution in the amount that financial aid did not actually cover: the cost of her six remaining classes and past costs, together $9,136. (11/30/21 Tr. 34:14-24, 47:22-28; 49:24-50:28 [Evans]; Ex. 9042.0063.) There is no basis in law or common sense to discount by value when the lie is about the price. Any value is already incorporated into the price the consumer was willing to pay and was told she would pay. For example, because a counselor falsely promised Ms. Tomko that her degree would cost $40,000, when in fact the final bill was more than $50,000, a $10,000 refund is appropriate. (*Prata*, *supra*, 91 Cal.App.4th at p. 1139; see also *Spann v. J.C. Penney Corp.* (C.D. Cal. Mar. 23, 2015) 2015 WL 1526559, at *7.)

Although the full amount that each student would be entitled to varies based on their individual circumstances, in the interests of simplicity and fairness to Defendants, the Court orders that non-testifying student victims of misrepresentations relating to cost, financial aid, and transfer credits, are entitled to $1,000 in restitution subject to the claims process. As with the flat amount for careers misrepresentations, $1,000 is conservative and well below the level of harm that students like Ms. Evans, Ms. Cox, Ms. Tomko, and Ms. Ohland testified that they suffered.

3. The Only Quantifiable Evidence of Value Shows None.

Although the price paid minus value formula is not legally required or appropriate for the misrepresentations that occurred in this case, even if value were to be taken into account, it would not reduce restitution because the only quantifiable evidence of value presented at trial shows a negative value for Ashford students. The People's higher education economics expert, Dr. Stephanie Cellini, analyzed 2018 earnings data from all students meeting the Department of Education's College Scorecard criteria and found that, after 40 years of earnings, employed

bachelor's degree graduates from Ashford's College of Education would sustain average *losses* of $15,634 on average. (12/6/21 Tr. 33:6-14; 56:6-57:5; 64:2-65:3 [Cellini].) In other words, the average cost of these graduates' education far outweighed any earnings gains. The average losses are even greater for the many dropouts and unemployed graduates from Ashford's College of Education. (12/6/21 Tr. 33:15-21 [Cellini].) And given Ashford's 25% graduation rate after eight years, dropping out is the norm, not the exception. (12/6/21 Tr. 44:9-18 [Cellini].) Although Defendants assert that Dr. Cellini's analysis is overly focused on economic benefits, she explained that certain non-economic benefits, such as improved health or mentorship, would be very small or would already be reflected in the earnings gains she measured. (12/6/21 Tr. 35:10-25; 126:5-11; 126:19-28; 128:20-25 [Cellini].) The Court gives Dr. Cellini's testimony weight.

The Court does not find Defendants' alternate measures of value persuasive. First, Defendants presented evidence of their Net Promoter Scores ("NPS") and alumni surveys (e.g., Ex. 742 & 12/9/21 Tr. 100:15-107:27 [Nettles]; Ex. 7330 & 12/9/21 Tr. 121:12-151:6 [Nettles]), but the Court gives those measures little weight because, as Dr. Cellini testified, they suffer from low response rates, "positive selection" bias, and improperly rely on stated rather than revealed preferences. (12/6/21 Tr. 60:25-62:21 [Cellini]; see also Ex. 3778 & 12/9/21 Tr. 167:15-23 [Nettles]; Ex. 7330 & & 12/9/21 Tr. 175:15-26; Ex. 7648 & 12/9/21 Tr. 180:9-15 [response rates of approximately 20% or less].) Further, neither survey sought information about students' experiences with the admissions department, the subject of this lawsuit. (Ex. 745 & 12/9/21 Tr. 170:18-24 [Nettles]; Ex. 7648 & Tr. 12/9/21; Tr. 12/9/21 Tr. 180:17-181:24 [Nettles].) As to the NPS scores, the Court notes that even Dr. Swenson described Ashford's 2016 scores as "troubling." (Ex. 1267 & 12/14/21 Tr. 197:12-202:7 [Swenson].)

