SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

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

Defendants.

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

STATEMENT OF DECISION

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

I. OVERVIEW

The Court concludes that the People of the State of California ("the People") have proven by a preponderance of the evidence that Defendants Ashford University, LLC and Zovio, Inc. (formerly known as Bridgepoint Education, Inc.) (collectively, "Defendants") violated the law by giving students false or misleading information about career outcomes, cost and financial aid, pace of degree programs, and transfer credits, in order to entice them to enroll at Ashford. The Court awards judgment for the People in the amount of $22,375,782.00 in civil penalties. The Court grants Defendants judgment on liability as to its debt collection practices and the Court denies the People's request for restitution and injunctive relief.

II. PROCEDURAL BACKGROUND

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

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

The case proceeded to bench trial before this Court on November 8, 2021. During 18 trial days, the parties had a full opportunity to present evidence and arguments. The court heard and

assessed the credibility of 23 live witnesses — 13 offered by the AG, 10 offered by Zovio, and 3 offered by both parties — and reviewed designated deposition testimony of 17 witnesses. Over fifteen hundred (1,514) exhibits were admitted into evidence.

At closing argument, by way of relief, the People asked this Court to impose judgment against Zovio as follows: (a) $25 million in restitution to students, which the People would have this Court deposit into a fund subject to a post-trial "claims-made" procedure for students who would demonstrate that they were financially harmed by Zovio's alleged practices; (b) $75 million in civil penalties; and (c) injunctive relief.

III. STATEMENT OF FACTS

A. Ashford University's History and Student Population.

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

As Ashford's former Presidents testified, Defendants enroll vulnerable students who lead "complex" and "difficult lives," which "heightens" the need for accurate college advising. (12/6/21 Tr. 195:23-27 [Pattenaude]; 12/7/21 Tr. 68:12-15 [Pattenaude]; 12/14/21 Tr. 196:20-23 [Swenson].) Based on Zovio's own assessments from 2009 through 2020, Ashford students typically are older than traditional college students (Exs. 9013-9034 [average age 35-37]); and are low income (Exs. 9030-9048 [between 55% and 76% receive Pell Grants, which require

significant financial need].) Around half of Ashford students identify as minorities. (Exs. 9013-9023 [between 47% and 56%].) Defendants enroll students primarily through sales people (whom Defendants referred to as "admissions counselors")[1] who are trained to build trust and rapport. (E.g., 11/9/21 Tr. 56:3-57:5 [Dean testifying that counselors would "use that friendship almost against [students] as a weapon"].) A typical Ashford bachelor's degree has cost between $40,000 and $60,000 during the statutory period. (See Exs. 9030-9048 [Academic Catalogs 2009-2021].) Only a quarter of Ashford students graduate (12/6/21 Tr. 44:9-18 [Cellini]; see also 12/9/21 Tr. 163:12-14 [Nettles]), and many default on their student loans (12/6/21 Tr. 51:3-5 [Cellini]).

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

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

The Court heard substantial evidence that over the last decade, Defendants created a high-pressure admissions department whose north star was enrollment numbers. Admissions counselors were expected to call hundreds of leads a day, and managers would threaten to fire those who failed to enroll enough students—warning that "'Someone can fill your chair'" if counselors did not meet their numbers. (Ex. 3753, Tr. 107:15-108:24 [Stewart]; Ex. 792; 12/1/21 Tr. 136:7-15, 137:8-21, 139:5-12, 141:15-142:6, 143:10-21, 149:1-6, 179:7-18, 216:20-25 [McKinley explaining that counselors who "did not sell" were publicly "mocked"].) As stated by one employee of the training department, "From my perspective, based on trainings and coaching, the emphasis for [admissions counselors] is still on submitting applications as quickly as possible." (Ex. 1362.) The high-pressure culture went beyond rhetoric: Defendants put their

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

words into action by creating "lowest performer lists" and then firing the bottom ten percent of admissions counselors based, in part, on enrollment numbers. (12/7/21 Tr. 59:3-17 [Pattenaude]; Ex. 1217; Ex. 3753, Tr. 107:15-109:7 [Stewart]; Ex. 792; 11/10/21 Tr. 22:10-23:1 [Parenti]; Ex. 3739, Tr. 107:2-108:24 [Bennett].) Top executives' testimony that Defendants had no quotas (e.g. 12/7/21 Tr. 37:9-11 [Pattenaude]; 11/10/21 Tr. 120:21-24 [Parenti]) is not consistent with this evidence and is contradicted by the testimony of former admissions counselors who testified to their job expectations first-hand. Indeed, many defense witnesses admitted having little or no direct knowledge of the admissions department. (E.g., Ex. 3759, Tr. 26:3-16 [Abe]; 12/09/21 Tr. 159:23-160:10 [Nettles]; 12/7/21 Tr. 156:1-157:14 [Ogden]; 12/9/21 Tr. 44:1-6 [Farrell].)

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

Defendants' own employee exit surveys, which they relied on (see Ex. 3767, Tr. 69:19-21, 69:24 [Putrus]), further confirm the problematic culture in admissions. For example, in one 2011-2012 survey, over half of respondents said "no" when asked if Bridgepoint "adheres to its core values of ethics, integrity, service, and accountability." (Ex. 1399B [Tab "Question 7"].) One

employee explained: "The only objective is to enroll as many students as possible. Employees fear for their jobs every day if they are not enrolling enough students." (*Id.* [Tab, "Question 7," cell C17]; see also cell C21 ["the boiler room mentality is still alive and well"]; see also Ex. 1083 [CEO Andrew Clark directing staff in 2020 to "overcome [] objections" of students wanting to withdraw due to COVID, including due to healthcare job demands or kids at home].) Although Defendants' high-level executives testified that they always put students first (see 12/7/21 Tr. 34:20-35:13 [Pattenaude]; 12/14/21 Tr. 188:27-190:7 [Swenson]; 12/1/21 Tr. 117:13-25 [Hallisy]), the Court finds that testimony lacks credibility because it is contradicted by those with direct admissions experience. As one employee summarized in an exit survey: "When employed I was told the motto of Ashford University was student first, Ashford second, and yourself last. This does not work when a quota must be met. An employee will be reprimanded if the quota is not met, therefore, the employee will always put herself first." (Ex. 1403 [cell AQ19].)

C. Defendants Misled Students on Four Topics Critical to Decision-making.

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

Each misrepresentation category was supported by four primary types of evidence. First, the Court heard the testimony of student victims who experienced the misrepresentations and relied upon them in deciding to enroll at Ashford. (Testimony of Alison Tomko, Roberta Perez, Pamela Roberts, Jessica Ohland, Rene Winot, Loren Evans, Crystal Embry, Joseph Ybarra, and Jasmine Cox.) Second, the Court heard the testimony of former Ashford employees, who explained how the pressure to meet their enrollment numbers, the instructions of their managers, and guidance from high performers on their teams all led them to deceive students to overcome objections and promote enrollment. (Testimony of Eric Dean, Lee Bennett, Wesley Adkins, and

Molly McKinley.) Third, the Court heard the testimony of Dr. Jerome Lucido, an expert in college admissions with over forty years of experience setting industry standards for college advising and leading the admissions, financial aid, and registrar departments of four major universities. (11/15/21 Tr. 50:11-70:22.) Dr. Lucido conducted a methodical and well-documented study of 561 phone calls between students and admissions counselors, through which he identified, categorized, and explained misrepresentations within the Relevant Topics. (11/15/21 Tr. 73:18-74:10; 92:7-95:22.) Dr. Lucido's testimony regarding exemplar calls and the role of the admissions counselor was well supported by his experience, and corroborated by the testimony of the student and employee witnesses.[2] The Court therefore finds Dr. Lucido's expert testimony credible and gives it significant weight. Fourth, the People presented internal company documents and testimony of company witnesses, which corroborated Dr. Lucido's assessment of misrepresentations in the four topical areas. (E.g., testimony of former Ashford Presidents, testimony of Defendants' compliance officials, training documents.) The Court describes this evidence in greater detail with respect to each category of misrepresentation in Part V.A, below.

