IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DEPARTMENT NO. C-67 HON. EDDIE C. STURGEON, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. ASHFORD UNIVERSITY, LLC, a California limited liability company; ZOVIO, INC., formerly known as BRIDGEPOINT EDUCATION, INC., a Delaware corporation; and DOES 1 through 50, INCLUSIVE, DEFENDANTS.	CERTIFIED TRANSCRIPT DIGITALLY SIGNED CASE NO. 37-2018-00046134-CU-MC-CTL COURT TRIAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DECEMBER 15, 2021

PAGES 1 THROUGH 197, INCLUSIVE

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INDEX

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DATES OF PROCEEDINGS

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PROCEEDINGS

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SAN DIEGO, CALIFORNIA; WEDNESDAY; DECEMBER 15, 2021;
9:17 A.M.

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THE COURT: Let the record reflect that we're under a mask mandate now, so everyone will be required to wear a mask, which you all did. And thank you very much.

The presiding judge has declared that if a judge is in plexiglas, which I am, that therefore, I don't have to wear a mask unless I want to wear a mask. For the record, I choose not to wear a mask.

I'm going to make a specific finding, though, that for my trials -- and each judge is different -- for my trials, I make a specific finding that for any type of appellate review, that I have a very good record, that only counsel who is speaking to the Court may remove their mask if they choose.

There was an issue in another department where a counsel couldn't hear properly and somebody brought an issue that it could possibly be an appellate issue. So my ruling is that when speaking to the Court, if you want to remove your mask, you may, only that counsel speaking directly to the Court.

And for the record, I'm more than 6 feet away from you, okay?

Are we ready?

MS. KALANITHI: Yes, Your Honor.

THE COURT: I like that. So with that being said, we will now have the People's -- one second -- the People's closing statement -- argument.

Give me just one second.

(The Court and the clerk confer off the record.)

THE COURT: I'm good.

MS. KALANITHI: Your Honor, we do have a hard copy and electronic version.

THE COURT: Bring it up.

Appearance and begin, Counsel.

MS. KALANITHI: Good morning, Your Honor. Emily Kalanithi for the People.

THE COURT: Good morning.

MS. KALANITHI: Good morning.

May I begin?

THE COURT: One moment.

(Pause.)

THE COURT: You may, Counsel.

MS. KALANITHI: Thank you, Your Honor.

Over the last six weeks, this Court has heard from over 30 witnesses. Some were defendants' telemarketers, admissions counselors, who explained how they lied because they feared missing their quotas and losing their jobs. Many were the students whose dreams and finances defendants destroyed, and still others were defendants' executives who, at every turn, allowed and encouraged the misrepresentations because for them, it

was all about the numbers.

We thank this Court for your time and careful attention to all of the evidence. The People submit that it overwhelmingly justifies full relief against defendants for their deceptive business practices over the last 12 years.

The Court heard testimony from nine consumers about the false and misleading statements made to them by their trusted Ashford admissions counselors, and they weren't misled about a one-off product or service that they bought. They were misled about the education that they hoped to invest in for their futures.

These nine students had experiences that exemplified the many thousands of other students across the country who were misled by defendants.

As former Ashford president, Dr. Richard Pattenaude, testified, Ashford students had complex and difficult lives, and the students who testified in this trial took time out of their busy, complex lives -- some traveling from as far as North Carolina and Pennsylvania -- all with the goal of shedding a light on defendants' deception and with the hope that other students wouldn't be lied to and ultimately harmed in the way they were.

I'll begin by discussing the evidence showing admissions counselors' misrepresentations to hundreds of thousands of students over the phone in violation of the UCL and FAL. Defendants' misrepresentations to students

are not about getting minor details wrong, as defendants assert.

The People have shown that in call after call, defendants' admissions counselors made statements to students about issues that were most important to them because they deeply affected their futures and their finances in four main issue areas: Their ability to pursue certain licensed careers, like teaching, nursing, social work, and substance abuse counseling; their ability to get financial aid and avoid out-of-pocket costs; the time it would take to complete their Ashford degree; and how much they would have to spend doing so.

THE COURT: Counsel, I'm muting --

THE CLERK: It's muted, Your Honor.

THE COURT: Just making sure.

MS. KALANITHI: Thank you.

THE COURT: There's a number of people that are listening. That's the reason why. So they're muted.

Let's go.

MS. KALANITHI: Thank you, Your Honor.

And lastly, their ability to apply previously-earned college credits towards an Ashford degree and transfer their Ashford credits to other colleges.

Next, I'll discuss several arguments the defendants have made to try to undermine the People's case. For example, that students should have known not

to trust their admissions counselors based on the fine print and various disclaimers and disclosures that admissions counselors were never expressly -- and that admissions counselors were never expressly authorized to lie.

And in this section, I'll try to address the issue that Your Honor highlighted yesterday regarding agency and authorization.

Defendants' arguments fail based on the law, the facts, and simple common sense. In fact, defendants' witnesses largely agree that based on the paper training defendants generated, admissions counselors should not have been making the deceptive statements to students.

But, at the same time defendants generated this paper training, they created a company culture where the key performance indicator was the number of students signing up and paying for Ashford each day, a culture where admissions counselors feared they would lose their jobs, and whatever false or misleading statements admissions counselors needed to get students on the hook were overlooked and, in many cases, directly encouraged by managers and supervisors, as long as the admissions counselors' numbers remained high.

Next, I'll move on to discuss the evidence of what defendants knew. The evidence shows that defendants were well aware of the deception emanating from their San Diego headquarters, from the scorecards

being generated by their own Compliance Department, by the reports of the mystery shopping firm they had retained, and by the statements of their own departing employees in exit surveys.

But despite having more than ample knowledge, defendants failed to stop further deception or to remedy the misleading statements made to students, because to do so would hurt defendants' bottom line.

Defendants further illegally padded their bottom line by charging students unlawful debt collection fees in violation of California law. And I'll discuss that next.

And finally -- finally, I'll discuss relief. I will address Your Honor's questions from yesterday regarding the $25 million in restitution and the penalty breakdown before, during, and after the Iowa monitor period.

Because of defendants' serious, pervasive, and willful violations of California's UCL and FAL, the People are seeking penalties of $75 million, as well as $25 million in restitution for harmed students.

Further, defendants' misconduct has not ceased. Zovio is providing the same enrollment and marketing services for the newly-named University of Arizona Global Campus, what defendants' witness Pat Ogden called the same institution under a different name. And Zovio's historically ineffectual Compliance Department will continue to exercise oversight over the

Zovio admissions counselors enrolling students in UAGC.

There's every reason to believe that the misrepresentations to students are continuing and will continue unless this Court issues an injunction, as requested by the People.

So first, the law. To prove a cause of action under California's consumer protection statutes, the UCL and FAL, it's necessary only to show that members of the public are likely to be deceived. The UCL and FAL prohibit both untrue statements and statements that may contain some truth, but are still likely to deceive. So the same standard likely to deceive a reasonable consumer applies in both instances.

Further, the UCL and FAL apply to single acts of misconduct. Contrary to defendants' argument, the People need not prove that there was an established pattern or practice of misconduct in order to prove liability. Nevertheless, the overwhelming evidence shows that such a pattern and practice of misconduct existed here.

The evidence of misrepresentations on the four issue areas identified here comes from four main sources: The testimony of former Ashford students, the testimony of former Ashford admissions counselors, defendants' documents and witnesses, and the testimony of the People's expert, Dr. Jerry Lucido. Drawing on his 40 years of experience leading college admissions departments, Dr. Lucido reviewed a random sample of 561

calls to identify misrepresentations.

And first, the evidence shows that defendants falsely promised students they could use an Ashford degree to become teachers as testified to by former students Alison Tomko and Crystal Embry. These misrepresentations have life-altering consequences because Ashford degrees do not, in fact, qualify graduates for teaching positions that require licensure or certification.

So first, the truth. As explained by Dr. Lucido, the vast majority of teaching positions require teacher licensure. This includes jobs at public schools, which in California comprise 85 percent of teaching positions, and many private schools, which may require or prefer licensure.

To obtain licensure, aspiring teachers must attend a state-approved teaching program. The problem is that, as defendants admitted in response to a request for admission, not a single online Ashford degree has ever been state approved for teaching.

As a result, aspiring teachers who enroll at Ashford, believing that it's more than just a bachelor's degree, must invest significant additional time and money in a real state-approved teaching program after leaving Ashford.

Had they known the truth, these students could have attended a blended two-in-one program earning their bachelor's degree and their teacher license in just four

years.

Many prospective Ashford students hoped to find work as teachers, and admissions counselor said what it took to get them enrolled with no regard for whether enrolling and ultimately graduating from Ashford would advance students' goals to teach.

The Court heard testimony from former admissions counselor Molly McKinley who explained that she never received training on the educational requirements for licensure, even though she spoke to aspiring teachers nearly every other day on the phone.

As shown here, Ms. McKinley tried to give aspiring teachers the impression that they would be, quote, "ready to go," unquote, once they earned an Ashford degree when, in fact, because Ashford is not state-approved, its graduates would need to attend a totally separate state-approved program before stepping into a classroom as a licensed teacher.

And how did Ms. McKinley learn these techniques? From the successful admissions counselors on her team, that is, admissions counselors who enrolled the most students that her supervisors encouraged her to emulate to get her numbers up, all part of the on-the-job training that continued after admissions counselors finished the initial two-week paper training.

Vice president of financial aid and student success services, Kyle Curran, confirmed that this on-the-job training was all part of how admissions

counselors were trained.

As Dr. Lucido testified, these kind of statements that "you're ready to go" convey that Ashford's degrees have the kind of state approval that allow students to move directly to student teaching or state teaching exams when they do not.

And now let's look at the lie in practice. Ms. Tomko, an aspiring public school librarian, enrolled at Ashford because her admissions counselor told her falsely that Ashford was part of an interstate agreement that meant her Ashford degree would carry over to Pennsylvania as long as she completed her student teaching and passed Pennsylvania's state teaching exam.

Ms. Tomko took handwritten notes during her preenrollment phone call with an admissions counselor shown here, recording the admissions counselor's false statement that Ashford was part of such an interstate agreement. Only after graduating did Ms. Tomko learn that she would need to complete an additional 60 to 90 credits before she could even begin her student teaching necessary to become a certified public school librarian or teacher.

Because Ms. Tomko could not afford the time or money to complete so many additional credits, she never became certified, eventually lost the job she had at a private school, and now works as a phlebotomist, a job that does not even require a bachelor's degree.

And the evidence has shown that defendants'

misrepresentations to students about careers were not limited to teaching. Indeed, defendants also misled students about their ability to use an Ashford degree to pursue careers in nursing, drug and alcohol counseling, and social work, which the People collectively refer to as the "helping careers."

So again, first the truth. Unfortunately for those students misled into enrolling at Ashford, by law, the helping careers require attending an approved program and obtaining licensure and certification.

As Dr. Lucido explained, affirmatively describing Ashford as "perfect" or "geared for" students who applied to the helping careers is deceptive because Ashford's program lacked -- Ashford's programs lacked the programatic accreditation required for licensure.

