

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

The City of New York and Lorelei Salas, as
Commissioner of the New York City
Department of Consumer Affairs,

Plaintiffs,

-against-

Berkeley Educational Services of New York,
Inc.,

Defendant.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Index No. 452025/2018

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The City of New York and Lorelei Salas as Commissioner of the New York City Department of Consumer Affairs (“DCA”) bring this action against Defendant Berkeley Educational Services of New York, Inc. (“Berkeley” or “Defendant”) and allege as follows.

INTRODUCTION

1. For-profit colleges are businesses, and like most businesses, their top priority is generating profits. The more tuition these businesses collect, the greater the return for their investors. To generate tuition, for-profit colleges employ targeted marketing and aggressive recruiting tactics that often cross the line from clever gamesmanship into illegal deception. Once caught in the for-profit web of deceit, student consumers are presented with a subpar educational experience, unreasonably high tuition prices generally requiring the exhaustion of all student loan eligibility, unmanageable financial obligations, and an unusable degree—in those instances where a degree could be obtained.

2. Berkeley is one of New York City’s largest and most prolific purveyors of the for-profit college paradigm. Berkeley spends a lot of money to target and recruit a population of students comprised mostly of people of color and first-generation college students with limited

financial literacy and little familiarity with higher education. Among other tactics, Berkeley misleads prospective students about employment prospects, trumpets tuition grants that sound substantial but in fact come with hidden strings attached and barely dent Berkeley's huge tuition mark-up, and lies about the programs offered by other colleges.

3. Once students enroll, Berkeley conceals vital loan information, makes it impossible for students to transfer, and railroads them into institutional loans. After students leave Berkeley—most with crushing debt, and many with no degree—Berkeley abandons them to their debt; except where that debt is owed directly to Berkeley. In those cases, Berkeley delivers the coup de grace, by employing illegal debt collection tactics against its former students.

4. These deceptive practices violate the New York City Consumer Protection Law.

5. By this proceeding, DCA seeks restitution for harmed consumers, civil penalties, injunctive relief, and other relief as authorized by section 2203(h) of Chapter 64 of the New York City Charter (“Charter”), the New York City Administrative Code (“NYC Code”), and the Rules of the City of New York (“RCNY”).

PARTIES

6. Plaintiff City of New York is a municipal corporation incorporated under the laws of the State of New York.

7. Plaintiff DCA is an agency of the City of New York responsible for protecting and enhancing the daily economic lives of New Yorkers to create thriving communities. DCA is charged with the protection and relief of the public from deceptive, unfair and unconscionable practices.

8. Plaintiff Lorelei Salas is the Commissioner of DCA and is empowered under section 2203 of the New York City Charter to enforce the New York City Consumer Protection Law.

9. Defendant is a domestic business corporation with a principal executive office at 99 Church Street, White Plains, NY 10601. It operates an online degree program and campuses at multiple locations, including in Brooklyn and Manhattan, New York.

VENUE

10. Venue is proper under New York Civil Practice Law and Rules § 503(a) because DCA’s principal office is located in this county.

RELEVANT LAW

11. The New York City Charter § 2203(d) authorizes DCA to enforce NYC Code § 20-700 et seq. and 6 RCNY § 5-01 et seq. (collectively, “Consumer Protection Law” or “CPL”). The CPL bars “any deceptive or unconscionable trade practice in the sale . . . of any consumer goods or services[.]” NYC Code § 20-700. Deceptive practices include “any false . . . or misleading oral or written statement . . . which has the capacity, tendency or effect of deceiving or misleading consumers.” NYC Code § 20-701(a). “To establish a cause of action under [the CPL] it need not be shown that consumers are being or were actually injured.” NYC Code § 20-703(e). Violations of the CPL carry civil penalties of up to \$350, and up to \$500 for “knowing” violations. NYC Code § 20-703(a)-(b).

12. NYC Code § 20-703(c) authorizes the City, upon a finding by DCA of “repeated, multiple or persistent violation of any provision of” the CPL, to bring an action to compel disgorgement of all proceeds from the violations and pay DCA’s investigation costs. NYC Code § 20-703(c). From the disgorged funds, the City may determine restitution for consumers if the

deceptive transaction occurred within five years of the action’s lawsuit. *Id.* The City may also seek orders enjoining the violative acts or practices. NYC Code § 20-703(d).

13. “Sellers offering consumer goods or services in print advertising and promotional literature must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions.” 6 RCNY § 5-09(a).

14. The CPL specifically bars certain acts by debt collectors. *See* 6 RCNY §§ 5-76—79 (the “Collection Rules”). Violations of the Collection Rules are both deceptive trade practices under NYC Code § 20-701(a) and unconscionable trade practices under NYC Code § 20-701(b). 6 RCNY § 5-77.

15. Under the Collection Rules, a “debt collector” is one “who . . . regularly collects or seeks to collect a debt owed or due or alleged to be owed or due.” 6 RCNY § 5-76.

16. In connection with the collection of a debt, the Collection Rules bar debt collectors from using “any business, company, or organization name other than the true name of the debt collector’s business[.]” 6 RCNY § 5-77(d)(13).

17. The Collection Rules bar debt collectors from “us[ing] any unfair or unconscionable means to collect or attempt to collect a debt,” including collecting “any amount . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 6 RCNY § 5-77(e).

STATEMENT OF FACTS

I. The For-Profit College Industry

18. For-profit colleges are an \$18 billion industry in the U.S.¹ Unlike nonprofit private and public colleges, they are structured as businesses. For example, some are publicly traded

¹ Based on expenditures during 2014-15 academic year. *Fast Facts: Expenditures*, National Center for Educational Statistics (U.S. Department of Education) available at <https://nces.ed.gov/fastfacts/display.asp?id=75>.

companies and others are owned by private equity firms.² As businesses, they set tuition with the goal of maximizing revenue, rather than maximizing the educational experience of their students.³ As a result, for-profit college tuition tends to be very high, with very little return on investment.⁴

19. For-profit colleges target low-income, less financially savvy students who are also less familiar with the mechanics of higher education.⁵

20. Deceptive sales tactics pervade the for-profit college industry. A U.S. Senate Report found that of the thirty for-profit colleges it reviewed,

“virtually every company . . . misled some prospective students or omitted information with regard to the cost of the program, the availability and obligations of Federal aid, the time to complete the program, the completion rates of other students, the job placement rate of other students, the transferability of the credit, and the reputation and accreditation of the school.”⁶

21. Students suffer because of for-profit colleges’ voracious greed. When the federal government analyzed which colleges left their graduates with “unreasonable debt loads,” almost all were for-profit institutions.⁷ On average, students who enroll in for-profit colleges end up earning less money than they did before enrolling.⁸ In New York State, 72 percent of African-American students who attend for-profit colleges default on their federal student loans (“Federal

² For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success (U.S. Senate, Health Education Labor and Pensions Committee 2012) at 20 & 22, available at https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf (hereinafter “Senate Report”).

³ Id. at 38.

⁴ Id. at 35.

⁵ Id. at 58.

⁶ Id. at 53.

⁷ For-Profit Postsecondary Education: Encouraging Innovation While Preventing Abuses, A 2018 Toolkit for State Policy Makers (The Century Foundation and Institute for College Access & Success 2017) at 10, available at <https://ticas.org/content/pub/profit-postsecondary-education> (hereinafter “Encouraging Innovation”).

⁸ Id.

Loans”) within twelve years, which is nearly three times the rate of African-American students who attend public and nonprofit colleges.⁹

22. Government financial aid is the lifeblood of for-profit colleges—without it, students targeted by these schools would never be able to pay the exorbitant tuition. Tellingly, for-profit colleges rely much more on federal aid than do their nonprofit and public counterparts.¹⁰ This reliance has led some for-profit colleges to generate revenue by deceiving students about Federal Loans. For example, students have complained that for-profit colleges promised grants that would pay their full tuition, then took out Federal Loans in the students’ names without their knowledge.¹¹

23. Put simply, driving unsophisticated students into debt is a common for-profit college business model.

II. Federal and State Financial Aid

24. Students pay for educational needs in a number of ways, but the two most common are with monies from state and federal financial aid.

25. Pell Grants are administered through the U.S. Department of Education, and are provided to undergraduate students from low-income households. Awards are based largely on household income, and a formula governs the number of terms for which a student may receive a Pell Grant.¹²

26. Federal Loans come in different forms, including Direct Subsidized and Direct Unsubsidized. Direct Subsidized Loans are available up to a certain cap each year, depending on

⁹ Yan Cao, Grading New York’s Colleges (Century Foundation 2018) at 3, available at <https://tcf.org/content/report/grading-new-yorks-colleges/>.

¹⁰ Senate Report, supra note 2, at 24.

¹¹ Emily Wilkins, “Student Debt Surprise: How Veterans Get Loans Without Knowing It” (Bloomberg Government May 22, 2018), available at <https://about.bgov.com/blog/student-debt-surprise-veterans-get-loans-without-knowing/>.

¹² See 20 U.S.C.A. § 1070a; 34 CFR § 690.

the student's class year (upperclassmen receive more than underclassmen). Interest does not accrue on these loans while the student is enrolled in school. Direct Unsubsidized Loans do not carry this benefit. Their cap is higher for upperclassmen and financially independent students. There is also a cap on the aggregate amount that an undergraduate may borrow through the Direct Subsidized Loans and Direct Unsubsidized Loans, combined: \$57,500 (the "Federal Loan Cap"). The interest rate for Federal Loans disbursed during the 2018-19 year is 5.045%.¹³

27. To apply for Pell Grants and Federal Loans, students must complete the Free Application for Federal Student Aid ("FAFSA").¹⁴

28. Military veterans may qualify for educational benefits through the U.S. Department of Veterans Affairs ("VA Benefits").¹⁵

29. New York State also offers a financial aid program to students from low-income households, called the Tuition Assistance Program ("TAP"). Awards range from \$500 to \$5,165 per year.¹⁶ TAP determinations are made based on the student's FAFSA.¹⁷

III. Berkeley's Business Model

30. Berkeley is a corporation owned by descendants of its former executive, Larry Luing, that offers associate, bachelor, and Master of Business Administration degrees. It does business as "Berkeley College," and has campuses in Manhattan, Brooklyn, and elsewhere in New York State, and also offers courses online.¹⁸ Berkeley's undergraduate program enrolls more than 3,500 students, making it one of New York State's largest for-profit colleges.¹⁹ It practices open

¹³ See 20 U.S.C.A. § 10-71 *et seq.*; 34 CFR § 682.

¹⁴ See 20 U.S.C.A. § 1090.

¹⁵ See 38 U.S.C.A. § 3001 *et seq.*; 38 CFR § 21.

¹⁶ See N.Y. Education Law § 667; 8 NYCRR § 2400 *et seq.*

¹⁷ 8 NYCRR § 2407.1(b)(1).

¹⁸ There is also a corporation in New Jersey that does business as "Berkeley College," which is not at issue here.

¹⁹ See National Center for Educational Statistics (Department of Education 2018), *searchable at* <https://nces.ed.gov/ipeds/use-the-data> (hereinafter "NCES 2018"). See also The State of For-Profit Colleges (Center

admissions, meaning that it admits all high school graduates who complete an application and pay a fee—regardless of their educational background or abilities.

31. Berkeley charges full-time students \$12,950 per semester in tuition and fees.²⁰ In contrast, the City University of New York (CUNY) charges New York residents \$3,685 per semester at four-year campuses and \$2,720 at two-year campuses.

