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**Pro Hac Vice* Admission Pending

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

TANNER SMITH and QIMIN WANG, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GRAND CANYON EDUCATION, INC.,

Defendant.

Civil Action No. ________________

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Tanner Smith ("Smith") and Qimin Wang ("Wang") (collectively, "Plaintiffs"), individually and on behalf of the other members of the below-defined classes they seek to represent (the "Class," or the "Classes"), hereby allege against defendant, Grand Canyon Education, Inc. ("GCE" or "Defendant"), upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon investigation of counsel, as follows:

I. NATURE OF THE ACTION

1. Since at least January 1, 2017, GCE has orchestrated a racketeering scheme to induce students—including Plaintiffs and the other Class members—to enroll in doctoral degree programs at Grand Canyon University, which has been controlled by GCE, by lying to students about how much they would need to pay to obtain their doctoral degrees from Grand Canyon University.

2. Both federal law and regulations promulgated by the U.S. Department of Education ("ED") require GCE, which had an exclusive agreement with Grand Canyon University to provide marketing and student recruitment, to give prospective students accurate information as to the true cost of the doctoral programs at Grand Canyon University.[1] Yet, GCE lied about doctoral program costs—repeatedly and persistently—to students like Plaintiffs and the other Class members.

3. Throughout the Class Period—January 1, 2017, to the present—GCE has propagated false information about the true cost of Grand Canyon University's doctoral programs in a variety of ways: on the Grand Canyon University website, through marketing materials sent by mail and email by GCE's sales representatives, and in enrollment applications and agreements.

[1] *See* 20 U.S.C. § 1092(a)(1)(E) (requiring accurate description of, among other things, "tuition and fees"); *see also* 34 C.F.R. §§ 688.71-73 (prohibiting both educational institutions and any "person with whom the [] institution has an agreement to … provide marketing, advertising, recruiting or admissions services" from making any "false, erroneous or misleading statement" regarding, as relevant here, the "cost of the program" and the "requirements for successfully completing the course of study").

4. Through those methods, GCE falsely told prospective students like Plaintiffs and the other Class members that they could obtain their doctoral degrees by paying a total tuition amount equal to 60 or 65 times the cost per credit.

5. For example, in July 2018, GCE informed Plaintiff Smith that the "estimated tuition" for him to complete a Ph.D. in General Psychology was $39,000, *i.e.*, 60 credits x $650 per credit. Similarly, in March 2019, GCE informed Plaintiff Wang that the "estimated tuition" for her to complete a Doctor of Education degree in Organizational Leadership was $39,000, i.e., 60 credits x $650 per credit. GCE also falsely told prospective students like Plaintiff and the other Class members that the "total estimated cost" of their degree will be the estimated tuition plus three specifically itemized fees. *See infra* ¶¶ 44–47, 89–97, 114–120.

6. In truth, however, since at least January 2017, senior executives at GCE—including Michael Berger, who has served as the Dean of the College of Doctoral Studies—have known that almost none of the students at Grand Canyon University completed their doctoral degrees with just 60 credits (or 65 credits for two doctoral programs) and that artificial bottlenecks in the doctoral dissertation process created by GCE's doctoral program policies and practices required at least 70% of doctoral students to pay thousands of dollars—and often tens of thousands of dollars—more in tuition for "continuation courses." *See infra* ¶¶ 49–62.

7. In Plaintiff Smith's case, GCE required him to pay more than $8,400 in additional tuition for four "continuation courses" after he had already paid for all 60 credits that he expected to pay to complete his Ph.D. in General Psychology. In Plaintiff Wang's case, GCE has required her to pay almost $8,700 in additional tuition for four continuation courses after she completed all 60 credits towards her Doctor of Education degree in Organizational Leadership and may require her to pay for yet more continuation courses to complete that degree.

8. In October 31, 2023, the Office of Federal Student Aid ("FSA") at ED announced a $37.7 million fine against Grand Canyon University after an "FSA investigation found GCU lied to more than 7,500 former and current students about the cost of its doctoral programs over several years," including by "falsely advertis[ing] a lower cost than what 98% of students ended

up paying to complete certain doctoral programs."[2] Attached as Exhibit 1 to this Complaint is a copy of a letter dated October 31, 2023, from ED to Grand Canyon University setting forth the basis for the fine.

9. To orchestrate and profit from this fraud scheme, GCE exploited its control over Grand Canyon University. Specifically, to facilitate its aggressive recruiting efforts directed at prospective students like Plaintiff, GCE used the proceeds of its fraud scheme to establish Grand Canyon University as a nominally independent, not-for-profit entity in July 2018. Beneath the veneer of nominal independence, however, GCE continued to control Grand Canyon University and to use it as a RICO enterprise for carrying out GCE's fraud scheme against doctoral students. *See infra* ¶¶ 63–87. (Attached as Exhibit 2 to this Complaint is a copy of a letter from ED, dated November 6, 2019, concluding that the nominally independent Grand Canyon University "does not satisfy the Department's definition of a nonprofit" due to the extent of GCE's control).

10. During the Class Period, GCE reaped millions of dollars a year in profits from this fraud scheme, in violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), California consumer protection statutes like the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq*. ("CLRA"), and the West Virginia Consumer Credit and Protection Act, 46A W. Va. Stat. §§ 6-101, *et seq*. ("W. Va. Consumer Protection Law").

11. For thousands of students like Plaintiffs and the other Class members, who enrolled in doctoral programs with dissertation requirements at Grand Canyon University, GCE's fraud caused them collectively to incur tens of millions of dollars in losses as result of either having to pay more to obtain doctoral degrees or, for many of them, having to leave those programs without ever graduating due to the unexpected costs.

12. This action seeks to recover tens of millions of dollars in tuition that Plaintiffs and other Class members had to pay due to GCE's fraud scheme and other relief authorized by law.

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[2] https://www.ed.gov/news/press-releases/us-department-education-office-federal-student-aid-fines-grand-canyon-university-377-million-deceiving-thousands-students (last visited June 3, 2024).

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this action pursuant to: (a) 18 U.S.C. § 1965(a), which authorizes the initiation of a "civil action" under RICO in a "district court of the United States"; and (ii) 28 U.S.C. § 1331, which confers federal question jurisdiction on actions arising under a federal statute like RICO.

14. This Court has supplemental jurisdiction over state law claims under 28 U.S.C. § 1367.

15. This Court has personal jurisdiction over GCE pursuant to 18 U.S.C. § 1965(a) because GCE can be found in this District and transacts business in this District.

16. Venue is proper in this District under (i) 18 U.S.C. § 1965(a) because GCE can be found in and transacts business in this District; and (ii) 28 U.S.C. § 1391 because the acts and omissions that give rise to the allegations and claims asserted in this action substantially occurred in this District.

III. PARTIES AND OTHER RELEVANT ENTITIES AND INDIVIDUALS

17. Plaintiff **Tanner Smith** is a resident of Fairmount, West Virginia. Plaintiff Smith enrolled in September 2018 in the doctoral program in General Psychology at Grand Canyon University with an emphasis in industrial and organizational psychology. After having to pay $8,400 for four "continuation courses," Plaintiff Smith earned his doctorate in July 2022.

18. Plaintiff **Qimin Wang** is a resident of La Quinta, California. Plaintiff Wang enrolled in March 2019 in the doctoral program in Education at Grand Canyon University. Since May 2023, Plaintiff Wang has had to take and pay for four "continuation courses" to work on her doctoral dissertation, which has cost her almost $8,700. Further, GCE may require Plaintiff Wang to pay for yet more continuation courses to obtain a doctoral degree.

19. Defendant **GCE** is a for-profit corporation registered in Delaware with its principal executive offices in Phoenix, Arizona. Throughout the Class Period (*i.e.*, January 1, 2017, to the present), GCE has either owned or controlled both iterations of Grand Canyon University—Old GCU and the GCU Enterprise (both of which are described below). GCE also has been

exclusively responsible for marketing and recruiting efforts for Grand Canyon University, including such efforts directed at prospective doctoral students. *See infra* ¶¶ 74–87.

20. **Grand Canyon University** was originally founded in 1949 as a non-profit educational institution with an emphasis on religious studies.[3] In February 2004, it was acquired by, and became a for-profit subsidiary of, GCE (then known as Significant Education, LLC).

21. During the Class Period, Grand Canyon University existed in two iterations. In its first iteration (“**Old GCU**”), it was owned and operated by GCE as a for-profit subsidiary until July 2018. During that time, Old GCU was a major recipient of federal student aid from ED.

22. The current iteration of Grand Canyon University (the “**GCU Enterprise**”) is a nominally non-profit educational institution registered in Arizona that enrolls more than 100,000 students in undergraduate, graduate, and certificate programs. The GCU Enterprise is supposedly independent from GCE. In fact, GCE has controlled the GCU Enterprise’s operations and policies since its creation in July 2018. Specifically, in 2017 and 2018, senior GCE executives orchestrated a series of corporate transactions to establish the GCU Enterprise as a non-profit entity nominally independent from GCE. *See infra* ¶¶ 63–73. The GCU Enterprise has been a major recipient of federal student aid from ED since its creation.

23. Within the Old GCU and the GCU Enterprise, doctoral programs were operated by the **College of Doctoral Studies**. Throughout the Class Period, **Michael Berger**, who was an executive at GCE until at least July 2018, has been the Dean of the College of Doctoral Studies.

24. Finally, GCE exercised its control over the GCU Enterprise through its senior executives including **Brian Mueller**. Mr. Mueller, for example, has simultaneously served as the CEO, Board Chair, and President of GCE, while also serving as the President of the GCU Enterprise.

25. As noted above, Old GCU and the GCU Enterprise were both major recipients of federal student aid from ED. During ED’s 2022-2023 award year, for example, the GCU

[3] Grand Canyon University was originally called Grand Canyon College. In 1989, and on the 40th anniversary of its founding, it was renamed to Grand Canyon University.

Enterprise received approximately $1 billion in total federal student aid (*e.g.*, federal student loans), including more than $18 million for first-year doctoral students.

26. As a condition of receiving federal student aid, Old GCU and the GCU Enterprise were required to enter into program participation agreements with ED, which set forth program requirements, including program integrity requirements. *See* 20 U.S.C. § 1094.

27. By entering into program participation agreements with ED, Old GCU and the GCU Enterprise agreed, *inter alia*, to comply with 20 U.S.C. § 1092, including to provide information to students that "shall accurately describe . . . the cost of attending [GCU], including (i) tuition and fees" as required by § 1092(a)(1)(E).

28. 20 U.S.C. § 1094(c) of the HEA authorizes ED to issue regulations to enforce program integrity requirements, including the requirement that an educational institution must not "engage[] in substantial misrepresentation of . . . its financial charges." Congress provided this authority "to protect students from 'false advertising' and other forms of manipulative 'sharp practice.'" *Ass'n of Private Sector Colls. v. Duncan*, 681 F.3d 427, 436 (D.C. Cir. 2012) (quoting H.R. Rep. No. 94-1086, at 13 (1976)).

29. Pursuant to that authority, ED promulgated regulations to define "misrepresentation concerning the nature of an eligible institution's financial charges" to "include[] false, erroneous, or misleading statements concerning . . . the cost of the program." 34 C.F.R. § 668.73.

30. ED regulations also provide that, because the GCU Enterprise "has an agreement" with GCE, *i.e.*, the Master Services Agreement ("MSA"), "to provide marketing, advertising, [and] recruiting [] services," any marketing, advertising, and recruiting materials that GCE disseminates on behalf of the GCU Enterprise must likewise give students accurate information concerning the cost of doctoral programs and not misrepresent those costs. 34 C.F.R. § 668.71.

31. Senior GCE executives, including CEO Brian Mueller, were aware of GCE's obligation to comply with these federal laws and regulations. During the Class Period, Mr. Mueller simultaneously served as the GCU Enterprise's President. In that role, he has signed the

program participation agreements on behalf of the GCU Enterprise. Accordingly, he was directly responsible for its compliance with the program participation agreements, including compliance with the requirement under 34 C.F.R. § 668.73 to refrain from giving students any "false, erroneous, or misleading" information "concerning the cost of [GCU's doctoral] program[s]."

32. Mr. Mueller's experience prior to his position at GCE also gave him ample reasons to be aware of GCE's obligation to conduct marketing, advertising, and recruiting activities in accordance with federal law, ED regulations, and the program participation agreement.

33. Specifically, before joining GCE in 2008, Mr. Mueller was a senior executive at another for-profit education company, University of Phoenix. During that time, University of Phoenix failed to comply with federal laws and regulations that prohibit paying incentive compensation to admissions counselors based on the number of students recruited.

34. As a result of those violations, University of Phoenix was named as the defendant in a civil fraud lawsuit. *See U.S. ex rel. Hendow v. Univ. of Phoenix*, 461 F.3d 1166 (9th Cir. 2006). In December 2009, after the Ninth Circuit overturned dismissal of those fraud claims, *see id.*, University of Phoenix paid $67.5 million to the federal government in settlement of the alleged civil fraud violations.[4]

IV. FACTUAL ALLEGATIONS

A. GCE's Scheme to Defraud Doctoral-Degree Students Like Plaintiffs

35. Throughout the Class Period, GCE was exclusively responsible for marketing and recruiting for the doctoral programs at Grand Canyon University.[5] GCE aggressively marketed and recruited prospective doctoral students to increase its revenue and profit.

36. For example, to recruit prospective students, GCE carried out nationwide marketing campaigns that involved both online and social media advertisements and the use of sales representatives to conduct telemarketing to students.

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[4] *See* https://www.justice.gov/opa/pr/university-phoenix-settles-false-claims-act-lawsuit-675-million (last visited Feb. 24, 2024).

[5] In 2017 and early 2018, GCE conducted marketing and recruiting for its subsidiary, Old GCU. After July 2018, GCE carried out these functions for the GCU Enterprise, which GCE controlled.

37. Instead of being forthright about the sales representatives' role as telemarketers for GCE, GCE directed them to tell prospective students that they were counselors at Grand Canyon University. Further, rather than making the prospective students' goals the top priority of those "counselors", GCE assigned specific quotas of students—called "Annual Student Counts"—that each counselor was expected to enroll and retain.

38. At the same time, GCE significantly expanded the doctoral programs at Grand Canyon University. In 2018, there were only 16 doctoral programs. By 2022, the number had more than doubled to 35.

39. To sustain this expansion, GCE orchestrated a scheme to defraud prospective doctoral students by supplying them with marketing materials and enrollment forms with false "estimated tuition" and "total estimated cost" data.

40. Those estimates informed prospective students that they could obtain doctoral degrees by paying 60 credits worth of tuition costs. But GCE knew this was untrue for almost all doctoral students at Grand Canyon University. Instead, most students paid thousands of dollars more in tuition for "continuation courses" after completing 60 credits' worth of courses.

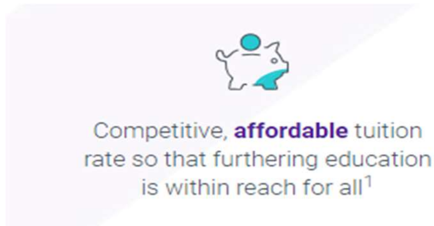
41. GCE marketed the doctoral programs at Grand Canyon University as offering an "accelerated path" to doctorates:

> Are you looking to advance your education by earning a doctoral degree? At Grand Canyon University, the doctoral journey is truly unique. From day one, you are placed on an accelerated path that will prepare you to succeed in your academic journey and career. Here are four ways to make the most of your doctoral journey at GCU:

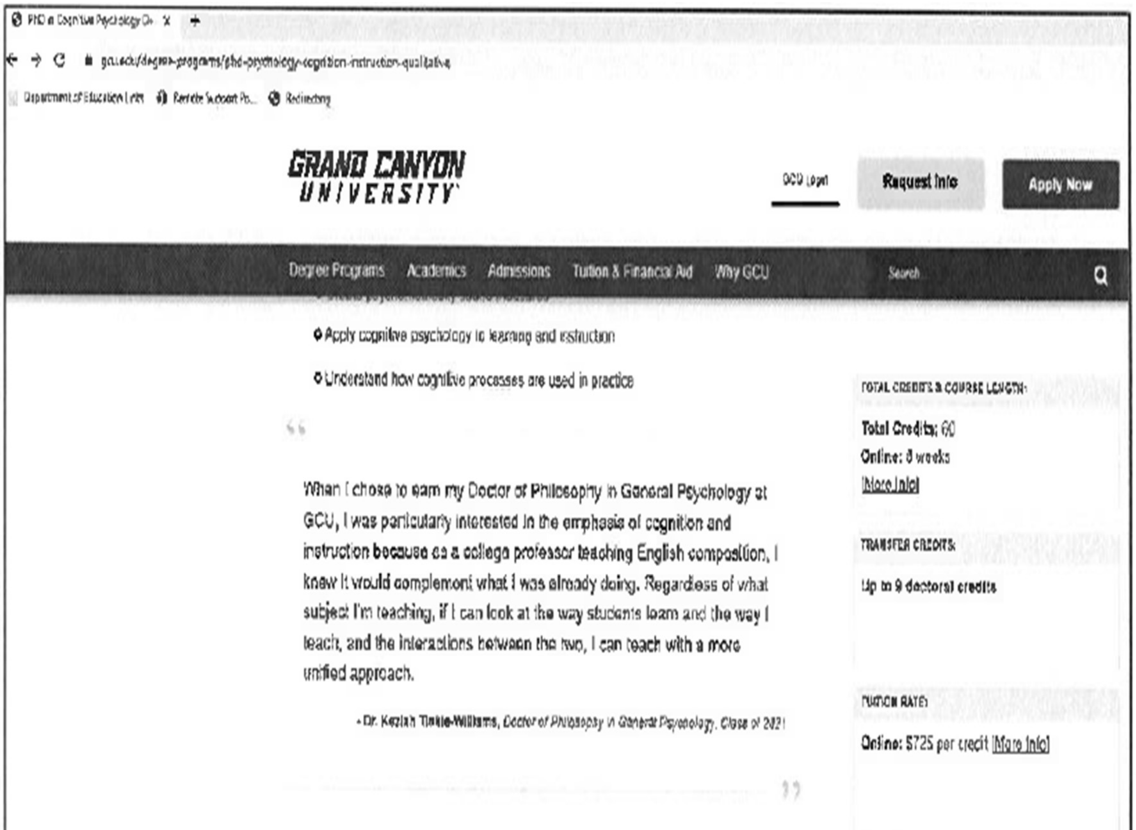
42. GCE also told prospective students that they would obtain doctoral degrees on an "accelerated" basis because they could "get a head-start" on their doctoral dissertations "at GCU":

> **Get a Head-Start on Your Dissertation**
>
> Unlike many other doctoral programs, at GCU, you will begin the dissertation process at the start of your program. In your first course, you will be introduced to the doctoral dispositions with emphasis on understanding expectations for scholarly work.

43. Further, GCE made the affordability of the "tuition rate" of doctoral programs at Grand Canyon University a key marketing point:



44. GCE gave prospective students detailed tuition cost information for different doctoral programs on Grand Canyon University's website and marketing materials. For example, in 2023, the webpage for the doctoral program in Psychology (Cognition and Instruction—Qualitative) offered key tuition cost information for prospective students in terms of the number of credits required and the cost per credit:



45. According to this webpage, which was created and maintained by GCE, the "Total Credits" needed to complete the degree was 60, and the "Tuition Rate" was $725 per credit. In other words, the total tuition cost of completing this doctoral degree was $43,500.

46. Prospective students who followed the "More Info" links on this webpage would find further confirmation that the tuition cost for this degree was $43,500. Specifically, the "More Info" page for "Total Credits" elaborated on the 60 credits requirement by listing 20 courses associated with that requirement, including three dissertation courses included within the 60 credits. And the "More Info" link for "Tuition Rate" took prospective students to a general tuition and costs page.[6]

47. When prospective students express a serious interest in a doctoral program at Grand Canyon University, GCE sends them an Application for Admission, which contains a standard, three-page enrollment agreement for the relevant program. As illustrated by the Doctor of Business Administration example below, the enrollment agreement not only contains information on the number of total credits needed to complete the degree, the cost per credit hour, and a list of required courses, but also provides the exact "Total Program Cost" or "Total Program Tuition and Fees":

[6] If prospective students followed the link for dissertation courses, they would again be informed that these programs require 60 credits at a cost of $725 per credit.

Doctor of Business Administration with an Emphasis in Data Analytics

Enrollment Agreement

Student Name SSN

Street Address

City State Zip

Start Date

Required Program Major Courses		Credits
RES-811	Introduction to Advanced Graduate Studies and Scholarship	3
DBA-820	Emerging Issues in Financial Management	3
MGT-820	Using Business Analytics for Competitive Advantage	3
DBA-831	Analytic Foundations for Business Leaders	3
RES-850	Foundations for Research	3
RSD-851	Residency: Dissertation	3
DBA-833	Predictive Modeling	3
RES-861	Analysis of Existing Research	3
DBA-815	Economics for Business Decisions	3
DBA-835	The Sustainable Future	3
RES-866	Approaches to Research Design and Data Analysis	3
RES-845	Statistics	3
RSD-881	Residency: Presentation of Progress or Results	3
DBA-837	Prescriptive Modeling for Business Decisions	3
DBA-839	Enterprise Data Complexity	3
RES-880	Formalizing the Research Prospectus	3
DBA-885	Developing the Research Proposal	3
DBA-955	Dissertation I	3
DBA-960	Dissertation II	3
DBA-965	Dissertation III	3
Required Program Major Course Total Credits		60

A minimum of 60 credits are required for completion of this program of study.

If taking one course at a time, this program will take a minimum of 39 months. Students with transfer credit that applies to this program will shorten the time to completion from that stated on this enrollment agreement.

Total Program Credits: 60
Cost/Credit Hour: $640
Book Costs: $2174
Learning Management Service Fee: $400
Graduation Fee: $150
Total Program Cost: $40850

Program cost is estimated based on current tuition rates and fees

Book costs are based on an average. Costs may increase or decrease depending on electronic availability or publishers' book costs. A one-time Learning Management Service Fee will be charged to new students only. Students continuing from one degree program to another with Grand Canyon University will only be charged the fee for the first program.

48. The truth of the matter is that the "Total Program Cost" stated in the enrollment agreement that GCE distributes to prospective students significantly understates the actual total costs that they would need to pay to complete their degrees.

49. What GCE has not disclosed to prospective students—but senior GCE executives have known since at least January 2017—is that almost none of the doctoral students at Grand Canyon University obtains their degrees after paying the tuition costs for 60 credits, including credits for the three dissertation courses.

50. Instead, doctoral students at Grand Canyon University routinely encounter lengthy delays in their efforts to complete their dissertations due to policies and practices enacted by GCE

that create artificial bottlenecks in the dissertation process. These include Byzantine review procedures that prevent doctoral students from communicating directly with key dissertation reviewers. They also include up to nine "Milestones" that require students to wait for extended periods of time as they try to make progress on their dissertations.

51. While doctoral students face these delays due to the artificial bottlenecks created by GCE, they also are required by GCE to enroll in "continuation courses" in order to maintain their enrollment and be eligible to obtain their doctoral degrees. In other words, students are compelled to pay for those "continuation courses" ***after*** they have completed 60 course credits and paid the tuition for those credits.

52. According to ED's analysis of outcome data, less than 2% of the more than 1,800 students who completed doctoral programs at Grand Canyon University between 2021 and 2017 did so while paying the total program cost that GCE provided to them:[7]

Table 2. Continuation Courses Taken by 1,858 Graduates between 2011 and 2017[17]

Number of Continuation Courses (Enrollments from 1/2011 – 7/2022)	Percentage of Graduates	Additional Time	Additional Tuition/Institutional Cost
0	1.7%	NA	NA
1	2.1%	12 Weeks	$2,106
2	5.5%	24 Weeks	$4,212
3	6.3%	36 Weeks	$6,318
4	6.7%	48 Weeks	$8,424
5	42.9%	60 Weeks	$10,530
6+	34.8%	72+ Weeks	$12,636+

53. Senior GCE executives, moreover, have known that the representations GCE was making to prospective students about the total program cost and tuition cost of doctoral programs at Grand Canyon University were false.

7 According to ED, this analysis was based on data produced by Grand Canyon University concerning its doctoral student outcomes from 2011 to 2022. *See* Ex. 2 at 6. ED also performed an analysis of outcome data for students who enrolled between July 2017 and June 2022. In this cohort, more than 90% of students who graduated by January 2023 had to take at least one continuation course, and more than 63% of the students in this cohort had withdrawn by January 2023. *See id*.

54. For example, in a series of emails from January 10, 2017, Michael Berger, the senior GCE executive who led the College of Doctoral Studies, discussed with one of his top subordinates that GCE's own internal analysis showed that most doctoral students were required to pay for multiple "continuation courses to complete their degrees."

From: Nikki Mancuso
Sent: Tuesday, January 17, 2017 2:20 PM
To: Michael Berger [redacted]
Subject: RE: Graduates and continuation courses needed for this past year

Yes:

It is getting Dan 5 the grads and continuation data so he can determine what we should update this verbiage to show:

** On average, doctoral students who graduated during the 2014/15 academic year required 5.25 continuation courses to complete their degree.*

Continuation Courses... $1925 per course (1st 5 courses); $500 per course (6th course and beyond)*

Nikki Mancuso, MAOM
Senior Vice President, College of Doctoral Studies

Grand Canyon University
3300 W. Camelback Road Phoenix, AZ 85017
1-800-800-9776 [redacted]

From: Michael Berger
Sent: Tuesday, January 17, 2017 2:19 PM
To: Nikki Mancuso <[redacted]
Subject: RE: Graduates and continuation courses needed for this past year

Can you remind me what this is?