Ashford's student inquiry department, the first point of contact for a potential Ashford student, was a key component of defendants' deception when it came to careers.

As former student inquiry coordinator Lee Bennett testified, students would frequently mention their interest in one of the helping careers when he was on the phone with them, including nursing and drug and alcohol counseling.

Student inquiry coordinators were not trained in what was required for these careers or whether Ashford programs met those requirements. Instead, Mr. Bennett testified that they were trained to transfer

them to the, quote, "perfect admissions counselor for their needs"; in the case of a substance -- in the case of substance abuse counseling, to an admissions counselor who would talk about Ashford's health and human services department, "someone who would close the sale."

And what happened after they were transferred? Well, the, quote, unquote, "perfect Ashford admissions counselor" themselves did not know the educational requirements for the helping careers. Instead, as former admissions counselor Molly McKinley testified, when she was asked: "When you spoke to prospective students about nursing in that fashion, what was the impression you were trying to give them?

"ANSWER: That they could go to Ashford, get whatever degree we were pushing at that time for nurses or people who wanted to be nurses, and then that would be it, that they would be set from that moment after getting the degree with us."

Defendants' deception about the helping careers was made clear to the Court through testimony from students like Pamela Roberts and Roberta Perez.

Pamela Roberts, shown here, testified that she was inspired to help people and become a certified substance abuse counselor because she had personally benefited from counseling at a substance abuse treatment center when she was a teenager.

But a week before graduation, Ms. Roberts

learned that her Ashford degree did not meet any of the requirements to become a certified substance abuse counselor. Ms. Roberts had put in four years of work toward a degree, sacrificed time with her family and attending AA meetings, only to be left with over $60,000 in student loan debt.

The Court also heard testimony from Ms. Roberta Perez, whose story also illustrates the tragic consequences of defendants' lies about the helping careers. Ms. Perez, a single mother who has worked for many years as a supervisor at a manufacturing plant, testified that she hoped to use an Ashford degree to get a new career and help people by becoming a therapist. It seemed that by enrolling at Ashford, Ms. Perez was on track to do just that.

She testified that her admissions counselor told her with her master's in psychology from Ashford, she could get a wide variety of different occupations in psychology, in the psychology field: Counseling, social work, therapy, human services field.

Unfortunately, Ms. Perez fared no better than Ms. Roberts. After graduating with $40,000 in student loans, Ms. Perez learned the devastating truth about how useless her Ashford degree was. The state licensing agency for marriage and family therapists delivered the news in the letter shown here.

Ms. Perez's Ashford degree was not approved for licensure, and she would need to complete an

entirely new degree before she could even begin her practice hours. Earning an Ashford degree had put Ms. Perez in a financial hole over $40,000 in student loan debt and brought her not one step closer to achieving her career goal.

Defendants also routinely made misrepresentations about financial aid. As Dr. Lucido testified, financial aid information is of critical importance to prospective students because it informs the students how much and how they will pay for their degree.

For many, a college education will be the single largest financial commitment of their lives. Accurate financial aid information is especially important to low income, nontraditional college students, like those who attended Ashford.

So first, the truth. Without a financial aid award letter in hand, an admissions counselor cannot know how much and what type of financial aid a student will receive.

As shown by defendants' own data between 2009 and 2019, one-third of Ashford students did not receive their final financial aid award letter until more than three weeks after enrolling. That's after they've already passed the Ashford Promise period, the three-week period during which a student could drop out of their first class at Ashford at no charge.

Zovio's vice president of financial aid, Kyle

Curran, testified in 2017 that for new students who did receive financial aid packages that year, 41 percent did not receive their packages until more than 28 days after starting class. Again, that's well after the Ashford Promise period had ended.

However, under pressure to enroll students, admissions counselors told them what they needed to close the sale. They gave false assurances about the amount and type of aid they would receive.

Student Loren Evans specifically asked her admissions counselor about whether she would have any out-of-pocket expenses while she was enrolled. She testified, "I asked her if there would be any out-of-pocket expenses on my end before I graduated. I was very adamant about that because I was working part time at the time and trying to support my children and myself."

And what did her admissions counselor say in response? Ms. Evans testified that "She assured me there would not be any until after I graduated and that it would be covered with student loans and grants."

It wasn't until Ms. Evans was close to graduating, long after the Ashford Promise period had ended, that she realized her admissions counselor's assurances were untrue. Financial aid did not cover her full cost of attendance and she owed a balance to Ashford that she could not afford, forcing her to withdraw.

Ms. Evans was left with a sizable student loan debt and no degree. And as her testimony shows, these financial aid misrepresentations not only cost students money and time, but because of lifetime financial aid limits, their chance to finish a college degree.

As with financial aid, at the time of enrollment, admissions counselors cannot know how much debt a student will take on, what a student's loan payments will be, or the student's ability to make those payments based on their income at the time. In fact, defendants' paper training instructed admissions counselors not to tell students about how much future student loan debt they would incur.

But let's look at this lie in practice. In one of the calls Dr. Lucido identified as deceptive, an admissions counselor speaks to a father of five who is unemployed. He's speaking about enrolling at Ashford. And here you see the admissions counselor downplaying the student's future debt by telling him that his payment might be like $50 a month or it might be like 75.

As Dr. Lucido explained, students' loan payments can easily reach several hundred dollars a month, a big difference for many of the students that Ashford serves.

Additionally, defendants' admissions counselors regularly misrepresented federal financial aid rules. For example, Dr. Lucido identified calls

where admissions counselors told students that federal financial aid is competitive, when, in fact, it is not; that the government subsidizes interest on all loans while the student is in school, when, in fact, that only applies to subsidized loans; and admissions counselors told students that Pell Grants are given to any actively enrolled student, when, in fact, Pell Grants are restricted to students with financial need.

Defendants' admissions counselors also misled students regarding the financial costs of doubling up on classes. The truth is that doubling up can leave students with out-of-pocket costs of over $1,000 per Ashford class because financial aid is limited by year.

Kyle Curran, the vice president of financial aid and student success services, confirmed in his testimony that admissions counselors should tell students if they double up, they will have to pay for it out of pocket. However, admissions counselors frequently offered students the option of doubling up without mentioning the costs associated with doing so.

For instance, Molly McKinley, former admissions counselor, testified that "a lot of people would voice concern about how long a program may take. So, you know, it was very common to say, 'Oh, well, there are ways to speed up your graduation or speed up to get your graduation date, such as doubling up on classes.'"

Another way in which defendants' admissions

counselors misled students on the issue of financial aid was by understating the costs of attendance. Defendants understated the costs of attendance in several ways, including by not mentioning the costs of books and fees, quoting costs lower than the cost figures in the academic catalog, and by stating the cost per academic year without clarifying that it takes five academic years to finish Ashford, not four.

And let's look at this lie in practice. As Ms. Tomko's notes reflect, her admissions counselor quoted her a price for academic year without explaining that to complete her degree, it would take five academic years. This misleading practice meant that Ms. Tomko had to pay 25 percent more for her degree than she expected.

Defendants' admissions counselors also misrepresented the pace of completing an Ashford degree by wrongly characterizing their bachelor's degree programs as accelerated and akin to a traditional four-year program. In fact, Ashford bachelor's degrees are anything but accelerated.

As Dr. Lucido explained, Ashford students have to spend significantly more time, more weeks in class every year, a full 50 weeks per year in order to achieve a bachelor's degree in four years. If Ashford students took summers off, like traditional students, it would take them five years, not four, to graduate. However, admissions counselors regularly misrepresented the time

it would take to complete a degree.

In 2015, when associate vice president of compliance, Alice Parenti, asked her staff to explain the inaccurate information about the university the counselors were giving to students, the examples Jeanne Chappell gave her included, "We offer one class every five weeks, so it's an accelerated program, and you'll graduate faster."

Finally, the evidence also shows that defendants misled students about their ability to transfer credits in and out of Ashford. In fact, admissions counselors routinely gave false assurances that students' prior credit or life experience would transfer before the student received a transfer credit evaluation from the responsible department, the university registrar.

As explained by Dr. Lucido and several students, transfer credits mattered because they can reduce the time and cost of a degree.

Shown here, Ms. Embry clearly testified that she wanted her prior credits to apply to her Ashford degree because that would make it a shorter amount of time for her to be in school, speeding up her graduation and setting her on a path to a new job more quickly.

The truth is that defendants' admissions counselors should not promise or imply that students' credits will transfer, as defendants' paper training Say This Not That documents make clear. The registrar, not

admissions, is responsible for pre-evaluations and official evaluations of students' prior credits. The registrar, not admissions, decides whether to award nontraditional credits. However, former admissions counselors testified that they routinely offered false assurances that students' prior credits would transfer.

Former admissions counselor Eric Dean testified that he tried to give students the faulty impression that their credits would transfer, just like his or other unnamed students' had.

Molly McKinley explained the scheme which she learned as part of her on-the-job training. She said, "It was all about positivity on the phone, so if somebody was worried about credits transferring, you would just sell it as though they were going to transfer, but then you would sort of sneak it in and say quieter to them, 'but you've got to check with the registrar.'"

Defendants have argued that we must consider the context of the calls, but a review of the template e-mails sent by admissions counselor Molly McKinley demonstrates that the false and misleading statements only continued in writing.

Using a template shared by successful admissions counselors and approved by her manager, Ms. McKinley falsely told students that Ashford's regional accreditation would allow credits to transfer out to any other schools.

Making matters even worse, admissions counselors' false assurances of credits transferring into Ashford went uncorrected until after the Ashford Promise period expired when students were financially liable for their classes.

In fact, students do not receive official transfer credit evaluations until at least four weeks after enrollment at Ashford; in other words, after the three-week Ashford Promise period has expired and students are on the hook for costs.

And let's look at this lie in practice. Jessica Ohland testified that before she even enrolled, and long before she received an official transfer credit evaluation from Ashford's registrar, her admissions counselor was very adamant, said "I could see half of my credits transfer from the junior college to Ashford." She goes on, "You know, worst-case scenario, am I going to see less credits transfer in?" And she was very adamant that, "No, no matter what, you'll see half of your credit transferred in."

Such misleading assurances about transfer credits caused students to underestimate the cost and time to earn their degrees.

Ms. Ohland's -- in Ms. Ohland's case, she learned only after completing her first class that the registrar's official transfer credit determination left her with approximately 14 fewer credits than what her admissions counselor had so adamantly promised her.

Earning those additional 14 credits increased the length of Ms. Ohland's degree and increased her costs by approximately $6,000.

Moreover, not only do admissions counselors have no reliable basis to promise or imply that prior credits will transfer into Ashford, but as Dr. Lucido explained, defendants have no basis to tell students that their Ashford credits will transfer out and apply to a degree elsewhere. That's because defendants do not know the transfer rules of other institutions.

Indeed, the testimony of student Renee Winot and Ms. Evans made clear that transferring credits out of Ashford is far from guaranteed. None of Ms. Winot's Ashford credits transferred out, and less than half of Ms. Evan's credits transferred out.