Second, Defendants point to students' testimony that they enjoyed Ashford's one-class-at-a-time schedule or that they learned something during their classes. (See, e.g., 11/18/21 Tr. 58:16-18, 58:27-59:11 [Roberts]; Ex. 3766, Tr. 96:15-23 [Cox].) But there is no authority for the notion that such testimony justifies reducing let alone eliminating restitution. Further, Defendants made no effort to quantify the value of Defendants' online format, and then ignore that on other side of the non-monetary equation, the consequences for victims went well beyond tuition. (See 11/30/21

Tr. 110:9-20 [Embry remained in abusive living situation because of Ashford debt]; 11/18/21 Tr. 52:6-20 [Roberts suffered health problems from the stress of her Ashford debt]; 11/8/21 Tr. 167:17-24 [Tomko couldn't get a mortgage loan without her daughter co-signing].) The Court therefore bases restitution on the measurable, monetary harm from Defendants' conduct.

4. A Claims Process Is an Efficient and Established Method for Distributing Restitution in a Law Enforcement Action.

The Court orders that restitution be administered through a claims process overseen by a claims administrator.[40] A restitution claims process is an established, efficient method for providing relief to victims in a law enforcement action under the UCL and FAL. (See *Sarpas*, *supra*, 225 Cal.App.4th at pp. 1569-1570 [notice and claims process at discretion of Attorney General]; *Fremont Life Ins. Co.*, *supra*, 104 Cal.App.4th at p. 531 [defendant required to make an offer of restitution to victims], 533-534 [describing notice]; *Jayhill*, *supra*, 9 Cal.3d at p. 286 [holding that trial courts have the inherent power to order that "defendants make or offer to make restitution to the customers"].) Courts have approved claims processes for enforcement actions not just in California, but in actions by other state attorneys general and federal consumer agencies. For example, in a case brought by the Minnesota Attorney General against two for-profit colleges, the Minnesota Supreme Court upheld a restitution claims process overseen by a Special Master, noting that "due process was satisfied" because students submitted claims under penalty of perjury and defendants retained the right to object to student claims. (*State v. Minn. School of Business, Inc.* (Minn. 2019) 935 N.W.2d 124, 133-144; see also *Consumer Protection Div. Office of Atty. Gen. v. Consumer Pub. Co., Inc*. (1985) 304 Md. 731, 775 [approving, in Maryland AG action, "a general order of restitution without proof of purchaser reliance, as long as the order provides a mechanism for processing individual claims"]; *State v. Ralph Williams' North West Chrysler Plymouth, Inc.* (1976) 87 Wash.2d 298, 318-321 [in a case brought by the Washington AG, rejecting defendants' due process claims and upholding restitution via claims submitted to a special master that defendants could challenge through "an efficient procedure"];

[40] The complaints that roughly 600 students filed about Defendants with the Attorney General either before or during the pendency of this case are not "claims." Submitting information or a complaint to law enforcement is not the same as filing a claim after a judgment has been issued, a claims process established, and notice sent to affected consumers.

FTC v. Inc21.com Corp. (N.D. Cal. 2010) 745 F.Supp.2d 975, 1011-1013 [in case brought by the Federal Trade Commission, approving refunds to customers who submitted claim form with the total amount paid under penalty of perjury].)

Awarding restitution via a claims process does not constitute an unlawful fluid recovery fund like that prohibited in *Kraus v. Trinity Mgmt. Servs., Inc*. (2000) 23 Cal.4th 116. What *Kraus* rejected was the distribution of restitution funds left over after a claims process to anyone "other than a direct victim." (*Id.* at pp. 129-131.) Here, restitution may *only* be distributed to direct victims with approved claims, with any excess funds returned to Defendants. That is exactly what the *Kraus* Court authorized when explaining that the trial could order the defendant to notify victims "of their right to make a claim for restitution" and "establish a reasonable time within which such claims must be made." (*Id.* at p. 138, fn. 18.)

The procedural details of the claims process are set forth in greater detail in the Court's separate Restitution Order. Broadly, the Court orders a claims process by which all students who enrolled at Ashford during the statutory period (February 6, 2009 to the present) will be given notice of the claims process by the claims administrator and an opportunity to submit a claim form. To receive restitution, students must certify that they enrolled during the statutory period. Students seeking restitution for careers misrepresentations must also certify that their admissions counselors misled them about the ability to obtain the relevant career with an Ashford degree, and that they enrolled in one of Ashford's College of Education degree programs (for teaching) or in one of several specific health-related degree programs (for helping careers). So long as these careers students paid more than $10,000 to Ashford, either directly or through financial aid, they are entitled to the flat careers restitution amount of $10,000. For cost misrepresentations, students must certify that they received at least $1,000 less in financial aid, or incurred at least $1,000 more in costs (whether total costs, or costs not covered by aid) than what their admissions counselor promised. Similarly, for credits misrepresentations, students must certify that they received at least three fewer credits[41] than what their admissions counselor promised. So long as the student paid more than $1,000 to Ashford, either directly or through aid, such claims will be

[41] The cost of three credits has always exceeded $1,000. (See Exs. 9030-9048.)

entitled to the flat amount of $1,000.