Michael Berger, EdD
Dean
College of Doctoral Studies
Grand Canyon University
[redacted]

From: Nikki Mancuso
Sent: Tuesday, January 17, 2017 1:40 PM
To: Michael Berger <[redacted]
Subject: Graduates and continuation courses needed for this past year

Hi Michael,

When do you plan to get this data?

Nikki Mancuso, MAOM
Senior Vice President, College of Doctoral Studies

55. In August 2017, senior GCE executives, including Mr. Berger, again engaged in a discussion of "up to date data on our graduates." According to this internal GCE analysis, 70% of the doctoral program graduates were unable to complete their degrees without having to pay for three or more continuation courses.

56. GCE never updated the program cost information on the website it operated or in the application and enrollment packets it sent to prospective students to reflect true the costs. As late as 2021, the enrollment agreement for the Ph.D. program in General Psychology (Industrial and Organizational Psychology with focus in Quantitative Research) still showed students a total program tuition and fees (for 60 credits) that did not include the cost of any continuation course:

Program Major:		**60 credits**
Total Degree Requirements:		**60 credits**
Required Program Major Courses		**Credits**
RES-815	Introduction to Research	3
RES-820C	The Literature Landscape: Psychology	3
PSY-810	History and Systems of Psychology	3
PSY-802	Psychoanalysis and Psychodynamic Theory	3
RES-831	Foundations of Research Design 1	3
RSD-851	Residency: Dissertation	3
RES-832	Foundations of Research Design 2	3
PSY-803	Behaviorism	3
PSY-830	Principles of Industrial and Organizational Psychology	3
PSY-804	Humanistic, Transpersonal and Existential Psychology	3
RES-842	Designing a Quantitative Study 1	3
RES-844	Designing a Quantitative Study 2	3
PSY-834	Psychology of Consulting and Coaching	3
RSD-884	Residency: The Quantitative Dissertation	3
PSY-836	Principles of Personnel and Human Resource Management	3
PSY-955	Dissertation I	3
RES-874	Quantitative Data Collection and Statistical Mechanics	3
PSY-960	Dissertation II	3
RES-884	Quantitative Data Analysis, Results, and Findings	3
PSY-965	Dissertation III	3
Required Program Major Course Total Credits		**60**

A minimum of 60 credits are required for completion of this program of study.
If taking one course at a time, this program will take a minimum of 39 months. Students with transfer credit that applies to this program will shorten the time to completion from that stated on this enrollment agreement.

Total Program Credits: 60
Cost Per Credit: $715
Learning Service Management Fee Per Program: $550
Graduation Fee Per Program: $150
Course Fees: $2,630
Total Program Tuition and Fees: $46,230

Estimated Additional Costs
Book Costs: $650

57. While the enrollment packet provides several notes on potential changes and additions to the program cost—such as potential changes to "retail pricing provided by publishers" of print textbooks, potential changes to "current tuition rates and fees," and a "one-time learning management service fee"—it does not disclose that requiring students to take continuation courses could, and usually do, substantially increase the program cost.

58. By fraudulently misrepresenting the true cost of completing doctoral programs at Grand Canyon University as part of its aggressive marketing campaign, GCE has been able to leverage its control over Old GCU and the GCE Enterprise and profit from the fraud.

59. The continuation courses are especially profitable for GCE. Even though doctoral students enrolled in continuation courses are only working on their dissertation and do not receive instruction from faculty, Grand Canyon University charges the same price for the first five continuation courses as regular content courses. Thus, the continuation courses have allowed GCE to reap significant tuition revenue from doctoral students while incurring lower instructional and operating cost.

60. GCE also profits from the continuation courses because its policies and practices create artificial roadblocks in the dissertation process. GCE's dissertation review procedures prohibit doctoral students from communicating directly with key reviewers, thus delaying the students' ability to make progress on their dissertations. Policies enacted by GCE also require doctoral students to fulfill up to nine separate "milestones" in their dissertation process. To fulfill each milestone, a doctoral student must correspond with an advisor or a review committee to obtain and address their comments. Instead of corresponding promptly with students, the advisors and review committees routinely wait up to two weeks to provide minor comments or approve minor changes. The cumulative result of these and other artificial roadblocks created by GCE's policies and practices is that nearly all of the doctoral students at Grand Canyon University are compelled to enroll in—and pay for—expensive continuation courses, which has redounded to GCE's financial benefit.

61. The false information GCE provided to doctoral students at Grand Canyon University regarding the cost of their programs has exacted significant financial tolls. According to ED's analysis, over 90% of the doctoral students who first enrolled in July 2017 and graduated before June 2022 had to take, and pay for, continuation courses.

62. The undisclosed cost of the doctoral programs also has contributed to the high rate of withdrawal among doctoral students at Grand Canyon University. According to ED's analysis,

more than 63% of the doctoral students who first enrolled in July 2017 withdrew from their programs by June 2022. Those students paid thousands of dollars in tuition – in most cases by taking out education loans – without ever obtaining degrees.

B. GCE's Creation of the GCU Enterprise in July 2018 and GCE's Control of the GCU Enterprise Since July 2018.

63. In February 2004, GCE acquired the assets of Old GCU, which was operating as a non-profit university.[8] From 2004 until 2018, GCE operated Old GCU as a for-profit educational institution. During this period, GCE's business activities consisted solely of operating Old GCU.[9]

64. Starting in 2014, well before the start of the Class Period, GCE began making plans to turn Old GCU into a non-profit entity that would be nominally independent from GCE.

65. To replace Old GCU with GCU Enterprise, senior GCE executives orchestrated a series of transactions in 2017 and 2018 that were known within GCE as "Project Gazelle," because they involved using a purportedly independent entity called Gazelle University, which Brian Mueller, the CEO of GCE, had chartered in 2014.

66. For GCE, a key purpose of Project Gazelle was to improve GCE's effectiveness at recruiting prospective doctoral students like Plaintiff. In April 2018, for example, GCE's board of directors received a report regarding Project Gazelle prepared by Barclays, which explained this project was "attractive" because establishing the GCU Enterprise as a non-profit entity would allow GCE to "grow its student population" and "mitigate the potential risk (perceived or real) posed by its for-profit status."

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[8] GCE was initially formed in November 2003 as Significant Education, LLC. In August 2005, Significant Education, LLC converted from a limited liability company to a corporation and changed its name to Significant Education, Inc. In May 2008, Significant Education, Inc. changed its name to GCE. Later in 2008, GCE became a publicly traded company.

[9] Starting in 2018, GCE expanded its business to provide education services to other institutions. For example, in December 2018, GCE acquired Orbis Education and, through that acquisition, took over Orbis's business of providing services to a group of 17 universities. According to GCE's most recent annual report, GCE "provided education services and support to approximately 113,000 students," with "more than 108,600" of them "enrolled in GCU's programs, emphases, and certificates," as of December 31, 2022

67. In December 2018, Brian Mueller, GCE's CEO, boasted that creating a nominally independent non-profit entity gave GCE "a tailwind" with recruiting students "just because of how many students didn't pick up the phone because we were for-profit."

68. Mr. Mueller also told investors in February 2019, that "being out there a million times a day saying we're non-profit has had an impact" on recruiting new students online.

a) <u>Project Gazelle and Creation of the GCU Enterprise in July 2018.</u>

69. As implemented, Project Gazelle had two major components. ***First***, in July 2018, GCE "sold" the assets of Old GCU to Gazelle University for more than $850 million. Post-sale, Gazelle University changed its name to Grand Canyon University.

70. This sale was not an arms-length transaction, but rather one orchestrated by GCE. Gazelle University was not actually independent from GCE. Instead, as noted above, it had been chartered by GCE's CEO, Brian Mueller.

71. Gazelle University did not have to come up with the funding to buy Old GCU. Instead, GCE—the purported seller—was the source of all the funding for this sale. GCE "loaned" Gazelle University the entire amount (more than $850 million) that Gazelle paid to purchase the assets and operations of Old GCU. Those funds then promptly flowed back to GCE when Gazelle made the acquisition and changed its name to Grand Canyon University.

72. Despite immediately recouping its loan in this round-trip transaction, GCE obtained a direct interest in the GCU Enterprise. Specifically, GCE received a Senior Secured Note in July 2018 in return for loaning Gazelle the entire purchase price for Old GCU.

73. Pursuant to this Senior Secured Note, GCE has been receiving approximately $50 million a year in interest payments from the GCU Enterprise. GCE also is entitled to a lump-sum repayment of the principal amount ($853 million) from the GCU Enterprise in July 2025. Finally, this Senior Secured Note gives GCE a security interest in the properties of the GCU Enterprise.

74. GCE also obtained the ability to control and dominate GCU's operations and policies by making the GCU Enterprise enter into a Master Services Agreement with GCE, which had a 10-yearlong initial term and renewal by default every five years thereafter.

75. Under this Master Services Agreement, the GCU Enterprise is required to pay GCE a fee equal to 60% of its adjusted gross revenue—including revenue from tuition and fees from students like Plaintiff—in return for providing certain services.

76. Under the Master Services Agreement, GCE also is entitled to the same percentage of services fees irrespective of how the GCU Enterprise's revenue changes in relation to GCE's costs to provide these services. Further, the agreement places on limit on the total amount of services fee that the GCU Enterprise must pay GCE. In other words, if the GCU Enterprise's tuition and fees revenues doubles while GCE's costs stay flat, the agreement requires GCU Enterprise to pay twice as much in services fees to GCE.

77. Overall, having the GCU Enterprise pay service fees to GCE has resulted in a dramatic increase in costs to Grand Canyon University while providing a significant financial benefit for GCE. A report that GCE's board of directors received from Barclays in April 2018 indicated that "the costs to operate [Grand Canyon University] following the change of ownership (with GCE providing services) would increase from $810 million to $1.496 billion in fiscal year 2019, solely as a result of fees paid to GCE."

78. In addition, the Master Services Agreement made GCE the "exclusive" provider of essential services like technology, budgeting analysis, enrollment, marketing, and student support.

79. GCE made it infeasible for the GCU Enterprise to seek out other vendors to supply services for which GCE is not designated as the "exclusive" provider. Under the Master Services Agreement, the GCU Enterprise is required to pay the same 60% of its adjusted gross revenue to GCE even if it were to pick another vendor to supply services such as procurement or auditing.

80. GCE also made it practically impossible for the GCU Enterprise to emerge from GCE's control. Under the Master Services Agreement, the GCU Enterprise is required to pay GCE 60% of its adjusted gross revenue each year until 2028. If it opts out of the agreement, the GCU Enterprise is required to pay GCE in one lump-sum a "non-renewal fee" equal to the 50% of the fees that GCE had received over the preceding year—which would amount to hundreds of

millions of dollars.

81. As ED noted in its 2019 decision denying the GCU Enterprise's request to be recognized as a non-profit educational institution, the combination of the Master Service Agreement and the Senior Secured Note meant that GCE received as much as 95% of the annual revenues of the nominally independent GCU Enterprise. Indeed, as GCE's board of directors were informed by corporate advisors in 2017 and 2018, a key purpose of Project Gazelle—the creation of the purportedly non-profit and nominally independent GCU Enterprise—was to benefit the financial interests of *GCE's* shareholders.

b) <u>GCE's Control of the GCU Enterprise Since July 2018.</u>

82. Since July 2018, the GCU Enterprise has functioned as an instrument through which GCE profits from fraud schemes directed at students like Plaintiff, who enrolled in doctoral-degree programs at the GCU Enterprise.

83. GCE has done so by controlling and dominating the operations and policies of the GCU Enterprise, including those relating to the doctoral-degree programs at issue here.

84. For example, GCE has ensured its control of the GCU Enterprise by having the key functions managed by GCE executives and employees.

85. As noted above, Brian Mueller has served as both the CEO of GCE and as the President of the GCU Enterprise since July 2018.

86. Of the 58 GCE senior executives responsible for managing and overseeing Old GCU's operations before July 2018, 41 (including Mr. Mueller) continued to work at GCE, rather than at the GCU Enterprise, after July 2018.

87. Additionally, when the GCU Enterprise came into existence, the 17 top positions below President were filled by former GCE executives. The Dean of the College of Doctoral Studies—where Plaintiffs and other Class members were enrolled—is Michael Berger, who served in the same role as a GCE executive prior to July 2018.[10]

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[10] GCE's control over the GCU Enterprise is also underscored by how GCE responded to ED's 2019 decision refusing to recognize the GCU Enterprise as a nonprofit institution for purposes of Title IV of

C. Plaintiff Smith's Financial Loss Due to GCE's Fraud Scheme.

88. Plaintiff Tanner Smith stands in the shoes of thousands of victims of GCE's fraud scheme. He would not have enrolled in a doctoral-degree program at Grand Canyon University if GCE and a counselor acting at GCE's direction had disclosed to him in 2018 that the estimated tuition cost that GCE represented to him significantly understated the true cost to complete the program.

89. In May 2018, Plaintiff Smith requested information from Grand Canyon University regarding its doctoral program in General Psychology with an emphasis in Industrial and Organizational Psychology.

90. In response, Plaintiff Smith was contacted by LH[11] from Grand Canyon University, who proceeded to communicate with Plaintiff Smith over telephone and electronic mail to persuade him to enroll in this doctoral program.

91. On May 18, 2018, LH sent an e-mail to Plaintiff Smith with the subject line: "Grand Canyon University-Your Proposed Graduation Timeline." This email attached a "Proposed Graduation Timeline," described as a "personalized proposed schedule based on the degree program [Plaintiff Smith] selected." According to this email, the Proposed Graduation Timeline "outlines ***each course*** you will need to complete." (emphasis added).

92. According to this Proposed Graduation Timeline, if Plaintiff Smith were to begin his doctoral program in July 2018, his "Expected Graduation Date" would be May 26, 2021. In other words, Plaintiff Smith was told that he could expect to graduate with his doctoral degree within three years of beginning his doctoral studies at Grand Canyon University.

93. This Proposed Graduation Timeline also stated that Plaintiff Smith could expect to

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the Higher Education Act. To assuage ED, GCE had the GCU Enterprise offer to amend the Master Services Agreement to make the terms more favorable to the GCU Enterprise. GCE, however, made the GCU Enterprise condition the "adoption of the [amended Master Services Agreement] contingent on," inter alia, ED's "approval of GCU's nonprofit status." *See Grand Canyon Univ. v. Cardona*, 2022 WL 18456049 (D. Ariz. Dec. 1, 2022).

[11] In the interest of privacy, Plaintiffs refers to the sales representatives that GCE assigned to them—MA, LH, KV, and TL—by their initials.

graduate with his doctoral degree after completing 60 credit hours. It did not disclose that he would need to take and pay for continuation courses to complete the doctoral program.

94. According to ED's investigation, GCE provided similar graduation timelines to other prospective students and used those timelines to lure students to enroll in doctoral degree programs at Grand Canyon University.

95. Plaintiff Smith also received a "Proposed Cost" document from LH. This document gave him a "personalized college cost estimation" for the Ph.D. program in General Psychology with an emphasis in Industrial and Organizational Psychology at Grand Canyon University.

96. The "Proposed Cost" document informed Plaintiff Smith that he could expect to pay $39,000.00 in "Estimated Tuition" to complete his doctoral degree:

Academic Year (AY) 2017 - 2018

Estimated Costs	AY1	AY2	AY3	AY4	AY5	Total
Credit Hours	12	15	15	12	6	60
Estimated Tuition	$7,800	$9,750	$9,750	$7,800	$3,900	$39,000
Canyon Connect Fee	$420	$420	$420	$420	$210	$1,890
Learning Management System Fee	$400	$0	$0	$0	$0	$400
Course/Lab/Graduation Fees	$0	$795	$795	$0	$150	$1,740
Total Estimated Cost	$8,620	$10,965	$10,965	$8,220	$4,260	$43,030
Scholarships and Other Aid						
Total Estimated Scholarships and Other Aid	$0	$0	$0	$0	$0	$0
Financial Aid						
Total Estimated Federal Aid	$0	$0	$0	$0	$0	$0
Summary						
Estimated Net Cost	$8,620	$10,965	$10,965	$8,220	$4,260	$43,030
Total Estimated Federal Aid	$0	$0	$0	$0	$0	$0
Total Estimated Out of Pocket Cost (Credit)	$8,620	$10,965	$10,965	$8,220	$4,260	$43,030

97. While this proposed cost identified three specific fees (the Canyon Connect Fee, the Learning Management System Fee, and the Course/Lab/Graduation Fees) that were included (along with the "Estimated Tuition") in the "Total Estimated Cost," it did not include the cost of any continuation courses—let alone the four different continuation courses that GCE eventually

required Plaintiff Smith to pay for.[12]

98. According to ED's investigation, GCE provided similar proposed cost documents to other prospective students and used those documents to lure students to enroll in doctoral degree programs at Grand Canyon University by falsely representing how much it would cost students to complete their doctoral degrees.

99. After receiving the graduation timeline and the false and misleading estimated tuition cost and total estimated cost information from LH and GCE, Plaintiff Smith decided to enroll in the Ph.D. program in General Psychology at Grand Canyon University in July 2018.

100. In the course of Plaintiff Smith's numerous communications with LH over telephone and e-mail, neither LH nor any other representative of GCE (or Old GCU or GCU Enterprise) disclosed to him the truth about the actual cost to complete his Ph.D. program. Even though senior GCE executives like Michael Berger knew that almost none of the doctoral students at Grand Canyon University completed their degrees with just 60 credits and that at least 70% of those students had to pay thousands, often tens of thousands, of dollars more in tuition for at least three "continuation courses" to complete their degrees, this information was never given to Plaintiff Smith.

101. In or about July 2018, Plaintiff Smith began taking courses in Grand Canyon University's Ph.D. program in General Psychology. At that time, and throughout his studies at Grand Canyon University, Plaintiff Smith lived in West Virginia and took classes remotely via online platforms.

102. Plaintiff Smith was able to complete his 60 credit hours of doctoral course studies in approximately three years, *i.e.*, by Fall, 2021, consistent with the proposed timeline from LH.

103. As Plaintiff Smith neared completion of his 60 credit hours of required coursework, GCE determined that Plaintiff Smith could not complete his Ph.D. degree program

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[12] While information materials provided by GCE to Plaintiff Smith mentioned continuation courses, those materials never included the cost of continuation courses in either the estimated tuition or the total estimated cost for Plaintiff Smith to complete his doctoral degree.

with those 60 credit hours and, instead, would be required to take continuation courses to complete his dissertation and earn his doctoral degree.

104. The innumerable delays that Plaintiff Smith encountered during the dissertation process at Grand Canyon University resulted in him having to incur costs for continuation courses that he was not told about before enrolling.

105. While completing his dissertation, Plaintiff Smith's academic advisors repeatedly required him to submit and resubmit drafts for review in response to minor and insignificant edits that could have been addressed more efficiently. Almost every time, moreover, Plaintiff Smith found that the academic advisors failed to respond promptly to his submissions. Instead, they habitually waited two weeks (*i.e.*, 10 business days) to respond to simple questions or minor edits, thus delaying Plaintiff Smith's ability to make progress on and complete his dissertation.

106. These routine delays were amplified by GCE's policies requiring doctoral students to fulfill nine milestones to complete their dissertation. In connection with each milestone, Plaintiff Smith encountered artificial bottlenecks. The cumulative effect of these roadblocks significantly delayed Plaintiff Smith's ability to complete his dissertation and caused him to pay for continuation courses.

107. In September 2021, GCE required Plaintiff Smith to enroll in his first continuation course, "Research Continuation I." Per policy established by GCE, completion of this continuation course was required for Plaintiff Smith to complete work on his dissertation, in order to earn his doctoral degree.

108. In December 2021, GCE required Plaintiff Smith to enroll in a second continuation course, "Research Continuation II." Per policy established by GCE, completion of this continuation course was required for Plaintiff Smith to complete work on his dissertation, in order to earn his doctoral degree.

109. In March 2022, GCE required Plaintiff Smith to enroll in his third continuation course, "Research Continuation III." Per policy established by GCE, completion of this continuation course was required for Plaintiff Smith to complete work on his dissertation, in order

to earn his doctoral degree.

110. In June 2022, GCE required Plaintiff Smith to enroll in his fourth continuation course, "Research Continuation IV." Per policy established by GCE, completion of this continuation course was required for Plaintiff Smith to complete work on his dissertation, in order to earn his doctoral degree.

111. As a result, Plaintiff Smith did not receive his Ph.D. degree in General Psychology from Grand Canyon University until September 2022 (at least 12 months after his promised completion date) and after having paid for a total of 72 credit hours.

112. Due to GCE's repeated misrepresentations and omissions regarding the cost required to complete his Ph.D., Plaintiff Smith paid $8,463.00 for continuation courses above the program cost that he had been told about.

D. Plaintiff Wang's Financial Loss Due to GCE's Fraud Scheme.

113. Plaintiff Qimin Wang also stands in the shoes of thousands of victims of GCE's fraud scheme. She would not have enrolled in the Doctor of Education program at Grand Canyon University in March 2019 if GCE and a "counselor" acting at GCE's direction had disclosed to her that the estimated tuition cost that GCE provided to her in fact significantly understated the true cost to complete her degree program.

114. In early 2019, Plaintiff Wang requested information from Grand Canyon University regarding its Doctor of Education program.

115. In response, Plaintiff Wang was contacted by TS from Grand Canyon University, who proceeded to communicate with Plaintiff Wang over electronic mail and telephone to persuade her to enroll in this doctoral program.

116. Iin e-mails and phone calls, TS provided Plaintiff Wang a detailed breakdown of the timeline of her coursework. TS advised Plaintiff Wang that she would be able to obtain her doctorate by completing 60 credits and should finish in approximately three years.

117. According to ED's investigation, GCE provided similar graduation timelines to other prospective students and used those timelines to lure students to enroll in doctoral degree

programs at Grand Canyon University by falsely representing how long it would take students to complete their doctoral degrees.

118. Plaintiff Wang also received a "GCU Price Sheets" document from TS. This document gave her a "personalized college cost estimation" for the Doctor of Education program in Organizational Leadership at Grand Canyon University.

119. According to this "GCU Price Sheets," Plaintiff Wang could expect to pay $39,000.00 in "Estimated Tuition" to complete her doctoral degree:

Academic Year (AY) 2018 - 2019

Estimated Costs	AY1	AY2	AY3	AY4	AY5	Total
Credit Hours	12	15	15	12	6	60
Estimated Tuition	$7,800	$9,750	$9,750	$7,800	$3,900	$39,000
Canyon Connect Fee	$460	$460	$460	$460	$230	$2,070
Learning Management System Fee	$400	$0	$0	$0	$0	$400
Course/Lab/Graduation Fees	$0	$795	$795	$0	$150	$1,740
Total Estimated Cost	$8,660	$11,005	$11,005	$8,260	$4,280	$43,210
Scholarships and Other Aid						
MOU-Coachella USD	$780	$975	$975	$780	$390	$3,900
Total Estimated Scholarships and Other Aid	$780	$975	$975	$780	$390	$3,900
Financial Aid						
Total Estimated Federal Aid	$0	$0	$0	$0	$0	$0
Summary						
Estimated Net Cost	$7,880	$10,030	$10,030	$7,480	$3,890	$39,310
Total Estimated Federal Aid	$0	$0	$0	$0	$0	$0
Total Estimated Out of Pocket Cost (Credit)	$7,880	$10,030	$10,030	$7,480	$3,890	$39,310

120. While this proposed cost identified three specific fees (the Canyon Connect Fee, the Learning Management System Fee, and the Course/Lab/Graduation Fees) that were included (along with the "Estimated Tuition") in the "Total Estimated Cost," it did not include the cost of any continuation courses — let alone the four different continuation courses that GCE has already

required Plaintiff Wang to pay for.[13]

121. According to ED's investigation, GCE provided similar proposed cost documents to other prospective students and used those documents to lure students to enroll in doctoral degree programs at Grand Canyon University by falsely representing how much it would cost students to complete their doctoral degrees.

122. In reliance on the graduation timeline and false and misleading estimated tuition cost and total estimated cost information provided by TS and GCE, Plaintiff Wang decided to enroll in the Doctor of Education program in Organizational Leadership at Grand Canyon University in March 2019. At that time, and throughout her studies at Grand Canyon University, Plaintiff Wang has lived in California.

123. Between March 2019 and February 2022, Plaintiff Wang was able to complete 17 content courses at GCU and earn 51 credits toward her Doctor of Education degree.

124. In March 2022, Plaintiff Wang began enrolling in the first of three courses focusing on her dissertation. Policies and practices enacted by GCE, however, caused Plaintiff Wang to encounter innumerable delays in her dissertation process.

125. During her dissertation process, academic advisors and reviewers repeatedly told Plaintiff Wang to revise and resubmit drafts of sections for review even though those comments and edits could have been addressed more efficiently. Almost every time, the advisors and reviewers did not review Plaintiff Wang's resubmissions promptly and, instead, waited two full weeks before communicating with her.

126. These repeated delays were exacerbated by the fact that Grand Canyon University's policies require Plaintiff Wang to fulfill nine milestones to complete her dissertation. In connection with each milestone, Plaintiff Wang has encountered artificial bottlenecks and delays describe above. As a result, Plaintiff Wang has had to bear the cost of multiple continuation

[13] While information materials provided by GCE to Plaintiff Wang mentioned continuation courses, those materials never included the cost of continuation courses in either the estimated tuition or the total estimated cost for Plaintiff Wang to complete her doctoral degree.

courses that she was not told about before she enrolled.

