

1 Mark Kleiman (SBN 115919)
2 mark@krlaw.us
3 Pooja Rajaram (SBN 241777)
4 pooja@krlaw.us
5 KLEIMAN / RAJARAM
6 12121 Wilshire Blvd., Ste. 810
7 Los Angeles, CA 90025
8 Tel: 310-392-5455 / Fax: 310-306-8491

9 *Attorneys for Plaintiffs/Relators*
10 *David S. Phillips and Ben Chaib*

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 UNITED STATES OF AMERICA *ex*
15 *rel.* DAVID S. PHILLIPS and BEN
16 CHAIB,

17 Plaintiffs,

18 v.

19 LOS ANGELES FILM SCHOOL, LLC;
20 FULL SAIL, LLC D/B/A FULL SAIL
21 UNIVERSITY; JAMES W.
22 HEAVENER; DIANA DERYCZ-
23 KESSLER; PAUL KESSLER; and
24 DOES 1-10,

25 Defendants.

Case No. 2:24-cv-05214-SB-RAOx

JOINT RULE 26(F) REPORT

[Fed. R. Civ. P. 26(f) and L.R. 26-1]

MSC: September 26, 2025

Time: 8:30 am

Ctrm: United States Courthouse
350 W. 1st Street, Ctrm 6C
Los Angeles, CA 90012

26 Pursuant to this Court's August 28, 2025 Order, *see* ECF No. 26, Fed. R. Civ.
27 P. 26(f), and Local Civil Rule 26-1, Relators David Phillips and Ben Chaib (together,
28 "Relators") and Defendants Los Angeles Film School, LLC ("LAFS"), Full Sail,
LLC d/b/a Full Sail University ("Full Sail"), and James W. Heavener ("Heavener")
(collectively, "the LAFS Defendants" and together with Relators, the "Parties"),
through counsel, set forth the written report of their Rule 26(f) Conference.

1 The Parties met and conferred telephonically on September 8, 2025. Those
2 participating were Mark Klieman and Pooja Rajaram for Relators and Mazda Antia,
3 David Mills, and Anne Bigler for the LAFS Defendants. Having discussed their
4 claims and defenses, the possibility of prompt resolution, and all other matters
5 required by the Court's August 28, 2025 Order, Fed. R. Civ. P. 26(f), and Local Rule
6 26-1, the parties jointly submit the following information:

7 **1. Subject Matter Jurisdiction**

8 This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. This
9 case is brought under 31 U.S.C. § 3729 *et seq.*, the federal False Claims Act.

10 **2. Statement of the Case**

11 a. Relators' Statement

12 The Los Angeles Film School (LAFS) and Full Sail University (FS) are
13 proprietary schools. Relators are two former high-ranking executives at LAFS. The
14 two schools share common ownership and control mechanisms, primarily through
15 defendant Heavener and his appointees. The defendants knowingly submitted or
16 caused the submission of false claims to the United States by lying to fool the
17 Government into paying out millions in student loans and tuition the schools never
18 deserved to receive. The programs victimized include, *inter alia*, Title IV of the
19 Higher Education Act and Veterans Assistance programs administered through the
20 U.S. Department of Veteran's Affairs. LAFS also lied to the California Bureau of
21 Private Postsecondary Education which is legally authorized to approve or
22 disapprove LAFS' eligibility to receive funding through the Veterans' Assistance
23 programs.

24 Specifically, LAFS and FS submitted false statements about whether a
25 sufficient percentage of their graduates were gainfully employed in the field for
26 which they had been trained (the "gainful employment" requirement). In thousands
27 of cases the employment was fake. The Defendants arranged two-day jobs, selected
28 who would get hired, and paid off production companies and others to simulate

1 employment. Defendants also falsely certified or caused the false certification of
2 compliance with requirements that Department of Education and Veteran's Affairs
3 regulations prohibiting LAFS and FS from basing the compensation of their sales
4 representatives or admissions representatives on the number of students the
5 representative sold school enrollment to.