Once all claims forms are submitted, Defendants will have an opportunity to contest any claim. However, the Court sets limits on this process in order to balance Defendants' interests with the UCL and FAL's clear mandate that individualized proof of reliance, deception, and harm are *not* required for restitution. Specifically, Defendants will be permitted to submit any internal document that they believe shows that the claimant: did not ever enroll at Ashford, did not enroll in the degree program indicated on the claim form, did not pay more in tuition and fees to Defendants than they are seeking in restitution, did not incur the extent of costs claimed or received more financial aid than claimed, or received a greater number of credits than claimed. Defendants will also have the right to provide documents showing that any claimant's restitution award should be offset by a payment received in the Iowa Attorney General's settlement or by a previous payment or refund to the claimant. Defendants will not be permitted to contest claimants' assertion that they were misled by their admissions counselor over the phone; that pattern of deception has been sufficiently proven at trial. Depositions of claimants will not be permitted. (See *Sarpas*, *supra*, 225 Cal. App. 4th at p. 1568 [rejecting defendants' argument that their "due process rights were violated" by paying restitution to victims who "did not testify" at trial and holding that the evidence presented was "sufficient to draw an inference" about the full population].) The People and Defendants must meet and confer regarding all contested claims, with those that cannot be resolved reviewed by a Special Master, who will make recommendations for the Court's final determination. Written disclaimers received by the student relating to the misrepresentation claimed (e.g., enrollment agreement disclaimer regarding licensure for teaching claimants) cannot be used as a basis for denying a claim. Costs of administering the claims process shall be paid from the $25 million restitution award.

5. $25 Million for Restitution Is Conservative and Well Supported.

The Court finds the People's request for $25 million in restitution to be well supported by the evidence. The expert analyses of Dr. Siskin and Dr. Lucido, and Mr. Regan, show that hundreds of thousands of deceptive calls occurred during the statutory period. Even if only a small fraction of those students enrolled at Ashford in reliance on their admissions counselor's

deceptive statement, that equates to thousands if not tens of thousands of potential claimants. Given administration costs and the separate restitution for debt collection (see Part V(D), *supra*, and Part VII(B)(6), *infra* and for testifying students, less than the full $25 million will be available to satisfy victim claims relating to deceptive phone calls. And even the full $25 million only could restore wrongfully obtained funds to somewhere between 2,500 students (assuming 100% careers claims) and 25,000 students (assuming 100% cost/credits claims). If the amount of restitution for approved claims exceeds the funds available, the administrator shall simply pro-rate the flat amounts downward. If the amount of restitution for approved claims is less than the available funds, the administrator will return the excess funds to Defendants. This protects both victim students and Defendants in a complex case where the precise number and type of victims cannot be determined before the claims process is completed.

6. Restitution for Students Harmed by Debt Collection Practices

Finally, the Court orders Zovio to repay the unlawful cost-of-collection fees paid by former students, which Defendants have admitted they never repaid. (Ex. 3642 at ¶ 8; see also Ex. 3758, Tr. 227:25-228:11, 231:16-19 [Moore].) As explained in more detail in the separate Restitution Order, the Court orders restitution to 2,844 students for a total of $174,238.37.

C. Injunctive Relief

Courts have "extraordinarily broad" remedial power to fashion appropriate injunctive relief (*Overstock.com, Inc.*, *supra*, 12 Cal.App.5th at p. 1091), which is the "primary form of relief available under the UCL . . ." (*Kwikset Corp. v. Super. Ct.* (2011) 51 Cal.4th 310, 337.) Pursuant to those powers, injunctions may be based on a "threat of continuing misconduct" (*Madrid v. Perot Sys. Corp*. (2005) 130 Cal.App.4th 440, 463) or a "reasonable probability that the past acts complained of will recur." (*Davis v. Farmers Ins. Exch.* (2016) 245 Cal.App.4th 1302, 1327.)