127. In May 2023, GCE required Plaintiff Wang to enroll in her first continuation course, "Research Continuation I." Per policy established by GCE, completion of this continuation course was required for Plaintiff Wang to complete work on his dissertation, in order to earn her doctoral degree.

128. In September 2023, GCE required Plaintiff Wang to enroll in a second continuation course, "Research Continuation II." Per policy established by GCE, completion of this continuation course was required for Plaintiff Wang to complete work on her dissertation, in order to earn her doctoral degree.

129. In February 2024, GCE required Plaintiff Wang to enroll in her third continuation course, "Research Continuation III." Per policy established by GCE, completion of this continuation course was required for Plaintiff Wang to complete work on her dissertation, in order to earn her doctoral degree.

130. In May 2024, GCE required Plaintiff Wang to enroll in her fourth continuation course, "Research Continuation IV." Per policy established by GCE, completion of this continuation course was required for Plaintiff Wang to complete work on her dissertation, in order to earn her doctoral degree.

131. To date, Plaintiff Wang has had to spend more than $8,700 out of pocket to pay for these four continuation courses and may be required to incur yet more costs before completing her doctoral degree. She had had to incur these costs due to GCE's repeated misrepresentations and omissions regarding the cost required to complete her Doctor of Education degree.

132. Further, even today, policies and practices enacted by GCE continue to delay Plaintiff Wang's ability to complete her degree and stop paying tuition for continuation courses that she never expected to incur.

V. CLASS ACTION ALLEGATIONS

133. Plaintiffs bring this action as a class action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, individually and on behalf of all others similarly situated.

134. Plaintiffs seek to represent the following classes:

Nationwide Class: All persons who enrolled in one of the doctoral programs at Grand Canyon University on or after August 1, 2017.

California Subclass: All persons in California who enrolled in one of the doctoral programs at Grand Canyon University on or after August 1, 2017.

West Virginia Subclass: All persons in California who enrolled in one of the doctoral programs at Grand Canyon University on or after August 1, 2017.

The Nationwide Class, California Subclass, and West Virginia Subclass are all referred to as the "Class" or the "Classes." Members of each of the Classes are referred to, collectively, as "Class Members."

135. Excluded from the Class are (1) GCE and GCU employees; (2) the judicial officers and the Court staff assigned to this case and their immediate family members.

136. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate, during the course of this litigation.

137. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

138. **Numerosity – Federal Rule of Civil Procedure 23(a)(1)**. Class Members are so numerous and geographically dispersed that individual joinder of all Class Members is impracticable. While the precise number of Class members is presently unknown, ED data indicates that there are more than 7,000 Class members. The identities of the Class Members—and the members of each Class—may be ascertained from books and records accessible to GCE and GCU.

139. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)**. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

a. whether GCE devised a fraud scheme to obtain money by means of false or fraudulent representations to prospective GCU students about the true cost of GCU's doctoral programs and the actual number of credits needed to graduate;

b. whether GCE knowingly executed this fraud scheme;

c. whether for purposes of executing this fraud scheme, GCE transmitted or caused to be transmitted any writings, signs, or signals by wire in interstate commerce;

d. whether for purposes of executing this fraud scheme, GCE placed or caused to be placed any matter or thing to be delivered by mail;

e. whether GCE conducted this fraud scheme leveraging its control over GCU as the RICO enterprise;

f. whether GCE invested income from its fraud scheme to acquire an interest in Gazelle University for the purpose of establishing a RICO enterprise under the guise of a new, non-profit GCU in 2018;

g. whether GCE violated section 1962(a) and 1962(c) of RICO;

h. whether GCE's conduct in connection with its fraud scheme violated California consumer protection statutes;

i. whether GCE's conduct in connection with its fraud scheme violated the West Virginia Consumer Fraud Statute;

j. whether Plaintiffs and the Class have been harmed as a result of GCE's fraud scheme; and

k. whether Plaintiffs and the Class are entitled to equitable or injunctive relief, including but not limited to prohibiting GCE from engaging in the same type of fraudulent misrepresentations as alleged here, pursuant to 18 U.S.C. § 1964(a).

140. **Typicality – Federal Rule of Civil Procedure 23(a)(3)**. Plaintiffs' claims are typical of the other Class members' claims because Plaintiffs and each of the other Class members first enrolled in a doctoral program at GCU between January 1, 2017, and October 31, 2023, and because Plaintiffs and each of the other Class members were given false or fraudulent representations by GCE concerning the true cost and the actual number of credits needed to complete those doctoral degrees. Plaintiffs and each of the other Class members suffered damages as a direct proximate result of the same wrongful practices in which GCE engaged. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the other Class members.

141. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4)**. Plaintiffs will fairly and adequately protect the interests of the Classes. By prevailing on their own claims, Plaintiffs will establish GCE's liability to all Class Members. Plaintiffs' counsel are unaware of any conflicts of interest between Plaintiffs as class representatives and absent Class Members with respect to the matters at issue in this litigation. Plaintiffs will vigorously prosecute the suit on behalf of the Classes. Plaintiffs have retained counsel with substantial experience in handling complex class action litigation, including complex questions that arise in this type of fraud and consumer protection litigation. Further, Plaintiffs and their counsel are committed to the vigorous prosecution of this action.

142. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2)**. GCE has acted or refused to act on grounds generally applicable to Plaintiffs and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, including but not limited to prohibiting GCE from engaging in the same type of fraudulent misrepresentations as alleged herein, with respect to the Class as a whole.

143. **Insufficiency of Separate Actions**. Absent a class action, Plaintiffs and Class Members will continue to suffer the harm described herein, for which they would have no

remedy. Even if individual Grand Canyon University doctoral student could bring separate actions, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated consumers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for GCE.

144. **Superiority – Federal Rule of Civil Procedure 23(b)(3)**. A class action is superior to any other available means for the fair and efficient adjudication of this controversy for at least the following reasons:

a) The damages suffered by each individual Class Member do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by GCE's conduct;

b) Even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;

c) The claims presented in this case predominate over any questions of law or fact affecting individual members of the Classes;

d) Individual joinder of all Class Members is impracticable;

e) Absent a class action, Plaintiffs and Class Members will continue to suffer harm as a result of GCE's unlawful conduct; and

f) This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused by GCE.

145. In the alternative, the Classes may be certified for the following reasons:

a) The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudication concerning individual members of the Classes, which would establish incompatible standards of conduct for GCE;

b) Adjudications of claims of the individual Class Members against GCE would, as a practical matter, be dispositive of the interests of other putative Class Members who are not parties to the adjudication and may substantially impair or impede the ability of other putative Class Members to protect their interests; and

c) GCE has acted or refused to act on grounds generally applicable to the putative Class Members, thereby making appropriate final and injunctive relief concerning the putative Classes as a whole.

VI. CLAIMS ASSERTED

COUNT I
USING PROCEEDS OF RACKETEERING ACTIVITY TO ACQUIRE AN INTEREST IN OR TO ESTABLISH A RICO ENTERPRISE IN VIOLATION OF 18 U.S.C. § 1962(a) (ON BEHALF OF THE NATIONWIDE CLASS)

146. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1-145, as though fully set forth herein.

147. 18 U.S.C. § 1962(a) provides, in relevant part:

> "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . ."

148. At all relevant times, Defendant GCE was a "person" within the meaning of 18 U.S.C. § 1962(c), because it was an "entity capable of holding a legal or beneficial interest in property[.]" *See* 18 U.S.C. § 1961(3)

149. Between August 2017 and July 2018, as set forth above, *see*, *e.g.*, *supra* ¶¶ 35-81, Defendant GCE received income derived, directly or indirectly, from a pattern of racketing activity, including by engaging in numerous and repeated uses of the mails and interstate wire

communications to execute a scheme to defraud students to enroll in doctoral programs at its subsidiary Old GCU in violation of 18 U.S.C. § 1341 and 1343.

150. In July 2018, Defendant GCE used or invested part of such income, or proceeds of such income, to acquire an interest in a RICO enterprise—namely, the GCU Enterprise—through Project Gazelle, including by obtaining the Senior Secured Note from GCU.

151. In July 2018, Defendant GCE also used or invested part of such income or proceeds of such income to establish the operation of the GCU enterprise through Project Gazelle.

152. Defendant GCE committed or aided and abetted the commission of at least two acts of racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§ 1341 and 1343, between August 2017 and July 2018.

153. These multiple acts of racketeering activity that Defendant GCE committed and/or aided and abetted in the commission of, were related to each other, pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" under 18 U.S.C. § 1961(5).

154. Defendant GCE's predicate acts of racketeering within the meaning of 18 U.S.C. § 1961(1) include, but are not limited to:

a) **Mail Fraud**: GCE violated 18 U.S.C. § 1341 by sending or receiving, or causing to be sent or received, materials via U.S. mail or commercial interstate carriers for the purpose of executing the scheme to defraud students to enroll in Old GCU's doctoral programs, which amounts to a material scheme to defraud and to obtain money on false pretenses, misrepresentations, promises, and/or omissions. The materials include, but are not limited to, marketing materials, enrollment materials, and invoices sent by GCE to doctoral students at Old GCU.

b) **Wire Fraud**: GCE violated 18 U.S.C. § 1343 by transmitting or receiving, or causing to be transmitted or received, materials via wire for the purpose of executing the scheme to defraud students to enroll in Old GCU's doctoral programs, which amounts to a material scheme to defraud and to obtain money on false pretenses, misrepresentations, promises, and/or omissions. The materials include, but are not limited to, marketing information presented on Old GCU's website, emails to doctoral students at Old GCU, and interstate credit card transactions.

155. Defendant GCE knowingly and intentionally made misrepresentations concerning the cost of Old GCU's doctoral programs and/or failed to disclose material facts concerning their true cost. GCE either knew or recklessly disregarded that these were material misrepresentations and/or omissions.

156. Defendant GCE obtained money and property belonging to Plaintiff Wang and other Class members as a result of these violations of 18 U.S.C. §§ 1341 and 1343. Plaintiff Wang and other Class members have been injured in their business or property by GCE's overt acts of mail fraud and wire fraud.

157. Plaintiffs and other Class members have been injured in their property by reasons of Defendant GCE's violation of 18 U.S.C. § 1962, including the tuition they paid to Old GCU, which collectively amount to tens of millions of dollars, plus interest on their student loans and late fees charged by their credit cards. In the absence of GCE's violation of 18 U.S.C. § 1962, Plaintiffs and the Class would not have incurred those losses.

158. Plaintiffs other Class members' injuries were directly and proximately caused by Defendant GCE's racketeering activity.

159. Defendant GCE knew and intended that Plaintiffs and other Class members would rely on the misrepresentations and omissions propagated as part of this scheme to defraud. GCE knew and intended for Plaintiff Wang and the Class to pay excess tuition to Old GCU as a result of this scheme.

160. Under 18 U.S.C. § 1964(c), Plaintiffs and other Class members are entitled to bring this action and to recover treble damages as well as the cost to bring this action and reasonable attorneys' fees.

COUNT II

CONDUCTING A RICO ENTERPRISE'S AFFAIRS THROUGH A PATTERN OF RACKETEERING ACTIVITY IN VIOLATION OF 18 U.S.C. § 1962(C) (ON BEHALF OF THE NATIONWIDE CLASS)

161. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1-145, as though fully set forth herein.

162. 18 U.S.C. § 1962(c) provides, in relevant part:

> "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity … ."

163. During the Class Period, Defendant GCE was a "person" within the meaning of 18 U.S.C. § 1962(c), because it was an "entity capable of holding a legal or beneficial interest in property[.]" *See* 18 U.S.C. § 1961(3)

164. As set forth above, *see*, *e.g.*, *supra* ¶¶ 35–87, Defendant GCE was associated with a RICO enterprise—namely, the GCU Enterprise—during the Class Period and conducted and participated in the GCU Enterprise's affairs through a pattern of racketeering activity, as defined in 18 U.S.C. § 1961(5), including by engaging in numerous and repeated uses of the mails and interstate wire communications to execute a scheme to defraud students to enroll in doctoral programs at GCU in violation of 18 U.S.C. § 1341 and 1343.

165. During the Class Period, Defendant GCE established and used the GCU Enterprise through Project Gazelle and used that enterprise to carry out the scheme to defraud and a pattern of racketeering activity, including to defraud students to enroll in doctoral programs at GCU.

166. Defendant GCE committed or aided and abetted the commission of at least two acts of racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§ 1341 and 1343, within the past 10 years.

167. These multiple acts of racketeering activity that Defendant GCE committed and//or aided and abetted in the commission of, were related to each other, pose a threat of continued

racketeering activity, and therefore constitute a "pattern of racketeering activity" under 18 U.S.C. § 1961(5).

168. Defendant GCE's predicate acts of racketeering within the meaning of 18 U.S.C. § 1961(1) include, but are not limited to:

a) **Mail Fraud**: GCE violated 18 U.S.C. § 1341 by sending or receiving, or causing to be sent or received, materials via U.S. mail or commercial interstate carriers for the purpose of executing the scheme to defraud students to enroll in GCU's doctoral programs, which amounts to a material scheme to defraud and to obtain money on false pretenses, misrepresentations, promises, and/or omissions. The materials include, but are not limited to, marketing materials, enrollment materials, and invoices sent by GCE to doctoral students at GCU.

b) **Wire Fraud**: GCE violated 18 U.S.C. § 1343 by transmitting or receiving, or causing to be transmitted or received, materials via wire for the purpose of executing the scheme to defraud students to enroll in GCU's doctoral programs, which amounts to a material scheme to defraud and to obtain money on false pretenses, misrepresentations, promises, and/or omissions. The materials include, but are not limited to, marketing information presented on GCU's website, emails to doctoral students at GCU, and interstate credit card transactions.

169. Defendant GCE knowingly and intentionally made misrepresentations concerning the cost of GCU's doctoral programs and/or failed to disclose material facts concerning their true cost. GCE either knew or recklessly disregarded that these were material misrepresentations and/or omissions.

170. Defendant GCE and its associated entity GCU obtained money and property belonging to Plaintiffs and other Class members as a result of these violations of 18 U.S.C. §§ 1341 and 1343. Plaintiffs and other Class members have been injured in their business or property

by GCE's overt acts of mail fraud and wire fraud.

171. Plaintiffs and other Class members have been injured in their property by reasons of Defendant GCE's violation of 18 U.S.C. § 1962, including the tuition they paid to GCU, which collectively amount to tens of millions of dollars, plus interest on their student loans and late fees charged by their credit cards. In the absence of GCE's violation of 18 U.S.C. § 1962, Plaintiffs and the Class would not have incurred those losses.

172. Plaintiffs' and other Class members' injuries were directly and proximately caused by Defendant GCE's racketeering activity.

173. Defendant GCE knew and intended that Plaintiffs and other Class members would rely on the misrepresentations and omissions propagated as part of this scheme to defraud. GCE knew and intended for Plaintiffs and the Class to pay excess tuition to GCU as a result of this scheme.

174. Under 18 U.S.C. § 1964(c), Plaintiffs and other Class members are entitled to bring this action and to recover treble damages as well as the cost to bring this action and reasonable attorneys' fees.

COUNT III
UNTRUE OR MISLEADING REPRESENTATIONS IN VIOLATION OF CAL. BUS. AND PROF. CODE § 17500
(ON BEHALF OF THE CALIFORNIA SUBCLASS)

175. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1-145, as though fully set forth herein.

176. During the class period, Defendant GCE has engaged in, and continues to engage in, and/or has aided and abetted, and continues to aid and abet, acts or practices that constitute violations of Cal. Business and Professions Code § 17500 et seq., by making or causing to be made untrue or misleading statements with the intent to induce members of the public to purchase services relating to the doctoral programs at Grand Canyon University.

177. GCE's untrue or misleading representations to Plaintiff Wang and other Class members in California include, but are not limited to, affirmative misrepresentations and

omissions concerning the cost of the doctoral degree programs at Grand Canyon University. The misrepresentations and omissions made to Plaintiff Wang on which she relied are set forth above in Paragraphs 169-89.

178. At the time the misrepresentations and omissions set forth in the preceding Paragraph were made, GCE knew, or by the exercise of reasonable care should have known, that the representations were untrue or misleading.

179. As a result of GCE's untrue or misleading representations and omissions, Plaintiff Wang and other Class members in California are entitled to an order, pursuant to Cal. Business and Professions Code § 17535, enjoining such future conduct by GCE and such other orders and judgments that may be necessary to provide restitutionary disgorgement of GCE's ill-gotten gains and to restore to any Class member in California all monies paid as a result of GCE's untrue or misleading statements.

COUNT IV
UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. AND PROF. CODE § 17200
(ON BEHALF OF THE CALIFORNIA SUBCLASS)

180. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1-174, as though fully set forth herein.

181. During the class period, Defendant GCE has engaged in, and continues to engage in, and/or has aided and abetted, and continues to aid and abet, business acts or practices that constitute unfair competition as defined in the Unfair Competition Law, Business and Professions Code § 17200 *et seq.*, in that such business acts and practices are unlawful, unfair, and fraudulent within the meaning of that statute.

182. The business acts and practices engaged in by GCE that violate the Unfair Competition Law include:

a) Providing Plaintiff Wang and Class members in California with untrue, misleading, unreliable, and/or inaccurate information concerning the cost of the doctoral programs at Grand Canyon University; and

b) Omitting material facts concerning the true cost of the doctoral programs at Grand Canyon University in communications with Plaintiff Wang and Class members in California.

183. These business acts and practices are unlawful because they violate laws including:

a) Cal. Business and Professions Code § 17500;

b) RICO;

c) 34 C.F.R. §§ 688.71-73; and

d) Federal and state laws and regulations, including those preclude misrepresentations to students and potential students and those governing accreditation standards and disclosures.

184. These business acts and practices are unfair in that GCE have caused doctoral students like Plaintiff Wang to pay thousands, sometimes tens of thousands, of dollars in unanticipated costs for continuation courses. These acts and practices violate public policy and are also immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers.

185. These business acts and practices are fraudulent in that GCE's untrue and misleading representations and omissions regarding the accreditation of their professional graduate degree or certification programs are likely to, and in fact have, deceived the public.

186. As a result of Defendants' unlawful, unfair, and fraudulent business acts and practices, Plaintiff Wang and the Class members in California are entitled to an order, pursuant to Business and Professions Code § 17203, enjoining such future conduct by GCE and such other orders and judgments that may be necessary to provide restitutionary disgorgement of GCE's ill-gotten gains and to restore to any Class member all monies paid as a result of GCE's conduct.

COUNT V
VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT
CAL. CIVIL CODE § 1750

(ON BEHALF OF THE CALIFORNIA SUBCLASS)

187. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1-145, as though fully set forth herein.

188. GCE has engaged in, and continues to engage in, and has aided and abetted, and continues to aid and abet, practices that violate the Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750 *et seq.*, specifically unfair, deceptive, unlawful, and unconscionable commercial practices in connection with the sale of services to consumers.

189. Plaintiff Wang and other Class members in California are "consumers" as defined by Cal. Civil Code § 1761(d). The doctoral programs promoted and provided by GCE are "services" as defined by Civil Code § 1761(b).

190. The practices engaged in by GCE that violate the CLRA include:

a) Providing Plaintiff Wang and Class members in California with untrue, misleading, unreliable, and/or inaccurate information concerning the cost of the doctoral programs at Grand Canyon University; and

b) Omitting material facts concerning the true cost of the doctoral programs at Grand Canyon University in communications with Plaintiff Wang and Class members in California.

See, e.g., Civil Code §§ 1770(a)(2)-(3), (5), (7), (9), (14).

191. As a result of GCE's violations, Plaintiff Wang and other Class members in California suffered ascertainable monetary losses in the form of tuition they paid and/or debts they incurred for GCE's doctoral programs and (including interest), which they would not have incurred but for GCE's unlawful practices.

192. Pursuant to Cal. Civil Code § 1782, on or around June 12, 2024, Plaintiff Wang notified GCE in writing via certified mail, return receipt requested, to GCE's principal places of business, of the particular violations of the CLRA, as set forth in Exhibit 3. In that letter, Plaintiff

Wang demanded that GCE rectify the actions described above by providing monetary relief, agreeing to be bound by its legal obligations, and giving notice to all affected customers of its intent to do so. GCE has not complied to date.

COUNT VI
UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF W. VA. CODE § 46A–6

(ON BEHALF OF THE WEST VIRGINIA SUBCLASS)

193. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1-145, as though fully set forth herein.

194. West Virginia Code § 46A-6-104 provides, in relevant part:

> "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

195. At all relevant times, Plaintiff Smith and other class members in West Virginia were "consumers" within the meaning of the West Virginia Consumer Protection Law, because they were "a natural person to whom a sale or lease is made in a consumer transaction and a 'consumer transaction' means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose." *See* W. Va. Code § 46A–6-102(2).

196. At all relevant times, Defendant GCE engaged in "trade or commerce" within the meaning of the West Virginia Consumer Protection Law because it engaged in the advertising, sale, and distribution of services[14] that affected people of the state of West Virginia. Specifically, GCE marketed and distributed doctoral programs at Grand Canyon University to residents of West Virginia, including Plaintiff Smith and the other class members in West Virginia. *See* W. Va. Code § 46A–6-102(6).

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[14] As recognized by the Supreme Court of Appeals of West Virginia,"[c]onsidered in the context of the CCPA, we see that a 'service' includes a peculiar legal right with respect to education . . . *State ex rel. Morrisey v. Diocese of Wheeling-Charleston*, 244 W. Va. 92, 97, 851 S.E.2d 755, 760 (2020) (*citing Mountain State Coll. v. Holsinger*, 230 W. Va. 678, 684, 742 S.E.2d 94, 100 (2013) (describing private college as "seller of education services")).

197. Defendant GCE has engaged, and continues to engage, in unfair methods of competition and deceptive acts or practices in conducting trade or commerce, as defined in the West Virginia Consumer Protection Law. *See* W. Va. Code § 46A–6-102(7).

198. The acts and practices engaged in by Defendant GCE that violate the West Virginia Consumer Protection Law include, without limitation:

a) Providing Plaintiff Smith and other class members in West Virginia with untrue, misleading, unreliable, and/or inaccurate information concerning the cost of doctoral programs at Grand Canyon University; and

b) Advertising to Plaintiff Smith and other class members in West Virginia regarding the doctoral programs at Grand Canyon University with the intent not to provide this service as advertised.

199. As a result of Defendant GCE's unfair and deceptive acts or practices, Plaintiff Smith and other class members in West Virginia enrolled in doctoral programs at Grand Canyon University and were required to incur higher tuition costs than Defendant GCE informed them of. These costs incurred amount to an ascertainable loss, as defined in the West Virginia Consumer Protection Law. *See* W. Va. Code § 46A–6-106.

200. Plaintiff Smith's and other West Virginia class members' ascertainable losses were directly and proximately caused by Defendant GCE's unfair and deceptive acts or practices.

201. On March 19, 2024, Plaintiff Smith sent correspondence to Defendant GCE, in writing and by certified mail, notifying it of its violations of the West Virginia Consumer Protection Law. At the time of this filing, Defendant GCE has not made a cure offer to Plaintiff Smith.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs seek entry of judgment against Defendant GCE as follows:

a. Certifying the Classes as requested herein, designating Plaintiffs as class representatives, and appointing the undersigned counsel as Class Counsel;

b. Ordering Defendant GCE to cease and desist from engaging in any further violation of 18 U.S.C. §§ 1962, 1341, and 1343, including to make any further misrepresentation or material omission concerning the cost of doctoral programs at GCU using mail or the interstate wire system;

c. Entering judgment against Defendant GCE in an amount equal to three times the amount of damages that the Plaintiffs and the Class to their property by reason of Defendant GCE's violation of 18 U.S.C. §§ 1962(a) and 1962(c);

d. Awarding injunctive relief as permitted by law or equity;

e. Awarding Plaintiffs' reasonable attorneys' fees, costs, and expenses;

f. Awarding pre- and post-judgment interest on any amounts awarded;

g. Awarding Plaintiffs and the Class all costs of this action, including their reasonable attorneys' fees and expenses, pursuant to 18 U.S.C. § 1964(c); and

h. Awarding such other and further relief as may be just and proper.

VIII. JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: June 12, 2024

/s/ Adam J. Levitt
ADAM J. LEVITT

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**Pro Hac Vice* Admission Pending

Exhibit 1

OCT 3 1 2023

Mr. Brian Mueller
President
Grand Canyon University
3300 West Camelback Road
Phoenix, AZ 85017-3030

Sent Via UPS and electronic mail
Tracking #: 1Z37X7Y30103219672
[redacted]

Steven M. Gombos
Gombos & Leyton P. C.
11350 Random Hills Road, Suite 400
Fairfax, Virginia 22030

[redacted]

RE: Grand Canyon University ("GCU"): OPE-ID 00107400

Dear Mr. Mueller and Mr. Gombos:

This letter is to inform you that the U.S. Department of Education ("Department") intends to fine Grand Canyon University ("GCU") a total of $37,735,000 based upon violations of the statutory and regulatory requirements outlined below. GCU participates in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 ("HEA"), as amended, 20 U.S.C. §§ 1070 *et seq*. and 42 U.S.C. §§ 2751 *et seq*. ("Title IV, HEA programs"). The Department is taking this fine action pursuant to 20 U.S.C. § 1094(c)(1)(F) and 34 C.F.R. § 668.84, and 34 C.F.R. § 668.71(a)(4).