32. Despite its high tuition, Berkeley spends less than half of what CUNY spends on instruction at its four-year campuses:²¹ CUNY spends over \$11,000²² per student, while Berkeley spends only \$5,161.²³ Even at two-year campuses, CUNY outspends Berkeley by thousands of dollars per student, despite charging a mere fifth of Berkeley's tuition.²⁴

33. The same is true of New York State's private nonprofit colleges, which, on average, spend \$19,025 on instruction, while charging less than Berkeley.²⁵ Even Berkeley's corporate peers, New York State's other for-profit, four-year colleges, which charge comparable tuition, spend thousands more than Berkeley per student on instruction.²⁶

34. In addition to short-changing its students on instruction, Berkeley spends nothing on research,²⁷ and nothing on public service.²⁸ Instead, Berkeley invests heavily in its

for Responsible Lending 2017), available at <https://www.responsiblelending.org/research-publication/state-profit-colleges> (finding that Berkeley is the state's third-largest for-profit college by undergraduate enrollment).

²⁰ See Berkeley's Website available at <http://berkeleycollege.edu/catalog-2017-2018/catalog-2017-2018-20568.htm>.

²¹ The United States Department of Education compiles this data and defines "instruction" at Glossary, National Center for Educational Statistics (Department of Education 2018), available at <https://nces.ed.gov/ipeds/glossary/>.

²² See NCES 2018. Figures are based on FY 2016 data. For example, Brooklyn College spends \$11,611; College of Staten Island spends \$11,062; John Jay College of Criminal Justice spends \$13,581; Lehman College spends \$13,187.

²³ *Id.*

²⁴ *Id.* For example, Hostos Community College spends \$11,920 on instruction; LaGuardia Community College spends \$9,337.

²⁵ Cao, *supra* note 9, at 12.

²⁶ *Id.*

²⁷ See NCES 2018, *supra* note 19.

²⁸ *Id.*

“enrollment/admissions” and “enrollment services” departments where, from January 2015 through April 2017, it employed more than a hundred people.

35. Tellingly, most of Berkeley’s revenue is from tuition and fees paid using financial aid monies awarded to students by the government.²⁹ More than two-thirds of Berkeley students take out Federal Loans,³⁰ borrowing, on average, over \$11,000 per year.³¹ Many students also borrow, sometime unknowingly, money directly from Berkeley—loans that carry significant fees and penalties.

36. Berkeley’s former students struggle to repay their debt. Of those who borrow Federal Loans, more than two-thirds fail to repay a single dollar,³² and more than 10% default,³³ within three years of entering repayment.

37. As previously noted, Berkeley’s students—the people who are paying dramatically higher bills for far less instruction—are mostly people of color; only 7% of its students identify as white.³⁴

IV. How Berkeley Recruits and Profits from Students

38. Berkeley recruits by luring vulnerable people to its offices under false pretenses. Once on Berkeley’s campus, potential students are met by recruiters who pretend to be applicants’ advocates by feigning interest in the applicant’s life and educational desires, all while obscuring any information that might thwart Berkeley’s attempt at a sale, e.g., actual costs.

39. Every step in Berkeley’s process leading up to student registration is scripted—the telephone operators and the recruiters both are supposed to use scripts (they also ad lib). These

²⁹ Id.

³⁰ Id.

³¹ Id.

³² College Scorecard (U.S. Dept. of Education 2018), available for download at <https://collegescorecard.ed.gov/data/>. Figures are based on FY 2015 data.

³³ See NCES 2018, supra note 19.

³⁴ Id.

scripts are designed to achieve one goal—trap students into contractual obligations that will allow Berkeley to siphon off as much of the student’s available financial aid as possible.

A. Berkeley Lures New Yorkers to Their Campuses Under False Pretenses.

40. Berkeley targets prospective students through in-person high school recruiting and via conventional advertising campaigns.

41. The high schools that Berkeley visits tend to serve students of color in economically disadvantaged neighborhoods like East New York, Brooklyn, and their advertisements use slogans designed to play on a sense of hopelessness: for example, “Lost? We’ll help you find your way.”

42. Berkeley’s recruitment strategy hinges on luring targets to campus for manipulative one-on-one meetings. Although Berkeley’s website and phone operators refer to these meetings as personal interviews, career planning sessions, open houses, or financial aid workshops, in actuality the meetings are merely opportunities for Berkeley recruiters to give a scripted presentation, or “Sales Pitch.”

43. Berkeley’s admissions webpage states that “a personal interview is strongly recommended” and phone operators say that “a visit is part of the [admissions] process.” These statements imply that the purpose of the appointment is for the students to sell themselves as part of a competitive admissions process, but in fact such an admissions process does not exist at Berkeley. The appointment is just the Sales Pitch.

44. Berkeley’s phone operators are scripted to always tell prospective students that they should visit Berkeley—including when they want to pursue a major that Berkeley does not offer. For example, Berkeley does not offer teaching or engineering degrees. High school students who express an interest in teaching are told:

“I have worked with some students in the past who were all set with the major of their choice and not willing to look into other options.

Some have lost credits, wasted time, and money. I don't want that to happen to you."

Aspiring engineers are asked a dauntingly specific question about future plans, and then told:

"Engineering is a very demanding field and often requires obtaining a license after completing a college degree."

Both sets of prospective students are then pressured to attend "an informative visit" at Berkeley, i.e., the Sales Pitch.

45. Berkeley's phone operators are scripted to create a sense of urgency: "classes are filling up quickly, you need to visit now!"

46. Phone operators are also scripted to say, after eliciting answers to various personal questions, "I have no doubt that a career planning session would benefit you." They claim that Berkeley will "review hot careers for the future" with the prospective student.

47. These remarks imply that the phone operator is offering a career planning session. In fact, the Recruiters at the Sales Pitch do not generally have any career planning or job market expertise, and their script does not include any meaningful career advice.

B. Berkeley's On Campus Recruiters Play on Prospective Students' Emotions and Obscure Material Facts About Berkeley.

48. At the Sales Pitch, Berkeley presents itself as a concerned advocate for the prospective student.

49. Undercover DCA investigators attended the Sales Pitch three times: in March 2017 and April 2018 at the Manhattan campus ("Undercover 1" and "Undercover 2," respectively), and in April 2018 at the Brooklyn campus ("Undercover 3"). At each Sales Pitch, DCA met with a different Recruiter ("Recruiter 1," "Recruiter 2," and "Recruiter 3").

50. The Sales Pitch script directs the Recruiter to “probe” the prospective student to elicit personal information, pretend to give personalized advice, and to pose as an advocate. Some examples of the script language include:

- “The purpose of this interview is to make sure Berkeley College is the right fit for you and that you will be the right fit for Berkeley College.”
- “I will also let you know at the end of this interview **my recommendations as well**” (emphasis in original).
- “I need to get to know you better.”
- “My concern is . . . Can I get you accepted to the college?” (Since Berkeley practices open admissions, Recruiters do not actually play a role in acceptance.)

51. Berkeley does not promote or describe itself during the first part of the Sales Pitch. The script directs, “no information about Berkeley should be given out. **Strictly fact finding.**” (Emphasis in original.)

52. At Undercover 2 during the probe, Recruiter 2 said, “I’m not here to convince you to go to Berkeley.”

53. Throughout the Sales Pitch, Recruiters cast themselves as advocates for the prospective student. Recruiter 1 disclosed the tuition price and added, “there are steps in which we look to conquer that . . . we don’t want you to pay \$12,000. We want you to be comfortable.” In Undercover 2, after DCA’s investigator described her *paid* job as a caregiver, Recruiter 2 suggested that she report having no income on her FAFSA, stating: “if you’re self-employed, clearly there’s no income to report.” Recruiter 3 vowed to “fight for” the prospective student when interacting with her Berkeley bosses.

54. Finally, the recruiting script directs the Recruiter to say, “at the beginning of this interview I mentioned that I would let you know if I thought Berkeley College would be a good choice for you.” The script continues: “(Explain why.)”

55. At this point in the Sales Pitch, Recruiter 1 said that she could tell the DCA investigator wanted to attend Berkeley because she was asking so many questions.

56. According to the script, the Recruiter then helps the prospective student fill out an application, being careful not to mention the application fee until the end. (“DO NOT ask for the \$50.”)

57. About tuition, Recruiters are scripted to say that financial aid will “make it affordable,” without providing any specific information. If the consumer still has questions about financial aid, the script directs the recruiter to squelch those questions with fake concern: “Do not be concerned about the tuition. My concern is . . . is Berkeley a good choice for YOU?”

58. This is not the only way that Recruiters handle questions about cost. Recruiters also erroneously claim that any college will require the prospective student to take out a loan, or that nobody attends college for free in the U.S. See ¶¶ 161, 162, & 165. Some Recruiters imply that Federal Loan debt is no big deal (see ¶¶ 71, 75, & 76), and some Recruiters say that students who work hard get scholarships (see ¶ 79).

C. After Enrollment, Berkeley Maximizes Students’ Federal Loan Burden.

59. After the Sales Pitch, Berkeley presents financial aid award estimates to prospective students that presupposes they will max out their Federal Loan eligibility for the coming year. These estimates include need-based aid from Berkeley.

60. Berkeley’s policies preclude extending need-based aid to students unless they are maximizing their Federal Loan burden. Berkeley generally does not explain this to students.

61. Berkeley students must request and fill out special paperwork if they do not wish to receive Federal Loans.

62. In sum, when all goes according to script, vulnerable New Yorkers visit Berkeley's campuses expecting career advice, but instead are met with a "probe" designed to play on their personal feelings and insecurities, receive no meaningful career advice, and leave committed to a program the purpose of which is to exhaust their financial aid eligibility.

V. **Berkeley's Illegal Conduct**

63. Berkeley engages in a wide range of illegal, deceptive and unconscionable conduct.

64. When prospective students are considering attending Berkeley, Berkeley deceives them about practically all types of financial aid, including Federal Loans, institutional grants, and institutional loans. It also falsely disparages other colleges and makes false representations about transfer credits, majors, and careers.

65. Once enrolled, Berkeley deceives students about the cost of continued attendance, and other facts about financial aid.

66. After students leave Berkeley, Berkeley tries to collect debt from them that they do not owe, lies about when debt accrued, cloaks its identity when it communicates with them, lies about the existence of legal judgments, and deceives them about re-enrolling at Berkeley.

A. Berkeley Lies About Federal Loans.

67. Many prospective students are understandably nervous about borrowing thousands of dollars, and some simply do not wish to do it. Berkeley overcomes their reluctance by inducing them to rely on it for advice, lying to them about the facts of financial aid, discouraging them from reviewing third-party information about financial literacy, and/or, sometimes, obscuring that information.

68. The CPL bars Berkeley from making “any false . . . or misleading oral or written statement . . . or other representation of any kind . . . in connection with the sale . . . or in connection with the offering for sale . . . of consumer goods or services, or in the extension of consumer credit . . . which has the capacity, tendency or effect of deceiving or misleading consumers.” NYC Code § 20-701(a).

69. At the Sales Pitch, Recruiters induce prospective students to rely on Berkeley for financial aid information by pretending to advocate on prospective students’ behalf (see ¶ 53). To do so, Berkeley touts its ability to personally guide students through the financial aid process. According to Berkeley’s website, a “staff of professionals helps students and families to understand the financial options and complete any necessary applications.”³⁵

70. “We coddle,” Recruiter 1 said to DCA’s investigator. “That’s the difference between us and a public school, you do get more time from us, more intimacy, more help in a sense.” Recruiter 2 said, after describing financial aid, “my job is to get you through the process as seamless as possible.” Recruiter 3 said, when discussing financial aid, “the beauty of Berkeley is students working one-on-one [with Berkeley].” She later claimed that “our financial aid director sits with every student . . . so you know it’s being completed correctly.”

71. In fact, their job is to get the prospective student to use as much aid as possible. To that end, some Recruiters minimize the gravity of borrowing tens of thousands of dollars in Federal Loans. For example:

- a. Recruiter 1 said that she had borrowed “fifty-five grand for school” and “it’s not annoying to pay back every month because I talk to [the loan servicer], I’m open with them.” She described loan servicers as “very flexible” and “so good,” and

³⁵ “Tuition and Financial Aid,” available at http://berkeleycollege.edu/admissions_bc/finances.htm (accessed October 12, 2018).

claimed that “once you’re keeping in touch with them and you’re open with them and tell them this month I really don’t have it, they will push you off for a month.”