Here, the threat of future harm is quite real. First, Dr. Lucido identified misrepresentations relating to financial aid and cost, transfer credits, and pace into 2020,[42] (Ex. 3728 [Appendix F]), and Dr. Siskin testified that there was no statistically significant reduction in the rate of deceptive

[42] Indeed, the rate of deceptive calls is actually higher in 2020 (4 out of 9 calls, or 44%) than the 22% rate for the overall period. (4 deceptive calls from 2020: Exs. 2397-2400; see also Ex. 1495.3900-3996 [Dr. Lucido's annotations of the calls]; 5 other Relevant Calls from 2020: Exs. 2963-2964, 2966-2968.)

calls either during or after the Iowa monitor period. (11/29/21 Tr. 76:2-27 [Siskin].) The fact that misrepresentations continued at a high rate for over a decade itself supports an injunction. (*Robinson v. U-Haul Co. of Calif.* (2016) 4 Cal.App.5th 304, 316 ["Evidence of such an ingrained, long-term, knowingly illegal corporate practice provides support for the finding of likely repetition in the future"].) Although Mr. Johnson testified that Defendants were already "taking actions to address" the Relevant Topics, the evidence showed that those actions did not prevent over a million deceptive calls and, in any event, Mr. Johnson's personal knowledge ended with his layoff in 2019. (12/14/21 Tr. 120:2-123:6, 126:18-127:5 [Johnson].)[43]

Further, the same problematic incentives and structures that existed between Zovio and Ashford still exist between Zovio and UAGC, which Pat Ogden described as "the same institution under a different name." (12/7/21 Tr. 176:4-5 [Ogden].) Zovio continues to provide for UAGC the recruiting and enrollment services that are at the heart of this case.[44] (Ex. 1320.0138 [Asset Purchase Agreement]; Ex. 3742, Tr. 39:13-22, 43:10-17, 47:21-48:9 [Zovio will perform its own compliance] [Clark]; Ex. 3743, Tr. 29:6-19, 49:11-14 [Clark testifying that UAGC does not independently monitor Zovio calls].) Moreover, in exchange for paying $54 million dollars to "sell" Ashford to UAGC, Zovio will now receive 15.5-19.5% of UAGC's tuition revenue for the next 7-15 years. (Ex. 735.) In other words, Zovio still has similar incentives to maximize enrollments to maximize tuition. As recently as 2021, Defendants' Director of Risk and Corporate Compliance Emiko Abe raised concerns that "high" or "excessive pressure" could "indicate predatory enrollment practices" or "lead to employees breaking rules to maintain their jobs." (Ex. 1431.) Defendants' HR personnel dismissed her concerns, responding "I understand that pressure could lead to non-compliant behaviors, but I don't think we will ever eliminate pressure and stress in the Enrollment department." (*Ibid.*) Ample evidence supports the People's request for an injunction. To secure the public's right to protection from Zovio's unlawful conduct, the Court orders Defendants to comply with the terms in the attached separate Injunction Order.

[43] Nor does the Iowa settlement moot the People's request for an injunction. Again, the evidence showed deception both during and after the Iowa monitor period, which concluded in 2017. In any event, the California Attorney General cannot enforce Iowa's settlement agreement.

[44] There is no evidence that those enrollment or compliance services have changed since Ashford became UAGC (11/10/21 Tr. 80:9-81:26 [Parenti]; Ex. 3743, Tr. 49:15-50:23 [Clark].)

Dated: January 28, 2022

Respectfully Submitted,

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DECLARATION OF ELECTRONIC SERVICE

Case Name: **The People of the State of California v. Ashford University, LLC, et al.**
No.: **37-2018-00046134-CU-MC-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the One Legal electronic filing system. Participants who are registered with One Legal will be served electronically. Participants in this case who are not registered with One Legal will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On January 28, 2022, I served the attached

- **[PROPOSED] STATEMENT OF DECISION**
- **[PROPOSED] RESTITUTION ORDER PURSUANT TO THE COURT'S STATEMENT OF DECISION**
- **[PROPOSED] INJUNCTION ORDER PURSUANT TO THE COURT'S STATEMENT OF DECISION**

By transmitting a true copy via this Court's One Legal system to the following counsel for Defendants:

Chad S. Hummel, chummel@sidley.com
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 28, 2022, at San Francisco, California.

E. Santos
Declarant

E. Santos
Signature

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