IV. STATEMENT OF APPLICABLE LAW

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

To prove a cause of action under the fraudulent prong of the UCL and under the FAL,[3] "it is necessary only to show that 'members of the public are likely to be deceived.' [Citation]." (*Com. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 211.]) "'Intent of the disseminator and knowledge of the customer are both irrelevant.'" (*Overstock.com, supra*, 12 Cal.App.5th at p. 1079, citing *Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.) This is because the UCL and FAL "afford[] protection against the probability or likelihood as well as the actuality of deception or confusion. [Citation]." (*Ibid.*) Unlike the UCL, the FAL has an

---

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

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

additional requirement that the misleading nature of the communications "is known, or . . . by the exercise of reasonable care should be known" by the defendant. (Bus. & Prof. Code § 17500.) By their plain language, the UCL and FAL apply to single acts of misconduct—no pattern or practice of misconduct is required for liability. (See *Klein v. Earth Elements, Inc.* (1997) 59 Cal.App.4th 965, 968 fn. 3 [UCL "covers single acts of misconduct."]; *United Farm Workers of America, AFL-CIO v. Dutra Farms* (2000) 83 Cal.App.4th 1146, 1163 [same].)

"'[T]he primary evidence in a false advertising case is the advertising itself." (*Brockey v. Moore* (2003) 107 Cal.App.4th 86, 100.) Each deceptive statement must be assessed in the context of the full advertisement in which it is conveyed. (*Hill v. Roll Int'l Corp.* (2011) 195 Cal.App.4th 1295, 1304-1305; *Freeman v. Time, Inc.* (9th Cir. 1995) 68 F.3d 285, 290.) However, there is no authority for the proposition that this Court must consider every sequential communication a defendant has with a consumer in order to determine whether a particular communication is deceptive. (See Part VI.B, *infra*, for additional discussion.)

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

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

necessarily be wary or suspicious of advertising claims. [Citation.]" (*Hill v. Roll Internat. Corp.* (2011) 195 Cal.App.4th 1295, 1304.)

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

Neither the UCL nor FAL require a showing of causation, reliance, or a specific injury; rather, "the only requirement is that defendant's practice is unlawful, unfair, deceptive, untrue, or misleading." (*Prata, supra*, 91 Cal.App.4th at p. 1144; *People v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 532 [noting "the rule that restitution under the UCL may be ordered *without individualized proof of harm* is well settled"] [emphasis added]; *Day v. AT&T Corp.* (1998) 63 Cal.App.4th 325, 332 ["[A]llegations of actual deception, reasonable reliance, and damage are unnecessary."].) As the California Supreme Court explained, this distinction with the common law "reflects the UCL's focus on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices. [Citation.]" (*In re: Tobacco II Cases* (2009) 46 Cal.4th 298, 312.)

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

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

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

Cal.App.3d at p. 886 [defendant in "position to control" employees was liable for false advertising]; *People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 735 [same].)

Nor does a Defendant immunize itself from liability by having policies prohibiting the misrepresentations; rather, it is the efficacy of these polices that matters. (See *JTH Tax*, *supra*, 212 Cal.App.4th at pp. 1248-1249 [company liable for agents' misrepresentations even though they were prohibited]; *Goodman*, *supra*, 244 F.2d at p. 592.) Further, a company is liable for misrepresentations it fails to prevent that it knows of or, by exercise of reasonable care, should have known of. (*People v. Forest E. Olson, Inc.* (1982) 137 Cal.App.3d 137, 139-140; *Conway*, *supra*, 42 Cal.App.3d at p. 886 [defendant liable who knew of misrepresentations and permitted them to continue]; *First Federal Credit Corp.*, *supra*, 104 Cal.App.4th at p. 735 [same].)

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Evidence Shows Defendants Deceived Students On Topics Critical to Student Decision-making.

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

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

The evidence shows that Defendants falsely promised students they could use an Ashford degree to become teachers. In fact, Ashford degrees do not qualify Ashford graduates for most teaching positions, which require teacher licensure. (11/15/21 Tr. 102:8-11 [Lucido].) This includes public school teaching jobs, which in California comprise 85% of teaching positions, and many private schools, which may require or prefer licensure. (11/15/21 Tr. 102:11-25 [Lucido]; 12/9/21 Tr. 47:12-19, 49:7-28 [Farrell].) To obtain licensure, aspiring teachers must attend a state-approved teaching program. (11/15/21 Tr. 103:24-104:2 [Lucido].) Not a single online Ashford degree has ever been state approved for teaching.[5] (Ex. 911 [Defs. Second Am. Resp. to Set 1 RFA 1, 2, 3].) As a result, students who are deceived into enrolling at Ashford must invest significant additional time (1-2 years) and money in a state-approved teaching program. (11/15/21 Tr. 105:27-107:12 [Lucido].)[6]

Between 8,000 and 10,000 students enroll in Ashford's College of Education every year (12/09/21 Tr. 46:16-19 [Farrell]), including students with teaching goals. (12/09/21 Tr. 45:24-46:19 [Farrell]; Ex. 3757, Tr. 116:16-18 [Farrell].) The testimony of Alison Tomko and Crystal Embry demonstrates how Defendants misled these aspiring teachers. Ms. Tomko enrolled at Ashford because her admissions counselor reassured her that Ashford was part of an "interstate agreement" that meant her degree would "carry over" to Pennsylvania so long as she completed her student teaching and passed the state teaching exams. (11/8/21 Tr. 131:14-133:13, 136:27-137:1 [Tomko]; Ex. 165.)[7] Only after graduating did Ms. Tomko learn that she would need to

[5] In California, Ashford's Education Studies degree did not even satisfy the state's basic bachelor's degree requirement for teachers because, until 2018, California required teaching credential applicants to have a bachelor's degree in a subject other than education. (Former Ed. Code, § 44225, subd. (a)(1) added by Stats. 1988, ch. 1355, § 6, p. 4473.) The law was amended in 2018, but the ban on education bachelor's degrees remains in place for middle and high school teachers. (Ed. Code, § 44225, subds. (a)(1)(A)-(a)(1)(B), as amended by Stats. 2017, ch. 123, § 1, p. 1898, eff. Jan. 1, 2018.) Ashford Dean Dr. Tony Farrell was not aware that any restrictions on education degrees currently exist in California. (12/9/21 Tr. 68:6-8 [Farrell].)

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

[7] The Court finds credible Ms. Tomko's testimony that her advisor told her to contact the state Department of Education closer to graduation. (11/8/21 Tr. 134:13-135:7, 137:2-14, 193:9-16 [Tomko].) In any event, the

complete an additional 60-90 credits before she could even begin her student teaching. (11/8/21 Tr. 148:18-149:14, 151:13-23 [Tomko]; Ex. 170.) Because Ms. Tomko could not afford those credits, she never became certified, and now works as a phlebotomist, which does not require a bachelor's degree. (11/8/21 Tr. 154:5-159:9 [Tomko].) Similarly, Crystal Embry was misled into enrolling at Ashford and withdrawing from a different school that would, in fact, have led to teacher licensure, because Defendants told her they offered the "same program," just online. (11/30/21 Tr. 80:18-25, 82:11-22 [Embry].) Only after graduating did Ms. Embry learn that her Ashford education did not qualify her to take the state teaching exam. (11/30/21 Tr. 90:2-25 [Embry].) This testimony is corroborated by Dr. Lucido's call analysis, which identified 10 calls with at least one teaching misrepresentation. (11/15/21 Tr. 77:19-25 [Lucido].) Had Ashford not led these students to believe that their degrees were in the type of program that leads to licensure, they instead could have attended a "two-in-one" teaching program: a four-year bachelor's degree program that is *also* approved for state teaching. This is an option offered, for example, at many of the California State University campuses. (11/15/21 Tr. 104:19-27 [Lucido].)[8]

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

---

specifics of this warning do not change the fact that Ms. Tomko's advisor also gave her false information regarding Ashford's membership in an "interstate agreement" that would allow Ms. Tomko to move directly to student teaching after graduation.