This fine action is based upon the Department's determinations as a result of an investigation conducted by the Department's Federal Student Aid Office of Enforcement regarding GCU's doctoral degree programs with a dissertation requirement (hereafter referred to as the "Doctoral Programs").[1] As discussed in detail below, the Department has concluded that GCU failed to meet the fiduciary standard of conduct required of all institutions participating in Title IV HEA programs by substantially misrepresenting the costs of certain doctoral degree programs to former, current, and prospective students. Specifically, GCU misrepresented those programs' total cost, including costs associated with GCU's continuation courses.[2] Therefore, as described below, the Department has determined that, due to the serious violations committed by GCU, a fine in the amount of $37,735,000 is warranted.

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[1] This fine action focuses only on the doctoral programs that have a dissertation component.

[2] "Continuation courses," which are sometimes referred to as "research continuation courses" or "dissertation continuation courses," are courses that most GCU doctoral students take to be able to continue to work on their dissertation after they have completed the other required coursework (which includes at least three dissertation courses) for their program.

SUMMARY

Since at least 2017, GCU has told prospective and enrolling doctoral students that its Doctoral Programs will cost between $40,000 and $49,000 (depending on the program and year of enrollment), which represent the tuition and other institutional costs required to complete 60 credit hours. In actuality, less than 2% of the graduates of its Doctoral Programs complete with 60 credit hours; whereas more than 98% of graduates are charged additional tuition or fees for continuation courses. These additional costs are significant. Approximately 78% of GCU's doctoral students that graduated between 2017 and 2022 required an additional five or six three-credit courses, costing an additional $10,000 to $12,000 in tuition alone, and sometimes more. This increase represents an almost 25% premium when compared to GCU's written statements informing prospective and newly enrolled doctoral students of the cost of the program.

These misrepresentations were made in GCU's website, in its enrollment agreement, in the Net Price Calculator, and elsewhere in its marketing materials. In those communications to potential or enrolled students, GCU provided charts or other tables to show students what the "total cost" of their degree would be or told them the required number of credits and cost per credit. Those representations of financial charges were misleading, because over 98% of actual doctoral graduates would have to pay more (often substantially more) than these materials stated.

Since at least 2017, GCU has introduced a series of fine print disclosures to some of its enrollment contracts and other documents distributed to students that provide somewhat more accurate (although still misleading and incomplete) information about the number of required credits to complete the Doctoral Programs. Yet, these disclosures are insufficient to cure the substantial misrepresentations described in this letter for several reasons. First, they do not address or correct the significant misrepresentations about the cost of the program – a term that is plainly among the most material considerations for a prospective student. Second, while coming closer to providing complete information about credits and time required to obtain a degree, the disclosures still do not provide accurate information about their impact on cost. Finally, the disclosures are buried in dense documents, are much less prominent than the misrepresentations, and do not cure the "net impression" that the program will be less expensive and will require fewer credits than it actually does.

Since at least 2017, GCU knew or should have known that its representations bear little resemblance to reality for the vast majority of its graduates. In fact, internal emails indicate that GCU leadership has been aware since at least January 2017 that its disclosures regarding cost were incomplete or misleading. Yet, to this day, GCU's substantial misrepresentations persist.

BACKGROUND

GCU offers certificate programs, undergraduate and graduate degrees across over 300 mostly-online academic programs. GCU has an enrollment of over 100,000 students. In the 2021-22 award year GCU received $1,104,169,332 in Title IV funding, which was the largest amount of funding received by any institution participating in the Title IV, HEA programs.

Documents that GCU produced to the Department indicate GCU's doctoral degree offerings have more than doubled since 2018 from 16 to 35 current doctoral degree programs with a dissertation requirement, which are in the fields of Business Administration, Education, and Philosophy/Psychology.[3] As of October 19, 2023, over $18 million in Title IV funds were disbursed to 1,344 first year students in GCU doctoral students during the 2022-2023 award year. GCU's total Title IV disbursements for all programs for the 2022-23 award year was approximately $1.01 billion.[4]

As explained in Table 1, based upon data obtained from GCU on January 11, 2023 and from internal Department information, 7,547 students began their enrollment in GCU's Doctoral Programs between November 1, 2018[5] and October 19, 2023. GCU and Departmental data indicate that those students paid at least $122,321,068 in tuition.[6]

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[3] Based on a review of its catalogs, GCU offered 16 different doctoral degree programs with dissertations in 2018 (GCU Summer 2018 Academic Catalog, GCU-DOE-008727-008736), 16 in 2019 (GCU Summer 2019 Academic Catalog, GCU-DOE-043040-043049), 29 in 2020 (GCU Summer 2020 Academic Catalog, GCU-DOE-017413-017430), 33 in 2021 (GCU Summer 2021 Academic Catalog, GCU-DOE-017891-017911), 35 in 2022 (GCU Summer 2022 Academic Catalog, GCU-DOE-018395-018416), and 35 in 2023 (GCU Spring 2023 Academic Catalog, GCU-DOE-085371-085393). Two additional doctoral degree programs exist within the College of Nursing that do not contain a dissertation requirement (GCU Spring 2023 Academic Catalog, GCU-DOE-085481).

[4] As of August 8, 2023, GCU's total disbursements of Pell Grants, TEACH Grants, IASGs, and Direct Loans for the 2022-23 award year are $1.01 billion, which is associated with more than 101,000 students. Award year 2022-2023 disbursement data was obtained from the Department's data and is current as of August 8, 2023.

[5] The Department has used November 1, 2018 as the starting point for analysis and student counts because that date is less than five years prior to the date of the issuance of this Notice of Intent to Fine, making any violations that occurred on or after that date within the five-year statute of limitations as required by 28 U.S.C. § 2462.

[6] GRAND CANYON UNIVERSITY, Recipient Data 2nd RFI ED 1-11-2023.

Table 1. New Enrollments (November 1, 2018 through October 19, 2023)

	November 1, 2018- June 30, 2019[7]	Award Year (AY) 19-20[8]	AY 20-21[9]	AY 21-22[10]	AY 22-23[11]	AY 23-24[12]	TOTALS
New Enrollment	1,244	1,887	1,622	1,357	1,080	367	7,547

The evidence collected by the Department indicates that, since 2017, GCU has represented in its enrollment agreement contracts, website, and other locations, that all but two[13] of the current

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[7] GRAND CANYON UNIVERSITY, Recipient Data 2nd RFI ED 1-11-2023.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Award year 2022-2023 enrollment data for first-time doctoral students was obtained from the Department's data and is current as of October 19, 2023. The data indicates 1,344 students across all Doctoral Programs who received a first Direct Loan disbursement in the 22-23 Award Year. The Department does not have program specific information to identify the number of students who enrolled in Doctoral Programs with a dissertation component for the 22-23 or 23-24 Award Years. To account for this, the Department reduced the total number of students (1,344) by 19.6%, which is the average number of students between November 1, 2018 and June 30, 2022 that enrolled in a doctoral program that did not have a dissertation component, to reach the final number, 1,080. *See* Enclosure A. (Student list consists of 1,344 students whereas Table 1 has 1,080 students (19.6% less than 1,344) due to the fact we could not identify which specific students were in doctoral programs with a dissertation component.)

[12] Award year 2023-2024 enrollment data for first-time doctoral students was obtained from the Department's data and is current as of October 19, 2023. The data indicates 456 students across all Doctoral Programs who received a first Direct Loan disbursement in the 23-24 Award Year. The Department does not have program specific information to identify the number of students who enrolled in Doctoral Programs with a dissertation component for the 23-24 Award Year. To account for this, the Department reduced the total number of students (456) by 19.6%, which is the average number of students between November 1, 2018 and June 30, 2022 that enrolled in a doctoral program that did not have a dissertation component, to reach the final number, 367. *See* Enclosure A. (Student list consists of 456 students whereas Table 1 has 367 students (19.6% less than 1,344) due to the fact we could not identify which specific students were in doctoral programs with a dissertation component.)

[13] Two of the current doctoral degree offerings (Doctor of Philosophy in Counselor Education and Supervision (with either Qualitative or Quantitative Research) have a 65-credit requirement. GCU-DOE-085387.

Doctoral Programs that require dissertations can be obtained by completing 60 credit hours (or 65 credit hours for the other two programs), which it tells prospective students equates to 39-43 months, and costs between $40,000 and $49,805 during the years under review.

In fact, when the Department analyzed GCU's outcome data for students enrolled in its Doctoral Programs from 2011 through July 2022, the reality is that almost no students are able to complete their doctoral program within the represented number of credits, resulting in increased cost and time for students to complete their programs. Specifically, based on GCU's own data and as detailed in Table 2 below, fewer than 2% of 1,858 graduates completed their programs within the cost that GCU advertises.[14] This is because subsequent "continuation courses" (which increase students' cost, time to complete, and the number of credits they obtain before graduating) are, for more than 98% of graduates, a necessary component of GCU Doctoral Programs. GCU would have known that when it made the representations related to cost described above. These continuation courses are necessary because almost all doctoral students are not able to complete their dissertation within 60 credits and are required to take, and pay for, "continuation courses" to maintain their enrollment, interact with GCU faculty about their dissertation, and work toward the completion of their doctoral degree. GCU's data further shows that almost 78% of graduates took five or six continuation courses (15 to 18 additional credits,[15] taking 60 to 72 additional weeks to complete) totaling roughly between $10,000 and $12,000 in additional costs compared to GCU's representations about cost since 2017.[16]

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[14] This analysis was conducted by economists in the Department and was based upon a spreadsheet produced by GCU related to its doctoral student outcomes from 2011 to 2022. *See* GRAND CANYON UNIVERSITY, GCU-FTC-008130. The calculation reflects "Doctoral Studie" [sic] students with a "Graduated" status whose last year of attendance was 2020, 2021, or 2022, and who enrolled in a program with a dissertation component, which includes Business Administration, Education, and Philosophy/Psychology. The doctoral programs related to Education Specialist and Nursing Practice were excluded because they do not have a dissertation component.

[15] Until recently, credit was only given for the first five continuation courses taken, all those beyond the fifth continuation course were zero credit, non-Title IV eligible courses. GCU Summer 2022 Academic Catalog, GCU-DOE-018395-018416.

[16] Continuation Courses I-V are Title IV eligible 3-credit classes, Continuation Courses VI and beyond were 0 credit, non-Title IV eligible classes. During the pendency of the investigation, GCU updated its Continuation Courses, as of January 2023, courses I-IX are 3-credit, Title IV eligible courses. GCU Spring 2023 Academic Catalog, GCU-DOE-085371-085393.

Table 2. Continuation Courses Taken by 1,858 Graduates between 2011 and 2017[17]

Number of Continuation Courses (Enrollments from 1/2011 – 7/2022)	Percentage of Graduates	Additional Time	Additional Tuition/Institutional Cost
0	1.7%	NA	NA
1	2.1%	12 Weeks	$2,106
2	5.5%	24 Weeks	$4,212
3	6.3%	36 Weeks	$6,318
4	6.7%	48 Weeks	$8,424
5	42.9%	60 Weeks	$10,530
6+	34.8%	72+ Weeks	$12,636+

An analysis of recently-enrolled GCU Doctoral Program students, detailed in Table 3a, shows that these trends continue. As of January 11, 2023, fewer than 3% of students who had enrolled between July 2017 through June 2022 graduated and 63% had withdrawn. Of those that had graduated, over 90% took at least one continuation course.[18] The data also shows that more than 63% of the students in this cohort have withdrawn from the program.

Table 3a. Status & Outcomes for July 1, 2017 through June 30, 2022 Enrollments[19]

Enrollments from 7/1/2017-6/30/2022	Active	Graduated	Withdrawn
Enrollment Status (as of 01/11/23)	3,125	239	5,790
Percentage of Enrollment	34.1%	2.6%	63.3%
Number With More Than 60 Credits	815	217	302
Percentage With More Than 60 Credits	26.1%	90.8%	5.2%

[17] This analysis was conducted by economists in the Department and was based upon a spreadsheet produced by GCU related to its doctoral student outcomes from 2011 to 2022. *See* GRAND CANYON UNIVERSITY, GCU-FTC-008130.

[18] This analysis was conducted based upon a spreadsheet produced by GCU. *See* GRAND CANYON UNIVERSITY, Recipient Data 2nd RFI ED 1-11-2023. The calculation reflects students in doctoral programs with a dissertation component that enrolled between July 1, 2017 and June 30, 2022. This data reflects the number of students that met those criteria, their credits, and their enrollment status.

[19] *Id.*

The Department presented this data to GCU in a letter dated May 12, 2023 ("Notice Letter").[20] GCU responded to that letter on June 21, 2023 ("Response Letter").[21] While GCU contested various statements made in the Department's letter, it did not contest these numbers.[22]

When looking at students who enrolled in the previous five years, as detailed in Table 3b, 3,562 students (58.3%) had withdrawn as of January 11, 2023.[23]

Table 4b. Status & Outcomes for November 1, 2018 through June 30, 2022 Enrollments[24]

Enrollments from 11/1/2018-6/30/2022	Active	Graduated	Withdrawn
Enrollment Status (as of 01/11/23)	2,512	36	3,562
Percentage of Enrollment	41.1%	0.6%	58.3%
Number With More Than 60 Credits	315	29	45
Percentage With More Than 60 Credits	12.5%	80.6%	1.3%

I. GCU MADE SUBSTANTIAL MISREPRESENTATIONS TO FORMER, CURRENT, AND PROSPECTIVE STUDENTS RELATED TO THE COSTS OF ITS DOCTORAL PROGRAMS

A. Applicable Regulations

Institutions may not make substantial misrepresentations "directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency" regarding the nature of their educational programs, the nature of their financial charges, or the employability of their graduates.[25] Under Title IV, a misrepresentation is defined as "[a]ny false, erroneous or misleading statement," that an institution or its representative makes directly or indirectly to a

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[20] Department of Education Ltr. Dated May 12, 2023.

[21] GCU Ltr. Dated June 21, 2023.

[22] *Id.*

[23] This analysis was conducted based upon a spreadsheet produced by GCU. *See* GRAND CANYON UNIVERSITY, Recipient Data 2nd RFI ED 1-11-2023. The calculation reflects students in doctoral programs with a dissertation component that enrolled between November 1, 2018 and June 30, 2022. This data reflects the number of students that met those criteria, their credits, and their enrollment status.

[24] *Id.*

[25] 34 C.F.R. §§ 668.71-74.

student, prospective student, or a member of the public.[26] A misrepresentation rises to the level of a "substantial misrepresentation" if the misrepresentation is one "on which the person to whom it was made . . . could reasonably be expected to rely, or has reasonably relied, to that person's detriment."[27]

A "misleading statement" includes "any statement that has the likelihood or tendency to mislead under the circumstances."[28] The Federal Trade Commission's ("FTC") exercise of its authority regarding deceptive acts or practices informs the Department's interpretation of the HEA's substantial misrepresentation provision and the implementing regulations.[29] In evaluating claims of deception under the FTC Act, courts have specifically rejected "fine print notices" or disclaimers intended to preclude liability where a "solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures."[30] Other courts have used the "net impression" analysis to find that advertisers who present the atypical outcome as the norm may be liable for misleading or deceptive practices.[31] As an

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[26] 34 C.F.R. § 668.71(c).

[27] *Id.*

[28] *Id.*

[29] *Id. See also* "Student Assistance General Provisions, Proposed Rule," 81 F.R. 39340 (June 16, 2016) ("t[]he Department's substantial misrepresentation regulations (34 CFR part 668 subpart F) were informed by the FTC's policy guidelines on deception.").

[30] *See, e.g., FTC v. Cyberspace.com LLC*, 453 F.3d 1196,1200 (9th Cir. 2006) (rejecting defendant's disclaimers because, among other things, consumers were unlikely to read these "fine print notices" because they were not prominent); *see also In re Pom Wonderful LLC*, 155 F.T.C. 1, 12 (2013) (finding that the "qualifying language" did not "materially alter the overall net impression" created by the advertisements and noting that "the Commission examines the entire advertisement and assesses the overall "net impression" it conveys"), *aff'd* 777 F.3d 478 (D.C. Cir. 2015). *See also CFPB v. Aria*, 54 F.4th 1168, 1170 (9th Cir. 2022) (affirming district court's grant of summary judgment and analysis that "the net impression created by Aria's solicitation packets [was] likely to mislead reasonable consumers" despite Aria's argument that "a reasonable student could not have been deceived after reviewing the entire solicitation packet").

[31] *See, e.g., Illinois v. Alta Colleges, Inc.*, 2014 WL 4377579, *2 (N.D. Ill., Sept. 4, 2014) (denying defendant's motion to dismiss where plaintiff alleged Westwood violated the CFPA by misrepresenting to potential students the cost, accreditation, and selectivity of Westwood, despite knowing most students would leave with significant debt and without a degree); *In re Intuit, Inc.*, 2023 FTC LEXIS 18, *31 (Jan. 31, 2023) (denying FTC's motion for summary judgment, but noting that if Intuit conveyed to "at least a significant minority of reasonable consumers" that they could file their taxes for free with TurboTax, when in fact that was not the case, the ads created a deceptive "net impression"); *See also Florida Coastal School of Law*"); *See also Florida Coastal School of Law, Inc. v. Cardona*, 2021 WL 3493311, *11 (M.D. Fla. Aug. 9, 2021) (denying FCSL's motion for a preliminary injunction and finding that the Department

example, in *FTC v. DeVry Education Group, Inc.*, FTC alleged that defendant's advertisements created the false impression that graduates earned 15% more than other bachelor's degree graduates when, in fact, almost no graduates did so. The court denied defendant's motion to dismiss and, in doing so, the court held that "advertisers can be held liable not only for making express false representations but also for misleading consumers through implications" and for making "unsubstantiated" representations.[32]

B. GCU's Representations Regarding GCU's Doctoral Programs Were False or Omitted Material Information

Evidence demonstrates that GCU made substantial misrepresentations to former, current, and prospective doctoral students regarding the cost of its online Doctoral Programs by leading prospective students to believe that they could obtain a doctorate at a significantly lower cost than they would actually pay. Those misrepresentations are material and prominent, and a prospective or enrolling student could reasonably be expected to rely on them to their detriment. Despite some fine print disclaimers and modifications within the past twelve months, the Department determined that GCU made consistent misrepresentations in its enrollment agreement contracts, catalogs, policy handbooks, on its website, and even in the "Net Price Calculator" document provided to students upon or after enrollment.[33]

1. <u>Website and Marketing Materials</u>

GCU's website provides information for students considering its programs, including the Doctoral Programs. Its current web page for the "PhD in Psychology – Cognition and Instruction – Cognitive" is representative of the information provided on the web pages for these Doctoral Programs. The pages include key information for students including the number of credits required and the cost per credit.[34] The web page provides the following information:

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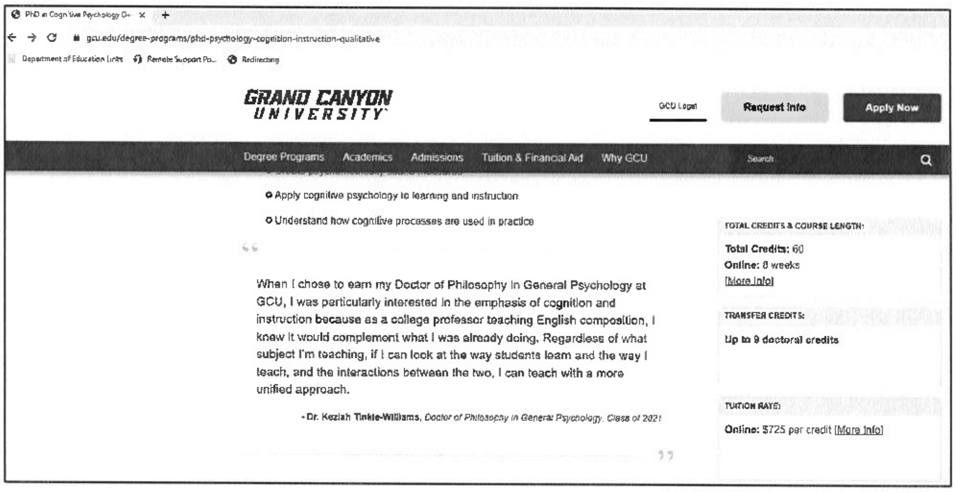
of Education could rationally conclude FCSL made substantial misrepresentations when FCSL stated that it was in compliance with ABA standards when in fact the ABA had noted multiple significant deficiencies).

[32] 2016 WL 6821112, *3-4 (C.D. Cal. May 9, 2016).

[33] Subsequent to receiving the August 16, 2023 letter setting forth the results of the Department's investigation, GCU produced additional responsive documents to the Department on September 18, 2023. However, these documents do not change the Department's analysis or conclusions. Where applicable, the additional documents are discussed below. GCU Ltr. dated September 18, 2023.

[34] *See* https://www.gcu.edu/degree-programs/phd-psychology-cognition-instruction-qualitative#



The informational boxes on the side of the page, which provide key information for prospective students, state that the website states that "Total Credits" is 60, and the "Tuition Rate" is $725 per credit. This would lead to a tuition cost of $43,500.

Both of these boxes contain a link for "More Info." Neither of those further links provides any information about continuation courses or their cost. In fact, the "More Info" page for the total credits simply expands upon the 60 credits previously disclosed by listing them, including three dissertation courses that are included within the 60 credits. The "More Info" link for the "Tuition Rate" takes one to a general GCU tuition and costs page.[35] Following the link to dissertation courses, the reader is once again informed that these programs require 60 credits at a cost of $725 per credit.[36]

Once at this further page, the reader has the choice to select a link for a "Net Price Calculator."[37] In order to use this tool, the reader is required to provide personal information to GCU, including the reader's age, housing, family size, income, whether the reader plans to apply for financial aid, etc. Even if this tool were to yield more accurate information about cost (which is unknown), the requirement to provide personal information to access the "Net Price Calculator" tool could reasonably be seen as a barrier to obtaining additional information. Thus, the "Net Price Calculator" tool cannot be viewed as a reasonable qualification of GCU's prior representations, even if the tool might eventually provide students, prospective students, or the general public more accurate information about additional costs.

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[35] *See* https://www.gcu.edu/tuition-and-financial-aid#h-tuition-and-fees

[36] *See* https://www.gcu.edu/tuition/online-evening (A PDF capture of GCU's website on April 19, 2023 shows an advertised cost of $715 per credit. The new higher amount is currently advertised on GCU's website).

[37] *See* https://www.gcu.edu/sites/default/files/media/documents/npc/index.html

2. Application for Admission/Enrollment Contract

GCU's standard Application for Admission, which consists of approximately 15 pages, contains the three-page GCU enrollment agreement contract relevant to a prospective student's chosen doctoral program. In response to the Department's requests for "all . . . enrollment materials referring or relating to any of [GCU's] graduate programs,"[38] GCU produced over 100 enrollment agreement contracts representing the versions used between 2017 and 2023 for 16 to 35 Doctoral Programs (depending on the year) in the fields of Business Administration, Education, and Philosophy/Psychology.[39] These enrollment agreements each state a precise cost for "Total Program Cost" or "Total Program Tuition and Fees." The cost disclosed ranges by program, from $40,450 (see example 1 below[40]) to $49,805 (see example 2 below[41]).

[38] 1st RFI ED 6-17-2022.

[39] Over the course of its three productions and response, GCU produced approximately 318 enrollment agreements. The 318 enrollment agreements included redacted agreements, subsequently produced unredacted agreements, erroneously produced agreements, agreements outside the relevant time period, and duplicate agreements.

[40] GCU-DOE-000148.

[41] GCU-DOE-085843.

Example 1:

Doctor of Business Administration with an Emphasis in Data Analytics

Enrollment Agreement

Student Name SSN

Street Address

City State Zip

Start Date

Required Program Major Courses		Credits
RES-811	Introduction to Advanced Graduate Studies and Scholarship	3
DBA-820	Emerging Issues in Financial Management	3
MGT-820	Using Business Analytics for Competitive Advantage	3
DBA-831	Analytic Foundations for Business Leaders	3
RES-850	Foundations for Research	3
RSD-851	Residency: Dissertation	3
DBA-833	Predictive Modeling	3
RES-861	Analysis of Existing Research	3
DBA-815	Economics for Business Decisions	3
DBA-835	The Sustainable Future	3
RES-866	Approaches to Research Design and Data Analysis	3
RES-846	Statistics	3
RSD-881	Residency: Presentation of Progress or Results	3
DBA-837	Prescriptive Modeling for Business Decisions	3
DBA-839	Enterprise Data Complexity	3
RES-880	Formalizing the Research Prospectus	3
DBA-885	Developing the Research Proposal	3
DBA-955	Dissertation I	3
DBA-960	Dissertation II	3
DBA-965	Dissertation III	3
Required Program Major Course Total Credits		60

A minimum of 60 credits are required for completion of this program of study.

If taking one course at a time, this program will take a minimum of 39 months. Students with transfer credit that applies to this program will shorten the time to completion from that stated on this enrollment agreement.

Total Program Credits: 60
Cost/Credit Hour: $640
Book Costs: $2174
Learning Management Service Fee: $400
Graduation Fee: $150
Total Program Cost: $40850

Program cost is estimated based on current tuition rates and fees.
Book costs are based on an average. Costs may increase or decrease depending on electronic availability or publishers' book costs. A one-time Learning Management Service Fee will be charged to new students only. Students continuing from one degree program to another with Grand Canyon University will only be charged this fee for the first program.