6 LAFS and Heavener (of the Defendants participating in this Report) also
7 directed that lies be told to the United States Department of Education when
8 Department officials audited the school in 2017. Defendants also mischaracterize the
9 resulting program review report and settlement, which was entirely silent about the
10 fraud described in the Relators' complaint.

11 Defendants continue their campaign of misrepresentation by incorrectly
12 claiming that the Department of Justice has declined to intervene. It has not. "The
13 Government's investigation is not complete and, as such, the Government is not able
14 to decide, as of the Court's deadline, whether to proceed with this action." (Dkt. No.
15 15).

16 Defendants likewise ignore binding Ninth Circuit precedent holding employer-
17 imposed releases invalid as to *qui tam* actions and fail to acknowledge that the release
18 given to Phillips admitted that the release affects such claims only "to the extent
19 permitted by law."

20 b. The LAFS Defendants' Statement

21 This lawsuit is an attempt by Relators to resuscitate time-barred and erroneous
22 allegations, which were already thoroughly investigated and settled by the
23 Department of Education. In fact, Relators already released these claims in prior
24 settlements with Defendants, and this suit is nothing more than a campaign to extract
25 additional money from Defendants to which Relators are not entitled. Emblematic
26 of their lack of merit, the allegations leveled against Defendants are ambiguous and
27 speculative, failing to meet the requirements of a False Claims Act action. This
28 lawsuit must be dismissed as a matter of law.

1 LAFS and Full Sail are two separate schools with main campuses based in Los
2 Angeles, California and Winter Park, Florida, respectively. Both offer a variety of
3 educational programs, including film- or production-related education, including but
4 not limited to music production, audio engineering, and digital filmmaking, and they
5 maintain separate corporate structures, regulatory approvals, and identities. Both
6 institutions are eligible to receive funds authorized by Title IV of the Higher
7 Education Act of 1965, as amended (“HEA”), on behalf of otherwise eligible students
8 to help support their educational pursuits.

9 From 2017 to 2020, the Department of Education undertook a comprehensive
10 investigation into LAFS, which resulted in a settlement with the school in 2020. In
11 2021, after the Department of Education concluded its investigation, Relator Chaib
12 released his False Claims Act claims in a separation agreement with LAFS.
13 Similarly, in 2023, years after the Department of Education concluded its
14 investigation, Relator Phillips also released his False Claims Act claims in a
15 settlement with the LAFS Defendants. Nevertheless, one year after Phillips signed
16 the settlement, Relators Phillips and Chaib filed this lawsuit on June 20, 2024. On
17 May 6, 2025, the Government declined to intervene.

18 The LAFS Defendants deny Relators’ claims and allegations that the
19 Defendants knowingly submitted or caused to be submitted false claims to the
20 government in violation of the False Claims Act. The LAFS Defendants dispute the
21 material allegations in the Complaint, and they intend to move to dismiss the case
22 against them.

23 c. Procedural History

24 Relators filed the Complaint initiating this *qui tam* action on June 20, 2024,
25 alleging violations of the False Claims Act, 31 U.S.C. § 3729 *et seq.* ECF No. 1. On
26 May 6, 2025, the United States declined to intervene in the action and requested
27 partial unsealing of the Complaint. ECF No. 15. That same day, the Court ordered
28 that the Complaint be unsealed and served upon all Defendants. ECF No. 16. On

1 July 28, 2025, counsel for the LAFS Defendants agreed to waive service as of July
2 3, 2025. The original deadline for a responsive pleading for the LAFS Defendants
3 was September 2, 2025. On August 28, 2025, pursuant to Local Rule 8-3, Relators
4 and the LAFS Defendants stipulated to a 29-day extension of the response deadline
5 to October 1, 2025.

6 Relators' position is that service upon Diana Kessler and Paul Kessler per Cal.
7 Code Civ. Proc. §415.40 is effective as of September 16, 2025.