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

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

There is also ample evidence that Defendants misled students about their ability to use an Ashford degree to pursue a career as a nurse, drug and alcohol counselor, or social worker ("the helping careers"). Like teaching, these professions require attending an approved program and obtaining licensure or certification.[9] Ashford degrees are not state-approved for any of the helping careers. (Ex. 3575 [Defs. Resp. to Set 5 RFA 86, 89, 90, 91]; Ex. 3753, Tr. 215:22-216:14 [Stewart]; 11/10/21 Tr. 56:19-27 [Parenti].) Yet Defendants repeatedly encouraged students with those career aspirations to enroll at Ashford. As Dr. Lucido explained, affirmatively describing Ashford as "perfect" or "geared for" students who aspire to the helping careers is deceptive because Ashford's programs lack the programmatic accreditation required for licensure. (11/15/21 Tr. 113:17-115:5 [Lucido]; Ex. 2323 [helping career call].)

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

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

that an Ashford degree would "allow [her] to be a nurse." (Ex. 3766, Tr. 20:6-9, 21:12-17 [Cox].) Dr. Lucido identified 7 calls with similar misrepresentations directed at the helping careers. (11/15/21 Tr. 77:22-78:1 [Lucido].)

As with teaching, Defendants knew it was likely to deceive students to suggest Ashford degrees lead to the helping careers. (Ex. 1035.0005 ["Ashford University cannot prepare students for licensure or certification"].) Yet the evidence shows that this form of deception was widespread. For example, Jenn Stewart, whom Defendants promoted to lead their training department, suggested an Ashford degree to a student clearly interested in nursing. (Ex. 3753, Tr. 216:17-218:16, 219:2-4 [Stewart]; Ex. 815 [email with student].) Similarly, Ms. McKinley testified that her team frequently misled students into thinking they could become social workers or nurses the "moment after getting the degree from" Ashford. (12/1/21 Tr. 162:28-174:5 [McKinley]; Ex. 2038; Ex. 2043.) Lee Bennett, who worked in Defendants' Student Inquiry Center, explained that he was trained to transfer students with nursing or counseling interests to the "perfect" counselor, who would attempt to enroll the student despite Ashford's lack of counseling or nursing programs. (Ex. 3739, Tr. 184:23-185:4; 194:17-25 [Bennett].) The Court finds that Defendants routinely misled students regarding their ability to pursue the helping careers with an Ashford degree.

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

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

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

Student and former employee testimony again confirms that statements like these were likely to deceive. For example, Loren Evans testified that her admissions counselor promised that financial aid would cover the costs of her degree so that she would not have out-of-pocket costs until after graduation. (11/30/21 Tr. 34:14-27 [Evans].) Ms. Evans discovered this promise was false when she reached her lifetime loan limit just a few classes shy of graduating and was forced to drop out, leaving her with massive debt but no degree. (11/30/21 Tr. 41:3-48:20, 50:22-51:2 [Evans].) Ms. Cox testified to a similar experience: though her Ashford advisor promised that financial aid would fully cover her costs, she discovered two years into her degree that she owed an out-of-pocket balance because she had exceeded her lifetime loan limit. (Ex. 3766, Tr. 23:2-15, 28:20-29:7, 29:20-30:1 [Cox].) Unable to afford her remaining classes, she—like Ms. Evans—was forced to withdraw. (Ex. 3766, Tr. 33:23-25 [Cox]; see also Ex. 3765, Tr. 52:2-16, 59:21-60:2, 108:15-21 & Ex. 194 [Ybarra was promised $5,000 in Pell Grants]; 12/1/21 Tr. 188:4-189:2 [McKinley and "everyone around" her told students "it was very likely" they would receive Pell Grants"].) Making unsupported representations about aid and out-of-pocket costs is misleading because only Ashford's financial services department is responsible for packaging financial aid, issuing award letters, and answering specific financial aid questions. (11/10/21 Tr. 25:3-8 [Parenti].) Indeed, on average, over 75% of students who ultimately received financial aid did not receive their award letter until after enrollment, and one-third of students who received financial aid did not receive their award letter until after the Ashford Promise[11] expired and they were financially liable. (Ex. 3597; see also 12/8/21 Tr. 198:19-199:18 [Curran], Ex. 1063.0003.)

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

[11] The Ashford Promise provides a 100% tuition refund for first course if student drops within the first three weeks. (Ex. 3572.0010-0011 [Defs. Am. Resp. to Set 3 RFA 54, 55].)

4. Defendants Misled Students by Downplaying Their Debt.

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

5. Defendants Misrepresented Federal Financial Aid Rules.

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

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

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

The evidence shows that Defendants misled students about the feasibility of "doubling up," or taking two classes simultaneously, rather than the standard one class at a time. As Dr. Lucido explained, doubling up can generate out-of-pocket costs of over $1,000 per Ashford class because financial aid is limited per academic year. (11/15/21 Tr. 148:18-150:1 [Lucido].) Defendants' own internal documents and witnesses confirm that Defendants knew it was misleading to tell students about doubling up on classes without also disclosing the additional costs. (See, e.g., Ex. 1330 ["[F]inancial aid may not be applied to the cost of the second course and will be an out-of-pocket expense."]; 11/10/21 Tr. 47:6-9 [Parenti].) Vice President of Financial Aid and Student Services Kyle Curran testified that counselors should inform students that doubling up creates out-of-pocket costs. (12/8/21 Tr. 151:19-152:17 [Curran].) Nevertheless, Dr. Lucido's call analysis identified 30 calls with this misrepresentation. (11/15/21 Tr. 78:12-14 [Lucido]; see, e.g., Ex. 2350 [representative said student could double up and graduate in two years, which would generate significant out-of-pocket costs]; 11/15/21 Tr. 151:3-152:5 [Lucido]; see also 12/1/21 Tr. 189:10-17 [McKinley testifying that advisors commonly offered students the option of doubling up].) The Court agrees that this category of misrepresentation was deceptive.

7. Defendants Understated the Costs of Attendance.

The Court finds that the People presented ample evidence that Defendants misled students about the cost of an Ashford degree. First, counselors led students to believe tuition costs represented the entire cost, when in fact costs include significant books and fees expenses. (11/15/21 Tr. 155:9-156:15 [Lucido]; Ex. 2386; Ex. 3728 [Lucido identified 15 calls in Category 4a[13]]; 12/8/21 Tr. 149:16-25 [Curran admitting that when quoting costs, counselors should include books and fees].) Second, counselors quoted costs that did not match the academic catalog, for example by understating the cost of a degree program by more than $8,000.[14] (11/16/21 Tr. 123:19-124:23 [Lucido]; Ex. 2399; Ex. 3728 [Lucido identified 4 calls in Category

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

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

4b].) Third, counselors inaccurately compared Ashford's price with other schools, for example by claiming that U.C. Berkeley is more expensive than Ashford, when in fact Ashford costs more for the same number of credits. (11/15/21 Tr. 157:22-159:14 [Lucido]; Ex. 2312; Ex. 3728 [Lucido identified 2 calls in Category 4d].) Finally, Defendants misled students about the total cost of an Ashford degree by quoting the cost per "academic year." As Dr. Lucido explained, students reasonably believe one academic year represents one fourth of the cost of a bachelor's degree, when it fact in is only one fifth of the cost at Ashford. (11/15/21 Tr. 161:4-162:5 [Lucido].) That is because, unlike a traditional 4-year school, Ashford divides its bachelor's degrees into 5 "academic years," so students must multiply by 5 to determine their total cost, not by 4. (*Id.*; Ex. 3572 [Defs. Am. Resp. to Set 3 RFA 58, 60]; Ex. 9036.0213.) Alison Tomko testified that when her admissions counselor quoted the cost of Ashford at around $10,000 per academic year, Ms. Tomko reasonably believed that her degree would therefore cost around $40,000, when in fact it cost more than $50,000. (11/8/21 Tr. 161:5-162:19, 165:6-9 [Tomko]; Ex. 172.) Dr. Lucido identified 12 calls where quoting the cost per academic year likely led students like Ms. Tomko to believe their degree would cost less than it actually would. (Ex. 3728 [Category 4c]; e.g., Ex. 2395.)