Example 2:

Doctor of Philosophy in Counselor Education and Supervision (Quantitative Research)

Enrollment Agreement

Student Name SSN

Street Address

City State AZ Zip

Start Date

Program Major:	**65 credits**
Total Degree Requirements:	**65 credits**

Required Program Major Courses		**Credits**
RES-815	Introduction to Research	3
RES-820D	The Literature Landscape: Counselor Education and Supervision	3
PCE-801	Ethics, Laws, and Multicultural Issues	3
PCE-803	Advanced Integrated Theories and Practices	3
PCE 905	Counselor Education and Supervision Practicum	2
RES-831	Foundations of Research Design 1	3
RSD-851	Residency: Dissertation	3
RES-832	Foundations of Research Design 2	3
PCE-806	Clinical Supervision	3
PCE-921	Advanced Internship II: Supervision	2
PCE-805	Pedagogy in Counselor Education	3
PCE-920	Advanced Internship I: Teaching	2
RES-842	Designing a Quantitative Study 1	3
RES-844	Designing a Quantitative Study 2	3
PCE-804	Leadership and Social Justice	3
PCE-834	Special Topics in Counseling Education and Supervision	3
PCE-922	Advanced Internship III	2
RSD-884	Residency: The Quantitative Dissertation	3
PCE-955	Dissertation I	3
RES-874	Quantitative Data Collection and Statistical Mechanics	3
PCE-960	Dissertation II	3
RES-884	Quantitative Data Analysis, Results, and Findings	3
PCE-965	Dissertation III	3
Required Program Major Course Total Credits		**65**

A minimum of 65 credits are required for completion of this program of study.
If taking one course at a time, this program will take a minimum of 43 months. Students with transfer credit that applies to this program will shorten the time to completion from that stated on this enrollment agreement.

Total Program Credits: 65
Cost Per Credit: $715
Learning Service Management Fee Per Program: $550
Graduation Fee Per Program: $150
Course Fees: $2,630
Total Program Tuition and Fees: $49,805

Estimated Additional Costs
Book Costs: $650

Program cost is estimated based on current tuition rates and fees.
Costs for courses that require students to purchase a print textbook are based upon retail pricing provided by publishers and are subject to change. Costs for courses where materials are provided digitally are based upon the standard Canyon Connect fees. Costs may increase or decrease depending on electronic availability or publishers' book costs. A one-time Learning Management Service Fee will be charged to new students only. Students continuing from one degree program to another with Grand Canyon University will only be charged this fee for the first program.

Significantly, these enrollment agreements also disclose various other fees, including a graduation fee, learning management service fee, and in some cases, lists "Estimated Additional Costs" that only lists a charge for books.[42] However, the "Total Program Tuition and Fees" does not include information about continuation courses and their cost. The language below the calculation notes that the "Program cost is estimated based on current tuition rates and fees", implying a change could come if GCU raised tuition or fees, but it does not note that students will almost certainly incur additional costs related to continuation courses.

Most of the enrollment agreements produced contain a disclosure in small print on a subsequent page of the document explaining that "on average, doctoral students who graduated required 5.2 continuation courses to complete their doctoral program." The record is not clear on when this disclosure was added to the enrollment agreements.[43]

College of Doctoral Studies Disclaimer
Graduation requirements include earning the total number of credits required by the program, meeting content requirements, and approval of a dissertation by the committee and the Dean as demonstrated by a signed D-80 document (See the University Policy Handbook). Students may need to take continuation courses that provide students with additional time for completing all the content and process requirements of the dissertation until officially approved or until the maximum time allowed per program policy has been reached. As of March 2017, since program inception, on average, doctoral students who graduated required 5.2 continuation courses to complete their doctoral degree.

Even with the "College of Doctoral Studies Disclaimer" disclosure, the cost of continuation courses is not mentioned anywhere on this page, nor anywhere else, in this or any of the other student enrollment contracts provided by GCU. GCU does not state that the 5.2 continuation courses mentioned will increase the "Total Program Cost" or "Total Program Tuition and Fees" set forth on the first page of the enrollment agreements.

[42] *See, e.g.*, GCU-DOE-000028-000029; GCU-DOE-000172-000173; GCU-DOE-000174-000175; GCU-DOE-000148-000149; GCU-DOE-084266-084267; GCU-DOE-084268-084269; GCU-DOE-084270-084271;GCU-DOE-084272-084273; GCU-DOE-084274-084276; GCU-DOE-084277-084279; GCU-DOE-084280-084282; GCU-DOE-084283-084285; GCU-DOE-084289-084291; GCU-DOE-084526-084528; GCU-DOE-084529-084531; GCU-DOE-085294-085296; GCU-DOE-085297-085299; GCU-DOE-085300-085302; GCU-DOE-085806-085808; GCU-DOE-085809-085811; GCU-DOE-085812-085814; GCU-DOE-085815-085817; GCU-DOE-085818-085820; GCU-DOE-085821-085823; GCU-DOE-085824-085826; GCU-DOE-085827-085829; GCU-DOE-085830-085832; GCU-DOE-085833-085835; GCU-DOE-085840-085842; GCU-DOE-085843-085845; GCU-DOE-085846-085848; GCU-DOE-085849-085851; GCU-DOE-085852-085854; GCU-DOE-085855-085857; GCU-DOE-085858-085860; GCU-DOE-085861-085863; GCU-DOE-085864-085866; GCU-DOE-085867-085869.

[43] The Department received inconsistent enrollment agreements from GCU. A 2020 enrollment form with an effective date of July 9, 2020, was produced to the Department (GCU-DOE-000139-000141) without a College of Doctoral Studies 5.2 Disclaimer, but among the documents GCU produced for this investigation on March 14, 2023, there is an exhibited enrollment agreement containing a 5.2 Disclaimer mentioning 2017 on a form with a 2016 "effective date" that was purportedly signed on January 2, 2018 and a written "Total Program Cost" of $41,340. GCU-DOE-091942-43. As discussed below, GCU later stated that a number of enrollment agreements were produced in error.

On August 16, 2023, the Department sent a letter to GCU setting forth the determinations made as a result of the Department's investigation and made GCU aware that the Department intended to initiate a fine action. In response to that letter, on September 18th GCU produced additional documents, including enrollment agreements/applications (the "September 2023 Production"). GCU's cover letter accompanying the documents stated that GCU's previous enrollment agreements and applications were "produced in error."[44] The newly-produced enrollment agreements included unredacted versions (including previously redacted effective dates) of previous GCU productions that show some pre-dated our Requests for Information and some dating back as far as 2009. Those older enrollment agreements fall outside the relevant time period for the Department's calculation of GCU's violations. Many of the recently produced and unredacted enrollment agreements are within the relevant time period and do contain the identical, insufficient disclosure referring to the average 5.2 continuation courses needed to graduate that was contained in some of the previously produced enrollment agreements and is discussed in detail above. The additional documents produced in the September 2023 Production do not refute or otherwise address the misrepresentations discussed in the August 16, 2023 letter and do not provide evidence of disclosure related to any additional cost of the programs.

At two points during the Department's investigation, GCU appears to have updated its College of Doctoral Studies Disclaimers. While it is not clear exactly when GCU started using the updated disclaimers, they appear to have been introduced after June 17, 2022 when GCU received its first request for information from the Department.

On March 27, 2023, the Department learned of the first updated disclaimers when it received a partial response from GCU to one of the Department's requests for documents. The new disclaimer states the following:[45]

> **College of Doctoral Studies Disclaimer**
> Graduation requirements include earning the total number of credits required by the program, meeting content requirements, and approval of a dissertation by the committee and the Dean as demonstrated by a signed D-80 document (See the University Policy Handbook). Students may need to take continuation courses that provide students with additional time for completing all the content and process requirements of the dissertation until officially approved or until the maximum time allowed per program policy has been reached. As of July 27, 2022, the average number of continuation courses for the 2,219 doctoral graduates since the first graduate in 2011, was 9.5 continuation courses (with passing grades) and a total program average time of 5.6 years.

However, as with the earlier version of the disclaimer, which noted an average of 5.2 continuation courses to complete the program, this updated language still does not disclose any additional tuition and fees resulting from the number of continuation courses required for graduation or note that there is additional cost at all.[46] The "total" cost presented on the previous page is not mentioned or explicitly qualified in the disclaimer.

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[44] GCU Ltr. dated September 18, 2023, p. 1.

[45] GCU-DOE-084268.

[46] *Id.*

In its June 21, 2023 Response Letter, GCU provided to the Department, for the first time, another updated version of the disclaimers within an unsigned Doctoral Enrollment Application. The newest disclaimer states that the average number of continuation courses "since the first graduate in 2011, was 9.9 continuation courses (with passing grades) and a total program average time of 5.7 years."[47]

> ☑ I acknowledge
>
> *Graduation requirements include earning the total number of credits required by the program, meeting content requirements, and approval of a dissertation by the committee and the Dean as demonstrated by a signed D-80 document (See the University Policy Handbook). Students may need to take continuation courses that provide students with additional time for completing all the content and process requirements of the dissertation until officially approved or until the maximum time allowed per program policy has been reached. As of December 31, 2022, the average number of continuation courses for the 2,440 doctoral graduates since the first graduate in 2011, was 9.9 continuation courses (with passing grades) and a total program average time of 5.7 years.*

The enrollment agreement that this disclaimer accompanies still presents "Total Program Tuition and Fees" in the body of the agreement without any mention of additional costs for Continuation Courses.[48] The disclaimer above also fails to note that those courses will add to the cost of obtaining a degree.

3. Net Price Calculator

GCU claims in its June 21, 2023 Response Letter that it proactively informs students about continuation courses in a "Net Price Calculator." According to GCU, that document is provided to students after they have engaged with a University Counselor, who inputs student-specific financial information into a GCU database (the Customer Relationship Manager, or CRM).[49] At that time, a "summary page" is sent to the student via email. GCU states that "Most GCU students receive the Net Price Calculator prior to signing an enrollment agreement, but if a student has not received the document before starting his or her first class, GCU's CRM system notifies [an employee of GCU's service provider] who is required to promptly deliver it to the student."[50] Thus, GCU acknowledges here that some unspecified number of students enroll without receiving the Net Price Calculator. And as described above, a prospective student or member of the general public cannot receive the information contained in the Net Price Calculator unless they specifically provide personalized information. Even if one receives a

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[47] GCU Ltr. dated June 21, 2023, Exhibit 7, p. 8.

[48] *Id.* at p. 7.

[49] GCU Ltr. Dated June 21, 2023, p. 14.

[50] *Id.*

copy, the statements made in the Net Price Calculator do not cure the misrepresentations about cost.

Among the Net Price Calculators produced to the Department, there are two types of disclosures about the potential need for additional courses and cost. Until 2022, GCU disclosed that the average graduate required 5.2 continuation courses, including information on cost:[51]

[illegible]

Displayed are estimates only, based on general information provided by the student. Official awards will be limited to each student's remaining Federal Student Aid eligibility

Additional fees not paid directly to the university such as Finger Print Clearance for Teacher Certification is not included in the calculation.

Federal Aid does not pay for Graduation Fees.

Student Reported External Aid. All financial sources reported below is aid the student is reporting and required to secure on their behalf, to be used during the duration of their program. If the student does not secure aid as indicated below, the cost for the academic program would increase by that amount.

GCU cannot include or provide any information regarding federal, state, or external programs available to students post-graduation

Federal Student Aid is available to those who qualify and is recalculated annually

Since program inception, on average, Doctoral learners who graduated required 5.2 continuation courses to complete their Doctoral degree. Continuation Courses*: $2145 per course (1st 4 courses); $500 per course (5th course and beyond)

Doctor of Business Administration (DBA) learners must complete five pre-requisite courses at the masters level earning a minimum 3.0 GPA or a passing grade if the institution does not use traditional A-F grading systems, prior to entering the DBA Program. If it is determined that all five pre-requisite courses must be taken via the Bridge Program to the DBA, please contact your Doctoral University Counselor for additional information. Students have the option to take an exam to fulfill some of these requirements

Academic Year (AY) 2022 - 2023

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Credit Hours	12	15	15	12	6	60
Estimated Tuition	$8,580.00	$10,725.00	$10,725.00	$8,580.00	$4,290.00	$12,900.00
Canyon Connect Fee (Digital materials)	$520.00	$650.00	$650.00	$520.00	$260.00	$2,600.00
Learning Management System Fee	$550.00	$0.00	$0.00	$0.00	$0.00	$550.00
Course/Lab/Graduation Fees	$0.00	$1,050.00	$1,050.00	$0.00	$150.00	$2,250.00
Total Estimated Cost	$9,650.00	$12,425.00	$12,425.00	$9,100.00	$4,700.00	$48,300.00
[illegible]						
Total Estimated Scholarships and Student Reported External Aid	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
[illegible]						
Federal Loans (Direct/Stafford)	$9,650.00	$12,425.00	$12,425.00	$9,100.00	$4,700.00	$48,300.00
Total Estimated Federal Aid	$9,650.00	$12,425.00	$12,425.00	$9,100.00	$4,700.00	$48,300.00
[illegible]						
Estimated Net Cost	$9,650.00	$12,425.00	$12,425.00	$9,100.00	$4,700.00	$48,300.00
Total Estimated Federal Aid	$9,650.00	$12,425.00	$12,425.00	$9,100.00	$4,700.00	$48,300.00
Total Estimated Out of Pocket Cost (Credit)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

[51] GCU-DOE-009936.

Starting in late 2022 (after the Department sent its first Request for Information to the school), GCU updated this disclosure to state that the average graduate required 9.5 continuation courses, including information on cost:[52]

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Displayed are estimates only, based on general information provided by the student. Official awards will be limited to each student's remaining Federal Student Aid eligibility

Additional fees not paid directly to the university such as Finger Print Clearance for Teacher Certification is not included in the calculation.

Federal Aid does not pay for Graduation Fees

Student Reported External Aid: All financial sources reported below is aid the student is reporting and required to secure on their behalf, to be used during the duration of their program. If the student does not secure aid as indicated below, the cost for the academic program would increase by that amount.

GCU cannot include or provide any information regarding federal, state, or external programs available to students post-graduation.

Federal Student Aid is available to those who qualify and is recalculated annually

Since program inception, on average, Doctoral learners who graduated required 9.5 continuation courses to complete their Doctoral degree. Continuation Courses*: $2,175 per course (not applicable for DNP). For more information please visit: https://www.gcu.edu/degree-programs/doctoral-degree

Academic Year (AY) 2022 - 2023

Estimated Costs	AY1	AY2	AY3	AY4	AY5	Total
Credit Hours	12	15	15	12	6	60
Estimated Tuition	$8,700.00	$10,875.00	$10,875.00	$8,700.00	$4,350.00	$43,500.00
Canyon Connect Fee (Digital materials)	$540.00	$675.00	$675.00	$540.00	$270.00	$2,700.00
Learning Management System Fee	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Course/Lab/Graduation Fees	$0.00	$1,315.00	$1,315.00	$0.00	$150.00	$2,780.00
Total Estimated Cost	$9,240.00	$12,865.00	$12,865.00	$9,240.00	$4,770.00	$48,980.00

This appears to be the first time a student is notified in writing of the cost of continuation courses. However, even this disclosure does not cure the incorrect net impression that students are given about cost – that the program described immediately above, for example, will cost $48,980.

Most simply, and most significantly, the boxed, grey-highlighted representation of "**Total** Estimated Cost" (emphasis added) is $48,980. While this comes after the disclosure that the **average** graduate required up to 9.5 continuation courses, and a disclosure of the cost per course, the "Total Estimated Cost" that follows does not include **any** cost for continuation courses.

Although GCU informs prospective (or already enrolled) students that the average student takes continuation courses and notes the cost per course, it omits those costs from the "Total Estimated Cost" that is prominently disclosed. It does not mention, even with an asterisk or any type of qualification to the "Total Estimated Cost" line, that this cost does not include the cost of the continuation courses that graduates are virtually guaranteed to need. This is true even though that cost breaks out "Estimated Tuition" and includes various relatively small, incidental costs such

[52] GCU Ltr. Dated June 21, 2023, Ex. 6-1.

as "Canyon Connect Fee" and "Course/Lab/Graduation Fees." As such, it would be reasonable for a prospective (or already-enrolled) student to believe that **all** anticipated costs are included in the "Total Estimated Cost" calculation.

In addition, GCU fails to note that those costs do not factor into the "Estimated Tuition" for the grey-highlighted "Total Estimated Cost" even though it affirmatively notes that the calculation excludes other fees (e.g., "Finger Print Clearance for Teacher Certification"). This further supports the conclusion that a reasonable student could conclude "Total Estimated Cost" was in fact "Total."

Further, while GCU makes various disclaimers about the "average" number of continuation courses, its overall "Total Estimated Cost" bears almost no resemblance to the reality for its students. GCU knew that reality – that fewer than 2% of students completed their dissertation for the "Total Estimated Cost" disclosed.

Finally, the disclosure omits another fact that, until recently, was significant - that federal student aid was unlikely to cover the cost of at least some of the continuation courses. Continuation courses offered for zero credits were required for approximately 34% of GCU doctoral graduates until GCU changed its policy in 2023. Zero credit courses are not eligible for federal student aid. In contrast, GCU did disclose that federal student aid does not pay Graduation Fees. Based upon the disclosures that GCU makes regarding what federal student aid does not cover, a reasonable student might have concluded that the other costs of the program could, in fact, be covered by federal student aid. When zero credit courses were offered, that was not true, raising the possibility that a student could be near the end of their course of study and only then learn that they had to come up with out-of-pocket funds to finish. This would almost certainly be a material fact for many students or prospective students considering enrollment in GCU's Doctoral Programs.

4. Academic Catalogs

In a passing comment in GCU's June 21, 2023 Response Letter, GCU references its lengthy policy handbooks and academic catalogs as an example of information that may be provided to students.[53] However, these documents contain only limited information about the cost of obtaining a doctoral degree. The 2021 versions of these documents are 211[54] and 484[55] pages long, respectively, and contain a wide variety of general information related to the school and the program.

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[53] GCU Ltr. Dated June 21, 2023, p. 6.

[54] GCU-DOE-037899-038109.

[55] GCU-DOE-036347-036830.

On page 164 of the 2021 policy handbook, GCU includes information about the credits and costs per credit for a doctoral degree. It notes that the cost per credit for a dissertation is $695 and includes a reference to "dissertation courses 966-970."[56] A prospective student would have to turn to the 484-page course catalog to learn that courses 966-970 are continuation courses, and therefore may be required in addition to the 60 required credits generally advertised as needed for completion. The 484-page course catalog describes those courses as continuation courses and states that "[d]octoral learners who did not complete their dissertation in DBA-965 must take one or more of the following in order to complete their dissertation."[57] The relevant parts of the policy handbook[58] and catalog[59] are copied below:

GCU Policy Handbook - Spring 2021

Non-Traditional Campus	
Nursing Programs	$550/credit
Advanced Practice Nursing Programs	$695/credit
Online and Professional Studies (all programs other than those listed above)	$550/credit
Active Duty and Active Reserve Military	$400/credit
Doctoral Programs – (includes dissertation courses 966-970)	$695/credit

Per GCU's Spring 2021 Catalog, DIS 966-970

Doctoral learners who did not complete their dissertation in DIS-965 must take one or more of the following in order to complete their dissertation:

DIS-966	Research Continuation I	3 credits
DIS-967	Research Continuation II	3 credits
DIS-968	Research Continuation III	3 credits
DIS-969	Research Continuation IV	3 credits
DIS-970	Research Continuation V	3 credits

The catalog does not inform students that 98% of doctoral graduates require continuation courses. Furthermore, because this information is buried deep in long catalogs and handbooks, and even requires cross-referencing to fully capture cost information, these documents do not cure the misrepresentations about cost contained on GCU's website, in its enrollment agreement, in the Net Price Calculator, and elsewhere in its marketing materials.

5. Doctoral Disclaimers Acknowledgement Form

In its Response Letter, GCU also refers to a "Doctoral Disclaimers Acknowledgement Form," and explains"[u]ntil recently, each doctoral student also received a version of the Doctoral Disclaimers Acknowledgement" and it "was automatically sent as soon as a student registered for the first class in a doctoral program."[60] While GCU produced two copies of the signed form

[56] GCU-DOE-038062.

[57] GCU-DOE-036411.

[58] GCU-DOE-038062.

[59] GCU-DOE-036411.

[60] GCU Ltr. Dated June 21, 2023, p.15.

as excerpted below (one from 2017[61] and an identical one from 2021[62]), it is not clear from the documents produced how many students signed these forms during the relevant time period.

GRAND CANYON UNIVERSITY

Doctoral Disclaimers Acknowledgement

In the third year of the program of study doctoral learners progress from standard content-based courses to dissertation courses. The transition to doctoral level research, independent scholarship, and progression through the dissertation courses and milestones is unique to doctoral pedagogy. During this transition, the doctoral learner gradually assumes more responsibility for their progress and development as independent

- An essential element of being a doctoral learner is taking ownership of your research, learning to be an independent scholar, and writing of the dissertation. GCU cannot determine the final time to completion as so much of that is unique to the plan and dissertation the learner has laid out, and the rate at which the work is done by the learner. The program allows learners the opportunity to finish within the listed 60 credits. But this is an opportunity, not a promise, as many learners will need additional time and continuation courses to complete an approved dissertation. Research Continuation I-V are standard 3-credit classes as they provide the same content and instructional support as the previous 60 credits of coursework. Learners who need additional time beyond Research Continuation V can repeatedly take a Dissertation Research Continuation course, which is 0 credits but has a small fee attached.
- Since program inception, on average, doctoral students who graduated required 5.2 continuation courses to complete their degree.
- For more information about continuation courses and graduation requirements please speak with your Student Services Counselor. Also review the College of Doctoral Studies section of the Academic Catalog and the Doctoral Graduation Requirements in the University Policy Handbook. Both can be found at https://www.gcu.edu/academics/academic-policies.php.

Student Services Counselor. Also review the College of Doctoral Studies section of the Academic Catalog and the Doctoral Graduation Requirements in the University Policy Handbook. Both can be found at https://www.gcu.edu/academics/academic-policies.php

Name: [redacted] GCU Student ID: [redacted]

Student E-Signature: [redacted] GCU E-Signature Date: [redacted]

Regardless, this form, too, fails to remedy GCU's substantial misrepresentations regarding cost; in fact, it arguably contributes to them. The form does note that the 60-credit finish is "an opportunity, not a promise" and, on average, "doctoral students who graduated required 5.2 continuation courses to complete their degree."[63] It also informs students that there are five potential continuation classes and suggests they are distinct from the "previous 60 credits of coursework."[64] However, the disclaimer does not state that these five classes involve additional tuition and will increase the cost of the program. Confusingly, it does acknowledge additional cost for continuation courses required after the first five, which it notes "have a small fee

[61] GCU-DOE-027978-027979.

[62] GCU-DOE-009209.

[63] GCU-DOE-027978.

[64] *Id.*

attached."[65] In this document, GCU again fails to address that continuation courses, on average, materially increase students' costs (and time) to complete their doctoral program.[66] Nor does it disclose that zero credit courses are not eligible for federal financial aid and must be paid out of pocket – a fact that presumably could make the costs impossible for some students to manage.[67]

6. E-mail Template Enclosure and Link to Welcome Video

In its June 21, 2023[68] and September 18, 2023[69] document productions, GCU produced a template of a welcome email that GCU states it sends to doctoral students "[o]ne week before a student starts classes" and discusses national timing averages.[70] The exhibited template instead links to an eight year old YouTube presentation entitled "Welcome to Your Doctoral Journey" by the long-time Dean of the College of Doctoral Studies, Dr. Michael Berger.[71] In the video, Dr. Berger represents to new students that the average number of continuation courses needed to graduate is three.[72] This statement contradicts GCU's current and past disclaimers, which state that the average number of continuation courses required is 5.2 (published at least between 2018 and 2022), 9.5 (published at least in late 2022 and in 2023), and 9.9 (published in 2023). Even ignoring this factual error, the costs of the courses is not addressed in the video. As a result, it does not correct or mitigate the substantial misrepresentations about total cost, made in writing, that are already addressed in this letter.

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[65] *Id.*

[66] For example, the 2020 Enrollment Agreement for a Doctor of Education in Organizational Leadership: Special Education (Qualitative Research) sets forth "Total Program Tuition and Fees" of $43,720. Students who take five or six continuation courses incur an additional (approximately) $10,000 in tuition, which represents a 23% increase over GCU's represented "Total Program Tuition and Fees." GCU-DOE-000446.

[67] Continuation Courses I-IV are Title IV eligible 3-credit classes, Continuation Courses V and beyond were 0 credit, non-Title IV eligible classes. During the pendency of the investigation, GCU updated its Continuation Courses, as of January 2023, courses I-IX are 3-credit, Title IV eligible courses.

[68] GCU Ltr. Dated June 21, 2023, Ex. 4-1.

[69] GCU-DOE-109104.

[70] GCU Ltr. Dated June 21, 2023, p. 16.

[71] The text on page 16 of GCU's Ltr. Dated June 21, 2023, represents Exhibit 4 to be a video entitled "Time to Earn a Doctorate". The active link produced to the Department within the exhibit is a different video presentation by Dr. Berger. Both videos (eight years old and six years old) contain outdated data and are unhelpful to students as to the costs of continuation courses.

[72] GCU Ltr. Dated June 21, 2023, Ex. 4-1, video at 2 minutes and 10 seconds.