This warm and fuzzy portrayal of indebtedness is absurd. Student loan servicing is a trillion-dollar industry in which debtors’ comfort is irrelevant. When borrowers do not pay, servicers—who are essentially debt collectors—act against them.

- b. Recruiter 1 also claimed that her loan servicer gave her “a year, free” after she had a baby. This statement is, at best, incomplete, and at worst, an outright lie. Even deferred loans can accrue interest depending on the type of loan it is, and that interest is capitalized—so that is certainly not “free.” All loans placed on forbearance accrue interest.

See also ¶¶ 75-78.

72. How student loans work is important information, so before students borrow Federal Loans, the Department of Education requires them to take an interactive course that explains the financial aid process and administers comprehension quizzes (“Entrance Counseling”).³⁶ Berkeley interferes in this process by commandeering students’ computers during the course, filling in answers and rapidly clicking through the pages, or telling them the answers. In this way, Berkeley ensures that information about Federal Loans comes only from Berkeley.

73. [REDACTED], [REDACTED], [REDACTED] and [REDACTED] experienced Berkeley’s interference during Entrance Counseling. All recall Berkeley representatives standing over their shoulders to fill in answers, and either clicking through a module or urging them to click through quickly. Other students recall Berkeley filling in answers for them.

³⁶ See 34 CFR § 685.304.

74. Some Recruiters, either by design or ignorance, simply give wrong information. Recruiter 2 told DCA’s investigator that TAP had to be paid back if the student did not graduate. This is false. Recruiter 2 had been working for Berkeley for nearly three years when he made this elementary error.

75. Recruiter 2, when asked how much graduates paid per month on their Federal Loans, floated a hypothetical scenario where the alum would pay \$25 or \$50 per month (but would not mind because of her great job). Once again, this is misleading at best, and an outright lie at worst. Even someone who borrowed only \$5,000 would pay more than \$25-50 per month on a ten-year repayment plan. Further, the average loan burden of Berkeley students is over \$11,000 per year, or \$44,000. On a standard ten-year repayment plan, that alum would pay over \$400 per month. On a twenty-year earnings-based plan, even with a low adjusted gross income of \$35,000, the alum would pay \$141 per month.³⁷

76. Recruiters also bungle the issue of default. Recruiter 3 defined Federal Loan default as meaning, “you didn’t make a payment, you didn’t reach out to [loan servicers], you did absolutely nothing, you ignored them trying to help you.” She added that “literally the only way you reach that status (default) is if you’ve done nothing for a year plus, no payment, no phone call, nothing.”

77. This is a lie. Default is simply a matter of missed payments, and calling one’s loan servicer does not prevent default. Like Recruiter 1, Recruiter 3 explained how the servicers “work with you” and are “there to help you,” creating the impression that no one is ever unable to meet their Federal Loan obligations if they regularly chat with their servicer.

³⁷ The U.S. Dept. of Education provides a calculator [available at https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action](https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action).

78. To compound these oral falsities, Berkeley disseminates written materials to students before the term begins that state: “Loans generally have three repayment options: Defer Payments, Pay only interest and Make Full Payments.” In fact, deferments and interest-only plans are not “generally” available; they are only available under certain limited circumstances.

79. When prospective students start asking pointed questions about financial aid, Berkeley dodges and weaves. For example, in 2016, when ██████████ inquired about the aid documents Berkeley gave him, no one could answer his questions. First, financial aid administrator Steven Perry told him that it did not matter whether ██████████ understood the documents, and he could figure it out later in the year. When ██████████ persisted, Perry gave him a phone number to call that seemed connected to the federal government, but when he called, the person on the line told him that Berkeley needed to answer his questions. Perry then directed ██████████ back to his Recruiter, Doris Jaquez, who scheduled him to meet with the enrollment director, Stephen Weinstein. Weinstein contradicted Perry by admitting he would need to take three terms per year to graduate (not two) in the timeframe Perry had promoted, and when ██████████ pressed him, he said that ██████████ should not worry about paying for Berkeley because if he worked hard, he would receive scholarships in future terms.

80. Berkeley dealt with other students’ concerns about Federal Loans by lying to them.

81. ██████████ was researching New York colleges in spring 2014. Her goal was to open an animal welfare agency that employed people with special needs. She wanted to continue her education but was concerned about costs.

82. At Berkeley ██████████ met Recruiter Doug Colon. After she told him about her college search and her determination to find an affordable school, he gave her good news: because

of her academic record and inspiring career goals, she qualified for a Berkeley scholarship. The scholarship would cover all her part-time attendance except for about \$200 per term.

83. ██████████ was thrilled. She signed all the paperwork that Berkeley gave her.

84. Over the next year, ██████████ attended Berkeley part-time. She earned high grades and felt excited about her future. In spring 2015, she checked with the financial aid office to make sure that her scholarship would renew for the next year. Berkeley told her that she would have to borrow money. Not only that—Berkeley told her that she had *already* borrowed \$13,197 in Federal Loans. Her scholarship had only amounted to \$1,130 per term, while part-time tuition and fees totaled \$4,475 per term.

85. ██████████ was floored. Berkeley put her in touch with Will Moya, the Campus Operating Officer. He told her that he could not help her because Colon no longer worked at Berkeley, and besides, she had signed for the loans.

86. Moya—who has since been promoted to Vice President—also told ██████████ that he could not help her view her file, so she asked the financial aid office. Some of the documents she had never seen before. One contained her e-signature, but it baffled her—it was full of boilerplate language and did not contain information that she would have recognized as a loan application, such as the amount of money she was borrowing.

87. Moya did not question ██████████ account. Rather, he told colleagues that he was “sure she missed communication from her lenders” by not reading her postal mail. He noted that Berkeley had collected all required signatures for the Federal Loans.

88. ██████████ tried contacting multiple offices at Berkeley, but the Berkeley administration was monolithically dismissive of her.

89. ██████████ withdrew from Berkeley. She has not returned to college.

90. Berkeley also deceived [REDACTED] about Federal Loans. She was [REDACTED] years old in August 2011 when she visited Berkeley with her mother. She had been admitted to an acting college but turned it down because it was too expensive. [REDACTED] comes from a large family that prides itself on paying expenses without resorting to loans.

91. The Recruiter asked [REDACTED] mother if she was interested in a parent loan. Her mother said no, and that she would pay [REDACTED] tuition out of pocket.

92. The Recruiter warned [REDACTED] and her mother that tuition was very expensive, but they reiterated that they did not want to borrow loans. The Recruiter moved on to describing the grants and payment plans for which [REDACTED] was eligible. The matter appeared closed.

93. The Recruiter then had [REDACTED] complete paperwork. In addition to a computer session where a Berkeley representative directed her, she also sat with the Recruiter to sign a document related to her FAFSA that did not say she was taking out a loan. Some documents described her “eligibility” for loans; they did not say she would automatically be loaned money.

94. On September 14, 2011, a Master Promissory Note (“MPN”) was signed electronically in [REDACTED] name and her Entrance Counseling was completed. The MPN authorized Berkeley to procure Federal Loans on [REDACTED] behalf for ten years.

95. [REDACTED] balance for the term was \$1,851—a large sum, but her mother was able to pay it.

96. [REDACTED] attended Berkeley on and off until her graduation in early 2017. During that time, she would pay tuition by visiting Berkeley’s financial aid office and asking how much she owed, then submitting a check from her mother or submitting her mother’s credit card information.

97. Sometimes ██████████ viewed her balance online and found it alarmingly high, but when she asked Berkeley about it, she was told not to worry—the number did not reflect all her grants and scholarships.

98. In July 2017, ██████████ mother told her that she had received something strange in the mail—it looked like a student loan servicer was seeking payment on a balance of \$28,834.

99. ██████████ went to Berkeley, where she told financial aid officer Oscar Vasquez what had happened. In the face of her panic about the giant surprise debt, Vasquez appeared unconcerned. Rather, he kept showing ██████████ how expensive Berkeley tuition was and asking, “you think your parents could afford to pay that every semester?” She countered that she had received over \$20,000 in scholarships. Vasquez shook his head and said she would not have been eligible for those without taking out Federal Loans (a remark that made no sense to her at the time). Ultimately Vasquez did nothing but condescend to ██████████; he seemed to be saying that Berkeley had done her a favor by taking out Federal Loans in her name.

100. For months afterward, ██████████ struggled to obtain her records from Berkeley and unearth the policies that had stealthily led her into debt. She endured an epic runaround between Vasquez, Moya (the COO), Theresa Bryant (the financial aid director), and various other representatives in the registrar and financial aid departments. Sometimes they stood her up. She overheard Vasquez say to a colleague that he could not get rid of her. When ██████████ arrived for a scheduled appointment simply to pick up documents, Bryant snuck out a back door to avoid her—after she had been waiting for three hours.

101. Finally, Bryant kept an appointment with ██████████. Considering Bryant’s title, ██████████ hoped to receive answers. Among her questions: was there really a policy that

conditioned grants on borrowing loans? There was (see ¶¶ 147-48), but Bryant refused to tell her that. Instead she claimed that she did not know the rules governing financial aid. ██████████ did not accept that answer, and so another runaround ensued: back to the registrar, which sent her back to financial aid.

102. Ultimately, Berkeley did nothing to help ██████████ with the debt it had incurred in her name.

103. ██████████ fell into a similar trap. She was a teenager from East Flatbush, Brooklyn when she visited Berkeley with her grandmother in December 2014. She felt nervous about attending college, though she thought it was crucial for her future.

104. Berkeley showed ██████████ the financial aid she was eligible for, including loans. ██████████ understood this to be an option and nothing more. Her family's college financing plan was for her to work part time, and for her grandmother to pay whatever tuition that grants did not cover.

105. Like many families, ██████████ and her grandmother assumed that student loans required opt-in; in other words, that Berkeley would only help arrange the loans if they asked Berkeley to do so. In fact, the opposite is true. Berkeley automatically arranges student loans for all eligible students. To opt *out* of student loans, the student must request a specific form and submit that to the financial aid office.

106. Berkeley presented ██████████ with a stack of papers to sign and initial. Berkeley pressured her to sign quickly. She believed that this was necessary to receive grants.

107. None of the forms looked to ██████████ like a contract or application for a loan, and in fact, none of them was. One was a “financial aid lifetime eligibility summary” that contained lots of numbers, but they were all hypothetical—the amount that ██████████ could possibly borrow

over six years. Similarly, the “student loan repayment chart” contained hypothetical repayment plans for loans of various sizes (the figures were inaccurate). A third form, “Financial Aid Session (FAS) Talking Points,” stated that Berkeley had discussed dozens of topics with her, some of them relevant (e.g., “loans need to be repaid”) and some of them not (financial aid for New Jersey residents). On the sole sheet of paper that stated she was taking out loans—the “borrowing acknowledgement form”—[REDACTED] did not sign her name but initialed nine times. This form did not contain any figures, e.g., the amount of the loan.

108. On the same day while at Berkeley, [REDACTED] sat at a computer. A Berkeley representative sat behind her and told her what to write. The representative also clicked through the pages for [REDACTED]. Records reflect that her Entrance Counseling was completed and her MPN was electronically signed on this day.

109. [REDACTED] struggled at Berkeley academically. After the Spring 2015 term she withdrew to focus on earning money. Later she learned that over those two terms, she had borrowed \$6,217 in Federal Loans.

110. Berkeley violated the CPL at least twice within the last three years by interfering with Entrance Counseling. DCA seeks penalties for these violations as described in the appended Schedule A, and any other such violations that it identifies before the end of trial.

111. Berkeley violated the CPL at least five times within the last three years by misrepresenting or omitting material facts about Federal Loans. DCA seeks penalties for these violations as described in Schedule A, and for any other such violations that DCA discovers before the end of trial.

112. Berkeley violated the CPL every time that it told a student or prospective student, orally or in writing, that interest-only payment plans and deferment were “generally available” for

loans, including on the “Berkeley College Challenge Loan Application/Disclosure Form.” DCA seeks penalties for these violations as described in Schedule A, and for any other such violations that it discovers before the end of trial.