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

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

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

9. Defendants Misrepresented Students' Ability to Transfer Credits.

The evidence shows that Defendants misled students about the ability to transfer credits in and out of Ashford. As explained by Dr. Lucido and several students, transfer credits matter because they can reduce the time and cost of a degree. (11/15/21 Tr. 174:9-175:5 [Lucido]; 11/30/21 Tr. 95:8-12 [Embry testifying that credits accepted meant "a shorter amount of time for me to be in school."].) Admissions counselors routinely made inaccurate promises that students' prior credits or life experience would transfer before the student received an evaluation from the responsible department: Ashford's Registrar. (11/15/21 Tr. 83:5-12 [Lucido]; Ex. 3573 at 9:20-27, 12:6-18, 69:18-25; see also 11/10/21 Tr. 48:18-50:22 [Parenti].) For example, Jessica Ohland's admissions counselor stated that at least half of her prior credits would transfer into Ashford "no matter what." Only after Ms. Ohland completed her first class did she learn that just 20 of her 69 prior credits had transferred, extending the time to degree completion. (Ex. 3771, Tr. 18:12-20:4, 25:12-26:11, 27:4-6, 85:17-25 [Ohland]; Ex. 3705 [Ohland]; see also Ex. 3765, Tr. 146:17-147:25 [Ybarra] [12 of 59 credits applied to Ashford degree].)

The testimony of students like Ms. Ohland mirror the 39 calls that Dr. Lucido identified with at least one misrepresentation about students' ability to transfer credits into Ashford. (11/15/21 Tr. 78:26-79:4 [Lucido].) As Dr. Lucido explained, statements like "we'll make sure to apply that" are likely to deceive students into thinking their credits or experience will be accepted

(11/15/2021 Tr. 180:11-27 [Lucido]; Ex. 2316), when in fact students receive official credit evaluations no earlier than four weeks after enrolling. (Ex. 3754, Tr. 183:2-17, 183:20-184:20 [Scheie]; Ex. 3746, Tr. 308:3-312:2 [Nettles]; Ex. 760-B.)

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

Defendants knew it was misleading to promise or imply credits would transfer. (Ex. 1332 [Say This Not That training document]; 12/1/21 Tr. 33:25-28 [Hallisy].) Nevertheless, multiple former employees testified that misrepresentations like the ones Dr. Lucido identified were routinely made and encouraged by managers. (11/9/21 Tr. 44:25-45:3, 50:11-14 [Dean testifying he suggested transfer into Ashford was guaranteed]; 12/1/21 Tr. 180:25-181:13, 185:25-186:3 [McKinley testifying she would "sell it as though [credits] were going to transfer"]; 12/1/21 Tr. 177:22-178:1 [McKinley testifying her manager liked statements that Ashford credits would transfer "to any other schools"] & Exs. 474, 2005 [template emails promising credit transfer].)

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

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

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

[16] The Court finds that Mr. Regan's use of Excel scorecards is reasonable because they were the only data

and numbers of non-complaint scorecards (12/2/21 Tr. 37:19-21, 38:11-42:22, 58:2-59:9, 126:11-127:4), were adequately explained and the Court gives Mr. Regan's analysis weight.

At a high level, Mr. Regan's analysis revealed that admissions counselors made non-compliant statements in 20.5% of scorecards discussing a topic relevant[17] to this case, for a total of 749,981[18] non-compliant calls nationwide.[19] (12/2/21 Tr. 45:2-47:12, 58:19-59:9, 126:11-127:4 [Regan]; Ex. 3420.) Further, the evidence showed that compliance personnel were trained to, and in fact did, comprehensively mark *both* compliant and non-compliant verbiages when completing scorecards (12/13/21 Tr. 34:13-16; 36:14-37:5 [Chappell]), supporting Mr. Regan's testimony that the 20.5% rate accurately captures the percentage of calls with at least one relevant non-compliant statement, and rebutting Defendants' contrary assertions. (12/2/21 Tr. 38:11-39:2, 126:11-127:4 [Regan]).[20]

Defendants had the capacity to and did analyze their own compliance data. (Ex. 3749, Tr. 84:19-87:25 [Chappell].) Indeed, at trial, Defendants presented their own analysis of their call scorecards, touting a compliance rate that rose from 75% in 2012 to 94.7% in 2018. (Ex. 942.0014 & 12/9/21 Tr. 209:12-211:18 [Chappell].) The Court gives this evidence some weight

---

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

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

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

[19] The Court finds that Mr. Regan appropriately classified statements rated "development opportunity" or "coaching" as non-compliant, in addition to "issues." Defendants frequently used the "development opportunity/coaching" rating and the "issue" rating for identical or nearly identical statements, such as "guaranteed student's credits will transfer into their program." (12/2/21 Tr. 34:16-35:2 [Regan].) The "development opportunity/coaching" rating was also used for statements that cannot reasonably be classified as compliant, including "Representative advised that financial aid will cover the student's entire cost of tuition" and "Representative advised the student that [Ashford's] academic program or programs can lead to becoming a social worker." (12/13/21 Tr. 51:9-53:17 [Chappell]; see also Ex. 7668.) Even compliance leader Jeanne Chappell described these ratings as "dangerously close" to an "issue." (12/9/21 Tr. 205:2-4 [Chappell].)

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

because it is evidence that the Defendants were attempting to improve their admissions department.

From 2012 to 2014, Defendants also received mystery shopper reports from a company called Norton Norris, which documented specific misrepresentations regarding financial aid and transfer credits. (Ex. 3760, Tr. 17:7-14, 26:3-26:7, 115:23-116:2 [Norton], Exs. 285, 289, 1285, 1286, 1408–1425.) These reports, which Mr. Norton testified were the "gold standard" for mystery shopping[21] (Ex. 3760, Tr. 35:6-8 [Norton]), revealed systematic deception in admissions. In one 2014 report, every single call was rated either "untruthful or unethical" or "incomplete or potentially misleading." (Ex. 1414.0001-2; see also Ex. 3760, Tr. 35:6-7 [Norton]; Exs. 285, 289, 1285, 1286, 1408-1425.) These were not sporadic or isolated statements of which management was unaware. Yet management failed to take Norton Norris's findings seriously, testifying that it was "consistent with a zero-tolerance approach to compliance" to have nearly one-third of counselors guaranteeing transfer credits. (11/10/21 Tr. 108:8-15 [Parenti].) Rather than fix these problems, Defendants discontinued the mystery shopper program. (Ex. 3760, Tr. 115:23-116:2, 148:24-149:7 [Norton].)

Internal documents further demonstrate that Defendants understood the extent of the deception emanating from the admissions department. For example, Defendants' Associate Director of Compliance, Matthew Hallisy, observed "areas where the level of negligence is astonishing" in his role overseeing admissions call monitoring. (Ex. 259.) As one manager under Mr. Hallisy put it, he felt "weary of identifying the same repetitive non-compliant behavior on the phones," and urged the company "do something radically different to stop this seemingly endless cycle." (Ex. 262.0002-3.) Yet Mr. Hallisy testified he saw no need to take action. (11/30/21 Tr. 238:7-14 [Hallisy].) Similarly, a report from Defendants' internal ombudsman office, which was circulated to dozens of top executives, reported that counselors were "telling potential students that we offer fully certified teaching degrees" and "guaranteeing as to [financial aid] amounts that would be received or credits that will be transferred." (Ex. 1359.0012-13.) Yet Ms. Alice Parenti,

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

then the Divisional Vice President of Admissions, could not recall taking any steps to address the ombudsman's concerns. (11/10/21, Tr. 202:12-205:21 [Parenti].) Finally, executives received troubling complaints directly from students, yet failed to take appropriate action. (E.g., Exs. 1033, 1034, 1048 [student complaints about teaching misrepresentations] & 12/9/21 Tr. 61:1-63:4 [Farrell testifying he did not report these complaints to admissions or compliance].)