7. GCU Was Aware as Far Back as 2017 That it Was Not Fully Informing Students About the Cost of its Doctoral Programs

GCU produced internal emails sent to Dr. Michael Berger in January 2017 discussing the need to update student disclosures to reflect accurate information about continuation courses.[73]

From: Nikki Mancuso
Sent: Tuesday, January 17, 2017 2:20 PM
To: Michael Berger [redacted]
Subject: RE: Graduates and continuation courses needed for this past year

Yes:

It is getting Dan S the grads and continuation data so he can determine what we should update this verbiage to show:

** On average, doctoral students who graduated during the 2014/15 academic year required 5.25 continuation courses to complete their degree.*

Continuation Courses... $1925 per course (1st 5 courses); $500 per course (6th course and beyond)*

Nikki Mancuso, MAOM
Senior Vice President, College of Doctoral Studies

Grand Canyon University
3300 W. Camelback Road Phoenix, AZ 85017
1-800-800-9776 [redacted]

From: Michael Berger
Sent: Tuesday, January 17, 2017 2:19 PM
To: Nikki Mancuso [redacted]
Subject: RE: Graduates and continuation courses needed for this past year

Can you remind me what this is?

Michael Berger, EdD
Dean
College of Doctoral Studies
Grand Canyon University
[redacted]

From: Nikki Mancuso
Sent: Tuesday, Janua[redacted]
To: Michael Berger [redacted]
Subject: Graduates and continuation courses needed for this past year

Hi Michael,

When do you plan to get this data?

Nikki Mancuso, MAOM
Senior Vice President, College of Doctoral Studies

This email includes suggested disclosures on "grads and continuation data" is needed to "update the verbiage," about the average need for 5.2 continuation courses, **and also inform them of the cost of those courses.[74]**

[73] GCU-DOE-102255-102259.

[74] GCU-DOE-102259.

While GCU did include the information about 5.2 continuation courses in some of its enrollment materials, **the cost information in the suggested "verbiage" does not appear in any of the enrollment agreements produced by GCU and in use from 2017 to the present.**

An email from August 10, 2017, reflects that, at that time, GCU leadership was still discussing "data we are considering adding to the Disclaimers and Disclosures."[75]

> **From:** Michael Berger
> **Sent:** Thursday, August 10, 2017 11:35 AM
> **To:** Dan Steimel [redacted] Chris Linderso[redacted] Nikki Mancuso [redacted]
> **Cc:** Hank Radda [redacted]
> **Subject:** Possible doctoral disclaimer updates
> Hi all,
> So Brian McGuire ran some up to date data on our graduates. Based on 395 that are fully graduated, here are some statements which are supported by the data that we are considering adding to the Disclaimers and Disclosures. As of August 2017:
> 1. 27% of our graduates completed in 48 months (4 years) or less.
> 2. 52% of our graduates completed in 56 months (4.5 years) or less.
> 3. 55% of our graduates completed in five continuation courses or less.
> 4. 30% of our graduates completed in three continuation courses or less.
> 5. 13% of our graduates completed in one or zero continuation courses.
> 6. 7% of our graduates completed needing zero continuation courses.
>
> Currently, what we have is (see attached):
> As of March 2017, since program inception, on average doctoral students who graduated required 5.2 continuation courses to complete their doctoral degree.
> We are considering of adding some or all of the above. What do you think?
> Thanks!
> Michael
> Michael Berger, EdD
> Dean
> College of Doctoral Studies
> Grand Canyon University

As discussed above, some versions of the enrollment agreements that GCU produced contained a disclaimer that "doctoral students who graduated required, on average, 5.2 continuation courses." Those disclosures currently do not expressly call out added cost in spite of the fact that this addition was suggested as far back as January 2017. In late 2022, GCU updated the enrollment agreements to state that the average number of continuation courses needed by doctoral students was 9.5, and in 2023 again changed the disclaimer to state that the average is now 9.9 continuation courses. Even in those recently revised disclaimers, GCU fails to disclose the additional cost of the continuation courses.

GCU's Net Price Calculator, which according to GCU not all students receive before starting classes, does include the cost-related information in the January 2017 email. However, as set forth in Section B.3 above, the price calculator's "Total Estimated Cost" excludes them. As a result, even for the students who received a link to the Net Price Calculator before enrolling,

[75] GCU-DOE-102301.

those statements do not cure the substantial misrepresentations about cost otherwise set forth in the Net Price Calculator, the enrollment documents, and elsewhere.

C. GCU Committed Substantial Misrepresentations in Violation of 34 C.F.R. § 668.71

As set forth above, there is substantial evidence (defined in the context of an agency's finding of fact as "more than a mere scintilla [and] relevant evidence as a reasonable mind might accept as adequate to support a conclusion")[76] that GCU made substantial misrepresentations about the true cost of its doctoral degree programs that required dissertations. GCU made such misrepresentations when it informed students in writing about "Total Program Cost" (enrollment agreement), "Total Program Tuition and Fees" (enrollment agreement), and "Total Estimated Cost" (Net Price Calculator) that it knew bore little or no resemblance to the true cost for actual graduates. These misrepresentations are also reinforced on GCU's website. These misrepresentations relate to both the nature of GCU's educational program and its financial charges, and therefore fall squarely within the misconduct proscribed by the HEA and its implementing regulations.[77] GCU's students could reasonably be expected to rely on those misrepresentations to their detriment.

Significantly, all of the enrollment agreements produced by GCU that were used between 2017 through 2023 contain this substantial misrepresentation. Because all students would presumably have been provided and/or signed an enrollment agreement, it is reasonable to conclude that 7,547 students who enrolled in a doctoral program during the five years covered by the Department's investigation were subject to the misrepresentation and could reasonably be expected to have relied upon it to their detriment.

The limited disclaimers that GCU included in its Enrollment Agreement, Net Price Calculator, and Doctoral Disclaimers Acknowledgement do not change the conclusion that a substantial misrepresentation occurred.[78] In analyzing whether a statement has "the likelihood or tendency to mislead under the circumstances"[79] for purposes of a misrepresentation or deception claim, courts "look at the totality of the practice" or the "net impression" in determining how a

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[76] *Visiting Nurse Ass'n Gregoria Auffant, Inc. v. Thompson*, 447 F.3d 68, 72 (1st Cir.2006) (*quoting Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

[77] 34 C.F.R. § 668.71(b).

[78] However, as discussed below, the presence of a disclaimer may be considered when determining the amount of the fine.

[79] 34 C.F.R. § 668.71.

reasonable person would respond to a representation.[80] In evaluating claims of deception under the FTC Act, courts have specifically rejected "fine print notices" or disclaimers intended to preclude liability where a "solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures."[81] Other courts have used the "net impression" analysis to find that advertisers who present the atypical outcome as the norm may be liable for misleading or deceptive practices.[82]A prospective student could easily have concluded, based upon GCU's representations, that a doctoral degree with a dissertation component from GCU could cost between $42,000 and $48,000, as clearly stated in the enrollment agreement and stated or suggested by all other sources of information produced to the

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[80] *See, e.g.*, "Student Assistance General Provisions, Proposed Rule," 81 F.R. 39342 (June 16, 2016) (citing with approval to the FTC Policy Statement on Deception and noting that "[t]he FTC looks at the totality of the practice when determining how a reasonable recipient of the information would respond. If a representation is targeted to a specific audience, then the FTC determines the effect of the practice on a reasonable member of that group. The Department similarly considers the totality of circumstances in which the statement or omission occurs, including the specific group at which a statement or omission was targeted, to determine whether the statement or omission was misleading under the circumstances"). The Department looks to FTC deception precedent in interpreting the HEA's substantial misrepresentation provision and the implementing regulations. *Id. See also* "Student Assistance General Provisions, Proposed Rule," 81 F.R. 39340 (June 16, 2016) ("t[]he Department's substantial misrepresentation regulations (34 CFR part 668 subpart F) were informed by the FTC's policy guidelines on deception.").

[81] *See, e.g., FTC v. Cyberspace.com LLC*, 453 F.3d 1196,1200 (9th Cir. 2006) (rejecting defendant's disclaimers because, among other things, consumers were unlikely to read these "fine print notices" because they were not prominent); *see also In re Pom Wonderful LLC*, 155 F.T.C. 1, 12 (2013) (finding that the "qualifying language" did not "materially alter the overall net impression" created by the advertisements and noting that "the Commission examines the entire advertisement and assesses the overall "net impression" it conveys"), *aff'd* 777 F.3d 478 (D.C. Cir. 2015). *See also CFPB v. Aria*, 54 F.4th 1168, 1170 (9th Cir. 2022) (affirming district court's grant of summary judgment and analysis that "the net impression created by Aria's solicitation packets [was] likely to mislead reasonable consumers" despite Aria's argument that "a reasonable student could not have been deceived after reviewing the entire solicitation packet").

[82] *See, e.g., Illinois v. Alta Colleges, Inc.*, 2014 WL 4377579, *2 (N.D. Ill., Sept. 4, 2014) (denying defendant's motion to dismiss where plaintiff alleged Westwood violated the CFPA by misrepresenting to potential students the cost, accreditation, and selectivity of Westwood, despite knowing most students would leave with significant debt and without a degree); *In re Intuit, Inc.*, 2023 FTC LEXIS 18, *31 (Jan. 31, 2023) (denying FTC's motion for summary judgment, but noting that if Intuit conveyed to "at least a significant minority of reasonable consumers" that they could file their taxes for free with TurboTax, when in fact that was not the case, the ads created a deceptive "net impression"); *See also Florida Coastal School of Law*"); *See also Florida Coastal School of Law, Inc. v. Cardona*, 2021 WL 3493311, *11 (M.D. Fla. Aug. 9, 2021) (denying FCSL's motion for a preliminary injunction and finding that the Department of Education could rationally conclude FCSL made substantial misrepresentations when FCSL stated that it was in compliance with ABA standards when in fact the ABA had noted multiple significant deficiencies).

Department by GCU. Because this is true for less than 2% of graduates, and GCU was aware of this fact, the statements constitute substantial misrepresentations.

II. GCU FAILED TO ACT IN THE NATURE OF A FIDUCIARY IN ITS ADMINISTRATION OF TITLE IV

The evidence set forth above also indicates that GCU failed to act in the nature of a fiduciary in its administration of Title IV. Pursuant to 34 C.F.R. § 668.82(a), (b), an institution "acts in the nature of a fiduciary in the administration of the Title IV, HEA programs," such that to participate the institution "must at all times act with the competency and integrity required of a fiduciary." "A fiduciary has 'an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading' the beneficiary of the fiduciary duty."[83] Black's Law Dictionary defines "fiduciary duty" as "[a] duty of utmost good faith, trust, confidence, and candor owed by a fiduciary . . . to the beneficiary. . . ."[84]

Substantial evidence demonstrates that GCU committed substantial misrepresentations to each of the 7,547 students who enrolled in the relevant Doctoral Programs at GCU between November 1, 2018 and October 19, 2023. Each of these students would have been subjected to GCU's substantial misrepresentations at least once, and probably multiple times, including through the school's website, the enrollment agreement, and/or the Net Price Calculator. These misrepresentations related to financial charges, a material factor for students considering enrollment, and caused many of them to incur charges well beyond what was represented. Each of these students would have been subjected to the same substantial misrepresentation upon enrollment, regardless of whether they graduated, withdrew, or are still enrolled, and regardless of how many credits they have completed or how much they have incurred in loans or paid tuition to GCU. In making these widespread substantial misrepresentations, GCU failed to adhere to the fiduciary standard required of a Title IV participant.

III. GCU'S DEFENSES DO NOT CHANGE THE DEPARTMENT'S DETERMINATIONS

On May 12, 2023, FSA's Investigations Group sent GCU a summary of the evidence gathered as of that date and indicated that it was considering a referral to the Department's Administrative Actions and Appeals Service Group ("AAASG") for possible administrative action. GCU responded on June 21, 2023 (the "Response Letter"). The school noted that it "is committed to continuous improvement" and that "[i]n October 2022, GCU implemented significant enhancements to the already robust disclosures discussed throughout this Response."[85] The

[83] *See Sec. & Exch. Comm'n v. Cap. Gains Res. Bureau, Inc.*, 375 U.S. 180, 194 (1963) (emphasis added).

[84] Black's Law Dictionary (11th ed. 2019).

[85] GCU Ltr. Dated June 21, 2023, p.17, ¶ 1.

statements and defenses set forth in GCU's Response Letter and in other letters and arguments provided after the August 16, 2023 letter do not warrant a change in the conclusions set forth in this notice of the Department's intent to impose a fine for these violations by GCU. We will address here the following claims raised by GCU: (1) that the Eleventh Circuit has already rejected the Department's claims; (2) that the Department must prove individualized student reliance to establish a substantial misrepresentation; (3) that it would be unreasonable for prospective doctoral students to expect that additional continuation courses would be free; (4) that additional documents, including enrollment agreements, contains accurate disclosures; and, (5) that the disclosures are, at worst, confusing, which GCU claims is not a violation of the substantial misrepresentation prohibition.

First, GCU claims in its Response Letter that the Eleventh Circuit's recent decision in *Young v. Grand Canyon Univ., Inc.*, 57 F.4th 861 (11th Cir. 2023), and the underlying District Court case it reversed in part, addressed and rejected the Department's position that GCU has made substantial misrepresentations to prospective and current doctoral students.[86] That case is distinguishable from this matter for several reasons.

- First, the plaintiff in *Young* did not claim that GCU misrepresented the cost of its doctoral program. Representations about cost are the focus of the evidence discussed here.
- Second, the *Young* plaintiff did not plead (or presumably know) that virtually none of GCU's doctoral students graduate within the advertised number of credits or, relevant here, the cost required to obtain those credits.
- Third, the *Young* plaintiff's misrepresentation claim required evidence of intent. As that court explained, "Mr. Young's ACFA claim is based on allegations that he relied on Grand Canyon's **intentional** misrepresentations to his own detriment."[87] The Department substantial misrepresentation claim does not require evidence of intent (although the emails described above support that the misrepresentations were knowing.)
- Fourth, the *Young* court dismissed the plaintiff's claims for intentional misrepresentation and under the Arizona Consumer Fraud Act because his "generalized assertions" did not contain sufficient specificity "to satisfy the who, what, when, where and how required by Rule 9(b)." [88] This rule and standard is not applicable to the Department's action. Even if it were, the Department's investigation uncovered specific facts as to all of the standards required by Rule 9(b).

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[86] GCU Ltr. Dated June 21, 2023, pp. 3-4.

[87] *Young v. Grand Canyon Univ., Inc.*, 57 F.4th at 875 (emphasis added).

[88] *Id.* at 876.

- Fifth, the *Young* plaintiff alleged breach of contract based on his enrollment agreement. The Eleventh Circuit dismissed this claim after concluding that the plaintiff "fails to point to any provision in any of the relevant documents promising that a student will complete his doctoral degree program in 60 (and no more than 60) credit hours.[89] The evidence discussed in this letter is not based upon breach of a promise regarding a set number of credits; rather, it is based on GCU's clear representations about "Total Program Cost", "Total Program Tuition and Fees", and "Total Estimated Cost." The Eleventh Circuit was not presented with these facts or legal claims, and consequently did not rule on them.

Second, GCU inaccurately claims the Department must show actual reliance by each student to establish a substantial misrepresentation under 34 CFR § 668.71.[90] GCU claims that "[u]nder the Department's regulations, a misrepresentation does not become a substantial misrepresentation (and thus actionable) without establishing that a student (1) reasonably relied on the misrepresentation, and (2) the reliance caused the student harm. GCU contends that this requires a detailed assessment of each student's individual circumstances."[91] GCU misstates the relevant legal standard. Under 34 C.F.R. § 668.71(c), the Department need not demonstrate actual reliance by any individual student. Rather, the regulation defines substantial misrepresentation to include "[a]ny misrepresentation, including omission of facts as defined under § 668.75, **on which the person to whom it was made could reasonably be expected to rely**, or has reasonably relied, to that person's detriment." (emphasis added). As discussed throughout this letter, a prospective student could reasonably be expected to rely, to their detriment, on GCU's written statements regarding how much it would cost them to earn a degree.

GCU also argues that it would be unreasonable for students to expect that continuation courses, when disclosed, would be free. The Department disagrees; A student could be reasonably expected to rely on GCU's written disclosure of representations regarding "Total Estimated Costs," "Total Program Cost," and "Total Program Tuition and Fees," none of which included the cost of a single continuation course.

GCU provided nine exhibits to its Response Letter containing affidavits, additional disclosures, and training materials, and, as discussed above, provided additional versions of enrollment agreements in September 2023. However, none of those materials reflect an accurate disclosure of cost to prospective or current doctoral students. As a result, the information contained in those exhibits does not change the determinations outlined in this letter.

In meetings with the Department after GCU received the Department's August 16, 2023 letter, GCU argued that *Association of Private Sector Colleges and Universities v. Duncan*, 681 F.3d

[89] *Id.* at 871.

[90] GCU Ltr. Dated June 21, 2023, p. 14, ¶ 1.

[91] *Id.*

427 (2012) supports its argument because GCU claims it stands for the proposition that a confusing statement is not a substantial misrepresentation under the HEA. GCU claims that its statements are, at worst, confusing and not deceitful and, that case, and subsequent changes to the language of 34 C.F.R. § 668.71, makes clear that a confusing statement is not a violation. However, GCU's reliance on *Duncan* is misguided. First, the Department does not contend that GCU's statements are merely "confusing." For the reasons set forth in this letter, the Department has determined that GCU's representations related to cost of its Doctoral Programs are "false, erroneous, or misleading" and have the "likelihood or tendency to deceive under the circumstances."[92] Second, the *Duncan* court addressed an earlier version of 34 C.F.R. § 668.71(c) and vacated that regulation to the extent that it defined a misrepresentation as including "***true and nondeceitful*** statements that have only the tendency or likelihood ***to confuse***."[93] Here, again, GCU's statements are not true, not nondeceitful, and not merely "confusing." They are false, erroneous, or misleading. Third and finally, even the *Duncan* court expressly noted that a misrepresentation under the HEA prohibits statements that have the tendency or likelihood to deceive, stating:

> We do not take Appellant to be challenging the Department's interpretation that the HEA reaches "misleading statement[s]," insofar as that term encompasses "any statement," ***truthful or otherwise***, "***that has the likelihood or tendency to deceive***." 34 C.F.R. § 668.71(c) (2011); *see also* Appellant's Br. at 42–44. Nor do we see how Appellant could challenge that aspect of the Misrepresentation Regulations. At *Chevron* step one, ***as we have already noted, a misrepresentation can be a true statement that is deceitful.*** [94]

None of the responses, information, or documents provided by GCU in response to the Department's multiple letters gives rise to any basis to alter or change the Department's determination that GCU committed substantial misrepresentations as discussed above.

ANALYSIS OF FINE ASSESMENT

The HEA states that "the Secretary may impose a civil penalty. . . for each violation or misrepresentation" upon concluding that "an eligible institution . . . has engaged in substantial misrepresentation of the nature of its education program, its financial charges, and the

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[92] 34 C.F.R. § 668.71(c).

[93] *Duncan*, 681 F.3d at 452-53 (emphasis added).

[94] *Id.* at 453 (emphasis added). *See also* 81 F.R. 75945 (Nov. 1, 2016) ("[w]e disagree that the substantial misrepresentation standard would not necessarily capture institutional misconduct that did not involve untrue statements. As revised in these final regulations, § 668.71(c) defines a "misrepresentation" as including not only false or erroneous statements, but also misleading statements that have the likelihood or tendency to mislead under the circumstances. The definition also notes that omissions of information are also considered misrepresentations. Thus, a statement may still be misleading, even if it is true on its face").

employability of its graduates."[95] A fine action must be commenced within five-years of when the claim accrued.[96] The term "accrued" has been interpreted to mean the "date of the violation giving rise to the penalty and each instance of a misrepresentation is a separate violation" for purposes of the statute of limitations.[97] Unlike a liability, which corresponds to the amount of federal student aid program funds that an institution improperly received or disbursed and therefore must repay, "the purpose of a fine is to punish the institution for its misconduct and to deter that school, as well as other institutions similarly situated, from committing similar violations in the future."[98]

Currently, the Department may impose a fine of up to $67,544 per violation against an institution (or third-party servicer) that engages in substantial misrepresentation.[99] As clearly stated in the language of the HEA, and supported by OHA cases, a separate fine may be assessed for *each* violation.[100] The word "violation" encompasses each instance of a misrepresentation made to students.[101] As the Secretary explained in *In the Matter of Bnai Arugath Habosem*, Docket No.

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[95] 20 U.S.C. § 1094(c)(3)(B). The implementing regulations can be found at 34 C.F.R. § 668.84.

[96] *In the Matter of Lincoln University*, Decision of the Secretary, Docket No. 13-68-SF (April 25, 2016) (finding that statute requires proceedings to enforce a fine or civil penalty must be initiated within five years from the date that the claim first accrued).

[97] *U.S. Sec. & Exch. Comm'n v. e-Smart Techs., Inc.*, 31 F. Supp. 3d 69, 88 (D.D.C. 2014) ("Each time e-Smart and Defendants filed a new 10–KSB, they made their misrepresentations anew, violated the statute anew, and exposed themselves to liability anew. The fact that e-Smart had published the same falsehoods for years prior is immaterial.").

[98] *In the Matter of Bnai Arugath Habosem*, Decision of the Secretary, Docket No. 92-131-ST (August 24, 1993) at p. 2.

[99] 34 C.F.R. § 668.84(a)(1). As required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which amended the Federal Civil Penalties Adjustment Act of 1990, the maximum fine increases annually to adjust for inflation.

[100] 20 U.S.C. § 1094(c)(3)(B); *In the Matter of Bnai Arugath Habosem*, Decision of the Secretary, Docket No. 92-131-ST (August 24, 1993) ("continuing violations of the same regulatory prohibition [for ineligible disbursements] should not be considered a single violation, but multiple violations of the same prohibition."); *In re North Carolina Academy of Cosmetic Art,* Decision of the Secretary, Docket Nos. 98-123-EA and 98-129-ST (December 12, 2000) (imposing maximum fines per instance for falsifying attendance and financial aid records for a total of $225,000 for nine students); *In the Matter of Demarge College,* Docket No. 04-49-SF (July 10, 2010) (approving maximum fine amount for 39 sustained violations of Title IV for a total fine of $1,072,500).

[101] *In the Matter of Bnai Arugath Habosem*, Decision of the Secretary, Docket No. 92-131-ST (August 24, 1993) (deciding that "continuing violations of the same regulatory prohibition should not be considered a single violation, but multiple violations of the same prohibition").

92-131-ST (August 24, 1993), anything short of a separate fine for each violation "would result in an institution having no incentive to correct existing violations."[102]

In determining the fine amount, the Department considers the appropriateness of the fine with respect to two factors. First, the size of the institution, and second, the gravity of the violation, failure, or misrepresentation.[103]

Number of Violations: To determine the number of violations in this case, the Department reviewed the number of students who enrolled during the period in which GCU made the misrepresentations. Based upon data obtained from GCU and from internal Department information, approximately 7,547 students began their enrollment in GCU's Doctoral Programs between November 1, 2018 and October 19, 2023. Each of those enrollments constitute a separate violation because they were each subjected to GCU's substantial misrepresentations at least once, when they signed an enrollment agreement. Students may have been subjected to the misrepresentation at other times as well, including on the school's website, and the Net Price Calculator. Furthermore, given the centrality of price as a factor, and the falsity of GCU's statements about price, there is a reasonable expectation that each student relied upon the misrepresentation to their detriment, regardless of whether they graduated, withdrew, or are still enrolled, and regardless of how many credits they have completed or how much they have incurred in loans or paid tuition to GCU. Based upon that analysis, the Department has determined that GCU committed a substantial misrepresentation at least 7,547 times between November 1, 2018 and October 19, 2023.

Size of the Institution: The size of an institution is not a mitigating factor for purposes of calculating the fine if the institution's Title IV funding is above the median funding levels for the Title IV, HEA programs in which it participates.[104] There can be no question that GCU is a large institution in the Title IV program – in fact, measured by funding levels, it is the largest.

The median funding levels for the 2021-22 award year for institutions participating in the Federal Pell Grant Program, Federal Direct Loan Program, and Campus-Based Programs are $1,577,089, $2,196,429, and $272,724, respectively. According to Department records, in the 2021-22 award year, students enrolled at GCU received approximately $180,052,343 in Federal Pell Grant funds, $904,936,254 in Federal Direct Loan funds and $7,999,215 in Campus-Based funds. Even if the analysis for determining an institution's size for purposes of determining an appropriate fine amount focused only on the GCU doctoral programs, which it does not, and used only the amount of Title IV funds disbursed to students solely for institutional costs (e.g., tuition and

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[102] *In the Matter of Bnai Arugath Habosem,* Docket No. 92-131-ST.

[103] See 20 U.S.C. § 1094(c)(3)(B)(ii).

[104] *In the Matter of Bnai Arugath Habosem,* Decision of the Secretary, Docket No. 92-131-ST (August 24, 1993) (finding that Bnai was not a "small school" for purposes of mitigating a fine because it received above the median funding level in the Pell Grant program).

fees), which it does not, GCU disbursed approximately $15,537,888 to students for institutional costs in those programs during the 2021-2022 award year, again making its funding well above the median for Title IV schools in the 2021-22 award year. As a result, the "size of the institution" does not warrant mitigation of the fine in this instance.

Gravity of the Offense: The gravity of GCU's violations is significant. GCU misrepresented a key material term – cost – to every student enrolling in its Doctoral Programs and to all prospective students considering enrolling in these programs, over 5 years. The additional costs for the almost 78% of graduates who needed at least 5 continuation courses to complete the program resulted in roughly $10,000 to $12,000 in additional tuition costs alone, approximately a 25% increase from the total program costs GCU represented to prospective students. This misrepresentation relates to a term that is likely to be central to students' decision, and one upon which they could reasonably be expected to rely to their detriment, when choosing to enroll at GCU. This misrepresentation also contributes to potential harm to the Title IV program itself, as students are ultimately required to pay more than was advertised to actually obtain a degree. This involves the commitment of additional Title IV funds and may cause more students to withdraw without obtaining a degree. Further, email evidence indicates that GCU was aware of misrepresentations and omissions in its representations about cost.