113. Berkeley violated the CPL at least 43 times in the last three years by procuring Federal Loans in students’ names after interfering with their Entrance Counseling, making false representations about Federal Loans, or providing the misleading “Disclosure Form” (the number of violations reflects each loan procured). DCA seeks penalties for these violations as described in Schedule A, and for any other such violations that DCA discovers before the end of trial.

114. DCA seeks disgorgement of all revenue Berkeley received within the last three years in the form of Federal Loan disbursements for students deceived about Federal Loans, including those listed in Schedule A, and any others that DCA discovers before the end of trial (collectively the “Federal Loan Consumers”).

115. DCA seeks restitution to all Federal Loan Consumers in the amount of all the Federal Loans borrowed in their names, plus applicable interest, within the last five years, and all monies paid directly to Berkeley within the last five years. These students include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. See Schedule A.

116. DCA seeks an order compelling Berkeley to vacate any judgments it holds against Federal Loan Consumers, discontinue the underlying actions, cease all collection activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers’ credit reports.

117. Finally, DCA seeks an order enjoining Berkeley from interfering with Entrance Counseling in any way, including by completing the process for students; and from disseminating materials that describe interest-only payment plans and deferments as “generally available.”

B. Berkeley Tricks Students and Prospective Students into Taking Out Institutional Loans.

118. Berkeley tricks students into borrowing money not only from the federal government, but also from Berkeley (the “Institutional Loan,” which is distinct from the Challenge Loan described at ¶ 222). Berkeley representatives block students from paying their balance any other way, misrepresent the terms of the financing, and even generate loans without telling students.

119. The CPL bars Berkeley from making “any false . . . or misleading oral or written statement . . . or other representation of any kind . . . in the extension of consumer credit . . . which has the capacity, tendency or effect of deceiving or misleading consumers.” Code § 2-701(a). This includes “the use . . . of . . . ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive[.]” *Id.* at subd. 2.

120. Berkeley uses various forms to bind students to Institutional Loans, including the “Payment Plan Promissory Note” and the “COO Registration Exception Request Contract” (referring to the Campus Operating Officer’s authority to “extend payment deadlines”). Regardless of the Institutional Loan’s format, it binds borrowers to the same terms:

- a. They must pay their balance over a period of less than three months;
- b. They must pay a finance charge of \$20, even if they pay off the loan early;
- c. They must pay a fee of \$75 for each late payment; and,

- d. If they do not “repay this Loan as agreed” then Berkeley “may prevent distribution of the student’s official Berkeley College academic transcripts and/or diploma” (the “Transcript Denial Policy”).

121. Orally and in writing, Berkeley often refers to the Institutional Loan as a “payment plan.” For example, Recruiter 3 told DCA’s investigator that students could rely on payment plans with Berkeley that carried no interest or penalties. This was a lie.

122. Several students have complained to DCA about these practices. When Berkeley was recruiting ██████████ (the prospective student who decided not to enroll), he and his mother repeatedly stated that they would not borrow money from any source other than the federal government, and that they would pay any balance owed to Berkeley out of pocket.

123. ██████████ balance for the first term, after applying all financial aid, would have been \$2,312.50. ██████████ mother said she wanted to pay it all at once. On at least two occasions, Berkeley told them that they could not pay it all at once, but rather would have to use a payment plan. They were sent to a cashier to make their first payment of \$583.

124. After ██████████ paid, the cashier gave him a pile of documents. He noticed that other young people in the room were rushing, signing too quickly to have read them. He asked the cashier if the documents were for a loan. The cashier said no.

125. ██████████ noticed that one of the documents referred to the payment plan as a “loan” with a “finance charge.” He pointed that out to the cashier. The cashier said that usually no one reads the documents, and he called over a supervisor. She did not answer ██████████ question, either. Then Jaquez, the Berkeley Recruiter, who had been nearby during the interaction, told ██████████ not to worry about the documents, and that it was not a big deal.

126. ██████████ was correct about the documents—they were a promissory note for the Institutional Loan. And he was not the only person to whom Berkeley mischaracterized them.

127. ██████████ (the student who investigated her surprise loans after graduating) and her mother insisted that they did not want to take out any loans (see ¶¶ 90-92), but Berkeley provided her four Institutional Loans that it called “payment plans,” at a total financing cost of \$80.00. She complied with the “payment plans” without realizing they were loans.

128. As with ██████████, Berkeley told ██████████ that his family must pay tuition on a “payment plan,” even though his mother was prepared to pay up front. Berkeley said the payment plan was more “convenient.” He ultimately signed documents for 11 Institutional Loans, paying \$220 in finance charges.

129. ██████████ never even signed the papers that trapped her in Institutional Loans. She re-enrolled at Berkeley for the Winter 2016 term. This time, she was not eligible for government aid. Berkeley instead charged the full cost of the term to her—\$8,250. But it did not send her a bill. Instead it generated an Institutional Loan, adding a \$20 finance fee, for a total of \$8,270. Had she known about it, ██████████ would have found this sum astronomically high. But she did not know about it. According to Berkeley’s own records, ██████████ never signed the contract for the Institutional Loan.

130. ██████████ took the spring term off to focus on her new job at ██████████, then re-enrolled in August 2016. Berkeley told her that she owed \$7,770 for past terms, but not to worry—if she graduated, that debt would be forgiven. She was upset about the surprise balance, but she felt helpless to address it, and anyway, it had always been her intent to complete college.

131. Two months later, Berkeley generated another Institutional Loan and processed it without ██████ consent, knowledge, or signature. This time the loan—which did not include the past term’s outstanding balance—was \$12,395.

132. Within months, Berkeley dismissed ██████. In early 2017, soon after her dismissal, her credit nosedived, and she began receiving frequent debt collection phone calls.

133. Until ██████ pays off the debt collectors, they may, after following applicable procedures, add interest and fees to ██████ debt, garnish her wages, seize funds from her bank account, and (for the Federal Loans) intercept her tax refunds and, eventually, her social security payments.³⁸ Student loan debt is generally not dischargeable in bankruptcy.

134. When Berkeley generated an Institutional Loan for ██████ in July 2016, it had already billed her a \$20 finance fee. She never signed the Institutional Loan.

135. When a student signs for an Institutional Loan, not only does Berkeley garner a fee, but it gains leverage over the student. If she fails to follow the terms of the Institutional Loan, then the Transcript Denial Policy prevents her from transferring. (CUNY and other colleges require that applicants produce transcripts of all previous college work, even if they do not hope to transfer the credits.) She also may be hounded by debt collectors—unless she agrees to re-enroll.

136. Berkeley violated the CPL by failing to tell students that their tuition was being financed by Institutional Loans, telling them that they were required to take out an Institutional Loan, and otherwise lying about Institutional Loans. Berkeley committed at least 8 violations related to the Institutional Loan within the last three years. DCA seeks penalties for these violations as described in Schedule B, and any other such violations that it identifies prior to trial.

³⁸ The U.S. Dept. of Education summarizes the law at <https://studentaid.ed.gov/sa/repay-loans/default/collections>.

137. DCA seeks disgorgement of any revenue Berkeley received as finance fees, late fees, or other fees related to the Institutional Loan within the last three years, from or on behalf of the students deceived about Institutional Loans, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and any others that DCA discovers before the end of trial (collectively the “Institutional Loan Consumers”). See Schedule B.

138. DCA seeks restitution for the Institutional Loan Consumers for all monies that they paid as finance fees, late fees, or other fees related to the Institutional Loan within the last five years.

139. DCA seeks an order compelling Berkeley to release official transcripts to all Institutional Loan Consumers.

140. DCA seeks an order compelling Berkeley to move to vacate any judgments it holds against Institutional Loan Consumers, discontinue the underlying actions with prejudice, cease all collections activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers’ credit reports.

C. Berkeley Deceives Students about Institutional Grants.

141. Berkeley vigorously promotes its grants but does not disclose that they require students to maximize their Federal Loan burden.

142. The CPL requires that:

“Sellers offering consumer goods or services in print advertising and promotional literature must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions.”

6 RCNY § 5-09(a).

143. Berkeley’s website homepage advertises that “\$59+ million in Berkeley College institutional aid was provided to qualified students during the 2016-2017 award year.” It also

advertises this figure in flyers given to prospective students. The flyer discloses that awards are applied “after all other federal and state grants and scholarships are calculated,” but does not mention loans.

144. Recruiter 1 told the DCA investigator that “we’re very general [sic] with scholarships and grants.” She disclosed Berkeley’s tuition and said, “we minus Pell, we minus TAP, and we minus a whole bunch of other stuff from Berkeley College itself.” From this presentation, it sounds as though prospective students are likely to receive multiple grants from Berkeley regardless of whether they borrow money.

145. Berkeley’s handbook and catalog describe its financial aid policy:

Berkeley College recommends that students avoid unnecessary borrowing. College financial aid packages are developed with this goal in mind.

146. The advertisements, oral assurances, and handbook are inconsistent with Berkeley’s actual financial aid policy, which it generally does not disclose to students:

Students are required to borrow in order to receive Automatic NIA (need-based institutional aid). Students must exhaust all options before being considered for DNIA (discretionary need-based institutional aid).

147. This policy means that students must borrow the maximum amount that the federal government will lend them (the “Federal Maximum”) before Berkeley will offer need-based assistance. The Federal Maximum is based on students’ class standing (upperclassmen have higher Federal Maximums) and whether they are financially independent (independent students have higher Federal Maximums).

148. In the 2016-2017 academic year, at least seven million dollars of Berkeley’s “institutional aid” was need-based, i.e., required students to borrow the Federal Maximum. Berkeley does not disclose this when it advertises institutional aid.

149. The requirement to borrow the Federal Maximum is a condition on Berkeley's institutional aid.

150. Additionally, whenever Berkeley promises institutional aid without disclosing the requirement that students also borrow the Federal Maximum, Berkeley is making a misleading misrepresentation.

151. Upon information and belief, Berkeley has advertised the quantity of its institutional grants, without proper disclosures, every day for the last three years, with each day constituting a separate and distinct violation.

152. Berkeley violated the CPL 1,096 times omitting material facts and/or attaching secret conditions to institutional aid. DCA seeks penalties for these violations.

D. Berkeley Falsely Disparages Competitors.

153. Many of Berkeley's prospective students also consider attending CUNY. To compete, Berkeley falsely disparages public education by claiming that their programs take longer to complete and require students to borrow money.

154. The CPL bars businesses from "disparaging the goods, services, or business of another by false or misleading representations of material facts[.]" Code § 20-701(a)(3).

155. In conversations with prospective students, Berkeley hypes the possibility of graduating early (the "Accelerated Degree"). This is done by taking summer courses, an option generally available at many colleges, and certainly at CUNY. Thus, Berkeley claim that its Accelerated Degree is somehow unique is false.

156. When prospective students tell a Berkeley phone operator that they are considering community college,³⁹ the operator responds, "you might want to investigate Berkeley's 2 year

³⁹ "Community colleges" offer associate degrees, a k.a. two-year degrees, but not bachelor/four-year degrees.

associates degree program because if you choose continuous enrollment (no semesters off), you will be able to complete it in 16 months[.]” This implies that such a pace is not possible at community college—but it is.

157. According to Recruiter 2, a Berkeley student could complete a bachelor’s degree in 2.5 years. He added that “at other schools it does take about four to five years.” He explained the alleged gap by saying that, at Berkeley, “we’re only offering you what you need. You’re not here taking music, you’re not taking history, you’re not taking science.” Recruiter 3 said that a student could complete an associate degree at Berkeley in twelve months, but that at “community schools it takes longer.” (Berkeley refers to CUNY institutions as “community schools,” though that is not a term generally used in higher education parlance.)

158. In fact, the determining factor in the length of a degree program is the number of credit hours, which is set by federal regulation; students at other schools may graduate early by taking summer courses, regardless of whether the school requires some credits to be related to general education requirements such as history.