C. Defendants Tolerated or Promoted Repeat Compliance Offenders.

Defendants' treatment of repeat compliance offenders also illustrates their knowledge and acceptance, even approval, of misrepresentations. Mr. Regan's expert testimony revealed that nearly 1,000 admissions counselors accumulated at least 10 non-compliant calls, some many more. (12/2/21 Tr. 51:1-25 [Regan].) For example, Michael Corner and Corey Howard accumulated 94 and 83 non-compliant scorecards. (12/2/21 Tr. 137:18-24, 138:25-139:17 [Regan].) Given that Defendants scored less than 1% of their calls, the true scope of non-compliance suggested by Defendants' own data is much greater. (12/2/21 Tr. 50:2-19 [Regan].)

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

This level of non-compliance among line-level admissions employees follows logically from Defendants' promotion decisions. For example, Mr. Regan testified that Defendants promoted 87 counselors who made relevant non-compliant statements in at least *half* of their monitored calls. (12/2/21 Tr. 54:8-16 [Regan].) Mr. Regan also explained that 131 admissions managers supervised teams that made relevant non-complaint statements in at least half of their calls. (12/2/21 Tr. 55:18-56:18 [Regan] [also noting 94 of those 131 continued to supervise for multiple years].) Defendants' decision to promote, rather than meaningfully discipline, repeat offenders undermines their claims that students' interests were put first and that deception was not tolerated (see, e.g., 12/6/21 Tr. 206:9-207:8 [Pattenaude]; 12/7/21 Tr. 41:21-42:5

[Pattenaude[22]); 11/10/21 Tr. 73:8-10 [Parenti]), particularly juxtaposed against their practice of firing the bottom 10% of employees based in part on enrollment numbers. (Ex. 3753, Tr. 107:15-108:25 [Stewart]; Ex. 792; 11/10/21 Tr. 22:10-23:1 [Parenti].)[23]

As multiple former employees testified, one result of Defendants' approach to compliance was an admissions floor where counselors worried frequently about meeting their numbers, and rarely about compliance. (Ex. 3769, Tr. 85:4-11 [Adkins] ["We never -- there was never a concern about compliance. There was always a concern about meeting your matrix numbers."]; 12/1/21 Tr. 214:6-7 [McKinley] ["I really wasn't even aware that we had a compliance department."].) The evidence that these employees did receive some compliance-related corrective action, (e.g., 11/9/21 Tr. 137:22-25 [Dean]; Ex. 3769, Tr. 221:8-12 [Adkins]), is not entitled to significant weight if actions by compliance were not perceived as serious.

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

VI. DEFENDANTS' DEFENSES.

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

Defendants are liable for their admissions counselors' misrepresentations because Defendants indisputably had the right to control their activities. (See *Ford Dealers*, *supra*, 32 Cal.3d at pp. 360-361; *JTH Tax*, *supra*, 212 Cal.App.4th at p. 1242; see, e.g., 11/10/21 Tr. 119:1-5 [Parenti]; 12/9/21 Tr. 217:21-218:12 [Chappell].) The right to control is sufficient for UCL and

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

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

FAL liability, even if Defendants did not exercise that control to prevent deceptive practices. It is also common sense that an employer can condone deception without uttering the words, "You are authorized to lie." Indeed, the evidence shows that despite formal training, (see, e.g., 12/9/21 Tr. 190:11-19 [Chappell]; 12/1/21 Tr. 43:2-22 [Hallisy]), the pressure to enroll created an environment in which misrepresentations were tolerated and even encouraged.[24] (See Part V.C, *supra.*) Moreover, Defendants knew of deception at unacceptable levels for a decade. (See Part V.B, *supra.*) This is more than sufficient to hold Defendants liable. (See, e.g., *Conway*, *supra*, 42 Cal.App.3d at p. 886; *First Federal Credit Corp.*, *supra*, 104 Cal.App.4th at p. 735.)

Nor do Defendants fall into the narrow exception identified in *Ford Dealers*, that a company might be able to avoid liability for its agents' misrepresentations if *all* of the following conditions were met: the company (1) made every effort to discourage misrepresentations, (2) had no knowledge of its agents' misleading statements, and (3) when so informed, refused to accept the benefits of any sales based on misrepresentations and took action to prevent a reoccurrence. (*Ford Dealers*, *supra*, 32 Cal.3d at p. 361, fn. 8.) No subsequent case has applied *Ford Dealers* to defeat liability. To the contrary, the two appellate courts that have considered the exception concluded it did not apply. (See *JTH Tax*, *supra*, 212 Cal.App.4th at pp. 1247-1248 [noting exception would only apply in "unusual circumstances"]; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 798-799 [same].) In any case, the exception does not apply here. The evidence shows that first, Defendants knew of misleading statements, including through their own scorecards, the Norton Norris mystery shopping reports, their exit surveys, their ombudsman, and other whistleblowers. (See Part V.B, *supra.*) Second, Defendants made scant "effort to discourage" the misrepresentations. They terminated Norton Norris, promoted employees with repeated compliance infractions, continuously ran a high-pressure admissions floor, and did not heed whistleblowers' warnings. (See Part V.C, *supra.*) Third, with one or two isolated exceptions, Defendants did not refuse to accept the benefits of enrollment based on misrepresentations. (Compare 12/7/21 Tr. 26:21-27:7 [Pattenaude testifying to forgiving one

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

student's balance]; with *Rob-Mac*, *supra*, 148 Cal.App.3d at p. 799 [defendant liable who refunded purchaser's money in only one of seven sales]).

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

The fact that Defendants' enrollment agreements (over 30 pages, see, e.g., Ex. 166), academic catalogs (over 300 pages, see, e.g., Ex. 9043), website (30,000 pages, 12/8/21 Tr. 173:8-11 [Curran]), or other written materials may contain truthful information about Ashford does not immunize Defendants for their misrepresentations over the phone. The first reason is legal: under California law, a deceptive statement cannot be cured by separate disclosures. (See *Prata*, *supra*, 91 Cal.App.4th at p. 1145; *Chern*, *supra*, 15 Cal.3d at p. 876 [accurate written disclosures do not cure misleading quotes made in initial dealings with customers]; *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 227-28 [fine-print disclosures about plan limits in a footnote do not, as a matter of law, cure characterization of phone plan elsewhere on website as "unlimited"].) The law requires honesty in all consumer interactions, not just in fine print. (*Brady*, *supra*, 26 Cal.App. 5th at p. 1172.) This maxim applies just as forcefully to agreements signed by students as it does to Ashford's website. And if Defendants' oral misrepresentations cannot be undone by their written disclaimers, they also cannot be undone by sources a student may encounter separate from Defendants. For that reason, the Court gives no weight to Dr. Wind's opinion that students are "active consumer[s] . . . doing searches . . . talking with friends . . . [and] competitors." (See 12/13/21 Tr. 171:16-19 [Wind].) Moreover, as Defendants' own witnesses admitted, students are entitled to trust their counselors. (Ex. 3743, Tr. 104:18-21 [Clark]; 12/7/21 Tr. 49:5-9 [Pattenaude]; 12/9/21 Tr. 182:7-16 [Nettles]; Ex. 3754, Tr. 26:15-26:19 [Scheie].)

The second reason is factual. In over a dozen calls, Dr. Lucido identified Ashford admissions counselors discouraging students from reviewing Ashford's catalogs with statements like, "Don't click it. Let me tell you why you don't click it right now. The catalog is almost 300 pages." (11/15/21 Tr. 88:21-89:27 [Lucido]; Ex. 3248; see also Ex. 807 [template email sent by Stewart stating, "The seventh section is a link to our university catalog. There is no need to download it, it's over 300 pages."].) As Eric Dean testified, his manager instructed him to "spit

[]out" financial information in the enrollment agreement as fast as possible. (11/9/21 Tr. 62:11-63:8 [Dean]; Ex. 3681.) These practices leave students more reliant on their counselors. (11/15/21 Tr. 87:17-25 [Lucido].) Indeed, multiple students testified that they did not read the enrollment agreement or catalog carefully if at all, instead trusting the information already provided by their counselor. (See, e.g., 11/30/21 Tr. 84:23-86:6 [Embry]; Ex. 3771, Tr. 19:1-6, 24:1-15 [Ohland]; 11/18/21 Tr. 44:6-8, 44:16-45:9 [Roberts].) Others raised concerns about the fine print only to be reassured and further misled. (See 11/8/21 Tr. 140:9-141:19 [Tomko testifying she asked counselor about licensure disclaimer and was told, "there would be no issue."].)