8 **3. Damages/Insurance**

9 a. Damages

10 Relators state that because the damages were suffered by the United States the
11 realistic range of provable damages depends upon data in possession of the
12 Department of Education and the Department of Veterans' Affairs. Relators can only
13 estimate the realistic range of provable damages, which they reasonably believe to
14 be in excess of sixty million dollars in single damages, subject to trebling and to per-
15 claim fines, both pursuant to 31 U.S.C. §3729(a)(1). The number of false
16 claims submitted which will form the basis for calculating these penalties is known
17 to the Defendants and to the Department of Education and the Department of
18 Veterans' Affairs.

19 The LAFS Defendants contend that Relators and the United States are not
20 entitled to any relief and that the Complaint fails to state a claim upon which relief
21 can be granted. At this stage in the litigation, the LAFS Defendants are not in a
22 position to describe the bases on which any alleged damages should be calculated in
23 the event liability were to be established (which the LAFS Defendants contest).

24 b. Insurance

25 No insurance coverage presently exists for the LAFS Defendants.
26
27
28

4. Parties, Evidence, etc.

a. Parties

- i. David S. Phillips, on behalf of the United States;
- ii. Ben Chaib, on behalf of the United States;
- iii. Los Angeles Film School, LLC;
- iv. Full Sail, LLC d/b/a Full Sail University;
- v. James W. Heavener;
- vi. Diana Derycz-Kessler; and
- vii. Paul Kessler.

b. Percipient Witnesses

- i. Relators;
- ii. James W. Heavener;
- iii. Diana Derycz-Kessler;
- iv. Paul Kessler; and
- v. LAFS and Full Sail current and former employees who have information regarding the allegations in the Complaint.

c. Additional Witnesses Identified by Relators

- i. The agents, employees, contractors, or directors of vendors which contracted with either or both schools to briefly employ graduates; and
- ii. Current and former employees of the California Bureau for Private Postsecondary Education, the United States Veterans' Administration, and the United States Department of Education.

d. Key Documents

- i. PPA Agreements;
- ii. Separation agreement between LAFS and Relator Chaib entered in 2021;

- iii. Settlement agreement between the LAFS Defendants and Relator Phillips entered in 2023;
- iv. Settlement agreement with LAFS and the Department of Education entered in 2020;
- v. Documents related to the investigation and audit conducted by the Department of Education into LAFS from 2017–2020;
- vi. Documents related to Relators’ separation from LAFS; and
- vii. All agreements entered into between Relators and any of the LAFS Defendants.

e. Additional Documents Claimed by Relators

- i. Documents evidencing LAFS Defendants’ payments to companies purportedly employing graduates;
- ii. Documents evidencing LAFS Defendants’ laundering payments to employers through tax-exempt foundations;
- iii. Documents evidencing LAFS Defendants offering free use of sound stages, theater space, and auditoriums or below-market use of them in exchange for companies creating two-day “employment” opportunities;
- iv. Documents evidencing LAFS Defendants control over which graduates got hired so that placement goals could be met;
- v. Documents evidencing Defendant Heavener’s insistent preoccupation with how many sales individual sales representatives had made before they could receive a salary increase; and
- vi. Documents evidencing strict sales quotas for salary increases.

f. Corporate Disclosure

i. Full Sail, LLC d/b/a Full Sail University: Full Sail, LLC does not have any corporate parents or subsidiaries. Full Sail, LLC is owned by various entities majority owned by James W. Heavener, Edward E. Haddock, Jr., and Jonathan D. Phelps, or trusts for members of their families.

ii. Los Angeles Film School: LAFS does not have any corporate parents or subsidiaries. LAFS is owned by various entities majority owned by James W. Heavener, Edward E. Haddock, Jr., and Jonathan D. Phelps, or trusts for members of their families.