The nine students the Court heard from during the trial are just examples of the hundreds of thousands more students the defendants misled about an Ashford education, as shown by the analysis of Dr. Jerry Lucido.

Dr. Lucido reviewed a sample of 561 admissions calls, which were provided to him by the People's statistician Dr. Bernard Siskin. Dr. Siskin selected a random sample of 2,234 phone calls. Then he used objective data coded by the firm Epiq and -- to separate that sample into two groups. First, admissions calls where substantive topics like cost or transfer credits were discussed, and second, all of the other calls, which he assumed, in defendants' favor, did not contain

any misrepresentations.

When Dr. Lucido reviewed those 561 calls, he found that there were 126 with misrepresentations in the four issue areas we just went through, 126 calls filling nearly 4,000 pages' worth of transcripts.

That means that whenever defendants' admissions counselors discussed the important topics of licensure careers, financial aid and cost, transfer credits, and the pace of a degree program, they misled students at least one-fifth of the time.

In stark contrast to Dr. Lucido's expertise-driven, detailed, and fully-transparent call analysis, Dr. Wind's call analysis, defendants' expert, was an exercise in the blind leading the blind.

First, Dr. Wind himself brought no experience in college admissions, financial aid, transfer credits, career certification issues, or the pace of undergraduate degree programs to the endeavor.

Second, the Protiviti coders he directed had no experience in those areas either, even though those were the very areas they were charged with identifying misrepresentations in. This call illustrates why their lack of expertise was fatal to the call review.

Here, the representatives stated the government pays interest on students loans while a students is in school.

Dr. Lucido explained that this is a false statement because the government does not pay interest

on unsubsidized federal loans.

Dr. Wind, by contrast, didn't even know the difference between federal subsidized and unsubsidized loans.

Dr. Wind also failed to provide his coders with other truthful information that was essential to identifying misrepresentations, such as the costs of attending Ashford. Without that information, it's impossible to identify the lie in this phone call.

By contrast, Dr. Lucido showed his work to support each and every misrepresentation he identified, which in this case was the admissions counselor's understatement of the cost of an Ashford master's degree in accountancy by over $8,000.

Finally, Dr. Wind applied a legally fallacious, implausibly-cramped concept of deception to his call review. In his view, even the most blatant of falsehoods can be canceled out by a variety of nebulous equivocations.

For example, he testified that if an admissions counselor told a student that a degree from Ashford was all they would need to become a teacher, but also stated that the student should check with their state licensing board for details, his opinion is that there has been no deception.

Even though Ashford transformed into the University of Arizona Global Campus in December of last year, the false and misleading statements made by

Zovio's admissions counselors to prospective students continue.

As defendants' witnesses testified Zovio continues to provide for UAGC the recruiting and enrollment services that are at the heart of this case, with Zovio also continuing to exercise oversight over its own in-house admissions counselors.

Earlier this year, following the sale of Ashford to UAGC, defendants' director of risk and corporate compliance, Emiko Abe, raised concerns that high or excessive pressure could indicate predatory enrollment practices or lead to employees breaking rules to maintain their jobs.

Defendant's HR manager responded, "I understand that pressure could lead to noncompliant behaviors, but I don't think we will ever eliminate pressure and stress in the Enrollment Department."

And, in fact, Dr. Lucido identified those very noncompliant behaviors in nearly half of the calls he reviewed from 2020. With Zovio continuing to provide enrollment and marketing services to UAGC, in return for 15.5 to 19.5 of UAGC's tuition revenue for the next seven to 15 years, all incentives are lined up for these noncompliant behaviors to flourish.

MS. KALANITHI: May I have a moment, Your Honor? Thank you.

I'm sorry, Your Honor. We just have a battery issue.

THE COURT: Take your time. It's okay.

MS. KALANITHI: Thank you.

(Pause.)

MS. KALANITHI: Thank you, Your Honor.

In response to the overwhelming evidence the defendants' Admissions Department deceived many thousands of students over the phone, and the evidence of the harm that the students suffered as a result, defendants use overly narrow definitions of misrepresentations to claim that there was no deception here because no student was ever told, for instance, "I guarantee that you will get a Pell Grant" or because fine print in one document that the student may have had access to contradicts the lies defendants' admissions counselors told.

Defendants also argue that they can't be liable because no admissions counselor was ever told by their supervisor, "I authorize you to lie."

As we'll see, these contrived interpretations of the standards for deceptive conduct and authorizations fail.

So first, disclaimers and disclosures. Defendants' witnesses, including former Ashford president, Dr. Richard Pattenaude, and Steve Nettles, the head of defendants' Office of Institutional Effectiveness, agree that students should be able to trust their Ashford admissions counselors.

In fact, Dr. Pattenaude testified that because

Ashford enrolled nontraditional students, there's a heightened need for accurate advising. Yet, defendants will argue that students who are misled by their admissions counselors should have read fine-print disclaimers and researched further on their own to uncover the truth about Ashford and its degrees.

For example, they will argue that student Pam Roberts, whose admissions counselor told her she would have, quote, "no problem becoming a certified substance abuse counselor," end quote, with her Ashford applied behavioral science degree, that she should have known to go to page 238 of a 411-page catalog to locate the italicized print in the middle of the page to find out that what her admissions counselor told her about that degree was not, in fact, true.

Defendants' attempt to blame students for not reading the fine print or doing their own research is wholly at odds with the law and with the evidence.

So first, the law. A false or misleading statement, such as those testified about by students and identified by Dr. Lucido, violates the UCL and FAL, period. It cannot be cured by disclosures elsewhere.

Consumers, such as Ashford students, are entitled to trust and believe what they are told in advertising by their admissions counselors over the phone and are not required to investigate the merits further.

And, in fact, defendants' admissions

counselors rushed students through the admissions process, brushing past any disclosures or disclaimers, knowing full well that students were unlikely to read the fine print.

Former admissions counselor Eric Dean testified that when his supervisor trained him and his fellow admissions counselors how to go over the enrollment agreements' terms and fee section with students -- that's the section notifying the students about the Ashford academic catalog -- she instructed them, "Spit it out to them." That is, Mr. Dean testified, get it out as fast as you can so we don't have to be stuck on that section of the online application.

And as for the catalog, Mr. Dean testified it was his job to get them through it "as fast as I can" with the understanding that it's 200 pages and it's rare they'll read it.

And while defendants characterize their disclosures as unavoidable, Dr. Lucido also identified more than a dozen calls from his random sample where Ashford admissions representatives encouraged students to avoid the fine print in Ashford catalogs, with statements like "There's no need to do that." "We don't need to do that now because it's a pretty big file." "You don't have to." "It's not required. I wouldn't." Student Renee Winot testified that her admissions counselor said, "I can give you all the information.

You don't need to really read it."

And in practice, the evidence in this case showed that students didn't do any further investigations of what they were told by their admissions counselors.

Student Crystal Embry testified that she did not read all of the enrollment agreement, a practice that anyone who's ever signed mortgage papers or bought a car can relate to. She said, "I just filled out what I needed to fill out."

What's more, even if a student did read the disclaimer full of legalese, there's no reason to think that he or she would understand it or believe it over the friendly Ashford admissions counselors that they had talked to over the phone.

The admissions counselors were trained to build rapport with the students, to overcome their objections, and get them through the enrollment process as quickly as possible.

Now, similarly, defendants will argue that regardless of what students were told by their admissions counselors about financial aid, students should have known the truth based on the EFIP tool, the tool defendants started using in 2016, only after being required to in a settlement with the Consumer Financial Protection Bureau.

But as Jim Smith, Ashford's senior vice president of finance, testified, the EFIP tool estimates

the cost of completing a bachelor's degree at Ashford University in four academic years, even though for a students coming in without transfer credits, it takes five academic years of costs to do so, understating the costs of attendance by one year.

Further, as Mr. Smith admitted, the EFIP tool doesn't inform students about all of the things that might impact what they'll have to pay for an Ashford education: Issues that have affected students in this case, such as the costs of doubling up, costs associated with failing a class, lifetime limits to receiving Pell Grants or federal student loans, and any comparison between the costs of attending Ashford versus other schools.

The law and facts are clear: Fine print disclaimers and disclosures do not allow defendants to shift the blame to the very students they misled.

Now, similarly, defendants will argue that no admissions counselors testified they were told to lie, but of course, defendants are again using their overly-narrow and legally-unsupported definition of what it means to authorize lying.

I'd like to address one of the issues Your Honor highlighted yesterday which related to agency or more specifically whether defendants can be held directly liable for the deceptive acts of their admissions counselors. Under the law and the facts, the answer is clearly yes.

So here's the rule. A corporation may be liable for the acts of its employees under general agency principles. Indeed in Ford Dealers, a case counsel pointed to yesterday, the California Supreme Court established that persons can be found liable for misleading advertising and unfair business practices under normal agency theory; that is, under agency theory, the right to control is sufficient for liability, even if defendant doesn't exercise that right.

The Court has heard ample evidence that defendants had the ability to train, discipline their counselors, and the fact the defendants failed to do so effectively to prevent deception is not legally relevant.

As the Court stated in JTH Tax, even if defendants prohibit false representations and when informed of them take steps to prevent false representation, they are still liable.

The only exception to this rule is the one described in dicta in Ford Dealers, and that exception is not at all applicable here.

The California Supreme Court said that a company might, might be able to defend an action predicated on misrepresentations by its employees by demonstrating that it made every effort to discourage misrepresentations, had no knowledge of salespeople's misleading statements, and, when so informed, refused to

accept the benefits of any sales based on misrepresentation and took action to prevent a recurrence. All three of those would need to apply.

The Court in JTH Tax described these as unusual circumstances that would negate the presumption of control. And not one of these three unusual circumstances is met here, let alone all three.

As the evidence shows and as I will discuss, defendants did not discourage misrepresentations. In fact, the evidence showed that they created a culture that encouraged them.

And we will see that defendants had significant knowledge of their admissions counselors' misleading statements from multiple sources, like their compliance scorecards and the Norton Norris mystery shopping reports, and defendants readily accepted the benefits of the sales, the tuition revenue flowing in the door from the misled students.

So let me first discuss the evidence showing how defendants created a culture that encouraged misrepresentations. From the top levels of Ashford and Zovio management on down, the primary directive was for admissions counselors to enroll as many students as possible by any means necessary.

Dr. Richard Pattenaude, Ashford's former president and the ultimate supervisor of admissions, testified that the Admissions Department created lowest performer lists that they used to make termination

decisions, termination decisions like firing the bottom 10 percent of admissions counselors, as Alice Parenti and Jenn Stewart testified was done.

And what was the Admissions Department like as a result? According to e-mails that Dr. Pattenaude received from Tremier Johnson, Ashford's associate vice president of diversity and inclusion, and Bill Ness, then the senior vice president of admissions, it was a place that motivated by fear, fear resulting from admissions counselors getting fired, including for their low enrollment numbers.

Yet in spite of this dire assessment of the Admissions Department, Dr. Pattenaude cannot recall any changes made as a result of receiving these e-mails.

The testimony of three former Ashford admissions counselors -- Eric Dean, Wesley Adkins, and Molly McKinley -- shows that they experienced the same fear culture described in the e-mails Dr. Pattenaude received.