159. Until 2016, when Berkeley’s academic calendar used quarters instead of semesters, Recruiters told students that they could graduate faster at Berkeley because quarters were shorter than semesters. This was false. While quarters are shorter than semesters, students must earn more “quarter credits” to complete the same degree.⁴⁰ Contrary to what Berkeley told prospective students, whether a college operates on semesters or quarters does not materially affect the length of degree programs.

160. Berkeley made other false representations about competitors. For example:

⁴⁰ While Berkeley emphasizes the possibility of graduating early, very few Berkeley students actually graduate early. In fact, *only 19% of Berkeley students complete four-year degrees within four years*; those who graduate in less time are only a fragment of that already low figure. See NCES 2018, *supra* note 19.

- a. Recruiter 1 stated that if a student earned more than \$15,000 per year, CUNY Queens College “would say well you do need to take out a loan.” This is a lie— CUNY does not force students to take out loans. In fact, students with income higher than \$15,000 may receive government grants that cover the entire cost of CUNY,⁴¹ whose tuition is only a fraction of Berkeley’s, thus manageable for many students even without loans or grants.
 - b. Recruiter 1 stated that at “the community schools,” “you’re very on your own, you can’t really ask that many questions because there’s no one to ask.”
 - c. Unprompted, Recruiter 1 offered her opinion of public schools, stating that she would “definitely” choose a private school instead. She claimed to have had a harrowing experience at CUNY Hostos Community College: “I hated it there. It was like a WIC office.⁴² They shouted out my social security number across the whole financial aid office. . . . It was definitely horrible.”
161. Recruiter 3 said of attending college for free: “not in America . . . not happening.”
162. [REDACTED] tried to compare Berkeley to CUNY. She visited Berkeley in 2011 and mentioned that she was also considering CUNY. The Recruiter deceptively told her that she would graduate sooner from Berkeley because Berkeley’s academic calendar used quarters instead of semesters. The Recruiter also said that she would not have to pay anything out of pocket at Berkeley.

⁴¹ Throughout the time period covered by this complaint, low-income New Yorkers have been eligible for Pell and TAP Grants that together covered the entire cost of attending CUNY. Beginning in 2018, the Excelsior Scholarship has covered the cost of attending CUNY for many middle-income New Yorkers as well, albeit with more strings attached.

⁴² WIC stands for Women, Infants, and Children. It is a federal nutrition program that assists low-income women through pregnancy and feeding an infant.

163. [REDACTED] was convinced by the Sales Pitch and enrolled. She did have out of pocket costs at Berkeley, and eventually had to switch to part-time status because she could not afford them. Now, seven years after a Recruiter told her she would graduate sooner if she enrolled at Berkeley, she is still working on her bachelor's degree.

164. In April 2018, [REDACTED] told Berkeley that she wanted to transfer to CUNY so that she would not need any more loans. Berkeley told her that she would not be able to afford attending CUNY part-time without borrowing money. Berkeley costs \$12,950 per semester; CUNY costs \$3,685—the math speaks for itself.

165. Berkeley has violated the CPL at least twice in the last three years by claiming that the Accelerated Degree was unique or that other colleges required longer enrollment periods. DCA seeks penalties for these violations as described in Schedule C, and for any other such violations that it identifies prior to trial.

166. Berkeley violated the CPL at least three times in the last three years by falsely claiming that other colleges require students to borrow money or that it is impossible to attend them for free. DCA seeks penalties for these violations as described in Schedule C, and for any other such violations that it identifies prior to trial.

167. DCA seeks disgorgement of all compensation received by Berkeley from or on behalf of all consumers deceived about other colleges (the “Disparagement Consumers”) within the last three years, including: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and any others that DCA discovers before the end of trial. See Schedule C.

168. DCA seeks restitution, plus applicable interest, for all Disparagement Consumers who transacted with Berkeley within the last five years, and all monies paid directly to Berkeley within the last five years.

169. DCA seeks an order compelling Berkeley to issue official transcripts to all Disparagement Consumers.

170. DCA seeks an order compelling Berkeley to vacate any judgments it holds against Disparagement Consumers, discontinue the underlying actions with prejudice, cease all collections activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers' credit reports.

171. DCA seeks an order enjoining Berkeley from illegally disparaging other colleges.

E. Berkeley Deceives Students about Transfer Credits, Majors, and Careers.

172. During the Sales Pitch, Recruiters say practically whatever they think the prospective student wants to hear about academic programs, employment, and transfer credits. Recruiters steer prospective students into programs of study in which they have shown no interest and have no aptitude, leaving some unable to obtain jobs in their field of study. Berkeley's website compounds the Recruiters' deceptions with false and misleading information.

173. The CPL bars Berkeley from making any "false . . . or misleading oral or written statement . . . in connection with the sale . . . or in connection with the offering for sale . . . of consumer goods or services . . . which has the capacity, tendency or effect of deceiving or misleading consumers." Code § 20-701(a).

174. The Sales Pitch script says, "Programs, give them what they want/interested in." It does not account for the hypothetical situation where a prospective student wants a program that Berkeley does not offer.

175. Recruiter 1 said that if a graduate held Berkeley degrees in financial services and accounting, “no matter what, [the career services office] will get you a good job.” This is a lie, since no school can guarantee anyone a job.

176. Recruiter 3 stated that “96% of our students graduate and are employed once they graduate.” This is deceptive, at best, and an outright lie, at worst. First, Berkeley’s graduation rate is only 29%.⁴³ Second, upon information and belief, there is no reliable basis for claiming that even that small percentage are actually employed.

177. Berkeley especially fogs the question of accounting degrees. An important credential for New York accountants is the Certified Public Accounting (CPA) license, but Berkeley’s accounting program does not make a graduate eligible for the license.⁴⁴ Recruiter 1, when pressed about the CPA license, said that Berkeley financial services majors are “set up to take that exam.”

178. Berkeley’s website describes its accounting degree as “a baccalaureate program that contributes to preparing students for the rigorous CPA exam[.]” In fine print, far at the bottom, the page discloses that its graduates “do not automatically become [CPAs], and such programs are not specifically intended to prepare graduates for the CPA examination.”⁴⁵ This does not clarify the earlier claim; for those who find it, it simply muddies the issue further. Elsewhere Berkeley’s website includes a page—linked to its business degree page—called “Accounting at a Glance.” It states, “many accountants become [CPAs].”⁴⁶

⁴³ See NCES 2018, *supra* note 19.

⁴⁴ See 8 NYCRR § 70.2, requiring, among other things, that applicants have completed 150 credit hours. Berkeley’s accounting programs are 60 and 120 credits, respectively.

⁴⁵ Available at http://berkeleycollege.edu/academics_bc/accounting_htm, accessed October 12, 2018.

⁴⁶ Available at http://berkeleycollege.edu/student_experience_bc/career-outlook_11001_htm, accessed October 12, 2018.

179. ██████████ wanted to become an accountant as soon as possible, which meant finding a college that would accept his transfer credits from ██████████.

180. During his 2015 Sales Pitch, Berkeley claimed that it would accept most of his credits, and that he only needed two additional credits to join its four-year accounting degree program. All he needed to do, Berkeley claimed, was obtain a 2.0 GPA in his first term at Berkeley.

181. ██████████ enrolled in Fall 2015, borrowing over \$4,000 in Federal Loans and paying over a thousand dollars out of pocket, and met the necessary GPA threshold. But when he tried to register for accounting classes the next semester, Berkeley would not let him.

182. When ██████████ sat down with a dean at Berkeley, he was told that the Recruiter had made a mistake—he did not need two more credits, but rather *four more courses*. Moreover, Berkeley declined credit for six of his courses from ██████████. This would delay his graduation by a year.

183. According to Berkeley’s internal records, the Recruiter had evaluated ██████████ transcript as though it came from a U.S.-based institution—a blunder that was squarely Berkeley’s fault. Moya, the Campus Operating Officer, acknowledged to a colleague that ██████████ “admissions process wasn’t smooth.” But Berkeley did nothing to compensate him for the time and money he had spent under false pretenses.

184. Frustrated and disillusioned, ██████████ withdrew in February 2016. Within a month, a collections agency began calling him about money he allegedly owed to Berkeley. The amount seemed to rise unaccountably. He eventually paid his balance with a credit card—about \$2,000. He still, however, owed thousands of dollars in Federal Loans because of one term at Berkeley. ██████████ has not returned to school.

185. [REDACTED] also hoped to transfer credits when he moved to New York in 2015. He had been a senior at the [REDACTED], majoring in computer science. Exploring the possibility of transferring, he met with a Berkeley Recruiter. He told the Recruiter that he was dissatisfied with tech and wanted to pursue a career serving the community.

186. The Recruiter told [REDACTED] that she understood, and that they would sit down together to choose the right major for him—later. In the meantime, she said, he should enroll at Berkeley as an information technology management major. That way, she said, although he would lose some transfer credits, he would maintain his status as a senior. [REDACTED] agreed and filled out the required paperwork.

187. [REDACTED] is a [REDACTED] and used his [REDACTED] to pay Berkeley's tuition.

188. [REDACTED] was assigned to an academic advisor. He told the academic advisor what he had told the Recruiter, and like the Recruiter, the academic advisor promised that they would sit down later to chart a course for him. But that never happened. Berkeley just kept pushing him along the information technology track. Meanwhile, [REDACTED] realized that Berkeley had only accepted about half his credits for transfer, so he was not a senior. The arrangement was the worst of both worlds: he was working toward a degree that he did not want, and he had been set back years.

189. Finally, in 2016, [REDACTED] gave up and withdrew. His [REDACTED] are exhausted, and he has not returned to college.

190. Berkeley violated the CPL at least 2,192 times by posting false and/or misleading CPA information on two pages of its website for at least three years, with each day of posting constituting a separate and distinct violation. DCA seeks penalties for these violations as described in Schedule D, and any other such violations that it identifies prior to trial.

191. Berkeley violated the CPL at least twice in the last three years by misrepresenting the probability of finding work after enrolling at Berkeley. DCA seeks penalties for these violations, including those described in Schedule D and any others that DCA identifies before the end of trial.

192. DCA seeks disgorgement of all revenue that Berkeley received from or on behalf of students enrolled in either of its accounting degree programs in the last three years.

193. DCA seeks disgorgement of all revenue that Berkeley received from or on behalf of any students it deceived about transfer credits, majors, or careers (the “Future Prospects Consumers”) within the last three years. These students include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and any others whom DCA identifies before the end of trial. See Schedule D.

194. DCA seeks restitution for all “Future Prospects Consumers” in the amount of all Federal Loans borrowed to attend Berkeley, plus applicable interest, and all monies paid directly to Berkeley, within the last five years.

195. DCA seeks an order compelling Berkeley to vacate any judgments it holds against Future Prospects Consumers, discontinue the underlying actions with prejudice, cease all collections activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers’ credit reports.

196. DCA seeks an order compelling Berkeley to issue official transcripts to all Future Prospects Consumers.

197. DCA seeks an order enjoining Berkeley from claiming that it prepares students for the CPA examination, and from enrolling transfer students before confirming in writing the number of credits that it will accept.

F. Berkeley Conceals Costs from Students.

198. What a student will owe Berkeley depends on their financial aid package, including Pell Grants and Institutional Grants. Most students receive some financial aid, and Berkeley heavily promotes the idea that nobody pays full tuition. See, e.g., ¶¶ 53, 145. But when a student's financial aid application is denied, Berkeley delays informing the student for weeks or months after it finds out—sometimes until it is too late to withdraw for a refund.

199. The CPL bars Berkeley from “fail[ing] to state a material fact if such [failure] deceives or tends to deceive[.]” Code § 20-701(a)(2).

200. The Winter 2016 term began on January 4 of that year. On January 22, 2016, after [REDACTED] (the student saddled with surprise Federal Loans and Institutional Loans) had been attending classes for weeks, Berkeley's Student Account Office informed her that she was “cleared” for Winter 2016.