5. Discovery

a. Status of Discovery

The Parties have not yet propounded discovery requests because the LAFS Defendants intend to file a motion to dismiss. The LAFS Defendants intend to file a motion to stay discovery taking the position that discovery should be stayed pending resolution of the motion to dismiss all claims against all three LAFS Defendants, which will be based in part on Relators' failure to plead their claims with the particularity required under Rule 9(b). *See, e.g., U.S. ex rel. Modglin v. DJO Glob.*, 2014 12564275, at *2 (C.D. Cal. Feb. 20, 2014) ("California district courts have found that it is proper in FCA cases where a motion to dismiss for failure to plead fraud with particularity is pending to stay discovery until the court has had the opportunity to decide whether the complaint satisfies the heightened pleading requirements of Rule 9(b)."); *U.S. ex rel. Williams v. Med. Support Los Angeles, Inc.* 2021 WL 4816607, at *1 (C.D. Cal. May 7, 2021) (staying discovery in FCA case pending a ruling on defendants' motion to dismiss, noting that "a plaintiff should not be able to use an inadequate complaint to get a foot in the door and discover unknown wrongs"); *U.S. v. Dynamic Med. Sys., LLC*, 2020 WL 3035219, at *5 (E.D. Cal. June 5, 2020) (staying discovery in FCA case pending decision on motion to dismiss).

Relators do not presently intend to oppose this motion.

Relators' counsel has been in contact with counsel for the Kesslers and anticipate they shall make a similar motion or motions.

b. Discovery Plan

The Parties began the conferral process pursuant to Rule 26(f) on September 8, 2025, and jointly propose the following discovery deadlines:

14 days after denial of MTD if applicable	Deadline to serve initial disclosures
30 days from initial disclosures deadline	Deadline to file protective order
10 days after protective order deadline	Deadline to serve first set of discovery requests
180 days (6 months) after first discovery request service deadline	Deadline to substantially complete document production
30 days after substantial completion deadline	Deadline to add parties
30 days after deadline to add parties	Deadline to complete non-expert depositions
30 days after fact discovery close	Fact discovery deadline
30 days after affirmative expert disclosure deadline	Affirmative expert disclosure deadline
30 days after rebuttal expert disclosure deadline	Rebuttal expert disclosure deadline
30 days after rebuttal expert disclosure deadline	Expert discovery deadline

60 days after expert discovery deadline	Deadline to file motions for summary judgment
30 days after motion for summary judgment deadline	Deadline to file opposition to motion for summary judgment
21 days after motion for summary judgment opposition	Deadline to file reply motion for summary judgment

6. Legal Issues

a. Relators' Statement

- Whether the false statements were material to the United States' payment decisions.
- How the number of false claims should be calculated.
- The applicability of a possible advice of counsel defense from one or more of the Defendants.
- The admissibility of acts and statements which are beyond the statute of limitations as evidence of motive, intent, preparation, plan, knowledge, scienter, or method of doing business under Fed. R. Evid. R. 404(b).
- The existence, non-existence, or extent to which potentially privileged materials should be afforded attorney-client privilege.

b. The LAFS Defendants' Statement

The LAFS Defendants deny that they have violated any laws, deny that Relators have stated a claim under any legal theory, deny the Complaint is timely filed, and deny that Phillips or Chaib can serve as Relators here, where they released False Claims Act claims in prior agreements. The primary issues at this stage are:

- Whether Relators' claims are time-barred under the False Claims Act's statute of limitations, 31 U.S.C. § 3731;

- Whether Phillips or Chaib can serve as Relators, where each released his claims in a prior agreement with the LAFS Defendants;
- Whether Relators have pleaded their claims in the Complaint with the particularity required under Rule 9(b); and
- Whether Relators have stated a claim under the False Claims Act, 31 U.S.C. § 3279.

7. Motions

a. Procedural Motions

At or immediately prior to the commencement of discovery, the Relators and the LAFS Defendants plan to propose a stipulated protective order regarding the handling of student identifiable information that is protected by 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act.

If necessary, the LAFS Defendants intend to file a motion to stay discovery pending the outcome of their motion to dismiss.

The Parties propose a deadline of thirty days before the proposed close of fact discovery to name additional parties.

b. Dispositive Motions

The LAFS Defendants intend to file a motion to dismiss the Complaint on October 1, 2025.

In the event that the LAFS Defendants' motion to dismiss is denied in full or part, they anticipate filing, as applicable, *Daubert* motions, a summary judgment motion, and/or motions *in limine*, prior to trial.

Relators fail to see how *Daubert* motions or motions *in limine* might be termed “dispositive”, but they shall also file such motions.

c. Class Certification Motion

Not applicable.