The admissions counselors were not there to advise students on their best educational options. They were there to close the sale. And if they didn't, they risked being fired.

For example, Eric Dean testified, "It was a numbers game. We needed to enroll a certain amount in order to feel safe at our job."

Wesley Adkins testified, "I don't think we were there to advise them on what was best for them. We

were there less for advising them and more for trying to just close -- close them as a sale and get them to enroll."

When Ms. McKinley was asked why she was afraid that she would lose her job, she responded "because my enrollment numbers were not good."

The testimony of these three admissions counselors is not unique. In fact, the exit surveys defendants conducted of their departing admissions counselors paint the same picture of a culture where admissions employees worry constantly about losing their jobs and where ethics went out the window in favor of meeting numbers.

Exit surveys from 2011 and 2012 include comments from former employees, such as "The only objective is to enroll as many students as possible." "Employees fear for their jobs every day if they are not enrolling enough students." "There are no values here."

And the problem is that the boiler room mentality is still alive and well. If an employee is enrolling a student a day, they are not held accountable if they are doing it by means that are not ethical.

And what about later surveys? One comment in the 2017-2019 exit survey reads, "For years I had to worry about my job security. I witnessed a lot of committed, passionate, and hardworking people go simply because they had a bad month or did not meet their numbers. The stress is beyond measure."

And while defendants might argue that these are cherry-picked, there are dozens and dozens more such comments in the lengthy collection of exit survey responses. Yet rather than addressing the fear that was abundant in the Admissions Department, defendants continued pressuring their admissions counselors to achieve enrollment numbers.

And with the threat of losing their jobs ever present, how did admissions counselors go about doing that? With tactics that they learned from their supervisors and the successful admissions counselors they worked with: First build rapport with students, act like you knew them, understood their problems, would be their friend, and quickly try to get past any reason the student might give for not enrolling in Ashford, otherwise known as "overcoming objections."

On the left is an objections or rebuttal script that Eric Dean's supervisor gave him. If a student said they didn't have time or money for college, the admissions counselor was instructed to move past that concern by accentuating the positive and asking how much time and/or money do you have set aside for school? This strategy of overcoming student objections was not only discussed and developed by lower-level Admissions Department employees, it was developed and encouraged by the highest management at Zovio.

In the e-mail on the right, Zovio's vice president of financial aid and student success services,

Kyle Curran, discussed with Andrew Clark, Zovio's founder and CEO, how to overcome the reasons students might have wanted to stop attending Ashford at the beginning of the COVID pandemic, reasons such as, because their kids are home and they can't focus on school; students saying they are sick so not allowed to go to work and can't focus on school; students working in health care, working too many hours, can't handle school too.

With this "students last" company culture being established from the top, it's no wonder that admissions counselors felt it was acceptable and even encouraged by management to mislead students in order to keep enrollment numbers high.

Throughout this litigation and trial, defendants have repeatedly argued that the People have lacked the boots-on-the-ground evidence that defendants intended to present. But to the contrary, defendants have decidedly chosen not to present boots-on-the-ground evidence in this trial.

Instead, defendants have elected to offer, for the most part, the testimony of high-level executives like the former presidents of Ashford, Dr. Pattenaude and Dr. Swenson, and subject matter witnesses who have little to no experience with the day-to-day of the Admissions Department.

Instead these witnesses have given essentially an executive summary about the good intentions of the

school to ensure that students succeed and the quality of the education and the written disclosures that were made to students, separate and apart from what was said to them over the phone.

But these are all irrelevant to the matter at issue in this trial; that is, what admissions counselors said to students. As to this issue, the testimony of defendants' witnesses has repeatedly demonstrated that they had little direct responsibility or oversight over the day-to-day operations of the admissions floor.

For example, defendants offered the testimony of Dr. Richard Pattenaude, Ashford's former president, who could not recall being made aware of a single instance of noncompliance in the Admissions Department as president.

Defendants offered the testimony of Jim Smith in finance, who provided no testimony regarding defendants' admissions practices.

Defendants offered the testimony of Dr. Tony Farrell in the College of Education, who did not regularly interacting with the Admissions Department, was never asked to weigh in on whether a statement made by an admissions counselor to a student was misleading, and who testified it was beyond the scope of his role as dean to take any action relating to complaints made by students about the Admissions Department.

Defendants offered the testimony of Ms. Pat Ogden, who testified about Ashford's accreditation

process. Her testimony regarding the Admissions Department was limited to testifying about the WASC documentation, about a one-page marketing review, and a single 50-call review that WASC conducted of admissions phone calls over the entire more than a decade of time it was reviewing and accrediting Ashford.

Defendants offered the testimony of Stephen Nettles in the Office of Institutional Effectiveness. He testified about student satisfaction through defendants' surveys. But even the alumni and Net Promotor Score surveys he discussed were not relevant to admissions practices as they did not seek any information about students' experiences with admissions.

For example, as he testified, the Net Promotor Score survey purposefully did not ask about admissions as it was only intended to gather information about student experiences with services after they had enrolled.

Notably missing from defendants' witnesses was the testimony of Bridgepoint/Zovio founder and, until March of this year, CEO, Andrew Clark.

Of all of their witnesses, defendants offer only the testimony of three witnesses regarding the Admissions Department, all of whom worked primarily in other departments.

For example, Kyle Curran testified about his time at Zovio from October 2017 through 2019, and though he testified about admissions practices, he worked only

in financial aid services and academic advising during that time, not the Admissions Department.

And while Matt Hallisy and Alice Parenti also testified about admissions, they were only in the Admissions Department until February -- February 2010 and 2013 respectively, before they moved into compliance.

In contrast, the People offered the testimony of 13 witnesses who could provide testimony directly related to what occurred on the admissions floor, the boots on the ground, four of defendants' admissions counselors and student inquiry representatives and nine student witnesses.

This testimony has shown unquestionably that admissions counselors, feeling pressure to meet their enrollment numbers in order to keep their jobs, made misrepresentations to students in the four areas at issue in this case.

The high-pressure culture that permeated defendants' operations led to systemic misrepresentations to prospective students, and the evidence shows that defendants were well aware of these misrepresentations from at least three sources: One, their own internal ombuds report; two, the reports of a mystery shopping firm they retained to review admissions calls; and three, their own internal compliance scorecards. Yet the evidence also shows that time and time again, defendants failed to act on this knowledge

to remedy the misrepresentations that occurred or to prevent future misrepresentations.

This report was from defendants' internal office of the ombudsman, and it was circulated to dozens of defendants' employees in the summer of 2010, including Alice Parenti, who was then the divisional vice president of the Admissions Department.

Based on conversations with admissions counselors and a review of complaints from students, the ombudsman reported that students were being told incorrect and/or improper information, including information about teaching, financial aid, and transfer credits, misrepresentations remarkably similar to those testified about by former Ashford students and identified by Dr. Lucido; namely, telling potential students that "We offer fully certified teaching degrees, guaranteeing as to FA, financial aid, amounts that would be received, or credits that will be transferred.

Despite the ombudsman clearly sounding the alarm about misrepresentations from inside defendants' admissions office, Ms. Parenti testified that she could not recall any steps defendants took to address the ombudsman's concern.

Defendants' mystery shopper, Norton Norris, provided yet more evidence in the form of monthly reports to defendants about the scope of the false and misleading statements being made by their admissions

counselors, particularly about financial aid and transfer credits from 2012 to 2014.

So what do the mystery shopper documents show? Here are just two examples, but there are literally hundreds more entries like this.

Regarding transfer credits, in March 2012, the shopper asks if Ashford credits will transfer out to another school? The admissions counselor says, "Absolutely, because we are regionally accredited. If you transfer to a state school with the same program, it shouldn't be a problem."

Norton Norris correctly identifies this as an untrue and unethical call. Defendants admit it themselves. It's the first item on their Say This Not That policy documents for transfer credits.

Two years later, Norton Norris's January 2014 mystery shopper report shows admissions counselors continuing to make untruthful or unethical statements about transfer credits, such as he said that "One of the great things about being a regionally accredited school is that the credits are highly transferable."

And now let's zoom out to look at what patterns these Norton Norris reports reveal. Defendants will point to some favorable testimony Mr. Norton gave and say it exonerates them. The problem for defendants is that the actual reports, what Mr. Norris called -- what Mr. Norton called the "industry gold standard," contradict his rosy memories.

This March 2012 mystery shopping report shows the mystery shopper scores for each call scored that month. And let's see what happens when we add color-coding, pink for a score of 1, meaning untruthful or unethical, and yellow for a score of 2, meaning incomplete or potentially misleading.

The slide speaks for itself. Out of 29 mystery shopper calls in March 2012, only one was fully compliant. As you can see, the remaining 28 had at least one statement rated either incomplete or potentially misleading or untruthful and unethical.

Defendants say while there might have been misrepresentations, they were certainly isolated. These are not isolated instances of misrepresentations.

And the March 2012 report was no fluke. This is from the January 2014 report, two years later. If we apply color-coding, this is what we see. It's the same story. This here is the pattern and practice of misconduct.

In January 2014, not a single mystery shopper call out of the 34 scored was fully compliant. 29 of the 32 calls had at least two categories that scored as incomplete or potentially misleading, or worse.

Remarkably, Alice Parenti testified that these reports were consistent with defendants' zero tolerance approach to compliance. But as always, defendants' action or lack of action speaks louder than their rhetoric.

As Mr. Norton testified, defendants elected to stop receiving the reports in 2014 rather than fix the problems they revealed. Rather than heeding the alarm bells, defendants failed to take corrective action to prevent or remedy the situation going forward.

Defendants' own compliance leaders condoned the misrepresentations that were happening left and right, day in and day out.

Through the testimony of associate director of compliance, Matt Hallisy, we saw an Issue Resolution Committee meeting log that detailed dozens of admissions counselors with repeated compliance infractions.

And just weeks after that log was sent out, one of Mr. Hallisy's reports, compliance manager Bill Saltmarsh, urged him to do something radically different to stop this seemingly endless cycle. Mr. Hallisy testified that he saw no need for such change.

And defendants didn't just ignore the alarms in their Issue Resolution Committee logs and Mr. Saltmarsh's e-mail, the compliance scorecards were full of alarms too, no matter how you slice them or dice them.

The People's expert, forensic accountant Greg Regan, performed a detailed analysis of thousands of compliance scorecards. Specifically, he found that from 2010 to 2020, the Compliance Department identified admissions counselors making at least one noncompliant statement to prospective students in 25 percent of all

calls.

And focusing on the issues relevant to this case, admissions counselors made at least one relevant noncompliant statement in over 20 percent of calls.

And as with the ombuds report and with the Norton Norris reports, although the issues were detected by the Compliance Department, defendants failed to remedy or prevent more misrepresentations from occurring.

Defendants knew that the misrepresentations were occurring, but let noncompliant admissions counselors keep talking to prospective students.

Mr. Regan's analysis shows the depth of the repeat offender problem the defendants allowed to continue. 979 admissions counselors made at least 10 relevant noncompliant calls detected by compliance. 16 admissions counselors made at least 50 relevant noncompliant calls.