GCU took some efforts to remediate the violation by adding information about continuation courses to its disclosures. However, as noted above and discussed in this letter, those updates were not sufficient. Even with those additions, a reasonable student could conclude that the "total cost" advertised by GCU would in fact be the total cost.

That said, some mitigating factors are present. Most significantly, the violations identified impacted only GCU's doctoral dissertation programs, which enroll fewer than 5% of GCU students who receive Title IV benefits. In addition, GCU generally cooperated with the Department's investigation, and, as noted above, has taken some steps through the years to update its disclosures.

The maximum fine available to the Department is $509,754,568 – a $67,544 fine for each of the 7,547 violations identified. After considering the size of GCU, the gravity of the violations, and the mitigating factors, the Department intends to impose a fine of $37,735,000 - a $5,000 fine for each of the 7,547 violations. A $5,000 fine per violation represents approximately 7.5% of the maximum allowable fine under the HEA. This significant reduction primarily reflects the fact that the violations identified did not impact all of GCU's programs and students, but rather were confined to doctoral programs requiring a dissertation.

The fine of $37,735,000 will be imposed on November 20, 2023, unless I receive, by that date, one of the following: 1) a request for a hearing to be conducted by the Office of Hearings and Appeals; or 2) written material indicating why the fine should not be imposed.

If GCU chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid
830 First Street, NE
UCP-3, Room 92G4
Washington, DC 20002-8019

If GCU requests a hearing, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of GCU's case to a hearing official who will conduct an independent hearing. GCU is entitled to be represented by counsel during the proceedings. If GCU does not request a hearing but submits written material instead, the Department will consider that material and notify GCU of the amount of the fine, if any, that will be imposed.

Any request for a hearing or written material that GCU submits must be received by November 20, 2023; otherwise, the $37,735,000 fine will be effective on that date.

If you have any questions or seek any additional explanation of GCU's rights with respect to this action, please contact Lauren Pope of my staff at [redacted]

Sincerely,

[redacted]

Susan D. Crim, Director
Administrative Actions and Appeals Service Group
U.S. Department of Education

Enclosure A

cc: Dr. Barbara Gellman-Danley, President, Higher Learning Commission, via [redacted]
Mr. Kevin LaMountain, Executive Director, Arizona State Board for Private Postsecondary Education, via [redacted]
Department of Defense, via osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil
Department of Veteran Affairs, via INCOMING.VBAVACO@va.gov
Consumer Financial Protection Bureau, via CFPB_ENF_Students@cfpb.gov

Exhibit 2

November 6, 2019

UPS Tracking #
1ZA879640294525311

Mr. Brian Mueller
President
Grand Canyon University
3300 West Camelback Road
Phoenix, AZ 85017

Re: Review of the Change in Ownership and Conversion to Nonprofit Status of Grand Canyon University (OPE ID 00107400)

Dear Mr. Mueller:

At your request, the U.S. Department of Education ("Department"), Federal Student Aid has conducted a review of the change in ownership application for Grand Canyon University, OPEID 00107400 ("Institution" or "GCU").

Prior to July 1, 2018, GCU was owned and operated by Grand Canyon Education, Inc. ("GCE"), a Delaware publicly traded corporation. By way of a July 1, 2018 Asset Purchase Agreement ("APA"), GCE sold its School Assets (as set forth in APA at Recital B and as defined in APA §2.1) to Gazelle University ("Gazelle"), an Arizona nonprofit corporation ("the Transaction"). Gazelle and GCE are hereinafter collectively referred to as the "APA Parties."[1] Prior to the Transaction, Gazelle was granted tax-exempt status by the Internal Revenue Service. GCU seeks approval of its change in ownership and request to convert to nonprofit status for purposes of its participation in Title IV, HEA programs. Although the parties had requested the Department to conduct a pre-acquisition review, the Transaction closed on or about July 1, 2018, prior to completion of the Department's pre-acquisition review. This letter constitutes the Department's post-closing decision on the change in ownership ("CIO") and requested change of status from proprietary to nonprofit.

Following the closing of the Transaction, GCU timely submitted a materially complete application and other documentation to satisfy the regulatory requirements set forth at 34 C.F.R. § 600.20(g) and (h). GCU has also submitted additional documentation and information as

[1] After the Transaction, Gazelle changed its name to Grand Canyon University. In documents submitted to the Department, Gazelle has also been referred to as "GCU" and the "New GCU." To avoid confusion, the Department will refer to the APA Parties as "Gazelle" and "GCE," based on the names used in the introductory paragraph of the APA: "Gazelle University" (the purchasing entity) and "Grand Canyon Education, Inc." (the selling entity). The sole member of Gazelle is Grand Canyon Foundation.

requested by the Department during its review.[2] A temporary provisional program participation agreement ("TPPPA") was issued to GCU on August 20, 2018, and GCU has been participating on a month to month basis since September 1, 2018.

I. BACKGROUND ON THE TRANSACTION

A. Overview of the APA

Pursuant to the APA, Gazelle purchased the School Assets,[3] which included Campus Property, certain Personal Property, Assumed Contracts, Course Materials and intellectual property embodied in the Course Materials and other identified intellectual property, and other assets, as listed in APA §2.1. Under APA §2.2, Services Assets remained the property of GCE, and include assets not listed in APA §2.1 or the related schedules, Retained Property (including GCE's headquarters building at 2600 West Camelback Road), and other assets (including cash and cash equivalents) as further described in APA §2.2.

APA §2.3 identifies the liabilities assumed by Gazelle ("Assumed Liabilities") and APA §2.4 identifies the liabilities that are not assumed by Gazelle ("Excluded Liabilities"). Significantly, the APA purports to insulate Gazelle from assuming Liabilities arising under Educational Laws.

The Purchase Price for the Transaction includes the assumption of the Assumed Liabilities, and payment of the Base Purchase Price ($853,068,386.00 "plus []$1.00") and the Invested Amount.[4] APA §3.1. The Base Purchase Price was paid by Gazelle's delivery of the Senior Secured Note and Credit Agreement ("CA"). APA §3.2. Notably, the lender for the Transaction is GCE. The loan is secured by a first lien on all of Gazelle's property and the property of all of Gazelle's subsidiaries, which are also guarantors of the loan. CA § 7.12, CA § 7.13. GCE also provides funding for Gazelle's operations under the Credit Agreement. CA § 2.01.

B. Overview of the Master Services Agreement

As part of the Transaction, the APA Parties also entered into a Master Services Agreement ("MSA") pursuant to which GCE provides Services to Gazelle/GCU and Gazelle/GCU pays a part of its revenues to GCE. Exhibit B to the MSA describes the Services that GCE provides to Gazelle. Gazelle further agreed that GCE is the exclusive provider (during the Term of the MSA) of certain services, identified in the MSA as "Exclusive Services," for which Gazelle agrees it will not contract with any third party absent GCE's approval (which is subject to GCE's sole discretion). MSA §3.1. The Exclusive Services are the following: Marketing (MSA Exh. B

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[2] Some information in this letter is shaded in grey as a result of the APA Parties' designation of that information as confidential, consistent with the Department's directions when it requested documents from the APA Parties.

[3] Words capitalized herein but not defined have the meaning set forth in the APA and/or the Master Services Agreement entered into as part of the Transaction.

[4] At closing, Gazelle paid an additional $17 million, rounded, representing amounts contributed to, or paid by, GCE in connection with GCU in the two months prior to the closing of the Transaction. *See* Purchase Price Adjustment Certificate.

§1); Enrollment Services and Budget Consultations (MSA Exh. B §2); Student Support Services Counseling (MSA Exh. B §3); and Technology (MSA Exh. B §12). The non-exclusive services are the following: Document Intake (MSA Exh. B §4); Student Records Management (MSA Exh. B §5); Curriculum Services (MSA Exh. B §6); Accounting Services (MSA Exh. B §7); Financial Aid Services (MSA Exh. B §8); Procurement Services (MSA Exh. B §9); Audit Services (MSA Exh. B §10); Human Resources (MSA Exh. B §11); Business Analytics Services (MSA Exh. B §13); Faculty Operations (MSA Exh. B §14); and Compliance Monitoring and Audits (MSA Exh. B §15). The MSA provides that GCE shall at all times provide at least three services in addition to Enrollment Services. MSA Exh. B (introductory paragraph). However, even if services are provided by a third party, Gazelle is still obligated to pay GCE its Services Fees described in MSA §5. *See* MSA §3.1. GCE also has the right to subcontract any of the services, as described in MSA §3.2.

Pursuant to MSA §5.1, the Services Fee is determined and paid in accordance with MSA Exhibit D which provides that Gazelle is required to pay GCE a fee that is equal to 60% of Gazelle's Adjusted Gross Revenue (excluding charitable contributions or other gifts used for purposes other than payment of tuition and fees for students).[5] Adjusted Gross Revenue consists of all revenue (net of refunds and scholarships accounted for as a discount to tuition) received by Gazelle or its Affiliates from the following sources:

(a) Tuition (including tuition funded by third party sources and charitable contributions;
(b) Fee revenue from students for use of the online communications portal ("the Platform");
(c) Fee revenue from students and their related activities
(d) Fee revenue from students for use of the Canyon Connect learning resources platform;
(e) Fee revenue from students for student housing;
(f) Fee revenue from students for meal plans and other food services; and
(g) Other revenue including revenue from: (i) sales of athletic tickets; (ii)the operation of the Grand Canyon University Hotel and Conference Center; (iii) the operation of the Maryvale Golf Course; (iv) the operation of the Grand Canyon University Arena; and (v) the operation of Canyon Enterprises (apparel sales and other businesses).

MSA Exh. D §1. The MSA does not provide any cap on the total amount of the Services Fee that must be paid to GCE in any year or cumulatively over the years.

Although the Services Fee is subject to review and adjustment pursuant to Exh. D §2(b), the first Optional Adjustment Date does not occur until the tenth anniversary of the Effective Date, and thereafter occurs on the first date of each Renewal Term (*i.e.,* at five-year increments thereafter). Exh. D at 2(b) and (c), and MSA §6.1. The Initial Term of the MSA is 15 years, with automatic renewals thereafter for successive five years terms ("Renewal Term") apparently in perpetuity. MSA §6.1. Either party can elect not to renew at the end of the Initial Term or any Renewal Term, but if Gazelle exercises that right, on the last day of such term it must pay GCE a Non-Renewal Fee equal to 50% of the aggregate Services Fees paid or payable for the trailing twelve month period ended as of the end of the immediately preceding month. MSA §6.2 and MSA

[5] The Services Fee is exclusive of all Tax, such that Gazelle must "pay and be liable for any and all Tax imposed on, sustained, incurred, levied and measured by the cost, value or price of the Services" provided under the MSA. MSA §7.1.

Exh. A at A-5 (definition of Non-Renewal Fee). Although Gazelle has the right to terminate the MSA during the Initial Term, it must give notice 18 months in advance, and cannot elect do so before July 1, 2025 (seventh anniversary) or the date by which the Senior Secured Note is paid in full – whichever is later. MSA §6.3. If Gazelle exercises that right, on the effective date of termination it must pay GCE an Early Termination Fee equal to 50% of the aggregate Services Fees paid or payable for the trailing twelve-month period ended as of the end of the immediately preceding month. MSA §6.3 and MSA Exh. A at A-3 (definition of Early Termination Fee). The MSA may be terminated as a result of a Performance Failure (subject to notice and cure) only if the breach in performance has a materially adverse effect on the Non-Defaulting Party or its business. MSA §6.4.[6]

The MSA provides Gazelle with the right to assume Back Office Services (defined in MSA Exh. A at A-2 as Accounting Services, Financial Aid Services, Human Resources and Technology[7]), and if it does, Gazelle and GCE agree to negotiate an adjustment to the Services Fee to account for any transfer of costs. MSA §6.9. But the MSA requires Gazelle to assume those Back Office Services directly, so that it cannot retain any other service provider to perform the Back Office Services. MSA §6.9. By way of example only, this would preclude Gazelle from retaining an outside payroll provider if it assumed Accounting Services, despite the fact that GCE performs payroll services through a third-party payroll provider. *See* MSA Exhibit B §7.1.

II. REPORTS

The Department has also been provided with several reports and valuations that were commissioned to support the Transaction, including reports from Barclays Capital Inc. ("Barclays") and Deloitte Tax, LLP ("Deloitte).

A. Barclays

The report from Barclays ("the Barclays Report") is dated April 26, 2018 and entitled "Project Gazelle." It is marked "Preliminary/Subject to further review, diligence and revision." The Barclays Report describes the contents of the report as containing "material that was provided to the Board of Directors … of Gazelle [identified as 'the Company']." [8] On August 29, 2019,

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[6] The MSA limits GCE's liability for any claim (other than one related to Confidentiality or Intellectual Property Rights, or based on GCE's gross negligence or willful misconduct) to the amount paid by Gazelle to GCE in the most recently completed three month period, and Gazelle "releases and waives any claim against GCE in excess of such amount, to the extent permitted by Applicable Law." MSA §11.

[7] "Technology" is designated as both a Back Office Service (MSA Exhibit A at A-2) and one of several Exclusive Services (MSA Exhibit B §12, identified with an *).

[8] While the Barclays Report states that it was prepared for/ provided to the Board of Directors of Gazelle (cover and at 1), Barclays was engaged by GCE and provided its analysis to the GCE Board as set forth in various places in GCE's board minutes. For example, both the November 21, 2017 and December 6, 2017 board minutes note the engagement of Barclays as GCE's "financial advisor." On February 21, 2018 the GCE Board and representatives of Barclays discussed how Barclays could best help the Board, and the potential merits and risks of the Transaction or "remaining as a for profit education company." *See*

Jonathon Glass, (counsel for GCU) provided the Department with a "follow-on" report from Barclays which was provided to the board of GCE "to confirm certain information in the final days before the transaction closed ("Barclays Update")."[9]

The Barclays Report reviews the strategic options available to GCE, including separation of the Institution and GCE, with GCE as the services provider as an alternative to the status quo. One of the considerations Barclays notes in regard to separation is "significant concentration of revenue for GCE and reduced influence over University." Barclays Report at 14. The Barclays Report provides a side-by-side comparison of the Institution's operating costs in 2019 based on two different assumptions – (1) GCE continues to own the Institution and incurs the costs to operate the Institution or (2) the Transaction closes, and Gazelle is required to hire GCE to perform some of the operational activities. *See* Barclays Report at 33. The comparison shows that under the planned separation (and as effectuated on July 1, 2018) the costs to operate the separated Institution increase from $810 Million to $1.496 Billion for fiscal year 2019, solely as a result of the Service Fees paid to GCE. Barclays Report at 33. The increase is not because GCE will be providing new or additional services, but solely because the MSA requires Gazelle to pay GCE the Services Fee.[10]

Although the Barclays Report (dated April 26, 2018) assumes a 65%/35% revenue split on most items, and a different split on housing (20%/80%), meals (5%/95%) and Canyon Connect (5%/95%), the executed MSA provides for a straight 60%/40% split and includes sources of revenue that are not included in the Barclays Report, including revenue from Gazelle Arena. These differences would seem to only exacerbate Barclays' assessment that the separation of the servicing functions from the Institution will result in a significant increased cost for the operation of the Institution, with those increased funds flowing to the benefit of its prior owner, GCE. Under the assumptions in the Barclays Report, the Services Fees under the MSA (estimated at $697 million for fiscal year 2019), *see* Barclays Report at 33, are a 67% markup on GCE's $416 million costs of performance. No evidence has been presented to the Department that would suggest that the services provided post-Transaction would be markedly different or more

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February 21, 2018 GCE Board Minutes at 2. The Barclays Report was provided to the GCE Board and discussed at the meeting held on April 26, 2018. *See* April 25-26, 2018 Minutes at 3. This is consistent with references in the Barclays Report to the Company's "shareholders." By contrast, the Gazelle board minutes do not reflect any discussion of the Barclays Report, and it is not clear whether the Barclays Report was provided to the Gazelle board prior to the approval of the Transaction.

[9] In his August 29th e-mail transmitting the Barclays Update, Mr. Glass explained that the Gazelle/GCU board "did not see or receive the [Barclays Update] until following up with GCE re [the Department's August 26, 2019] request." The Barclays Update was discussed with the GCE Board at its June 20, 2018 meeting. *See* June 20, 2018 GCE Board Minutes at 3-4.

[10] The cost for GCE's services is particularly high considering that GCE is not even performing the entirety of the operational activities that were previously performed at a cost of $810 million. Some services are performed by Gazelle.

expensive to provide.[11] Once the Services Fees are added, GCE will incur 28% of total expenses ($416,000,000 of $1,496,000,000) and Gazelle will incur 72% of total expenses ($1,080,000,000 of $1,496,000,000), as can be extrapolated from the information contained in the report:

OPERATING EXPENSE SPLIT POST-TRANSACTION			
Expenses in Millions $	**Total**	**GCE Share under MSA**	**Gazelle Share as Owner under MSA**
Instructional	476	105	371
Marketing & Promotional	125	125	0
Admissions Advisory	149	149	0
General & Administrative	49	37	12
Subtotal	**799**	**416**	**383**
Share %	**100%**	**52%**	**48%**
Gazelle Fees under MSA Agreement	697	0	697
Total	1496	416	1080
Share %	**100%**	**28%**	**72%**

See Barclays Report at 33 (source of information for the above chart).

B. Deloitte

Perhaps trying to circumvent the somewhat obvious conclusion that under the MSA the Institution costs an additional $697 Million to operate in the first fiscal year, the parties have also provided the Department with a Transfer Pricing Report for the Fiscal year ending December 31, 2018, which was prepared by Deloitte ("Deloitte Report"). Deloitte performed an "Economic Profit Split" ("EPS") analysis in connection with the services provided by GCE to Gazelle during the 15 year period "beginning with fiscal year ending December 31, 2018," and the transfer of certain intangible assets and license of the technology platform from GCE to Gazelle during FY 2018. Deloitte Report at 1. An EPS is an analysis of what each party to a common economic enterprise contributes to revenue-generating activities. Deloitte Report at 1. The Department was provided with two Deloitte Reports, one clearly marked "Draft" and a virtually identical version. Neither version is signed, identifies the person(s) responsible for the report's conclusions, nor provides an affirmation from an appropriate person that the report has been prepared according to the applicable standards. However, the Department has confirmed with counsel for GCU that the version of the Deloitte Report that is not marked as a draft is the final version of the report.

[11] For purposes of this analysis, the Department assumes that the payments owed to GCE under the Credit Agreement are fair value. When those payments are included in the analysis, GCE receives 95% of Gazelle's revenue.

The first step in Deloitte's EPS analysis was to identify the "assets and activities" of the enterprise that generate revenue. *Id.* at 1. Based "on fact finding discussions with key management personnel" – which at the time would have consisted solely of GCE's management – Deloitte found that the Institution generates revenue from seven activities.[12] Deloitte concluded that virtually all of the Institution's revenue-generating activities are those that will be wholly or partially performed by GCE under the MSA. *Id.* at 19-30. Because Deloitte was working from a prior draft of the MSA, its conclusion in this regard is not accurate. *See* discussion below regarding revenue from the arena, athletic tickets, etc.

Significantly, Deloitte did not identify the Institution's physical campus as revenue-generating, which is at odds with statements made by GCE to its shareholders. Notwithstanding the campus facilities' undeniable contribution to revenue, Deloitte did not consider it as a revenue-generating asset. According to GCE's 2017 Annual Report to shareholders, one of the competitive factors in the post-secondary education market is "the quality of the ground campus facilities." GCE 2017 Annual Report at 15. In fact, GCE told its shareholders that one of the primary factors for its revenue increase in 2017 was due to "ancillary revenues resulting from the increased traditional student enrollment (e.g. housing, food, etc.)" and that a higher percentage of its students were residing on campus. *Id.* at 48. GCE noted that its campus was also valuable to "provide our online students, faculty, and staff with a sense of connection to a traditional university." *Id.* at 14. To continue increasing revenues, GCE planned to enhance the reputation of the ground campus by expanding campus infrastructure. *Id.* at 14. According to the figures provided in the Barclays Report, over 27% of the Institution's tuition revenue is from on-campus students. *See* Barclays Report at 33.

According to Deloitte, the next step in the EPS analysis was to identify risks associated with the revenue-generating activities and assets and determine which party: contractually assumes the risk; encounters upside or downside consequences of the risk; controls the risk; mitigates the risk; and has the financial capacity to assume the risk. Deloitte Report at 5-6. Deloitte identified several risks associated with the seven revenue-generating activities it considered. Those risks include negative perception of marketing campaigns, failure to develop course content that will prepare students to complete the course work, failure to attract prospective students, software bugs, inability to recruit and hire effective faculty, and workplace injuries, among others. *Id.* at 26-30. In each instance, the Deloitte Report simply notes that the fixed costs are borne by both GCE and the Institution, and that both face risks related to the various functions. However, the Deloitte Report wholly fails to assess which party assumes these risks, encounters upside or downside consequences of these risks, controls these risks, mitigates these risks, or has the financial capacity to assume these risks. As the Deloitte Report states, this failure renders Deloitte's EPS analysis "incomplete." *Id.* at 5.

The principal focus of the Deloitte Report is the risk of fixed costs, defined as costs that do not vary with the quantity of services provided. *Id.* at 1, 33-35. Deloitte claims that the party assuming fixed costs assumes greater risk justifying a greater share of profits. *Id.* at 5. Although this information is not detailed in the report, Deloitte apparently determined which costs

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[12] Based on discussion with "key management personnel," Deloitte concluded that the following functions constituted the "key value creating drivers": marketing; curriculum development; admissions advisory; IT and technology; back-office support; faculty services; and Executive Leadership. Deloitte Report at 19.

associated with the seven revenue-generating activities were fixed costs and what share of fixed costs Gazelle and GCE were contractually obligated to pay. *Id.* at 33. Nowhere does the Deloitte Report identify the specific costs Deloitte deemed fixed, let alone provide any analysis supporting the conclusion as to which party is responsible for paying such costs. Instead, the Deloitte Report simply states that GCE is responsible for paying approximately $270 million in fixed costs for the seven revenue-generating activities and that Gazelle is responsible for paying approximately $164 million. Deloitte Report at 36. The Deloitte Report is wholly devoid of any information that would allow the Department to assess the accuracy or reasonableness of this conclusion.

The Deloitte Report also appears to give significant weight in its determination of fixed costs to its consideration of off-balance sheet assets ("OBSA"). Deloitte apparently considered historic trial balance sheet financial data (from FY 2013 through FY 2017) to "capture any fixed costs incurred in the past accounting period that are tied to the revenue generated in FY 2017. These are the costs that generate OBSAs." Deloitte Report at 32. Presumably, because all of those earlier costs were incurred during the years prior to the separation, Deloitte's calculation of fixed costs gives GCE – and not Gazelle – the benefit of those historical costs that were incurred before the services function was separated on July 1, 2018.

GCE has recognized that an important competitive factor in the post-secondary education market is "qualified and experienced faculty." 2017 Annual Report at 15. As GCE described it, the high quality of the Institution's faculty contributed to student retention and was "critical" to the Institution's success. *Id.* at 6, 9. Although Deloitte included "faculty services" as one of the seven "key value driving factors," it is unclear how it evaluated the faculty's contribution to revenue generation or risks related thereto, given that Gazelle is responsible for most of the costs of "Instructional Cost and Services" (i.e.,. $371 Million for Gazelle and $105 Million for GCE). *See* Barclays Report at 33. The Deloitte Report does not include any discussion of whether or not Gazelle was responsible for fixed-cost risk in connection with the Institution's faculty.

In addition, because the Deloitte Report failed to identify the Institution's campus as a revenue-generating asset, it failed to consider the fact that Gazelle is incurring significant fixed-cost risk in connection with the campus. Gazelle owes a lump sum payment to GCE on July 1, 2025 of $853,068,386, which represents the purchase price for the campus. CA §1.01 (defining "Term Loan Commitment" and "Maturity Date") and §2.07(c). Gazelle also owes GCE a monthly interest payment of approximately $4.2 million. *Id.* §1.01 (defining "Applicable Rate" and "Interest Payment Date") and §§2.08 (a) and (f) (interest is payable at the Applicable Rate on each Interest Payment Date).

Despite the fact that the purpose of the Deloitte Report was to determine a reasonable range of remuneration by Gazelle to GCE as a percentage of Gazelle's Adjusted Gross Revenue, the Deloitte Report was premised on the inaccurate assumption that Adjusted Gross Revenue for calculating the Services Fees excluded sales of athletic tickets, operations of Gazelle's hotel and conference center, the operation of the Maryvale golf course, and the operation of Grand Canyon University Arena. *See* Deloitte Report at 3, and at n.4, and at 6. Apparently without considering these sources of revenue and the risks/costs related thereto, Deloitte concluded that the reasonable split is 62%/38% or 63%/37%. Under the executed MSA, all of those sources of revenue are included in calculating the 60% Services Fees. MSA at Exhibit D. In short, the revenue sources Deloitte uses to calculate each parties' percentage contribution to the seven revenue-generating activities identified is based on fundamentally flawed assumptions.

It also bears mentioning that the main opinions in the Deloitte Report do not appear to be based on information that Deloitte independently tested and analyzed on behalf of Gazelle. Rather, those opinions in key areas appear to have been based on information supplied by GCE management.[13] For example, Deloitte states that it identified revenue-generating activities based on "fact finding discussions with key management personnel," that the classification of fixed costs was made "in conjunction with GCE management," and that the calculation of the share of fixed costs Gazelle and GSA would each pay under the MSA was determined by "Deloitte Tax and GCE." *See, e.g.,* Deloitte Report at 19, 33.