1 **8. Alternative Dispute Resolution (ADR)**

2 a. Prior Discussions

3 There have been no prior oral or written settlement discussions. Given that the
4 LAFS Defendants' motion to dismiss the Complaint is forthcoming, it is premature
5 to engage in extensive settlement discussions at this time. The Parties agree that they
6 will be in a better position to have a robust exchange of information and settlement
7 discussions regarding a fair resolution to the case after the resolution of the LAFS
8 Defendants' motion to dismiss.

9 b. ADR Selection

10 The Parties are amenable to private mediation, after challenges to the initial
11 pleadings are determined, and after completion of initial discovery. However, the
12 Parties also would want to consult with the parties who have not yet appeared in this
13 action to understand their preference.

14 **9. Trial**

15 a. Proposed Trial Date

16 The Parties jointly request a trial date of March 23, 2027.

17 **Relators' Statement:** Relators, LAFS, FS, and Heavener all anticipate the trial
18 will take ten days. This estimate is based in part on the allotted time for trial in *United*
19 *States ex rel. Mackillop v. Grand Canyon Education*, Case No. 18-CV-11192-WGY
20 in D. AZ, set to begin a lengthy trial on October 14, 2025, and the eight days allotted
21 for trial in *United States et al. v. Stevens-Henager College*, 2:2015-cv-00119, which
22 was tried earlier this year.

23 This case involves testimony about actual as opposed to claimed graduates
24 spanning a nine-year period on two different campuses, and testimony from sales
25 representatives from each campus under several different versions of incentive
26 compensation schemes. It will also involve testimony from the two Relators who
27 between them worked for defendants for nearly twenty-five years, from individual
28

1 school administrators over lengthy periods, and from three individually named
2 defendants.

3 Relators expect to put on witnesses relating to, *inter alia*, the following:

- 4 • Defendant Heavener's preoccupation with precise sales statistics as a
5 condition for salary increases;
- 6 • LAFS Defendants' knowledge that sales staff's income could not be tied to
7 sales statistics;
- 8 • The design and operation the incentive compensation scheme;
- 9 • The Defendants' extending financial incentives to production companies and
10 other vendors in exchange for brief employment of graduates;
- 11 • The Defendants' control of which graduates would be employed and when
12 they would be employed in order to meet placement requirements;
- 13 • The Defendants' role in giving "employers" the money to cover their purported
14 payroll expenses;
- 15 • The Defendants' insistence that vendors acting as purported employers not
16 actually pay the graduates for their labor until the graduates had succumbed to
17 demands that they sign attestations claiming they were self-employed
18 "freelancers"; and
- 19 • The Defendants' misrepresentations to state and federal officials about the
20 gainful employment and incentive compensation.

21 The case will also require expert testimony on damage calculations.

22 **The LAFS Defendants' Statement:** This time period is within the twelve to
23 eighteen months generally expected for cases involving a high level of factual and
24 legal complexity. This case implicates complex legal issues under the False Claims
25 Act, the HEA, regulatory agency requirements, and other state and federal statutes,
26 and if a trial is required, it will require evidence spanning more than a decade. The
27 parties also anticipate engaging multiple experts.
28

1 A proposed trial date of March 23, 2027, allows sufficient time for the Parties
2 to fully brief and for the Court to decide any motions for summary judgment and
3 evidentiary motions in advance of trial.

4 b. Time Estimate

5 The Parties anticipate that trial likely will last ten days because the Parties
6 expect to call witnesses regarding subjects related to all material allegations in the
7 Complaint, as well as relevant to the LAFS Defendants' numerous defenses,
8 including but not limited to the following:

- 9
 - 10 • Interactions with the Department of Education, including but not limited
11 to the Department of Education's 2017–2020 audit of and settlement
with LAFS;
 - 12 • The negotiation, execution, and applicability of the separation
13 agreement between Relator Chaib and LAFS;
 - 14 • The negotiation, execution, and applicability of the settlement
15 agreement between Relator Phillips and the LAFS Defendants; and
 - 16 • Whether Relators have proved each element of their False Claims Act
17 claims.