This drastically, as a reminder, underestimates the extent of admissions counselors' noncompliant calls because defendants monitor less than one percent of admissions calls.

As admissions counselor Eric Dean testified, compliance listened to, quote, "very few out of the probably thousands of calls" he made in a month.

Worse, Mr. Regan's analysis shows that defendants promoted admissions counselors with habitual noncompliance and continued employing admissions

managers who oversaw extensive noncompliance.

Specifically, defendants promoted 87 admissions counselors, even though they made relevant noncompliant statements in at least half of their monitored calls. And Mr. Regan's analysis shows that admissions managers stayed in management, even though their teams of admissions counselors regularly made noncompliant calls.

131 admissions managers, supervised admissions counselors who made relevant noncompliant statements in at least half of their calls, yet 94 continued to manage for multiple years.

19 admissions managers supervised teams of admissions counselors that made at least 100 relevant noncompliant calls in a single year, yet 17 of them continued to manage for multiple years.

As with the previous slide, this drastically underestimates the extent of admissions counselors' noncompliance because defendants monitored less than 1 percent of calls.

So we have the ombuds report, the Norton Norris reports of mystery shopping, and defendants' internal compliance scorecards, all leading to the same conclusion: Defendants knew about the misrepresentations that were rampant in the Admissions Department, and yet over and over again, they turned a blind- and self-interested eye, refusing to make changes that would prevent future students from being misled.

And through December 2013, defendants went a step beyond misleading their prospective students and saddling them with unjustified debt, they also engaged in predatory debt collection practices by threatening, then assessing, and ultimately collecting a patently illegal debt collection fee.

The Court has heard relatively less testimony about the People's debt collection claims as compared to defendants' phone calls with prospective students, and that's because the parties largely agree about the debt collection facts and entered their fact stipulation into evidence.

So let me summarize the allegations.

As Your Honor knows, the unlawful prong of the UCL makes violations of other laws independently actionable under the UCL. And here, the UCL borrows from two California laws, the Rosenthal Act and the rule of Bondanza, which prohibit someone who is owed money from threatening to or actually passing along the cost of collecting the debt to the person who owes the money.

And through 2013, defendants did just that, when they threatened to, and in thousands of cases actually did, pass the cost of collections on to former students in debt to Ashford. The cost of collections fee the defendants imposed was no trifling sum. It typically amounted to one-third of a student's balance, an illegally high fee.

Let's briefly review the applicable law.

First, the Rosenthal Fair Debt Collection Practices Act prohibits debt collectors from collecting or attempting to collect from a debtor any part of the fee incurred by the debt collector in the collection of consumer debt.

Rosenthal clearly applies to defendants because they collected education debts owed to Ashford in the ordinary course of business, a fact established in the testimony of defendants' collections manager Scott Moore and in the party's debt collection stipulation.

Therefore, as debt collectors under the statute, defendants were prohibited from recovering debt collection fees from consumers. They were also prohibited from threatening to charge such a fee pursuant to Rosenthal. Unfortunately, the facts show that they did both.

Second, and in addition to Rosenthal, the California Supreme Court has expressly held that a cost of collection fee of one-third of the balance of a debt, the amount defendants typically imposed, is an unfair and unlawful practice under the UCL. It did so in a case called Bondanza.

And now turning to the facts.

As defendants stipulated through 2013, they had a policy requiring their third-party debt collection agencies to add a fee to student balances in an amount sufficient to compensate defendants for those agency's

commissions, typically one-third of the student's balance.

Defendants, therefore, violated both -- violated both Rosenthal and the rule of Bondanza. Mr. Moore agreed in his testimony, "Typically the cost of collection fee meant the former student's balance grew by one-third."

Mr. Moore testified that a typical balance was $1500. That means defendants typically added $500 to student accounts. And as Your Honor has heard in testimony, many of defendants' former students would not have been able to afford that kind of upcharge.

So how many UCL violations did defendants commit relating to the cost of collection fee? Unfortunately, this illegal conduct was rampant during the relevant time frame.

As established through some combination of the parties' stipulation regarding debt collection, defendants interrogatory responses, and Mr. Moore's testimony, defendants unlawfully threatened 16,401 California students with this fee.

They then unlawfully directed their collection agencies to assess cost of collections fees on 12,064 of those California students. Of those students, 4,401 subsequently made at least one payment toward the debt balance and 472 California students paid the whole debt plus the entire unlawful cost of collection fee.

Finally, defendants admit in the parties'

stipulation that they never returned the illegal cost of collection fees paid by thousands of former California students.

Although defendants wish to rely on the summary conclusions of Mr. Thomas Perrelli, the Iowa monitor, the People have shown why Mr. Perrelli's three-year monitorship cannot exonerate defendants in this case, which covers 12 years.

Mr. Perrelli validated the most fundamental aspects of the People's analysis. He confirmed that the single most effective tool for assessing the extent of defendants' misrepresentations was to scrutinize their calls, not their catalogs, not their enrollment agreements, not how they trained admissions counselors on paper.

Mr. Perrelli also confirmed the fundamental false advertising principles that even true statements can be misleading, that unfounded promises are misleading, and that disclaimers on some future piece of paper cannot excuse a prior oral misrepresentation.

Where Mr. Perrelli went astray was in the lack of rigor in his call review. He relied on junior associates as the primary call reviewers and missed various critical misrepresentations that the People have proven in this case, such as those about social work and substance abuse counseling, and the misleading use of Ashford's academic year costs.

He wasn't guided by any professional

statistical expertise and never quantified the rate of misrepresentations he found, except in one instance, in his entire three-year tenure. And in that instance, he reported in 2016 that approximately 4 percent of the randomly-sampled calls that the administrator reviewed were clearly noncompliant, an additional 7 percent were of questionable compliance.

But he also acknowledged that a random sample of defendants' calls would result in many calls where no topics of interest were discussed, as well as calls from departments other than the Admissions Department. That's why the People assert the 22 percent rate of misrepresentations in relevant calls found by Dr. Lucido is a more meaningful measure of defendants' wrongdoing.

At the end of the day, Mr. Perrelli's ultimate conclusion the defendants did not engage in a pattern or practice of misrepresentations is just not credible. His conclusions don't square with his own reporting.

The defendants were willing to tolerate too many repeat offenses by their admissions counselors, and the defendants repeatedly chose to scrimp on compliance measures, such as how long they would retain call recordings and what technology they would use to monitor and search those recordings.

His ultimate conclusion also doesn't square with what statistician Dr. Bernard Siskin quantified, was that given the marginal drops in defendants' misrepresentation rates from before and after

Mr. Perrelli's tenure, we cannot conclude that his monitorship had a statistically-significant effect.

A private settlement administrator like Mr. Perrelli can only do so much. This Court has the ability to effectuate relief that Mr. Perrelli never could. It can impose penalties, injunctive relief, and restitution, and the evidence supports the use of all three remedies.

So first, penalties. Under the UCL and FAL, any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty.

Based on all of the evidence in this case, the People are requesting that the Court issue a penalty award of $75 million, which is amply supported by the evidence the People have presented on the number of violations during the statutory period, as well as the various penalty factors laid out in the UCL and FAL.

Defendants lied to hundreds of thousands of students, students who led difficult, complex lives, many of whom were low income and who sought a college degree in the hope that it would open doors for them to become a teacher, like Ms. Tomko hoped she would, or a substance abuse counselor, like Ms. Roberts, or a therapist, like Ms. Perez.

Those doors slammed shut when defendants' misrepresentations came to light, misrepresentations about what jobs the students could get after their years

of education or how much money they would have to pay for their education. And it's not just years of their lives and career dreams that the students lost. Students paid lots and lots of money to defendants.

The People's expert, Dr. Stephanie Cellini, a labor economist who specializes in higher-education economics, testified that the average net cost of attendance for Ashford in 2018 -- and that's not including opportunity costs and that's not including Pell Grants -- was $18,761 per year. The median student loan debt for Ashford students in 2018 was $34,375.

And at the same time, defendants lined their pockets with money from the federal government. In 2017-2018, defendants got 88 percent of their revenue from federal sources, Title IV and the GI bill. Adding up the federal revenue reported in defendants' 10-K's, we find that since 2009, defendants have received over $6 billion from federal sources.

Defendants' misconduct was serious. The harm to students was grievous. A $75 million penalty award is more than justified here.

The People's request for $75 million in penalties is also more than supported by the number of violations committed by defendants.

As I mentioned earlier, Dr. Lucido testified that of the 561 calls he reviewed, he identified 126 with at least one misrepresentation. That's 22 percent of calls. Dr. Lucido's conclusion is bolstered by

Mr. Regan's study of the scorecards generated by defendants' own Compliance Department. And as you'll recall, focusing on issues relevant to this case, Mr. Regan found that admissions counselors made at least one relevant noncompliant statement in over 20 percent of monitored calls.

So using Dr. Lucido's results and the fact that they were based on a random sample mirroring the full population, Dr. Siskin could reliably estimate how many calls with misrepresentations exist in that starting population.

As a reminder to this Court, that starting population was limited to California calls from the period of January 2013 to April 2020. Within that population alone, Dr. Siskin estimated that over 88,000 calls contained misrepresentations.

Your Honor asked yesterday for a breakdown of the violation counts by time period, so pre-Iowa monitorship, during the Iowa monitorship, and after. And we'd like to walk the Court through this chart showing that information.

Of the 126 calls with misrepresentations that Dr. Lucido identified, 29 of them were from before the monitorship, 71 were from during the monitorship, and 26 of them were from after the monitorship.

And because Dr. Siskin's random sample amounted to drawing one out of every 704 of the starting population of defendants' phone calls, we can multiply

the number of misleading calls from each period by 704 to determine the total number of California calls with misrepresentations for their period. So that gets us to 20,424 misleading calls from the period January 2013 through May '14, that's the period before the Iowa monitorship for which we have call recordings; 50,004 misleading calls from the period May 2014 through May 2017, that's during the Iowa monitorship; and 18,311 misleading calls from the period May 2017 through April 2020; that's after the Iowa monitorship.

Your Honor will recall that since defendants did not produce any calls for the period March 2009 through December 2012, Dr. Siskin did a backwards-looking projection to estimate the total number of misleading California calls during that earlier period, and his estimate for that period was 46,386 misleading calls.

As Dr. Siskin also explained, we have evidence that 10.87 percent of defendants' students lived in California. Therefore, we can determine that for the March 2000 -- for March 2009 through the end of 2012, defendants made a total of 426,734 misleading calls to their students nationwide; for the period January 2013 through May 2014, they made 187,893 misleading calls; for the period May 2014 through May 2017, that's during Mr. Perrelli's monitorship, they made 460,018 misleading calls; for the period May 2017 through April 2020, they made 168,454 misleading calls. So in grand total, that

comes out to 1,243,099 misleading calls.

The People's request for $75 million in penalties comes out to less than $100 per violation for these misleading calls, and once you take into account defendants' thousands of debt collection violations, the per dollar penalty amount is even lower.