201. On or before January 25, 2016, Berkeley determined that [REDACTED] would receive no financial aid for Winter 2016 and therefore owed \$8,270. It generated the stealth Institutional Loan on that date, but never sent her an invoice.

202. On or before October 8, 2016, Berkeley determined that [REDACTED] would receive no financial aid for the term in progress, fall 2016, and therefore owed \$12,395 (in addition to the \$8,270 owed for past terms). On that day, Berkeley generated an Institutional Loan to [REDACTED] for \$12,395. See ¶ 203. Again, Berkeley sent no invoice. On December 7, 2016, Berkeley generated a financial aid award letter stating that [REDACTED] would receive \$8,497 in financial aid, including Institutional Grants worth \$2,101 and a Pell Grant of \$2,908.

203. In Fall 2016, [REDACTED], a returning student, also experienced a failed financial aid application. On or before September 23, 2016, Berkeley told her that she was financially

“cleared” to attend Fall 2016. Then, within two weeks of the start of the term, Berkeley vaguely told her that there was an issue with her FAFSA.

204. [REDACTED] viewed her FAFSA, found an issue, corrected it, and assumed the problem was resolved. She did not receive an invoice from Berkeley until months later, after she completed the term and withdrew. Berkeley had generated, signed on its own behalf, and charged a fee for an Institutional Loan of \$12,395 during the first few weeks of the term. That figure would have shocked [REDACTED]—*if* Berkeley had shown it to her. But it did not, as evidenced by the blank space where her signature should be.

205. [REDACTED] and [REDACTED] (twice) would have been entitled to refunds of at least 50% if Berkeley had promptly notified them of how much they owed and they had withdrawn in response. [REDACTED] and [REDACTED], too, would have been entitled to refunds at the points when Berkeley generated Institutional Loans without telling them. Instead Berkeley simply omitted to tell them their costs.

206. Berkeley knew that [REDACTED] financial aid would drop considerably before graduation. To entice her to enroll, Berkeley lied to her.

207. Before [REDACTED] enrolled, Berkeley emailed her documents to sign. One of them read, “I, [REDACTED] . . . understand that as of today, my Financial Aid Lifetime Eligibility is as follows[.]” The document claimed that she could receive Pell Grants for 18 quarters. She signed it on November 14, 2012.

208. The document was false. [REDACTED] had used up several terms of eligibility at another for-profit college, so she only had about a year’s worth of eligibility remaining.

209. Berkeley sent [REDACTED] other documents that week which projected Pell Grants would cover \$1,850 per quarter.

210. On January 8, 2014, after the winter quarter began, Berkeley emailed [REDACTED]: “your financial aid for the winter 2014 term, was reduced by \$930. You are no longer receiving the PELL Grant.” She had to make up the difference herself—every term.

211. [REDACTED] TAP eligibility was soon exhausted as well, and her costs rose considerably. She borrowed more and put every possible dollar into Berkeley.

212. At the time, [REDACTED] was a single mother of three children, all under age 18, one of whom was disabled. Her goal was to complete her degree as quickly as possible. This made her determined to pay Berkeley whatever was necessary.

213. When Berkeley first recruited [REDACTED], it showed her what Berkeley would cost for her first two terms: \$1,156 or \$1,155 in subsidized federal loans, \$1,980 in unsubsidized loans, and \$814 or \$815 out of pocket. In the last term that she attended full time, fall 2014, she borrowed \$1,815 in subsidized loans, \$2,309 in unsubsidized loans, and owed Berkeley \$1,721 out of pocket. In other words, expenses rose by \$1,895 per quarter.

214. Berkeley could have explained all of this to [REDACTED] up front. But instead it sent her false information and deceptively rosy short-term projections.

215. With interest, [REDACTED] now owes over \$40,000 in Federal Loans. Her monthly payments are over \$500.

216. Berkeley violated the CPL at least three times within the last three years by failing to tell students what they owed. DCA seeks penalties for these violations as described in Schedule E, and any other such violations that it identifies before the end of trial.

217. DCA seeks disgorgement of all revenue Berkeley received within the last three years from or on behalf of these students after it failed to notify them of costs (the “Cost

Consumers”). The Cost Consumers include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and any others whom DCA identifies before the end of trial. See Schedule E.

218. DCA seeks an order compelling Berkeley to issue official transcripts to all Cost Consumers.

219. DCA seeks restitution for all Cost Consumers deceived within the last five years, in the amount of monies paid and/or borrowed to continue enrollment at Berkeley based on deception. See Schedule E.

G. Berkeley Collects Debt that Is Not Owed.

220. Berkeley is a debt collector under the Collection Rules when it seeks monies owed by its current and former students. See 6 RCNY § 5-76. As such, it is barred from “us[ing] any unfair or unconscionable means to collect or attempt to collect a debt,” including “(1) collecting any amount . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 6 RCNY § 5-77(e).

221. Berkeley pursues its graduates, seeking payments for debts that it is not owed. Often, the alleged basis for the debt is one or more “Challenge Loans.” These are loans that Berkeley extends to students with the promise that if they graduate from Berkeley, Berkeley will forgive the debt.

222. [REDACTED] was one such borrower. She enrolled in Berkeley’s Honors Program in Fall 2013. Determined to earn a bachelor’s degree, she attended Berkeley without any terms off and carefully tracked her progress toward graduation. While attending Berkeley full time, she also worked [REDACTED].

223. Account records show that for [REDACTED] entire tenure at Berkeley, Berkeley expected her to graduate in Summer 2016 or sooner.

224. ██████████ successfully completed her Summer 2016 courses and a federally-mandated counseling session for graduating Federal Loan borrowers. She believed that she was a college graduate. But in November 2016 Berkeley sent her a letter stating that because she was “unable to successfully complete [her] program at Berkeley,” she owed it \$4,675 in Challenge Loan debt.

225. As soon as she found out that she had not graduated, ██████████ arranged to make up the alleged missing credits. Berkeley agreed to award them for an internship she had completed the previous spring if she wrote a paper about it. She submitted the paper to the Dean of Strategic Initiatives within two weeks. The dean (an “upper management” employee) told her that she had earned an A. Berkeley counted her as enrolled part-time in Fall 2016 and let her graduate.

226. As COO Moya later described the episode to a colleague, ██████████ “was processed as a non-graduate. However, there was an error and we were able to graduate her.”

227. Berkeley continued to send “Dunning Letters” (a debt collection notice to a consumer, often sent multiple times, which state that the consumer is overdue on an account receivable to the sender) to ██████████ for the Challenge Loan for two more months. And Berkeley did not grade her internship paper for free—it obtained a \$747 Pell Grant in ██████████ ██████████ name for Fall 2016.

228. ██████████ found herself in a similar situation. After graduating from Berkeley in September 2016, Berkeley hassled her for months to pay \$425 by sending her Dunning Letters. The alleged debt appeared to be related to a Challenge Loan. But she had graduated—early. Finally, Berkeley acknowledged she had graduated and backed off.

229. [REDACTED], on the other hand, does not know why Berkeley thinks he owes it money. He graduated from Berkeley owing it nothing; but when he requested his diploma in 2011, Berkeley refused to issue it, telling him that he owed more than \$3,000. The Student Accounts department referred him to Moya. Moya then referred him to Student Accounts.

230. [REDACTED] began receiving constant phone calls from debt collectors. Berkeley continued to stonewall him, with various departments referring him to Moya, and Moya ignoring his messages. As recently as March 2017, Berkeley told [REDACTED] that he owed thousands of dollars (first \$5,525, then \$4,111) but refused to explain why.

231. [REDACTED] credit report reflects the alleged unpaid debt.

232. Berkeley tried a different tack with [REDACTED], generating two Institutional Loans on her behalf without her knowledge, consent, or signature, and charging her fees for each. See ¶¶ 202-203.

233. Berkeley tried to collect on the Institutional Loans by calling her at least three times, sending her at least four letters, and reporting the alleged debt to three credit bureaus.

234. Berkeley led [REDACTED] to believe that she had signed all the documents that it needed to enforce debts against her. Because of Berkeley's efforts, [REDACTED] paid at least \$300.

235. There is no agreement creating [REDACTED] debt, so Berkeley should not have sought to collect anything.

236. In January 2016, Berkeley told [REDACTED] that she owed it \$366. Two months later, Berkeley inexplicably claimed she owed it \$1,217, even though she had not attended Berkeley since it claimed she owed \$366. Neither of these claims seemed related to \$2,125 in alleged Challenge Loan debt, which Berkeley separately sought from [REDACTED] throughout the same time period.

237. Berkeley sued [REDACTED] in 2016. Two years later, after she requested an account statement, Berkeley realized that it actually owed her a refund for an overpayment in 2014.

238. There was no legal basis for collecting the amounts sought from [REDACTED], [REDACTED], [REDACTED], [REDACTED], or [REDACTED].

239. Berkeley violated the Collection Rules at least 20 times in the last three years by attempting to collect debts that were not owed. DCA seeks penalties for these violations as described in Schedule F, and any other such violations that it identifies prior to trial.

240. DCA seeks disgorgement of any funds Berkeley collected as debt from former students without a legal basis within the last three years, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and any others whom DCA identifies before the end of trial (collectively the “Baseless Debt Consumers”). See Schedule F.

241. DCA seeks an order compelling Berkeley to release official transcripts to all Baseless Debt Consumers.

242. DCA seeks restitution for all Baseless Debt Consumers, in the amounts that they paid Berkeley, its agents or successors, and any fees paid to sheriffs or other intermediaries within the last five years because of Berkeley’s efforts to collect unearned debt. See Schedule F.

243. DCA seeks an order enjoining Berkeley from collecting debt based on contracts that the alleged debtor did not sign.

244. DCA seeks an order compelling Berkeley to move to vacate any judgments it holds against Baseless Debt Consumers, discontinue the underlying actions with prejudice, cease all collections activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers’ credit reports.

H. Berkeley Lies About When Debt Accrued.

245. The Collection Rules provide that debt collectors “in connection with collection of a debt, shall not make any false, deceptive, or misleading representation.” 6 RCNY § 5-77(d).⁴⁷

246. In January 2016, Berkeley sued its former student [REDACTED] for \$4,300. At least seven years had passed since her withdrawal from Berkeley.

247. The statute of limitations on collections actions is six years. See CPLR 213. Berkeley got around that law in [REDACTED] case by having its lawyer affirm to the court, in a written filing, that “this cause of action accrued in New Jersey on 6/26/2015[.]” Neither the location nor the date of accrual is accurate.

248. Based on that false filing, Berkeley obtained a judgment against [REDACTED] that is accruing 9% interest. Berkeley uses the judgment to garnish her paycheck.

249. [REDACTED] executed a Challenge Loan contract in 2010. The contract let Berkeley extend \$425 in credit to her every term that she attended. Ultimately, she borrowed \$4,675 pursuant to this contract and then later, according to Berkeley, incurred an additional \$3,570 of debt.

250. Berkeley sued [REDACTED] in August 2017 for \$8,245, asserting that all her debt accrued on June 28, 2017—almost a year after she withdrew from Berkeley. This also included her Challenge Loan debt and \$1,275 that Berkeley extended her more than six years prior to the date it sued her. Berkeley did this despite having signed a contract with [REDACTED] in 2016 stating that she only owed \$1,559 for past terms, i.e., that she did not owe anything related to the 2010 Challenge Loan contract.

⁴⁷ That the representation was made in legal filings does not bar application of the Collection Rules. Debt collection laws typically apply to legal filings. Under the federal Fair Debt Collection Practices Act (FDCPA), for example, debt collectors are liable to consumers for lies to the court. See, e.g., Samms v. Abrams, 112 F. Supp. 3d 160, 164 (S.D.N.Y. 2015) (debt collector created “false impression” that it was legally entitled to attorney fees by seeking them in complaint).