18 c. Jury or Court Trial

19 Relators have requested and are requesting a jury trial.

20 d. Magistrate Judge

21 The Parties are still considering whether they consent to having a Magistrate
22 Judge preside for all purposes, including trial.

23 e. Trial Counsel

24 The following attorneys will try the case:

25 Attorneys Mark Kleiman and Pooja Rajaram will serve as lead trial attorneys
26 for David Phillips and Ben Chaib.

1 Attorneys Mazda Antia, David Mills, Victoria Pasculli, Ellie Dupler, Anne
2 Bigler, and Joseph Vaughan will represent the LAFS Defendants at trial, with Antia
3 and Mills serving as lead trial attorneys.

4 **10.Special Request/Other Issues**

5 The Parties agree that this is a highly complex case because it is a complicated
6 False Claims Act action that involves difficult legal issues, multiple statutes, and will
7 require expert testimony on multiple issues. As such, the Parties agree that this case
8 should be litigated in accordance with The Manual for Complex Litigation and that
9 the procedures should be used in whole.

10 The LAFS Defendants also request that liability be bifurcated from damages.
11 Relators oppose bifurcation.

1
2 Dated: September 16, 2025

Respectfully submitted,

3 **KLEIMAN / RAJARAM**

4
5 By: /s/ Mark Kleiman

6 Mark Kleiman

7 Mark Kleiman (SBN 115919)

8 Pooja Rajaram (SBN 241777)

(mark@krlaw.us)

(pooja@krlaw.us)

9 12121 Wilshire Blvd., Ste. 810

Los Angeles, CA 90025

10 Tel: 310-392-5455

11 Fax: 310-306-8491

12 *Attorneys for Relators David S.*
13 *Phillips and Ben Chaib*
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1 Dated: September 16, 2025

Respectfully submitted,

2 **COOLEY LLP**

3
4 By: /s/ Mazda K. Antia

5 Mazda K. Antia

6 Mazda K. Antia
7 (mantia@cooley.com)
8 10265 Science Center Drive
9 San Diego, California 92121-1117
10 Telephone: (858) 550-6000
11 Facsimile: (858) 550-6420

12 David E. Mills (*pro hac vice*
13 *forthcoming*)
14 (dmills@cooley.com)
15 1299 Pennsylvania Ave., NW, Suite
16 700
17 Washington, DC 20004-2400
18 Telephone: (202) 842-7800
19 Facsimile: (202) 842-7899

20 *Attorneys for Defendants Los*
21 *Angeles Film School, LLC; Full Sail,*
22 *LLC, d/b/a Full Sail University; and*
23 *James W. Heavener*
24
25
26
27
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Local Rule 5-4.3.4 Attestation

Pursuant to Local Rule 5-4.3.4(a)(2)(i), the below e-filing attorney attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: September 16, 2025

KLEIMAN/RAJARAM

/s/ Mark Kleiman

Mark Kleiman

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Central District of California by using the CM/ECF System.

Participants in the case who are registered CM/ECF Users will be served by the CM/ECF System.

I further certify that a copy of the foregoing document was served via U.S. Mail and E-Mail to the persons listed below:

MAZDA K. ANTIA
COOLEY LLP
10265 Science Center Drive
San Diego, California 92121-1117
Telephone: (858) 550-6000
Facsimile: (858) 550-6420
mantia@cooley.com

Bradley J. Bondi
PAUL HASTINGS LLP
2050 M Street, NW
Washington, DC 20036
202-551-1700
bradbondi@paulhastings.com

David E. Mills
(*pro hac vice*)
1299 Pennsylvania Ave., NW
Suite 700
Washington, DC 20004-2400
202-842-7800
202-842-7899 (fax)
dmills@cooley.com

Prospective Attorney for
Diana Derycz-Kessler
and Paul Kessler

Attorneys for Defendants
Los Angeles Film School, LLC;
Full Sail, LLC, d/b/a
Full Sail University; and
James W. Heavener

By: /s/ Mark Kleiman
Mark Kleiman