To put the People's penalty request into perspective, it amounts to only 1 percent of defendants' revenues over the statutory period in this case. It's also less than twice the $54 million the defendants paid to Global Campus with the expectation of earning it back over the course of their contract.

For all those reasons, a $75 million penalty award is more than justified.

A $75 million penalty award is also justified by the fact that defendants' misconduct was persistent, long-lasting, and willful.

From the start of the statutory period in 2009 until this year, defendants have known full well about the vast number of students being misled by their Admissions Department. They knew from the exit surveys of departing employees, from the report of their ombudsman in 2010, which identified lies to students about teaching careers, financial aid, and transfer credits. They knew from the 2012 and 2014 mystery shopping reports from Norton Norris, which identified yet more lies about financial aid and transfer credits. And they knew from their own internal compliance

scorecards.

Yet despite over a decade of notice of the problems, defendants failed to do anything to prevent or remedy misrepresentations to students on these key issues, preferring instead to circle the wagons and focus on maximizing enrollment numbers to boost their bottom line.

On the last penalty factor, defendants' assets, liabilities, and net worth, Zovio's public filings show that it has tens of million dollars in cash on hand, as well as significant additional assets.

Further, Zovio offloaded significant sums of cash from its balance sheet over the last year, $54 million to UAGC and $3 million to its departing CEO, Andrew Clark.

A penalty award of $75 million is wholly appropriate here.

In addition to penalties, the People seek an injunction to stop current and future misconduct by Zovio. Courts have extraordinarily broad remedial power to fashion appropriate injunctive relief under the UCL. And courts may base an injunction, not just on continuing harm, but the threat of future harm, which here is very real.

As laid out above, Zovio is continuing to provide enrollment and marketing services for UAGC. Zovio has been promised a cut of UAGC's future revenues, so it has every incentive to encourage its admissions

counselors to mislead students to get them to enroll at UAGC.

And the evidence in this case, Dr. Lucido's analysis of admissions calls from 2020, and Mr. Regan's analysis of scorecard violations from 2020 shows there's every reason to believe those misrepresentations are continuing to occur.

So to stop Zovio's bait-and-switch recruiting tactics, the People seek an injunction.

The People will lay out in greater detail in their post-trial brief their proposed injunctive terms which follow from the injunctive terms provided to defendants during discovery.

But based on the evidence in this case, those injunctive terms will include the following: Zovio should be prohibited from misleading prospective students regarding the four key issue areas that this case is about: Careers, cost of attendance and financial aid, pace and time to completion, and transfer credits.

For example, if cost of attendance per academic year is discussed, the admissions counselor must notify the student that it takes five academic years of costs to earn a bachelor's degree.

But as we've seen from the evidence in this case, prohibiting misleading statements is necessary, but not sufficient to eliminate misconduct. Zovio currently saves their calls for 30 days. Students often

do not learn that they were misled until they're nearly ready to graduate or even after they've graduated. Accordingly, Zovio should be required to retain recordings of and data from their Admissions Department calls, including those from the student inquiry unit, for at least five years.

For students who actually end up enrolling in school, Zovio should be required to produce all recordings of the student's admissions calls to the student upon request as well as to law enforcement. This will ensure that the evidence of Zovio's misconduct remains available.

Zovio's current call retention policy makes it all too easy to deny student complaints by pointing to the fine print and maintaining willful ignorance of what was said on the phone.

Finally, the People seek $25 million in restitution for the many students who've been harmed by defendants' pervasive misrepresentations.

As with injunctive relief, when it comes to restitution, courts have broad discretion to fashion an order restoring money to victims that was lost due to violations of the UCL and FAL. And further, the People need not show individual -- individualized proof of deception, reliance, or injury by the student victims in order to be awarded restitution.

Defendants have argued that any restitution a student receives should be limited or decreased by the

value of what they received from Ashford, but price paid minus value is not the exclusive way to measure restitution and would be improper here.

As the People have laid out in discovery responses, the amount of restitution any given student receives should be calculated based on the type of misrepresentation.

Here, the People are proposing restitution for three categories of misrepresentations. First, victims of career misrepresentations, like Ms. Embry and Ms. Tomko, would receive a full refund of the amount paid. Victims of cost or financial aid misrepresentations, like Ms. Embry and Ms. Winot, would receive the difference between the price promised and the price paid. Victims of transfer credit misrepresentations, like Ms. Ohland, would receive the value of credits promised but not received.

And Your Honor asked specifically about the $25 million request for restitution, so I'd like to spend a few minutes explaining that.

If full restitution could be provided to all students harmed by Ashford's misrepresentations, that amount would be hundreds of millions of dollars given the breadth of defendants' wrongdoing. Defendants have made misrepresentations to hundreds of thousands of consumers nationwide, causing consumers like those the Court heard from to incur tens of thousands of dollars in debt.

The People provided the $25 million number as its best conservative estimate of a reasonable pool for restitution based on what we know about the number of deceived students and based on how we proposed calculating restitution for the three types of misrepresentations as I just went over, as well as for debt collection.

Ashford enrolled hundreds of thousands of students during the statutory period, but because it's impossible to know ahead of time how many students enrolled at Ashford after being misled about their career options or financial aid or transfer credits, the People's request for $25 million provides defendants with some cap, some finality, even though the law does not require the People to do so.

The People further propose a streamlined claims administration process, which is an efficient and well-established method for identifying victims and awarding restitution in a law enforcement action.

Because restitution is an equitable remedy within the Court's discretion, the Court may, in fact, set the estimate differently based on the evidence, different than the 25 million.

And while the $25 million will not restore all harmed students, it could, for example, provide restitution for 500 students, like Alison Tomko, who herself paid $50,000 for an Ashford degree that, despite what she was told by her admissions counselor, was not

approved for teaching in her state. Or 2,500 students, like Loren Evans, who found out that contrary to what her admissions counselor told her when she enrolled, she would have to pay $10,000 out of pocket to complete her Ashford degree. Or 4,166 students like Jessica Ohland who had to pay Ashford $6,000 to cover the credits she believed would transfer into Ashford based on what her admissions counselor falsely told her.

The People's post-trial brief will lay out in greater detail how they propose administering restitution claims, but in brief, the People will propose that the claims process be overseen by a claims administrator and that as part of that process, students who enrolled at Ashford will receive a notice and the opportunity to submit a claim.

Now, defendants may argue that any restitution needs to be reduced by the value of the education the students received, but the only quantifiable evidence in the record regarding the value of an education at Ashford comes from Dr. Stephanie Cellini, and it's a negative value.

Dr. Cellini's analysis based on 2018 data shows that after 40 years of earnings, employed bachelor's degree graduates from Ashford's College of Education will sustain average losses of about $15,634 on average. Those losses are even greater for unemployed graduates and students who leave Ashford before getting any degree, a majority of Ashford

students based on its 25 percent graduation rate in 2018.

Defendants have not introduced any concrete, quantifiable estimate of the value of their education to students to counter this, preferring instead to assert high-level rhetoric about the supposed value of friendships Ashford students might have gained or mentorship opportunities they might have had and the convenience of online education.

But even if defendants had been able to prove and quantify these benefits, which they did not, their vague value assertions are fatally flawed because they do not take into account the cost an Ashford student pays, a necessary component of any assessment of economic value.

Defendants' motto is that they change lives. The evidence from former Ashford students who were misled, from former admissions counselors who testified about the misrepresentations that they regret making to prospective students, the analysis of the People's experts like Dr. Jerry Lucido, and defendants' own documents and witnesses, all of that evidence shows that Ashford did change lives, for the worse.

As a result of defendants' deception and illegal conduct, many thousands of students were grievously harmed, unable to pursue their career goals, and saddled with debt that will further limit their career and educational options.

Because of defendants' serious, pervasive, and willful violations of California's UCL and FAL, the People respectfully request $75 million in penalties, $25 million in restitution, and an injunction to prevent Zovio's future misconduct.

Thank you, Your Honor.

THE COURT: Thank you. Just a few questions, a few questions to make sure the Court is clear in your argument. Thank you for answering my questions, Counsel. I appreciate that.

Just to be clear for the record, when you say "post-trial brief," is there an assumption there?

MS. KALANITHI: There is an assumption we would like to bring up with the Court possibly today what Your Honor is envisioning.

THE COURT: I thought I was reading your mind when you said there was an assumption. But what is your -- what is your assumption there? How do you get to a post-trial brief?

MR. HUMMEL: Your Honor, we -- we do not agree that there should be a post-trial brief.

THE COURT: I understand. But when she said that, I want to make -- I'm assuming I'm reading her mind. I don't want to read her mind.

MS. KALANITHI: Thank you, Your Honor.

THE COURT: So when you say, "Judge, when you get our post-trial brief," explain that to the Court, because I think I know what you mean, but I want to be

very sure.

MS. KALANITHI: So, Your Honor, we had proposed to defendants -- and counsel is correct, we have no agreement -- that after -- following the trial, the parties exchange briefing, including proposed statements of decision, that we would file with the Court.

THE COURT: Oh, there's got to be statements of decision. There will be no question about that. But you specified -- is that where you're going to -- okay. For everybody, I will want a statement of decision from both of you.

Is that what you're going to include, this extra -- is that what you're -- I'm trying to get the point there, I guess. So the post-trial briefing -- let's make it clear. "The post-trial briefing, Judge, that will be our statement of decision, Your Honor"? Is that correct?

MS. KALANITHI: Correct, Your Honor.

THE COURT: I've got it. You've answered that question. Hold on. Thank you.

Go back to -- put up Slide 86. Counsel, never take this as prejudging. Never. But for me to fully understand, I say to both sides, "Let's go." I understand. When I've done major class-action lawsuits, I use a claims settlement administrator. Very effective. Very easy in a class -- big -- huge class-action, which I've done before. It's math.

What's the money? How many claimants? How many people were in the class? There's your number.

When I look at this, Counsel -- maybe you were going to explain this -- who's going to do this? Who's going to decide how much money -- do you understand what I'm saying? Who does that? Is it the claims administrator? The parties you're going to get involved in all this to go through that analysis? Can the analysis be challenged? Because I'm in another big case where that's a major issue that is being litigated.

What's the People's theory there?

MS. KALANITHI: Certainly, Your Honor.

THE COURT: It's more process. Do you understand what I'm saying?

MS. KALANITHI: I do. So it's the People's position that for these three particular types of misrepresentations for which we would seek restitution for students, that for each of those, there's a formula that can be applied that is supported by the law for each of those types of misrepresentations.

And so the claims administrator would be applying that formula, depending on the type of misrepresentation that the student claimed in the restitution process.

So, for instance, if a student was a victim of career misrepresentations, it would receive a -- the students would receive a full refund of the amount paid.

THE COURT: Just -- thank you. That helped

explain it. But to be clear then, it would be the claims administrator that would be making the determination of where the person submitting the claim would fall? Would that be a fair statement?

MS. KALANITHI: Among the three misrepresentations?

THE COURT: Yes.

MS. KALANITHI: The student would be detailing that in the claims form.

THE COURT: Yes.

MS. KALANITHI: And then -- can I have a moment to confer with my colleagues?