Furthermore, even if disclosures on Defendants' website were pertinent to misrepresentations made over the phone, generalized testimony that counselors received website training (12/1/21 Tr. 199:12-200:5 [McKinley]), and can provide a "tour" of "all of the different things about the school" (11/10/21 Tr. 140:6-19 [Parenti]) is vague and entitled to little weight. While Defendants also introduced evidence of the "net price calculator" and program costs on their website, (Ex. 7740.23524-25; Ex. 7740.27075), those disclosures are not only legally irrelevant to misstatements of cost over the phone, but Defendants also did not show that they were part of the "tour" or meaningfully highlighted for students. There is also evidence that portions of Defendants' website itself were misleading. For example, Dr. Tony Farrell agreed that the only credentialing disclosure on the College of Education's website landing page was embedded within the "Special Terms and Conditions" section, which a student would have to affirmatively open in order to view. (Ex. 1047 & 12/9/21 Tr. 66:22-67:13 [Farrell]; see also Ex. 7740.01826-01830 [Ashford webpage stating that "[t]hrough the program's courses, students will be able to focus on . . . social work"]; 12/8/21 Tr. 209:24-210:4 [Curran]; see discussion of EFIP tool in Part VI.C.3, *infra*.) Other disclaimers, like emails Defendants sent to students about teacher licensure requirements *after* the students had already earned 30, 60, or 90 credits, (12/9/21 Tr. 30:6-31:25 [Farrell]; Exs. 175-177; 11/8/21 Tr. 182:6-183:7 [Tomko]), would not help a student make an informed decision about whether to choose Ashford in the first place.

The evidence clearly shows that students were misled through their phone calls with admissions counselors *despite* any written disclaimers.[25]

C. Third Party Assessments Do Not Defeat Liability.

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

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

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

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

171:14-174:12 [Ogden]; 12/7/21 Tr. 175:26-176:13 [Ogden].) Moreover, any WASC approval of Defendants' admissions practices would be vastly outweighed by the actual evidence of misrepresentations the Court found here and the Court declines to substitute WASC's judgment for its own.

2. The Iowa Settlement Was Limited, the Monitor's Findings Are Contradicted by the People's Evidence, and Neither Bar Liability.

Defendants presented evidence of the work of attorney Thomas Perrelli, the third-party monitor who assessed Defendants' compliance with their settlement with the state of Iowa, regarding Iowa's false advertising allegations. Defendants emphasize that Mr. Perrelli examined their business practices, including their phone calls, and found no "pattern or practice" of misrepresentations. (Ex. 3750, Tr. 49:6-8 [Perrelli].) But Mr. Perrelli's assessments do not defeat liability for several reasons. First, Mr. Perrelli's monitorship lasted only from May 2014 to May 2017 (Ex. 3750, Tr. 201:1-202:12 [Perrelli]), whereas this case ranges from 2009 to 2021. Second, Mr. Perrelli did not investigate the same range of misrepresentations that the People have proven in this case. (See, e.g., Ex. 3750, Tr. 301:11-302:12, 311:5-312:4, 325:6-13 [Perrelli].) Third, even as to the misrepresentations that were on his radar, Mr. Perrelli's summary conclusion of no "pattern or practice" could not be tested at trial. Mr. Perrelli's call review was done primarily by junior associates at his law firm without the guidance of a statistician, and his reports do not contain the underlying calls or data they reviewed. (Ex. 3750, Tr. 28:20-21, 215:21-217:3, 219:9-17 [Perrelli].) The People presented evidence of a rigorous call review conducted by a college admissions expert, Dr. Lucido, along with the testimony of a statistician, Dr. Bernard Siskin, to quantify the ramifications of Dr. Lucido's findings. Dr. Lucido's and Dr. Siskin's analyses are detailed and transparent, and deserve greater weight than Mr. Perrelli's. Indeed, they show that Defendants engaged in substantial rates of misrepresentations both during and after Mr. Perrelli's tenure. (See Part VII.A.2, *infra*.) Fourth, Mr. Perrelli's own reports contain observations that corroborate the People's case, such as Defendants' tolerance for "repeat or severe compliance infractions." (Ex. 3750, Tr. 318:6-319:15 [Perrelli]; Ex. 1154.0015 [2016 Report]; Ex. 1155.0051 [2017 Report].) Finally, while Mr. Perrelli opined about the admissions floor environment based

on his occasional visits, the more reliable evidence on that issue is testimony from those with first-hand experience: Defendants' own admissions employees. (See Part III.B, *supra.*) Thus, the Court, which is charged with independently evaluating the People's claims and evidence supporting them at trial, finds that Mr. Perrelli's conclusions do not bar liability. However, the Court will give some weight to Mr. Perrelli's conclusions when evaluating the appropriate statutory penalties for any violations.

3. Defendants' Settlement with the CFPB is Not a Defense.

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

Defendants did elicit testimony that, under the CFPB settlement, they implemented the "EFIP" tool, developed by the CFPB, which walks Ashford students through financial information relating to their degree. (Tr. 12/8/21 Tr. 10:4-13:21 [Smith].) However, as explained in Part VI.B, *supra*, misleading statements by admissions counselors regarding financial aid and cost of attendance cannot be cured by written disclaimers like those contained in the EFIP. More practically, the EFIP tool lacks information on many cost issues raised in the People's case, including: the costs of doubling up, lifetime limits on federal grants and loans, and any comparative costs between Ashford and other schools. (Ex. 7798 & 12/8/21 Tr. 101:8-102:13 [Smith].) Finally, the EFIP tool understates the cost of completing an Ashford degree by 20% by using four academic years, when in fact it takes five. (12/8/21 Tr. 76:5-18 [Smith]; Ex. 7798.)

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

Equitable defenses such as good faith cannot defeat UCL liability and are only relevant to fashioning an appropriate equitable remedy. (See *Cortez v. Purolator Prods. Co.* (2000) 23 Cal.4th 163, 179-181.) Further, the existence of a compliance program does not in itself establish good faith. In fact, the court in *JTH Tax* held that a defendant can violate the UCL and FAL even when its own internal policies forbid the false advertisements in question, if the defendant

nonetheless fails to stop false advertisements after it becomes aware of them. (See *JTH Tax, supra*, 212 Cal.App.4th at pp. 1247-1249.) Here, it is clear that Defendants did not take serious action to prevent or remedy the extensive deception their compliance program identified. (See Part V.B [Defendants' Knowledge] and Part V.C [Defendants' Failure to Act], *supra.*) To be clear, Defendants are not being punished for having a compliance department, but for the actual misleading practices their employees engaged in, and for their failure to meaningfully respond to that misconduct.

E. There is Insufficient Evidence to Support Any Remedy For The People's Debt Collection Claims and Demands.

The People seek penalties, restitution of fees paid, and an injunction based on Zovio's debt collection practices that lasted from March 2008 until December 19, 2013. (12/15 Tr. 185:21-23; Ex. 3642 at ¶ 6.) While the People argue that Zovio illegally profited by charging students unlawful debt collection fees, even if the People had presented any evidence of an actual legal violation, the evidence showed that Zovio almost never recovered the money students owed it, and the People did not present any calculation to support the remedies or relief sought.