III. THE DEPARTMENT'S REQUIREMENTS FOR NONPROFIT STATUS

The Department regulations identify certain covered transactions for an instituton that constitute a change in ownership which require the institution to apply for and obtain approval from the Department to continue participating in Title IV, HEA programs. These include instances where an institution is sold, is merged with one or more eligible institutions, experiences a change in the ownership of the controlling stock, has a transfer of assets that comprise a substantial portion of the education business of the institution, or has a change in status as a for-profit, nonprofit, or public institution. 34 C.F.R. § 600.31(d).

To establish eligibility and to continue participation in Title IV, HEA programs, an institution must demonstrate to the Department that, after the change, the institution qualifies to be certified to participate under 34 C.F.R. Part 668, Subpart B pursuant to 34 C.F.R. § 600.31(a)(3)(ii). *See also* 34 C.F.R. § 600.20(g) and (h) (requirements for temporary provisional certification following a change in ownership which results in a change of control).

Because Gazelle seeks to participate in Title IV, HEA programs as a nonprofit institution, it must meet the Department's requirements for that status. The Higher Education Act ("HEA") defines an institution of higher education as "a public or other nonprofit institution." HEA §101(a)(4), 20 U.S.C. §1001(a)(4); HEA §102(a)(1), 20 U.S.C. §1002(a)(1). The Department regulations define a nonprofit institution as an institution that:

(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual; and

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

[13] Although the Deloitte Report indicates at p. 19 that it conducted interviews with "University personnel," it appears to be referring to "management" which it describes as "GCE management."

(iii) Is determined by the Internal Revenue Service to be an organization to which contributions are tax deductible under 26 U.S.C. §501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)).

34 C.F.R. §600.2.[14]

Gazelle, an Arizona nonprofit corporation, now owns GCU, satisfying the "owned by one or more nonprofit" entity requirement of the Department's definition of a nonprofit. Gazelle is also legally authorized to operate a private postsecondary degree-granting institution in Arizona, the only location where GCU is located. Arizona law does not require separate approval to operate as a nonprofit, so GCU meets the requirement of legal authority to operate under subsection (ii) of the Department's definition. *See* April 27, 2018 Letter from the Arizona State Board for Private Postsecondary Education and Arizona Secretary of State Website on Veteran's Charity Organizations (explaining that only Veteran's Charities are required to register). Gazelle has been granted 501(c)(3) status by the IRS, meeting the requirement of subsection (iii) of the definition. *See* November 9, 2015 IRS Letter 947 for EIN 47-2507725.

The remaining issue (*i.e*, whether GCU is operated by a nonprofit and whether its net earnings benefit any private shareholder or individual) requires a review of relevant authority under the Internal Revenue Code and an analysis of the impact of the MSA on the regulatory requirements.

IV. AUTHORITY UNDER THE INTERNAL REVENUE CODE

The Department's definition of a nonprofit institution mirrors the statutory language for tax exempt organizations found in 26 U.S.C. § 501(c)(3). Under Treasury regulations, the taxpayer has the burden to demonstrate that it is entitled to tax-exempt status pursuant to section 501(c)(3).[15] This includes the requirement for tax exempt entities to meet both an organizational test and an operational test. 26 C.F.R. § 1.501(c)(3)-1(a)(1).

The organizational test requires a nonprofit organization to be organized exclusively for one or more exempt purposes and its articles of organization must: "(a) Limit the purposes of such organization to one or more exempt purposes; and (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes." 26 C.F.R. § 1.501(c)(3)-1(b). Gazelle's First Amended and Restated Articles of Incorporation are consistent with these limitations.

[14] Similarly, the HEA defines a nonprofit entity as having "no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual." HEA § 103(13), 20 U.S.C.A. § 1003(13) (West).

[15] 501(c)(3). Rule 142(a)(1), *Tax Court Rules of Practice and Procedure*; *Bubbling Well Church of Universal Love, Inc. v. Commissioner*, 670 F.2d 104, 106 (9th Cir.1981).

The focus of the operational test is on the prohibition against private benefit and private inurement, and the related Treasury regulations examine both the primary activities of the organization and its distribution of earnings.[16] *See* 26 C.F.R. § 1.501(c)(3)-1(c)(1)(primary activities) and 26 C.F.R. § 1.501(c)(3)-1(c)(2)(distribution of earnings). Although there is significant overlap in the analysis of prohibited substantial private benefit under the primary activities test and private inurement under the distribution of earnings test,[17] the prohibition on private benefit encompasses a greater range of activities. *See Am. Campaign Acad. v. C.I.R.*, 92 T.C. 1053, 1068–69 (Tax 1989*)*("while the private inurement prohibition may arguably be subsumed within the private benefit analysis of the operational test, the reverse is not true. Accordingly, when the Court concludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether a prohibited private benefit is conferred"). Unlike private inurement, private benefit does not necessarily involve the flow of funds from an exempt organization to a related private party, it can also include other benefits from the activities of the exempt organization *to an unrelated party*. *See P.L.R. 200914063*, 2009 WL 889714 (IRS PLR Apr. 3, 2009) (citing Rev. Rul. 76-206, 1976-1 C.B. 154 which found that an organization formed to promote broadcasting and classical music in the community created a substantial financial benefit to an unrelated for-profit radio station); see also *Capital Gymnastics Booster Club, Inc. v. C.I.R.,* 106 T.C.M. (CCH) 154 (Tax 2013) ("Impermissible benefit to 'private interests' thus encompasses not only benefit to insiders but also benefits that an organization may confer on unrelated or even disinterested persons, *i.e.,* outsiders").

Under the primary activities test, the existence of even one non-exempt purpose, such as creating a private benefit, if substantial in nature, will destroy the organization's exempt status. *See Intl. Postgraduate Med. Foundation v. C.I.R.*, 56 T.C.M. (CCH) 1140, 1989 WL 3808 (Tax 1989)(the existence of a "single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes") (*citing Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279 (1945); *Nat. Assn. of American Churches v. Commissioner*, 82 T.C. 18, 28-29 (1984)). As the United States Tax Court stated in *Intl. Postgraduate Foundation,* "[w]hen a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes." *Id.* In concluding that the IRS had properly revoked the petitioner's exempt status, one of the significant findings of the Tax Court was that the owner of the for-profit business "formed the [nonprofit entity] to obtain customers for his tour business."

In looking at payments to a related for-profit enterprise, the focus is on whether "the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the [nonprofit entity]." *Church By Mail, Inc. v. C.I.R.*, 765 F.2d 1387, 1392 (9th Cir. 1985)(citing *Est of Hawaii v. Commr. of Internal Revenue*, 71 T.C. 1067, 1080-81 (Tax

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[16] The final element prohibits the organization from being involved in political or lobbying activities. 26 C.F.R. § 1.501(c)(3)-1(c)(3).

[17] *See Canada v. Commr. of Internal Revenue*, 82 T.C. 973, 981 (Tax 1984) ("In determining whether these conditions are satisfied, the 'operated exclusively for exempt purposes' and the 'private inurement' requirements often substantially overlap").

1979)). Thus, "the purpose and objective to which the income of the [nonprofit entity] is devoted is the ultimate test in determining whether it is operated exclusively for an exempt purpose." *Church By Mail*, 765 F.2d at 1392. In *Church by Mail,* the Ninth Circuit found that the tax court did not err in determining that the church was operated "for a substantial non-exempt purpose of providing a market" for the printing and mailing services provided by the for-profit entity, where the employees of the for-profit spent a considerable portion of their time working on services provided to the church, and where the majority of the church's income was paid to the for-profit for payments on loan principal, interest, and commissions. 765 F.2d 1391-92.

Percentage of revenue contractual arrangements can lead to prohibited private benefit, and the scrutiny is heightened in arrangements where the compensation is based on an uncapped percentage of revenue. *See* P.L.R. 201235021, 2012 WL 3764677 (IRS PLR Aug. 31, 2012) ("This lack of cap limit entails that [the for profit company] can receive unlimited income that will more than compensate [the for profit company] for the services [it] renders to you. Thus, rather than devoting substantially all your income towards a purpose tax-exempt under § 501(c)(3), your income will be inuring to the benefit of [the for profit company]"). An uncapped percentage as low as 5% of donation receipts has been held to be a prohibited inurement to private shareholders and individuals. *Id.*; *see Spokane Motorcycle Club v. U.S., 222 F. Supp.* 151, 153-54 (E.D. Wash. 1963)(even a de minimis amount can be an impermissible private inurement).

V. THE DEPARTMENT'S DETERMINATION ON THE REQUESTED CHANGE TO NONPROFIT STATUS

A. The Impact of the MSA

Having reviewed voluminous materials provided to it, the Department has concluded that the primary purpose of the MSA, and by extension, the Transaction, was to drive shareholder value for GCE with GCU as its captive client – potentially in perpetuity. Notably, the Executive Summary of the Barclays Report includes the following:

- The Company's strong balance sheet and track record of performance position it to consider a broad range of strategic alternatives to continue to drive share price performance
    - However, perceived and tangible limitations on the Company's ability to aggressively pursue select alternatives as a for profit postsecondary provider must be considered
- Project Gazelle provides an attractive alternative for the Company ***and its shareholders*** to position the Company to:
    - Continue to provide an attractive (and enhanced), competitive offering, and therefore, grow its student population
    - Mitigate the potential risk (perceived or real) posed by its for profit status

- Pursue additional growth vectors to ***drive incremental value for shareholders***

Barclays Report at 2 (emphasis added).

The Barclays Update, provided to the GCE board days prior to the July 1, 2018 closing on the Transaction contains similar language in an updated Executive Summary:

- Investors recognize the Company's pursuit of Project Gazelle, and have continued to show support and interest in the stock, reflecting a positive expected outlook for the Company

- Project Gazelle provides an attractive alternative for the Company ***and its shareholders*** to position the Company to: .... Pursue additional growth vectors ***to drive incremental value for shareholders***

Barclays Update at 1 (emphasis added). The Barclays Update also includes a "Preliminary Discounted Cash Flow Analysis -Implied Value Transfer" analysis which notes that following the Transaction, "current shareholders ***retain ownership*** of GCE cash flows." Barclays Update at 7 (emphasis added). Of course, the primary (if not sole) source of those cash flows is revenue generated from Gazelle/GCU pursuant to the MSA. As explained in the Barclays Update, "following the transaction GCE, Inc. will have a single client, and as a result, a highly concentrated source of revenues," and further, "GCE, Inc.'s performance will be closely tied to that of Gazelle University – should Gazelle University's performance (or regulatory standing) be impacted in any way by (or following) the transaction, GCE, Inc. could also be negatively impacted." *See* Barclays Update at 9.

Similarly, the November 21, 2017 GCE board minutes reflect that the Board engaged in an extensive discussion about "Project Gazelle" including "the benefit to [GCE] and its stockholders." Board Minutes at 1. And at a GCE board meeting immediately prior to the closing of the Transaction, Mr. Bachus (GCE Chief Financial Officer) explained that a post-closing appraisal might result in a higher fair value for the assets transferred, and although GCE would not benefit from that, the higher valuation would benefit GCU in connection with its composite score, and he further explained why a good composite score for GCU "ultimately benefited the Company," meaning GCE. GCE June 28, 2018 Board Minutes at 2-3.

Not only was the Transaction structured so that the revenues generated by GCU are transferred to and retained by GCE for the benefit of its shareholders, the implementation of operations under the MSA results in an additional $697 Million to operate in the first fiscal year, solely resulting from the Services Fee paid to GCE. *See* Barclays Report at 33.

As described above the Services Fee is paid on a variety of revenue generating items:

- tuition
- student use of the online platform
- "students and their related activities"
- Canyon Connect

- student housing
- meal plans and other food services
- athletic tickets
- Grand Canyon University Hotel and Conference Center
- Maryvale Golf Course
- Grand Canyon University Arena
- Canyon Enterprises (apparel sales and other businesses)

MSA Exh. D §1. Although GCE receives 60% of the revenue from all of these revenue generating operations, it does not appear that GCE actually provides services for a significant part of many of these operations – e.g., student housing, food services, operation of the hotel, conference center, golf course, arena or Canyon Enterprises.

Despite GCE only taking on the responsibilities of 28% of the operating costs, 60% of the gross adjusted revenue from the Institution will be paid to GCE under the MSA. When payments on the Senior Secured Note are included in the analysis, GCE will be receiving approximately 95% of Gazelle's revenue. It is also worth noting that if revenue increases at a rate faster than operating costs, GCE has the potential to be paid even significantly higher amounts over the costs of the services it provides. Therefore, instead of the increased revenue being used for GCU's exempt purpose of providing education, the additional revenues would primarily benefit the shareholders of GCE.

It is equally concerning that GCU is essentially a captive client. As described above, the Initial Term of the MSA is 15 years, with automatic renewals thereafter for successive five years terms apparently in perpetuity. MSA §6.1. Although either party can elect not to renew at the end of the Initial Term or any Renewal Term, if Gazelle exercises that right, it has to pay GCE a Non-Renewal Fee (50% of the aggregate Services Fees paid or payable for the trailing twelve month period just ended). MSA §6.2 and MSA Exh. A at A-5. Gazelle has the right to terminate the MSA during the Initial Term, but it cannot elect do so before July 1, 2025 (seventh anniversary) or the date by which the Senior Secured Note is paid in full – whichever is later. MSA §6.3. If Gazelle exercises that right, it must pay GCE an Early Termination Fee (50% of the aggregate Services Fees paid or payable for the trailing twelve-month period just ended). MSA §6.3 and MSA Exh. A at A-3. Thus, Gazelle is locked into the agreement for at least seven years. And even if Gazelle wanted to terminate the MSA after July 1, 2025 because it found a more competitive service provider, the required payment of the Senior Secured note is an arguably prohibitive termination fee.

On October 1, 2018, Mr. Glass (counsel for GCU) wrote to the Department, providing various documents and responding to a September 10, 2018 letter from the Department seeking further information on GCU's request to convert to nonprofit status. ("October 1 Letter"). In part, the October 1 Letter described the approvals from the Higher Learning Commission ("HLC"), the IRS, the State of Arizona and other bodies, including the National Collegiate Athletic Association. As described above however, the Department makes its own determination of nonprofit status for a school's participation in Title IV. Although state and IRS approvals are required for nonprofit status under the Department's regulations, those approvals are not the sole determining factors, nor does the Department need to defer to those determinations. In regard to the IRS designation of tax-exempt status, and as noted by the October 1 Letter, the IRS approval was issued three years prior to the Transaction. Even if the "basic structure" of the Transaction and a prior draft of the MSA were provided to the IRS at that time, there is no evidence that the IRS conducted a comprehensive review of the MSA or any of the studies that were later performed to support the MSA. Unlike the IRS's initial grant of tax-exempt status, the Department's determination of nonprofit status considers the structure and planned operations of the institution when its owner(s) apply for that change of status, and seeks to ensure that a nonprofit institution's revenues – a good portion of which are generated from Title IV funds – are primarily devoted to the mission of the school and not to other parties, including (as here) the shareholders of the prior owner.

Based on the tax authority cited above, the Department has determined that GCU does not meet the operational test's requirement that both the primary activities of the organization and its stream of revenue benefit the nonprofit itself. Rather, the materials that the Department has reviewed demonstrate that GCE and its shareholders – rather than Gazelle/GCU -- are the primary beneficiaries of the operation of GCU under the terms of the MSA. This violates the most basic tenet of nonprofit status – that the nonprofit be primarily operated for a tax-exempt purpose and not substantially for the benefit of any other person or entity.

B. Other Factors

The Department has identified other factors related to the MSA that provide additional support for the Department's determination that granting nonprofit status to GCU is not warranted.

1. Mr. Mueller's Dual Roles

The October 1 Letter explains that the GCE and Gazelle boards have adopted independent structures, and that the boards of GCE and Gazelle made independent decisions to retain Mr. Mueller in his positions as President of GCU and Chief Executive Officer of GCE. The October 1 Letter further notes that the terms of the MSA and Gazelle's bylaws "limit Mr. Mueller's direct involvement in the day to day oversight of the relationship with GCE" because direct oversight is vested in a Designee (*see* MSA §3.11), and because from Gazelle's side, management oversight is vested in a standing committee of the independent members of the board of trustees ("MSA Committee"). But not only is Mr. Mueller the President of GCU and the CEO of GCE, he is also a shareholder of GCE (even if he holds a de minimis percentage of stock). Thus, he is in the dual role of running both the Institution and its managed services provider – the major recipient of the Institution's revenues – and one of its shareholders. GCE's only client is GCU. Thus, as the CEO of GCE, he is the key executive responsible for providing the services under the MSA, with duties of loyalty to shareholders of GCE. Yet, as the Institution's President he will have responsibility to manage matters large and small with its primary service provider, notwithstanding the appointment of a Designee and the independent trustees who comprise the MSA Committee. Given those obviously conflicting loyalties, and the breadth of the services provided under the MSA, the Department is not satisfied that these structures are sufficient to ensure that Mr. Mueller's undivided loyalty is to the Institution.

2. GCE's "Management and Oversight" of GCU

According to GCE's statements to Deloitte, GCE's 44-person "Executive Leadership is responsible for managing and overseeing the University." Deloitte Report at 26 ("the majority of their time relate [sic] to strategic activities that generate future benefits for the University"). Relying on the titles used in the Deloitte Report, the Department has determined that the Executive Leadership team (as of the date the Transaction closed) had 58 members, not 44 members, assuming that the CEO is also included in the team.[18] Upon closing of the Transaction, a significant number of these executives remained employed by GCE – they did not transition to become Gazelle/GCU employees. *See* APA Disclosure Schedules at Schedule 6.3(a)-2. Of the 58 executives, only seventeen transferred to Gazelle: the General Counsel, the Chief Academic Officer, eight academic deans of the various colleges, three senior vice presidents and four vice presidents. Brian Mueller, the CEO of GCE and the President of GCU, is identified in Schedule 6.3(a)-3 as the sole "Joint Employee." This means that nearly 75% of the executive team members responsible for managing and overseeing GCU and developing its strategic vision are employed by its service provider. As employees of GCE, these executive leaders have a primary fiduciary responsibility to the shareholders of GCE[19], a for-profit publicly traded corporation, while at the same time providing significant management and oversight of the Institution. This is particularly so given the scope of the activities GCE is performing under the MSA, including: marketing, enrollment services and budget consultations, student support services counseling, document intake, student records management, curriculum services, accounting services (payroll, accounts payable, general ledger, etc.), financial aid services, procurement services, audit services, human resources, technology, business analytics services, faculty operations, and compliance monitoring and audits. MSA at Ex. B §§1-15.

The Department is skeptical that any nonprofit could outsource the number and type of institutional functions that Gazelle has and still be deemed to operate the Institution. Given the enormous leverage GCE now has over Gazelle by virtue of the MSA and the fact that most of the Institution's key management personnel work for GCE, not Gazelle/GCU, the Department concludes that, as a practical matter, Gazelle is not the entity *actually operating* the Institution as is required under the Department's regulations. *See* 34 C.F.R. § 600.2 (definition of nonprofit at (1)(i)).

VI. CONCLUSION

For the reasons discussed above, the Institution does not satisfy the Department's definition of a nonprofit. The Department approves the change in ownership application of the Institution from GCE to Gazelle (now known as Grand Canyon University) and approves the Institution as a for-

[18] While the Deloitte Report does not identify the Executive Leadership Team members by name, it states that the Team consists of those with the title of CFO, CIO, COO, CTO, Chief Academic Officer, General Counsel, EVP, SVP, VP, Director, and Dean. In regard to the designation of "Director," the Department only counted personnel with the title of "Executive Director," not all personnel with the designation "Director" in their titles.

[19] And at least some of these executives are GCE shareholders themselves.

profit institution for purposes of its continued participation in the Title IV, HEA Programs. The Department denies the request for recognition of the Institution as a nonprofit.

The for-profit status of the Institution is for purposes of its participation in the Title IV, HEA programs. The Department does not take a position with respect to Gazelle's non-profit 501(c)(3) status with the Internal Revenue Service. However, GCU must cease any advertising or notices that refer to its "nonprofit status." Such statements are confusing to students and the public, who may interpret such statements to mean that the Department considers GCU a nonprofit under its regulations. The Department does not take a position regarding statements that GCU may make about its IRS status as a 501(c)(3) tax exempt organization.

The TPPPA under which the Institution has been operating since the CIO continued the prior approval for the Institution to participate under a for-profit status. The for-profit status for the continued participation of the Institution is therefore unchanged. The Institution is reminded that the Institution must meet the Title IV, HEA programs reporting and program eligibility requirements applicable to for-profit institutions, including the 90/10 eligibility requirements described in 34 C.F.R. §668.28 and any applicable gainful employment program requirements set out in 34 C.F.R. Subpart Q.

Under APA § 2.4, Gazelle does not assume any liabilities arising under Educational Laws related to or based on the conduct of the Institution prior to closing. The Department's approval of the CIO does not include the exclusion of liabilities arising under the Title IV, HEA programs, and the approval of the CIO is expressly conditioned on Gazelle/GCU's responsibility for both pre-closing and post-closing liabilities arising under Title IV. Notwithstanding this condition, GCE also retains responsibility for pre-closing liabilities arising under Title IV. The parties are not foreclosed from requiring GCE to indemnify Gazelle/GCU for any losses resulting from pre-closing Title IV liabilities.

The TPPPA will expire at the end of this month. The Department has included with this letter the provisional program participation agreement ("PPPA") for the Institution. The PPPA includes the approval of the new programs requested by GCU. If the Institution wants to continue to participate in Title IV programs without interruption, the PPPA should be signed and returned to the Department no later than November 25, 2019 (given the Thanksgiving holiday) for countersignature.

The APA Parties also previously inquired (through counsel) about whether GCE is considered an "unaffiliated third party" for purposes of the March 17, 2011 Dear Colleague Letter (GEN-11-05) that addressed the implementation of the program integrity regulations and the incentive compensation ban. That question is currently under review, and the Department will provide the parties with a separate response on that issue.

If the Institution has additional factual information or documents that it believes the Department should consider relating to the decisions set forth in this letter, GCU should submit a request for reconsideration. That request should be submitted to Jane Eldred (Jane.Eldred@ED.Gov) within 10 calendar days of the date of this letter. Please note that a request for reconsideration will not stay the expiration of the TPPPA which expires on November 30, 2019.

Sincerely,

Michael J. Frola
Director,
Multi-Regional and Foreign Schools Participation Division

cc: The Higher Learning Commission (*email: Barbara Gellman-Danley, President - president@hlcommission.org, Anthea Sweeney, VP for Legal and Governmental Affairs - asweeney@hlcommission.org*)

AZ State Board for Private Postsecondary Education (*email: Terr Stanfill, Executive Director - teri.stanfill@azppse.gov*)

New Mexico Higher Education Department (*email: exec.admin@state.nm.us*)

IRS
Attn: EO Classification
MC 4910 DAL
1100 Commerce Street
Dallas, TX 75242
eoclass@IRS.gov

Exhibit 3

DICELLO LEVITT

485 LEXINGTON AVENUE SUITE 1001 NEW YORK, NEW YORK 10017

LI YU
LYU@DICELLOLEVITT.COM
646.933.1000

March 19, 2024

<u>Via Certified Mail with Return Receipt Requested</u>

Grand Canyon Education, Inc.
3300 W. Camelback Road, Building 26
Phoenix, AZ 85061

Re: ***Our Client, Tanner Smith and Others Similarly Situated***

TO WHOM IT MAY CONCERN:

This letter serves as a notice and demand for corrective action on behalf of our client, Tanner Smith, and all other persons similarly situated, arising from violations of West Virginia law, including the West Virginia Consumer Credit and Protection Act ("CCPA"), West Virginia Code § 46A-6, *et seq*.

Grand Canyon Education, Inc. ("GCE") has participated in the deceptive, false, and misleading marketing of doctoral programs at Grand Canyon University ("GCU"). Specifically, GCE has advertised, marketed, and recruited prospective students for GCU's doctoral programs by falsely understating the true cost to complete doctoral degree at GCU.

Mr. Smith is a victim of GCE's deception and misrepresentations. He enrolled in a Ph.D. program in psychology at GCU in 2018 based on representations from GCE that he would expect to pay $39,000 in tuition (*i.e.*, 60 credits x $650 per credit). However, Mr. Smith was required to pay over $8,400 more in tuition for four "continuation courses" **after** he had completed 60 credits.

Mr. Smith is not alone. Grand Canyon has known since at least January 2017 that almost none of its doctoral students ever completed their degrees with just 60 credits and that at least 70% of those students had to pay thousands of dollars for continuation courses above what Grand Canyon told them to expect to pay.

To cure the defects described above, we demand that you do and complete the following within 20 days: (1) cease and desist from deceptive advertising, marketing, informing, or further misrepresenting the true cost of doctoral programs at GCU to current and prospective doctoral degree students; and (2) make full restitution to all students who had to pay for such additional coursework.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the marketing and sale of GCU's doctoral degree programs;

2. All documents concerning the amount of credits, tuition cost, and time that it takes to complete GCU's doctoral degree programs;

3. All communications with students and prospective students concerning complaints or comments about GCU's doctoral degree programs; and

4. All communications with the U.S. Department of Education and the Federal Trade Commission concerning any of those matters.

We are willing to negotiate to attempt to resolve the demands in this letter. If you wish to enter into such discussions, please contact us immediately. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Sincerely,

Li Yu

Li Yu