THE COURT: Absolutely.

MS. KALANITHI: Thank you, Your Honor.

THE COURT: Take a minute.

(Attorneys confer.)

MS. KALANITHI: So to answer Your Honor's question, yes, the claims administrator would determine based on what was submitted by the student in the claims form which -- which of these categories the student fell in.

Defendants would have the opportunity to challenge, for instance, you know, if the student had never been enrolled at Ashford; if the student, in fact, had not, you know -- knowing the student's payment history, could challenge the amount the student had paid over the course of their education.

THE COURT: You've explained the Attorney

General's position very well, Counsel.

MS. KALANITHI: Thank you, Your Honor.

THE COURT: All right. Mr. Yeh, we're going to start in 15 minutes.

MR. YEH: Yes, Your Honor.

THE COURT: When we get to 12:00 o'clock, what I would like you to do -- or have somebody nudge you at 12:00 o'clock -- go until that section is done. In other words, "Judge, I want to finish." Do you understand? So if you need to go ten more minutes, go ten more minutes. So it will be easier for me to follow too. And then we'll take a break for one hour, and then we'll come back and finish.

Everybody good?

MS. KALANITHI: Yes, Your Honor.

THE COURT: 15 minutes.

(Recess.)

THE COURT: We shall now hear the defendants' closing arguments.

Counsel.

MR. YEH: Good morning, Your Honor. May it please the Court, I am Jack Yeh of Sidley Austin on behalf of myself and our entire team and our clients. We're here to present our closing argument.

And first, before I start, I want to say on behalf of all of us, thank you to this Court. You've dedicated a tremendous amount of time and resources to this trial, which has not gone unnoticed. I just want

to say thank you to you and your staff and those who are behind the scenes, as well as our court reporter, for enduring the length of this trial. So thank you.

Your Honor asked us yesterday to consider giving you specific focus on three questions. And in this slide here, I leave it blank because I just wanted to talk about those three questions first and give you a bit of an overview as to where we're going to go with this argument.

You asked us to talk about the argument on agency liability and on restitution. Where did the 25 million figure come from, and on penalties, the breakdown of pre-Iowa, Iowa, and post-Iowa time frames.

In response to Your Honor's guidance from yesterday's argument on the motion for judgment, we'll explain for the Court how the evidence in the record to which the Attorney General is bound is overwhelming and conclusively and irrefutably establishing the elements of a secondary liability exception articulated in the California Supreme Court's decision in Ford Dealers.

Indeed, the Attorney General acknowledged that exception is articulated by the California Supreme Court, and we will show you how we made every effort to discourage misrepresentations, had no knowledge of misleading statements before they were made, and when informed of misrepresentations, we took serious action to prevent it from happening again.

Specifically, every single witness in this

case testified that Zovio and Ashford did everything in its power to prevent, detect, and remedy any potential misrepresentation to prospective students. The business incentives were aligned with preventing misled students from enrolling. The business processes were robust and designed specifically to accomplish that goal.

Executives, managers, employees, current and former, all agreed it was the core policy of the company to not lie to students. The Compliance Department's training, monitoring, and discipline processes were 97 percent effective in accomplishing that goal.

This is the exact case the California Supreme Court had in mind when articulating the exception to corporate liability in this kind of case. This is not a case to split the baby or compromise on violations. It is the perfect case for this Court and, when up on appeal, the Court of Appeal to affirm the factors in Ford Dealers.

As to restitution, where does that number come from? The answer is simple. Out of thin air. Out of thin air. The $25 million is untethered to any specific evidence in the record. There is no evidentiary link whatsoever to any testimony by any student or any testimony by any expert. Fluid recovery and claims processes are not allowed in California under the UCL or False Advertising Law. They've already had their claims process.

When they filed this lawsuit, they held a

press conference, and they invited 695,000 students to come file complaints. They got 614 and provided no evidence as to any one of those 614 as to what they paid or the value they received.

This is not a class action. This case does not proceed under the constitutional protections of class action. And not a single class-action case has ever proved that such -- I'm sorry. Not a single nonclass-action case has ever approved of such a post-trial claims process where the constitutional protections included and required in a class action are absent.

Let me say it again. The AG is limited to the evidence in the record regarding what a student paid and the value they received and the difference of that restitution. There is no such evidence in this case, and it is an unsustainable evidentiary record upon which restitution could be ordered.

With respect to penalties, you asked for a breakdown of the requested penalties framed around the Iowa AVC periods, before, during, after. We have shown the Court there is no basis for any penalties whatsoever to be assessed because there's no evidentiary basis upon which they can be assessed.

Dr. Lucido's call analysis, which is the linchpin of their case, is unreliable evidence which cannot be relied upon at all because of -- because of its process integrity flaws, as well as its substantive

evaluation flaws, nor can it be extrapolated to astronomical levels for the very same reasons.

Even if this Court were to accept Lucido's opinion of 126 calls, those calls break down into small bunches, 29 -- if I remember correctly -- 28, small portion at the end.

Those figures over time further illustrate why civil penalties should not be assessed because the good faith efforts of the defendants are a factual and legal bar to the assessment of any material penalty for the isolated incidents identified by the Attorney General in this case.

Quite simply, Your Honor, it is an unsustainable evidentiary record upon which penalties could be ordered in this case.

Those are the short answers to your questions from yesterday. And with the Court's permission, I'd like to explain in detail how those answers are irrefutably supported by the evidence, to which the Attorney General is bound, that has been presented in this case.

The first question I always ask in every case to a Court or to a jury is "Why are we here? Why have we dedicated these resources and this much attention to this case?" The answer to that, the Attorney General told you why in their opening statement on November 8th. Counsel said to you, "This case is about a school that has made billions of dollars by lying to its

students" -- lying to its students -- "That school is Ashford University and its parent company Zovio, Inc."

They not only said it in the opening statement, you heard it today. You heard the word "lie" nearly a dozen times. You heard the word "truth." You heard the word "regularly, pattern and practice, rampant, blind eye, bait and switch."

That is the case that they've presented, that is the case that they have framed, and that is the case they pled in their complaint in 2017; that Ashford's misrepresentations were not the actions of rogue employees; Ashford systematically made false or misleading statements; each defendant was acting within the course and scope of the agency relationship with each of the other defendants and with the permission and ratification of each of the other defendants; these representations were systematic; they were developed and refined by Ashford through consumer testing.

That's the case that they told you they were going to prove, and that is not the case they presented. The case they told you they were going to prove is a case of corporate incentives forcing admissions counselors to place profits over students, to systematically engage in a pattern and practice of lying to students from 2009 to 2020. And as a result, the Attorney General believes that the defendants have liability under the Unfair Competition Law 17200 and the False Advertising Law 17500.

Now, Your Honor, in 2017, these kinds of allegations -- how do I say this -- appeal to a then-existing skepticism of online education. Today every university in the country is an online university in one way, shape, or form. So just simply disparaging the industry isn't enough to win, not only in a court of law, but also in the court of public opinion.

So that's why the Attorney General believes that it needs to say something more, do something more, allege something more, shout something more, because they know that's also the legal standard they're going to have to prove given the Ford Dealers exception for corporate liability, and that's what they need to do to win the court of public opinion.

That is why the Attorney General told you at the beginning of this trial they would show you that Zovio and Ashford were companies basically running amok with no oversight, no compass, no conscience, and they recklessly told you that the university was a sham and provided an education of no value and the Compliance Department and all of its employees were a sham. We have proven each and every one of those claims to be 100 percent demonstrably untrue.

Let's talk about the law. Let's talk about what this case -- I just told you what the case is. This case is about their -- the financial aid, cost of attendance, transfer credits, time to complete the degree, licensure and career goals. Those are the main

categories.

But let's talk about what this case is not.

This case is not an individual consumer case. It is not a case by any one of those students against Ashford or Zovio. We're not litigating their claims.

It is not a negligent hiring or firing case. We are not litigating whether or not Ashford or Zovio should have hired a specific admissions counselor or should have fired them.

This is not an employment hostile work environment case. We are not litigating the legality of the work environment and whether pressure creates a hostile work environment or a boiler room atmosphere.

This is not a disparate impact case. We are not litigating whether or not the practices of the company have had a disparate impact on a protected class.

This is not a class action. Though it's being argued like one, it is not a class action.

And this is not a disciplinary proceeding against any specific individual, against any of the admissions counselors that they've called us in to tell you that they misled students.

And also importantly, Your Honor, this is not a regulatory case where they get to challenge the practices of the company in trying to do the right thing as being insufficient, as something more should be done. They should -- that should be done in front of

regulators. This is not the right forum for that.

So that's what this case is not.

Let's go to what this case actually involves on the law.

This case involves untrue or misleading statements in advertising under the False Advertising Law. This case is about unfair, deceptive, untrue, or misleading statements under the UCL Section 17200. And under those laws, an untrue statement is one that is literally false.

A deceptive or misleading statement is a literally true statement that is likely to deceive a significant portion of reasonable consumers when analyzed in context, not just a single statement in isolation.

The case law supports that standard under Procter & Gamble, Emery, Roll. You've seen those cases, and you're very well familiar with them.

That's what this case is about.

This case is also about corporate liability, secondary liability. The Attorney General has told you that the simple right to control employees and have oversight over your employees is case dispositive. That's it. You just need to stop right there. So long as they're an employee, it's over. The entire corporation gets to be held liable.

Well, the California Supreme Court had the foresight to address this issue in Ford Dealers. And

you can see in the cases that found liability for corporate defendants, those were cases where the employee misrepresentations were authorized or approved by the company.

In Conway, that was the case. In Liberty Tax, that was the case, where the franchisor required the franchisee submitted advertising for approval and did, in fact, approve the false advertising and controlled the other aspects of advertising.

Those are the cases where corporate liability is appropriate under the agency theory. But the California Supreme Court was very specific in articulating the exception to that rule, and the elements of that exception, as demonstrated in Footnote 8 in Ford Dealers, 32 Cal 3d 347, at 361, Footnote 8, arguing that the defendant -- a corporation is not liable for acts of its employees if the defendant made every effort to discourage misrepresentations, had no knowledge of representatives' misleading statements, and when informed of the misrepresentations, refused benefits and took action to prevent them in the future.

That's the standard for the exception, and, Your Honor, we have shown that to be the case many times over in this case.

To illustrate how that plays out in the cases, you see in Conway the facts were that the misrepresentations were authorized, approved, controlled, and trained to deceive.

In Liberty Tax, authorized, approved, and controlled.

In Johnson & Johnson you found authorized, approved, controlled, and trained to deceive.

In the Ford Dealers exception, the three elements are that the company discouraged it, had no knowledge of when the statements were made until after the fact, corrected the problems.

And that's what we've demonstrated each and every step of the way for Zovio and for Ashford.

Now, I don't want to confuse the exception to corporate liability with good faith because good faith is different. Good faith is an affirmative defense to penalties. While there's a factual overlap between the two, they are two different separate legal issues. And I'll come back to that when we get to the remedies.