First, the fee was not a source of profit for Zovio. The collection fee was approved as a pass-through cost so that Zovio "would be made whole" on the student's debt owed, not so that Zovio would receive any sort of payment above what it was owed. (Ex. 3758, Tr. 180:12-14, 194:21-195:1 [Moore].) Students were asked to pay the debt that was owed to Zovio, as well as the collection fee that Zovio incurred due to the student's failure to timely pay, as a pass-through charge. (Ex. 3758, Tr. 183:6-17 [Moore].) Zovio did not "pad[] their bottom line" or generate increased profit by charging students debt collection fees, but added the 33.33% fee only so Zovio could collect the full amount of debt, accounting for the collection agency's commission rate. (12/15 Tr. 9:9-11; Ex. 3758, Tr. 194:15-195:3 [Moore].)

In fact, very few students paid any part of their debt owed to Zovio once they were assessed a debt collection fee (4,413 students between March 1, 2009 and September 30, 2014), and very few of those students paid (472) their entire balance. (Ex. 3642 at ¶¶ 9, 10.) This does not amount to a practice warranting penalties because, aside from the 472 students who paid their

balance in full, all students paid *less* than the amount they owed to Zovio plus the fee, and most students who were assessed a fee did not pay the amounts they owed Zovio at all.

Second, in signing the enrollment agreement, students agreed to pay the reasonable collection costs incurred by Zovio in collecting any unpaid balance due to the Zovio on the student's account. (Ex. 1122 at 9.)

Third, the record does not support the AG's requested relief. As a preliminary matter, the debt collection stipulation entered into by the parties at Exhibit 3642 does not concede liability, as the People attested. This stipulation cannot be used to establish a penalty violation count, especially where no student testified in this case that they paid a collection fee in response to an allegedly unlawful debt collection letter. As to an injunction, Zovio voluntarily ceased the debt collection practices in 2013. (Ex. 3758, Tr. 179:13-16, 187:1-23 [Moore].) There is therefore no evidentiary support in the record that an injunction is warranted. The evidence showed that all but 472 of the students who were assessed a debt collection fee did not pay Zovio the amount they owed Zovio.

VII. REMEDIES

A. Penalties

1. Standard and Methodology for Calculating Penalties

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

Here, the Court must quantify Defendants' deceptive phone marketing. To start, the Court finds it appropriate to include in the violation counts each deceptive telephone call made by Defendants. (E.g., *People v. Morse* (1993) 21 Cal.App.4th 259, 273-274 [each deceptive mailing is a separate violation].) In light of the enormous scope of Defendants' call marketing, the People presented the expert testimony of Dr. Lucido, Dr. Siskin, and Mr. Regan, which together support a reasonable inference that Defendants committed well over 75,000 violations in California, and over one million nationwide. Individualized proof of deception is not required to assess penalties for these deceptive calls. (*Day*, *supra*, 63 Cal.App.4th at p. 332.) Indeed, in complex cases involving numerous communications, requiring individualized proof of viewership for each communication would be "so onerous as to undermine the effectiveness of the civil monetary penalty as an enforcement tool." (*JTH Tax*, *supra*, 212 Cal.App.4th at p. 1254 [internal citations omitted].) Therefore, whether or not students who heard misrepresentations were actually deceived is not relevant to determining the number of violations.

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

are sound: they are based on a sufficiently large random sample, and associated with small margins of error at a 95% confidence level.

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

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

---

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

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

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

Second, the 561 Relevant Calls were sent to Dr. Lucido,[29] an expert in higher education admissions with over four decades of experience leading admissions offices at major institutions across the country. (11/29/21 Tr. 37:9-15 [Siskin]; 11/15/21 Tr. 53:26-54:13, 60:21-61:8, 61:18-62:5 [Lucido].) Dr. Lucido's credible testimony regarding what is likely to deceive prospective students is based on his substantial experience, and there is no evidence in the record to show that Dr. Lucido's knowledge of the study's sponsor biased the results. (11/15/21 Tr. 221:13-222:7 [testifying that decades advising students informed his opinion about which calls were likely to mislead]; 11/15/21 Tr. 198:5-21 [testifying that he conducted his work "independently"].) Of the 561 Relevant Calls, Dr. Lucido identified 126 calls (22%) with at least one misrepresentation.[30] (Ex. 3728 [Appendix F].) For each call, Dr. Lucido reviewed the entire call in context, highlighted the key passages containing misrepresentations, assigned each misrepresentation a category code, and notated his rationale.[31] (11/15/21 Tr. 93:13-95:8, 190:1-191:16 [Lucido]; Ex. 1495 [Appendix E, full notated transcripts of all calls containing misrepresentations].) Defendants' critique that Dr. Lucido deemed some statements to be misleading half-truths because they "omitted critically important information," (11/15/21 Tr. 220:25-221:5 [Lucido]), lacks merit because that type of statement is clearly actionable under the UCL. (See *Day*, *supra*, 63 Cal.App.4th at pp. 332-333 ["A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable . . . "].) The fact that Dr. Lucido did not consider written disclaimers or subsequent phone calls, (11/15/21 Tr. 210:22-211:7, 261:2-12 [Lucido]), is also beside the point because the law is clear that they cannot cure the misrepresentations Dr. Lucido identified. (See

---

[29] As Dr. Lucido testified, his research associate, Dr. Emily Chung, initially reviewed each call to determine whether there was a potential misrepresentation. (11/15/21 Tr. 93:7-23 [Lucido].) If so, Dr. Chung elevated the call to Dr. Lucido, who then reviewed the entire call to make the final determination. (11/15/21 Tr. 93:24-94:17 [Lucido].) The Court credits Dr. Lucido's testimony that no conflict resolution process was necessary because the ultimate decisions were his alone. (11/15/21 Tr. 235:6-21 [Lucido]; 11/16/21 Tr. 112:19-113:5 [Lucido].)

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

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

Part VI.B, *supra*.) To the extent an admissions counselor provided both misleading and correct information within the same call, Dr. Lucido assessed each call individually to determine whether the advisor clearly "walked back" the misrepresentation, in which case he did not code the statement. (11/15/21 Tr. 258:25-259:24 [Lucido].) The Court finds Dr. Lucido's approach more logical than that of Dr. Wind, whose call review used a formula by which clear misrepresentations could be cancelled out by vague disclaimers. (E.g., 12/13/21 Tr. 241:11-18 [Wind] ["Q. And so [if] the admissions counselor told a student that coursework or a degree from Ashford was all they would need to become a teacher, but they also stated that the student should check with their state licensing board for specific details, [the coders'] instructions were to conclude that . . . that call was not deceptive, true? A. Yes."].) In general, the Court gives Dr. Wind's call review little weight due to that flaw, as well as his lack of substantive expertise, which the Court found hampered his ability to identify misrepresentations. (E.g., 12/13/21 Tr. 223:16-226:17 [Wind testifying to no financial aid, registrar, or teacher certification experience].)[32]

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

Further, the size of Dr. Siskin's sample resulted in small margins of error, which, when paired with a high confidence level, signifies high accuracy.[33] Dr. Siskin determined with 95% confidence that the true number of calls with at least one misrepresentation is between 75,097 and

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

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

102,386, and that the true percentage of misleading calls among Relevant Calls is between 19% and 25% (a 3% margin of error). (11/29/21 Tr. 64:17-65:4, 68:17-39:7 [Siskin].) The odds that the true number and rate of misleading calls lie outside of these ranges are negligible to infinitesimal—for example, the chance that the true percentage of misleading calls is only 15% or lower is 37 in a million. (11/29/21 Tr. 71:2-73:4 [Siskin].) Dr. Siskin also determined that the percentage of misleading calls was relatively constant over the 2013-2020 period: 25% during the pre-Iowa monitoring period (29 misleading calls out of 117 Relevant Calls), 23% during the monitoring period (71/308), and 19% after the monitoring period (26/136), differences that Dr. Siskin concluded were not statistically significant. (11/29/21 Tr. 76:2-27 [Siskin]; Appendix A.)

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

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

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

Defendants retained and produced only California calls. The People presented evidence that California students constituted 10.87%[34] of Ashford's enrollment, and Defendants offered no contrary evidence. (Ex. 1387-B.) Accordingly, to calculate the number of deceptive calls nationwide, one divides the number of deceptive California calls by 10.87%. (11/29/21 Tr. 85:15-87:26 [Siskin].) The Court therefore finds that Defendants made a total of 1,243,099 misleading calls, as detailed in Appendix A. These results converge with Defendants' own compliance data,

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

which show that counselors made relevant non-compliant statements 749,981 times nationwide between 2013-2020, based on a 20.5% non-compliance rate. (12/2/21 Tr. 16:11-20 [Regan].)