251. Berkeley violated the Collection Rules at least twice in the last three years by making false representations about when debt accrued. DCA seeks penalties for these violations as described in Schedule G, and any other such violations that it identifies prior to trial.

252. DCA seeks disgorgement of any funds Berkeley collected from students based on false dates of debt accrual, including [REDACTED], [REDACTED], and any others whom DCA identifies before the end of trial (collectively the “Wrong Date Consumers”). See Schedule G.

253. DCA seeks an order compelling Berkeley to issue official transcripts to all Wrong Date Consumers.

254. DCA seeks an order compelling Berkeley to move to vacate any judgments that it holds against Wrong Date Consumers, discontinue the underlying actions with prejudice, cease all collections activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers’ credit reports.

255. DCA seeks restitution for Wrong Date Consumers for any amounts paid to Berkeley, its agents or successors, and any intermediaries, within the last five years, based on false debt accrual dates.

I. Berkeley Cloaks Its Identity from Former Students.

256. Berkeley sends Dunning Letters and invoices (the “Invoice”) to student who withdraw and are believed to owe money. On these documents, the author and payee are not identified as “Berkeley” but rather as “BES, Inc.” Upon information and belief, BES, Inc. is a fictitious name.

257. In connection with the collection of a debt, Berkeley is barred from using “any business, company, or organization name other than the true name of the debt collector’s business[.]” 6 RCNY § 5-77(d)(13).

258. The Dunning Letters and Invoices are initiated in connection with debt collection. Berkeley violates the Collection Rules each time it sends a Dunning Letter or Invoice with this fictitious name.

259. Berkeley violated the Collection Rules at least 15 times in the last three years by using a fictitious name in connection with collecting debts from former students, including [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. DCA seeks penalties for these violations as described in Schedule H, and for any such violations that it discovers before the end of trial.

260. DCA seeks an order enjoining Berkeley from collecting debt under any name that does not include the word “Berkeley.”

J. Berkeley Lies to Former Students about Legal Judgments.

261. Berkeley sued [REDACTED] in August 2017. After she found out about the case, she tried to discuss it with Berkeley. Berkeley told her, erroneously, that it already held a judgment against her. Feeling hopeless, [REDACTED] did not explore how to defend herself in the pending action.

262. This was not a one-off error by a rogue Berkeley employee. Berkeley’s “Policy and Procedures for BES Collection Department” (the “Collection Policy”)—which is the only written material that Berkeley uses to train collection employees—offers the following misinformation about the legal process: its collection agency “investigates the [student’s] account to see if Berkeley should issue a legal judgment, upon approval by Berkeley management.”

263. This is false on its face, since only a court of law can issue a “legal judgment.”

264. The Collection Rules bar Berkeley from making a “false representation of the character, amount or legal status of any debt[.]” 6 RCNY § 5-77(e)(14).

265. Each time Berkeley represents to a consumer that it held a “legal judgment” based on its policy, it violates the Collection Rules. It has done so at least once. DCA seeks penalties for this violation as described in Schedule I, and for any other such violations that it discovers before the end of trial. DCA seeks restitution for [REDACTED] in the amount that she paid after the false statement, and likewise for any similarly deceived consumers whom it discovers before the end of trial.

266. DCA seeks an order enjoining Berkeley from representing its internal determinations to pursue consumers as “legal judgments.”

K. Berkeley Deceives Former Students about Re-enrollment.

267. After a student withdraws from Berkeley, Berkeley begins trying to woo them back. In addition to sending Dunning Letters and Invoices, Berkeley emails the former student (the “Re-enrollment Emails”).

268. The CPL bars Berkeley from making false or misleading statements, including as to “the reasons for ... price reductions, or price in comparison to prices of ... one’s own price at a past or future time[.]” Code § 20-701(a)(6).

269. Berkeley’s Re-enrollment Emails express concern for the former students’ well-being and future. For example, in July 2016, Moya emailed [REDACTED] and [REDACTED] a photograph of a graduation ceremony with the note: “my goal is for you to see yourself in this graduation picture and to get you back on track towards graduation!!” According to the email, “All we want is for you to graduate!”

270. The Re-enrollment Emails offer to retroactively reduce tuition and fees: “Upon your re-enrollment at Berkeley College for the [following term], your prior account balance owed

to Berkeley College will be set aside and eventually forgiven, if you comply with ALL of the program details.” (Emphasis in original.)

271. The Dunning Letter makes a similar offer in even vaguer terms: “If . . . you wish to re-enroll at Berkeley, repayment of your Challenge loan will be deferred until you graduate from Berkeley.”

272. Former students who express interest in re-enrollment are invited to meet one-on-one with Berkeley. There they are given legal documents that they must sign before re-enrolling (the “Re-enrollment Contract”). The Re-enrollment Contract contains several terms, such as:

- a. The re-enrolled student must attend Berkeley continuously until graduation.
- b. Should Berkeley sue the re-enrolled student, she will not defend herself. “I hereby acknowledge the validity of the [prior terms’] Debt, waive any defenses I may have to its collection, and agree not to contest the validity of the Debt in any future legal proceeding.”

273. Berkeley does not disclose these conditions in the Re-enrollment Email or the Dunning Letter.

274. ██████████ has re-enrolled at Berkeley multiple times in hopes of clearing her debt.

275. ██████████ attended Berkeley on and off from 2009 to 2014, funding her studies with Federal Loans, Institutional Loans, and Challenge Loans. During this time, she realized that she would be better off financially at CUNY, but she could not transfer because of the Transcript Denial Policy. Meanwhile, whenever she took time off from Berkeley, she would find herself facing onerous repayment and enticing re-enrollment offers. So, she fell into a cycle of withdrawing from Berkeley because she could not afford out-of-pocket costs, then re-enrolling in

the hope of clearing her debt to Berkeley, then—after incurring even more debt—withdrawing when out-of-pocket costs overwhelmed her again. In other words, she was caught in a debt trap.

276. ██████████ finally quit Berkeley for good in 2014, after her mother died. As a single parent and full-time worker, ██████████ had relied on her mother for help taking care of her young son. Moya, the COO, at first discouraged her from withdrawing but then, after she burst into tears, told her he understood. A few months later he demanded that she meet with him again. She refused, but then acquiesced to a phone call. On the phone he berated her and threatened to send her account to collections if she did not re-enroll.

277. Indeed, in April 2016, after ██████████ ignored Re-enrollment Emails, Berkeley sued her. It now holds a judgment against her for over \$5,000. She also owes tens of thousands of dollars in Federal Loans. She struggles to provide for her son with ruined credit.

278. Berkeley violated the CPL at least three times by advertising an offer to former students without disclosing material conditions, including continuous enrollment and waiver of all defenses in future litigation.

279. When Berkeley sends Re-enrollment Emails, its motivation is not to help former students graduate. If that were true, it would not employ the Transcript Denial Policy. Rather, Berkeley's goal in sending Re-enrollment Emails and offering debt reduction is to squeeze more money out of former students.

280. Berkeley violated the CPL at least three times by making false representations about its reason for reducing or discounting the price of past semesters. DCA seeks penalties for these violations as described in Schedule J.

281. Berkeley violated the CPL at least three times by failing to disclose material terms in statements about re-enrollment. DCA seeks penalties for these violations as described in Schedule J.

282. DCA seeks disgorgement of all revenue Berkeley collected in the last three years from students who re-enrolled after receiving false or misleading Re-enrollment Offers and Dunning Letters (the “Re-enrollment Consumers”), including [REDACTED], [REDACTED], and any others whom DCA identifies before the end of trial. See Schedule J.

283. DCA seeks restitution for all Re-enrollment Consumers in amounts paid to Berkeley and its agents or intermediaries, plus any applicable interest on loans incurred, based on false and misleading Re-enrollment Emails or Dunning Letters. See Schedule J.

284. DCA seeks an order compelling Berkeley to issue official transcripts to all Re-enrollment Consumers.

285. DCA seeks an order finding that Berkeley never held a valid debt related to the Re-enrollment Consumers for any amounts incurred after they received a Re-enrollment Email or Dunning Letter.

286. DCA seeks an order compelling Berkeley to move to vacate any judgments that it holds against Re-enrollment Consumers, discontinue any collections actions with prejudice, cease all collections activity, and ask all the major credit bureaus to delete information about Berkeley on these consumers’ credit reports.

FIRST CAUSE OF ACTION

Engaging in deceptive trade practices in violation of NYC Code § 20-700

At least 2,265 violations

287. NYC Code § 20-700 prohibits deceptive trade practices, defined as “[a]ny false, falsely disparaging, or misleading oral or written statement, visual description or other

representation of any kind made in connection with the sale . . . or in connection with the sale, lease, rental or loan or in connection with the offering for sale . . . or loan of consumer goods or services, or in the extension of consumer credit or in the collection of consumer debts, which has the capacity, tendency or effect of deceiving or misleading consumers.” NYC Code § 20-701(a). Deceptive trade practices include but are not limited to: “(1) representations that goods or services have . . . characteristics . . . [or] benefits . . . that they do not have; . . . (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive; (3) disparaging the goods, services, or business of another by false or misleading representations of material facts; . . . (7) stating that a consumer transaction involves consumer rights, remedies or obligations that it does not involve . . .” Id.

288. Berkeley violated NYC Code § 20-700 repeatedly and persistently.

289. Berkeley violated NYC Code § 20-700 at least 50 times by deceiving students and prospective students about Federal Loans. As detailed in Schedule A, it is liable for penalties for each violation, restitution to students, and disgorgement of all revenues received in the form of Federal Loans from or on behalf of students whom it deceived about Federal Loans. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

290. Berkeley violated NYC Code § 20-700 at least nine times by deceiving students and prospective students about the Institutional Loan. As detailed in Schedule B, it is liable for penalties for each violation, restitution to students, and disgorgement of all revenues received from or on behalf of students whom it deceived about the Institutional Loan. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

291. Berkeley violated NYC Code § 20-700 at least five times by falsely disparaging competitors. As detailed in Schedule C, it is liable for penalties for each violation, restitution to students, disgorgement of all revenues received from or on behalf of students to whom it disparaged a competitor. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

292. Berkeley violated NYC Code § 20-700 at least 2,194 times by deceiving prospective students about transfer credits, majors, and careers. As detailed in Schedule D, it is liable for penalties for each violation, restitution to students, and disgorgement of all revenues received from or on behalf of students whom Berkeley deceived about transfer credits, majors, or careers. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

293. Berkeley violated NYC Code § 20-700 at least four times by hiding its costs from students. As detailed in Schedule E, it is liable for penalties for each violation, restitution to students, and disgorgement of all revenues received from or on behalf of students after hiding costs from them. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

294. Berkeley violated NYC Code § 20-700 at least three times by making false representations about its reasons for providing discounts. As detailed in Schedule J, it is liable for penalties for each violation, restitution to students, and disgorgement of all revenues received from or on behalf of students after making false representations to them. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

SECOND CAUSE OF ACTION

*Failing to disclose material conditions in violation of 6 RCNY § 5-09(a)
At least 1,099 violations*

295. Rule 6 RCNY § 5-09 provides that “[s]ellers offering consumers goods or services in print advertising and promotional literature must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions.”

296. Berkeley violated 6 RCNY § 5-09 repeatedly and persistently.

297. Berkeley failed to disclose material exclusions, reservations, limitations, modifications or conditions on its institutional grants at least 1,096 times.

298. Berkeley failed to disclose material exclusions, reservations, limitations, modifications or conditions on its Re-enrollment Contracts at least three times, as detailed in Schedule J.

299. Berkeley is liable for each time it violated New York City law by failing to make required disclosures. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing. Berkeley is also liable for disgorgement of all revenues received from or on behalf of students after their re-enrollment.

THIRD CAUSE OF ACTION

*Collecting debt not owed in violation of 6 RCNY § 5-77(e)(1)
At least 22 violations*

300. Rule 6 RCNY § 5-77(e) bars Berkeley from “us[ing] any unfair or unconscionable means to collect or attempt to collect a debt,” including “(1) collecting “any amount ... unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

301. Berkeley used unfair or unconscionable means to collect or attempt to collect a debt at least 22 times by seeking to collect amounts that it was not owed, as detailed in Schedule F.