The Court finds it appropriate to determine violations on a nationwide basis according to the well-established rule[35] that the UCL extends to conduct that emanates from California even if victims reside out of state. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 241-244; see also *Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1208 ["[T]he UCL reaches any unlawful business act [] committed in California."]; *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 613 [endorsing application of California law to non-resident victims].)

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

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

Tr. 82:26-83:16 [Parenti testifying admissions and compliance executives are based in San Diego], 84:1-3 [Ashford president was based in San Diego as recently as 2020], 84:4-9 [Parenti based in San Diego]; 12/13/21 Tr. 29:6-24 [Chappell testifying Zovio general counsel was based in San Diego until retirement in 2021]), and Defendants continue to employ admissions counselors and compliance staff in San Diego, (see Ex. 3737.0092; 11/10/21 Tr. 82:15-18 [Parenti testifying Zovio still employs admissions staff in San Diego], 87:5-8 [San Diego-based admissions counselors were hired in November 2020]; 12/13/21 Tr. 31:22-24 [Chappell testifying compliance staff is based in San Diego]). Given these facts, both constitutional and choice-of-law principles support an award of penalties based on deception of students nationwide.

5. The Statutory Penalty Factors.

The Court's "duty to impose a penalty for each violation [of the UCL and FAL] . . . is mandatory." (*People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 686 [citation omitted].) "The amount of each penalty, however, lies within the court's discretion." (*Ibid.*) In exercising that discretion, the Court "shall consider any one or more" of the following non-exhaustive factors set out in both the UCL and FAL: "the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth." (Bus. & Prof. Code, §§ 17206, subd. (b), 17536, subd. (b).) The Court has considered the factors and determined that $22,375,782.00 in statutory penalties is reasonable and supported by the evidence.

The Court assessed the penalty amounts based on its careful consideration of the entire record. The Court finds that Defendants made false and misleading statements to students over a substantial period of time. But the Defendants also dedicated significant time and efforts in creating a compliance program to detect and prevent fake and misleading statements. Even if insufficient to pose a bar to liability, Thomas J. Perrelli's work as the independent administrator of the Assurance of Voluntary Compliance entered in May 2014, between Defendants and Iowa, weighs favorably for Defendants. Also, the Consent Order with the Consumer Financial Protection Bureau that Defendants entered in September 2016, weighs favorably for the

Defendants. For example, while the record has demonstrated that it is not perfect nor a cure for Defendants' misrepresentations (see, e.g., Part VI.C.3, *supra*), the EFIP tool implemented as a result of the Consent Order walks Ashford students through at least some of the financial information relating to their degree. These elements warranted a downward adjustment in the total amount of penalties.

6. No Injunction Is Necessary

The evidence at trial demonstrated that there is no basis to impose an injunction on Zovio. The People have not presented sufficient evidence of ongoing misconduct to support its demand for an injunction. The court does not find the evidence postdating 2017 to be such that an injunction is needed. For example, no student who enrolled after 2017 or admissions counselor who worked after 2017 testified. The People's expert analysis ended in 2018 (Dr. Cellini), 2020 (Mr. Regan), 2020 (Dr. Siskin), and 2020 (Dr. Lucido). Dr. Lucido identified only four deceptive calls in 2020 (Exs. 2397-2400), which falls far short of what is required to establish an imminent threat of misconduct entitling the People to an injunction.[36] Moreover, Ashford University no longer exists, and Zovio no longer serves the role it did previously; it now provides support services subject to the direction of UAGC—a non-profit entity. (Ex. 1320.) The People did not introduce evidence of Zovio's current practices—how it trains admissions counselors, how it monitors admissions counselors, or how it administers financial aid.

To argue that purported misconduct continues to the present, the People cited only a single email from corporate compliance director Emiko Abe from 2021 describing one exit interview, but that email cannot justify an injunction. Ms. Abe credibly testified that during her entire time monitoring exit interviews, she only saw one exit interview that mentioned feeling pressure. (Ex. 3759, Tr. 81:25-82:4; 85:23-25; 97:13-22 [Abe: "I had reviewed several in the course of my evaluation of exit interviews and do not recognize any other reports of any other concerns . . . . It is my opinion that this was an anomaly[]."].) Ms. Abe investigated the situation and determined that there was no issue remaining. (Ex. 3759, Tr. 89:16-90:6, 95:9-11 [Abe].) Ms. Abe even

[36] In one of those 2020 calls, (Ex. 2399), Dr. Lucido conceded that the student did not rely on the admissions counselor's alleged misrepresentation in order to enroll, and the student indicated he "felt that Ashford was more than they were willing to pay at this point in their search." (11/16 Tr. 102:18-105:13.)

attempted "several times" to follow-up with the author of the exit survey to "gain more insight from him or her into what might have led to them feeling that pressure," but the former employee did not respond. (Ex. 3759, Tr. 95:22-25 [Abe].) If anything, this email demonstrates that Zovio's compliance department has (at least relatively recently) taken seriously signs of concerning behavior. The People provided insufficient current evidence entitling it to an injunction and Zovio demonstrated that it has already made many of the changes the People seek via injunction. (12/9 Tr. 69:18-21 [Dr. Farrell testified we followed AVC disclosure requirements on noncompliant conduct. (12/9 Tr, 191:27-192:14 [Chappell].)

Thus, the Court finds judgment in favor of the People of the State of California for $22,375,282.00 in penalties against Defendants for misleading students about career outcomes, cost and financial aid, pace of degree programs, and transfer credits, in order to entice them to enroll at Ashford. The Court finds judgment for the Defendants on liability as to its debt collection practices and denies the People's request for penalties, restitution on fees paid and an injunction based on Defendants' debt collection practices. The Court denies the People's request for an injunction on Zovio.

IT IS SO ORDERED.

Dated: March 3, 2022

Eddie C. Sturgeon

EDDIE C. STURGEON
Judge of the Superior Court

APPENDIX A
PENALTY COUNTS

Period	# of Misleading Calls Identified by Dr. Lucido		Dr. Siskin's Multiplier		# of Misleading California Calls		Nationwide Factor (Ex. 1387-B)		# of Misleading Calls Nationwide
Pre-Iowa (3/1/09-12/31/12)	-		-	=	46,386	÷	10.87%	=	**426,734**
Pre-Iowa[i] (1/1/13-5/14/14)	29	x	704.29	=	20,424	÷	10.87%	=	**187,893**
Iowa Monitorship[ii] (5/15/14-5/14/17)	71	x	704.29	=	50,004	÷	10.87%	=	**460,018**
Post-Iowa[iii] (5/15/17-4/30/20)	26	x	704.29	=	18,311	÷	10.87%	=	**168,454**
							Grand Total	=	***1,243,099***

[i] 29 misleading calls in pre-Iowa monitoring period: Exs. 1514, 2261-2274, 2276-2280, 2282, 2284-2290, 2293; see also Ex. 3728 [Lucido list of misleading calls]. Other Relevant Calls in this period: Exs. 2275, 2281, 2283, 2291, 2292, 2969-3002, 3004-3052.

[ii] 71 misleading calls in monitoring period: Exs. 2294-2316, 2318-2320, 2322-2333, 2335-2344, 2346-2354, 2356-2363, 2365-2369, 2373; see also Ex. 3728 [Lucido list of misleading calls]. Other Relevant Calls in this period: Exs. 2317, 2321, 2334, 2345, 2355, 2364, 2370-2372, 3053-3246, 3248-3281.

[iii] 26 misleading calls in post-monitoring period: Exs. 2374-2382, 2384-2400; see also Ex. 3728 [Lucido list of misleading calls]. Other Relevant Calls in this period: Exs. 2383, 3282-3365, 3367-3373, 3375-3381, 3383-3387, 3389-3391, 3393-3395.