302. Berkeley violated 6 RCNY § 5-77(e)(1) repeatedly and persistently.

303. Berkeley is liable for each time it violated New York City law by collecting or attempting to collect debts not owed. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing. Berkeley is also liable for disgorgement of all revenues collected within the last three years after using unfair or unconscionable means of collection. DCA seeks restitution from Berkeley as detailed in Schedule F.

FOURTH CAUSE OF ACTION

*Misrepresenting a debt's date of accrual in violation of 6 RCNY § 5-77(d)
At least 2 violations*

304. Rule 6 RCNY § 5-77(d) bars Berkeley from “mak[ing] any false, deceptive, or misleading representation” in connection with the collection of a debt.

305. Berkeley made false, deceptive, or misleading representations in connection with the collection of a debt at least twice by misrepresenting the date that a debt accrued, as detailed in Schedule G.

306. Berkeley violated 6 RCNY § 5-77(d) repeatedly and persistently.

307. Berkeley is liable for each time it violated New York City law in this way. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing. Berkeley is also liable for disgorgement of all revenues collected within the last three years after doing so, and restitution as described in Schedule G.

FIFTH CAUSE OF ACTION

*Collecting debt under a false name in violation of 6 RCNY § 5-77(d)(13)
At least 16 violations*

308. Rule 6 RCNY § 5-77(d)(13) bars Berkeley from, in connection with the collection of a debt, using “any business, company, or organization name other than the true name of the debt collector’s business[.]”

309. Berkeley used a name other than its true name in connection with collecting debt at least 16 times, as detailed in Schedule H.

310. Berkeley violated 6 RCNY § 5-77(d)(13) repeatedly and persistently.

311. Berkeley is liable for each time it violated New York City law by collecting or attempting to collect debts. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing.

SIXTH CAUSE OF ACTION

*Falsely representing the legal status of debts in violation of 6 RCNY § 5-77(e)(14)
At least 1 violation*

312. The Collection Rules bar Berkeley from making “the false representation of the character, amount or legal status of any debt[.]” 6 RCNY § 5-77(e)(14).

313. Berkeley falsely represented that it held a legal judgment at least once, as detailed in Schedule I, and in accordance with a written institutional policy.

314. Berkeley violated 6 RCNY § 5-77(e)(14) repeatedly and persistently.

315. Berkeley is liable for each time it violated New York City law by falsely representing that it held a legal judgment. For each violation, Berkeley is liable for a \$350 penalty, or \$500 if the violation was knowing. Berkeley is also liable for disgorgement of all revenues collected within the last three years after doing so, and restitution as described in Schedule I.

RELIEF SOUGHT

WHEREFORE, the Plaintiffs request that the Court:

A. Declare that Berkeley was responsible for repeated, multiple or persistent deceptive conduct when it:

1. Deceived students and prospective students about Federal Loans;
2. Deceived students and prospective students about Institutional Loans;

3. Deceived students and prospective students about Institutional Grants;
4. Falsely disparaged competitors;
5. Deceived students and prospective students about transfer credits, majors, or careers;
6. Hid costs from students;
7. Collected debt it was not owed;
8. Lied about when debt accrued;
9. Cloaked its identity from former students while collecting debt;
10. Lied to former students about the legal status of their debt; and
11. Deceived former students about re-enrollment.

B. Find that Berkeley committed the above violations knowingly.

C. Establish an account for consumer restitution (the “Account”) as described in NYC Code § 20-703(c) and CPLR 2601, to be structured and funded according to the following orders.

1. Order Berkeley to pay all monies that it received from or on behalf of the Federal Loan Consumers within the last three years.
2. Order Berkeley to pay all monies that it received from or on behalf of the Institutional Loan Consumers within the last three years.
3. Order Berkeley to pay all monies that it received from or on behalf of the Disparagement Consumers within the last three years.
4. Order Berkeley to pay all monies that it received from or on behalf of the Future Prospects Consumers within the last three years.
5. Order Berkeley to pay all monies that it received from or on behalf of the Cost Consumers within the last three years.

6. Order Berkeley to pay all monies that it collected from the Baseless Debt Consumers within the last three years.
7. Order Berkeley to pay all monies that it collected from the Wrong Date Consumers within the last three years.
8. Order Berkeley to pay all monies that it collected from former students within the last three years after misrepresenting the legal status of their alleged debt.
9. Order Berkeley to pay all monies that it received from or on behalf of the Re-enrollment Defendants within the last three years.

D. Order Berkeley to pay the City the cost of DCA's investigation and prosecution of this action.

E. Order Berkeley to pay civil penalties as follows.

1. \$350 for each time it deceived a student or prospective student about Federal Loans, or \$500 if the violation was knowing.
2. \$350 for each time it deceived a student or prospective about institutional grants, or \$500 if the violation was knowing.
3. \$350 for each time it deceived a student or prospective student about the Institutional Loan.
4. \$350 for each time it falsely disparaged a competitor, or \$500 if the violation was knowing.
5. \$350 for each time it deceived a student or prospective student about transfer credits, majors, or employment, or \$500 if the violation was knowing.
6. \$350 for each time it deceived students about future costs, or \$500 if the violation was knowing.

7. \$350 for each time it sought to collect debt that was not owed, or \$500 if the violation was knowing.
8. \$350 for each time it falsely represented the date when a student's debt accrued, or \$500 if the violation was knowing.
9. \$350 for each time it cloaked its identity from a former student, or \$500 if the violation was knowing.
10. \$350 for each time it falsely represented that it held a legal judgment against a student or former student, or \$500 if the violation was knowing.
11. \$350 for each time it deceived a former student about re-enrolling, or \$500 if the violation was knowing.

F. Find that Berkeley deceived the Disparagement Consumers and the Future Prospects Consumers in direct relation to the educational services that they received from Berkeley.

G. Find that Berkeley deceived the Federal Loan Consumers in direct relation to the federal student loans that they borrowed to attend Berkeley.

H. Order Berkeley to cease collections activity against the Federal Loan Consumers, Institutional Loan Consumers, Disparagement Consumers, Future Prospects Consumers, Cost Consumers, Baseless Debt Consumers, Wrong Date Consumers, and Re-enrollment Consumers.

I. Report to credit bureaus that any negative reports that Berkeley or its agents made against the Federal Loan Consumers, Institutional Loan Consumers, Disparagement Consumers, Future Prospects Consumers, Cost Consumers, Baseless Debt Consumers, Wrong Date Consumers, and Re-enrollment Consumers were in error.

J. Order Berkeley to release official transcripts to all Federal Loan Consumers, Institutional Loan Consumers, Disparagement Consumers, Future Prospects Consumers, Cost Consumers, Baseless Debt Consumers, Wrong Date Consumers, and Re-enrollment Consumers.

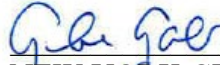
K. Enjoin Berkeley from engaging in the following conduct:

- a. Interfering with Entrance Counseling or completing Entrance Counseling for students;
- b. Disseminating materials to students and prospective students that describe interest-only payment plans and deferments as generally available;
- c. Making claims about other colleges that are not based in fact;
- d. Claiming that Berkeley prepares students for the CPA examination;
- e. Enrolling transfer students before confirming in writing the number of the students' credits that it will accept;
- f. Collecting debt based on contracts that the alleged debtor did not sign;
- g. Collecting debt under a name that does not include the word "Berkeley"; and
- h. Referring to legal investigations or legal complaints as "judgments."

L. Award Plaintiffs such other and further relief that it deems just.


Dated: New York, NY
October 15, 2018

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Schedule A

Federal Loan Deception

	Berkeley Interfered with Entrance Counseling	False Representations about Federal Loans	Misleading "Disclosure Form"	Number of Federal Loans within 3 years of filing	Restitution sought for deception within 5 years
	Yes	Unknown	Unknown	Unknown	Yes
	Yes	Unknown	Unknown	13	Yes
	Unknown	Unknown	Yes	8	Yes
	Unknown	Unknown	Yes	4	Yes
	Unknown	1	Unknown	16	Yes
	Yes	1	Unknown	0	Yes
	Unknown	1	Unknown	0	Yes
	Yes	Unknown	Unknown	0	Yes
	Yes	Unknown	Unknown	0	N/A
	Unknown	Unknown	Yes	2	Yes
	Yes	Unknown	Unknown	Unknown	Yes
	Unknown	Unknown	Yes	N/A	Yes
Undercover 1	N/A	2	No	0	N/A
Undercover 2	N/A	2	No	0	N/A
Undercover 3	N/A	1	No	0	N/A
Total Violations within 3 Years	2	5	0	43	

Schedule B

Institutional Loan Deception

	Deceptions	Penalties sought for loans or statements within 3 years	Restitution sought?
	3	3	Yes
	2	2	Yes
	1	N/A	Yes
	2	2	N/A
	1	N/A	Yes
	1	1	Yes
Undercover 3	1	1	N/A

Schedule C

Falsely Disparaging Competitors

	Deception about Accelerated Degree	Deception about Competitors' Costs/Financing	Penalties sought for deception within 3 years	Restitution sought?
	Yes	Unknown	N/A	Yes
	Yes	Unknown	N/A	Yes
	Yes	Yes	1	Yes
	Yes	Unknown	N/A	Yes
	Yes	Unknown	N/A	Yes
	Yes	Unknown	N/A	Yes
Undercover 1	No	Yes	1	N/A
Undercover 2	Yes	No	1	N/A
Undercover 3	Yes	Yes	2	N/A

Schedule D

Deception about Transfer Credits, Majors, and Careers

	Deceptive Statements about Transfer Credits, Majors, or Careers	Penalties sought for deception within 3 years	Restitution sought?
	1	N/A	Yes
	1	N/A	Yes
	1	N/A	Yes
	1	N/A	Yes
	1	N/A	Yes
Webpage	2,192 (one per day from October 19, 2015 to October 18, 2018)	2,192	N/A
Undercover 1	1	1	N/A
Undercover 3	1	1	N/A

Schedule E

Concealing Costs

	Concealed Costs	Penalties sought for deception within 3 years	Restitution sought?
	1	N/A	Yes
	2	2	Yes
	1	N/A	Yes
	1	1	Yes
	1	1	Yes

Schedule F

Collecting Debt Not Owed

	Attempts to Collect Debt Not Owed	Penalties sought for deception within 3 years	Restitution sought?
	4	4	Yes
	1	1	Yes
	10	10	Yes
	1	1	Yes
	1	1	Yes
	1	1	Yes
	4	4	Yes

Schedule G

Misrepresenting Date When Debt Accrued

	Misrepresentations about Date of Accrual	Penalties sought for deception within 3 years	Restitution sought?
	1	1	Yes
	1	1	Yes

Schedule H

Collecting Debt under a False Name

	Communications under False Name	Penalties sought for deception within 3 years	Restitution sought?
	4	4	N/A
	4	4	N/A
	5	5	N/A
	3	3	N/A

Schedule I

Misrepresenting Status of Debts

	False Statements about Status of Debts	Penalties sought for deception within 3 years	Restitution sought?
	1	1	Yes

Schedule J

Re-enrollment Deception

	Deceptive Statements about Reasons for Discount	Failure to Disclose Material Terms	Penalties sought for deception within 3 years	Restitution sought?
	1	1	2	Yes
	2	2	4	Yes

VERIFICATION

TAMALA T. BOYD, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an Officer of the City of New York, a plaintiff in the within action. I have read the foregoing complaint and know the contents thereof. I believe the same to be true upon information and belief.

The reason why this verification is not made by the City of New York is that it is a corporation. My belief as to all matters is based upon information obtained from various departments of the city government, from statements made to me by certain officers or agents of the City of New York, and from statements, affidavits or affirmations of other persons.

Dated: New York, NY
 October 15, 2018



TAMALA T. BOYD