But a defendant's good faith or bad faith is relevant to the evaluation of the fine assessed against the defendant. That's the Tobacco case. Equitable considerations may guide the Court in fashioning the appropriate remedy in a UCL action. That's the standard for good faith. And you can see how there's incredible factual overlap in this case in that respect.

When you take the law into consideration and you take the allegations in this case and you take what's been told to you by counsel in opening statement and in closing argument, what this case boils down to and what this case is about are three things: Corporate

conduct, context, and informed decisions.

Corporate conduct: Was there any systematic behavior throughout the organization that authorized, required or encouraged admissions counselors to lie to students to lure them into enrolling in Ashford?

What's the context of that? The student's journey is essential and even critical to assess whether students are likely to be deceived. That's the standard under the law, whether students are likely to be deceived. And the case law says you have to examine context to make that determination, especially if the statements that are being made are literally true. If there's an omission or if there's information that isn't provided, you have to take context.

And every time counsel told you this morning of an example of a lie, when she told you the truth, the truth was, "Well, the admissions counselor didn't also say..." That's an omission. That is not literal falsehood. These are misrepresentations by omission.

And finally, this is a case about informed decisions. Were students actually lied to? Were students actually lied to? Did mistakes happen? We've never said, "Your Honor, mistakes -- mistakes didn't happen."

In fact, you've heard a lot of testimony about the nature of human beings in an organization this large, that's the nature of organizations. Mistakes do happen.

But was there an intent to mislead so that somebody relies on it to your benefit? That simply has not been proven with the evidence in this record, nor does it exist outside this record.

So let's talk about corporate conduct, and let's talk about who the corporations are.

Corporations in this case, entities, are Bridgepoint Education, now known as Zovio, and Ashford University. You're familiar with them.

Who is Ashford? Dr. Pattenaude, who has been in higher education for decades, explained to you that Ashford's mission is to take a risk on students who have struggled because of life gets in the way, jobs get in the way, they're not ready. It's a place where you're committed to transforming people's lives with education and working primarily with nontraditional students, older students, and making a difference in people's lives, giving them an opportunity to achieve their dreams and goals. That's what Ashford is.

We heard Dr. Swenson tell you yesterday that Ashford's mission was affordability, access to a population that's underserved, quality education that focused on student learning and meeting their needs, and giving people whose access to higher education is often restricted because of their circumstances.

The mission is to provide accessible, affordable, innovative, high-quality learning opportunities and degree programs that meet their needs.

That's who Ashford is.

And the evidence has shown, Your Honor, that the corporate conduct of these defendants was completely above board, was always intended to do the right thing. From the corporate perspective, there was no systematic deception, no pattern or practice of misrepresentations, no boiler room atmosphere.

We -- we put the slide up for you in opening statement and we told you this is what we're going to prove, and this is, in fact, what we've showed you for the past six weeks. Ashford never authorized or ratified any deceptive practice, and we implemented in good faith a robust and effective compliance program that prevented, detected, and remedied noncompliant conduct, and Ashford made unavoidable disclosures as required by law, the Iowa AVC and the CFPB settlement. That's the corporate conduct that we showed this Court. That is the evidence in the record. That is the evidence the Attorney General is bound by.

Quite simply, Your Honor, what we showed you was that there was a complete failure of proof of any systematic or authorized misbehavior. In fact, what we affirmatively demonstrated to you was that the corporate interest of both companies are aligned with preventing misstatements to students.

The reason is really simple. As Dr. Pattenaude explained to you, you can't make misleading statements, you can't make false statements,

it's detrimental to the operation of the institution to be breaking rules because you can lose accreditation, and without accreditation, students would lose access to federal funding for tuition.

Your Honor, that's the ball game.

If, in fact, this was systematic, to lie to students, this company wouldn't last more than a few months. They wouldn't be able to operate. There could be no profit because they wouldn't be able to generate any type of consumer trust.

You lie to a student, you're gone. It's part of the culture. Dr. Pattenaude told you. You don't lie to students, and retention was important for profitability.

The longer a student stayed, Your Honor, the more profitable they were to the organization. Tricking students to enroll when they didn't fit resulted in students that didn't pay. That's not a profitable business model. The business model is for them to stay and graduate. That's the only time it becomes profitable.

And as Dr. Pattenaude told you, the old saying in higher education, "It's less expensive to keep a student than to go find a new one." "If we're good, we'll get these students through or at least far enough along, and it's a financial loser to have students drop out." Those are the business incentives.

Dr. Swenson also told you, "My experience is

that in any organization, there are tensions, and those tensions can be destructive or they can be creative."

And Dr. Swenson did whatever he could to make that a creative tension, and he never questions Zovio's honesty in pursuing the good of the students just as they were. He never observed any conflict in the business operations, as well as the educational opportunities.

As Dr. Pattenaude told you, Ashford just happened to be a university inside a business, but it's just like any other university that educates students.

You also heard from not just the executives, you heard from managers. Alice Parenti told you that Ashford never authorized a misrepresentation or misleading statement. She trained admissions counselors -- never trained admissions counselors to mislead students.

Matt Hallisy told you he was never trained to lie or mislead prospective students. And, in fact, it was the opposite in Ashford's robust admissions training.

Mark Johnson testified yesterday, explained to you during his time here, he didn't believe that there was any systematic really anything of this kind. "I know that's a broad statement. We had things that were one-offs. I'm confident we didn't have leaders training employees in doing the wrong thing."

And I've got to tell you, Mr. Johnson was, I

thought, incredibly credible at acknowledging when mistakes happened. He's not going to say they didn't happen. He's not going to say that isolated incidents don't happen. But on a systematic level, a pattern and practice, that just simply didn't exist.

Jeanne Chappell told you that Ashford never tolerated, condoned, authorized, or instructed admissions counselors to mislead students.

And even one of the witnesses called by the Attorney General told you, to her knowledge, any kind of misrepresentations were one-off situations.

Those are the facts as presented in the case. That's the evidence the Attorney General is bound by.

Even -- even their own witnesses, former employees, admitted to you that they never lied. "I don't think I lied to a student as far as I'm concerned."

Mr. Dean also admitted to you that no one at Ashford ever told him to lie to a prospective student.

Molly McKinley told you she was never told to lie by Ashford management in order to increase her enrollment numbers.

I'll talk about her in a little bit.

But she acknowledged to you, her management and the policies in the company never instructed her to lie to students. She felt a pressure to do that? We'll talk about those pressures and how she owned those pressures.

Wesley Adkins admitted that he was trained not to guarantee students they were getting financial aid or tell students that we had a program that we didn't have.

And Lee Bennett -- and by the way, Lee Bennett, he's at the front of this journey. He's a screener. He has no influence in the actual decision-making of actual prospective students. He finds out where they want to go and he directs traffic. He's not even an admissions counselor. But even he will tell -- he told you the Compliance Department would send you e-mails saying that this conversation was monitored. He was trained not to lie to people.

Over and over and over again at every level, executives, management, employees, every level has admitted and expressed to you affirmatively there was no systematic effort to encourage people to lie, misrepresent, or mislead.

This is a strange case, Your Honor. It's a strange case because in every case, there's always a bad guy. There's always someone, right? There's always a person. And the Attorney General here, they enjoy the benefit of what I call a "presumptive or optical white hat," right, because they're the Attorney General.

But let's not forget the Attorney General in this case is a civil litigant. They have the same burden of proof just like any other private litigant. The fact that they are the Attorney General's Office doesn't change their burden of proof and doesn't change

what they have to do in this court of law.

But who is the bad guy in this case? Their answer to that question has and always has been, "The organization is the bad guy." So that's why this case is unique. There's no any specific individual, any president of the company, like Liberty Tax, who said, "Send me the advertisements. I'll approve them all."

They can't point to any specific human being who is the bad actor who acted in a way that forms the basis for the Court to give them what they want in this case, not a single person at the top of that.

The AG points generally at the organization and asserts that because, well, Ashford and Zovio had in place this Compliance Department and processes that caught our employees making mistakes that we should now be punished to the tune of a hundred million dollars for not achieving perfection.

That's their claim, taking our own data, our own processes, our own efforts to catch mistakes and saying, "You didn't get to 100 percent. The cost is a hundred million dollars."

It's hard to say that no good deed goes unpunished, Your Honor, and I've avoided that phrase this entire case, but it's the poster child for that phrase.

Remember what Mark Johnson told you in his testimony, that the -- that he's -- he and the company's cognizant that the organization is made up of

individuals of human beings, and yet despite having four years of discovery, five full weeks of testimony in this case, they still cannot identify a single human being that authorized, approved, ratified admissions counselors to lie to students.

They can't. And even if they could, in some tangential way, they've never called any of those people in. They never testified. And they can't prove it because such an action would have been contrary to every single piece of training, every written policy of the company, the entire philosophy of the entire company.

Because if somebody did that and the company found out about it, they'd be fired. That's what you heard. That is the evidence that the Attorney General is bound to in this case.

Let's talk about the human beings in this case. You heard testimony from Dr. Tony Farrell from the School of Education, and he explained to you how Ashford designed a rigorous curriculum through a process that was extensive.

It was designed by faculty, vetted by senior leadership, submitted to the board of directors, reviewed and approved by regulators, like WASC and the California BPPE, the U.S. Department of Education, and then students enroll in that program. He's an educator. There's no question about it.

And the way that the organization vets a fit for students is critical to the organization's ability

to succeed, not only for them, but more importantly for the students. That's why the company measured student performance and learning outcomes to improve their own curriculum.

This is a learning organization, Your Honor, as Dr. Wind described to you. It constantly seeks data to affirmatively change and grow and evolve. That is the hallmark of a corporation who is trying to do the right thing. And you saw it in the curriculum. You saw it in the testimony over and over.

And you heard what Ashford offers. It offers flexibility, accessibility, and support to nontraditional students who wouldn't otherwise have access to an ivory tower, who wouldn't otherwise have the ability to get an education and improve themselves and be a role model for their children, if it wasn't for what Ashford provided.

But Ashford didn't do it on its own. It wasn't out there on its own. You heard Mr. Johnson and Dr. Pattenaude and Pat Ogden and witness after witness explain to you that this is a heavily-regulated company, that operations like any university are subject to layers of regulatory oversight, at the federal level with the Department of Education, at the regional level with WASC and HLC, at the state level with the California BPPE, and similar regulators in other states.

It's heavily-regulated. There's not a single thing that the organization does with respect to

students' enrollment that doesn't get examined and investigated by these regulators. And as part of that, that's -- I mean, that's not all.

The company's created its own internal regulator to monitor whether or not it's doing the right thing. It created a vast compliance program and hired experts to not only design and create a robust system of checks and balances, but also to implement them over time and to help the organization grow and to learn from the data it acquires and it tracks and evolve over time, the hallmark of an organization that's doing the right thing.

Back to the Compliance Department. It was externally regulated, as well as internally regulated. And you heard Matt Hallisy, who the Attorney General called to the stand, talk about the Department of Education's misrepresentation regulations that were promulgated in 2010.

This is just before the incentive compensation rules were issued by the D.O.E. as well. Those were the rules that eliminated the ability of any university to pay -- pay their admissions counselors for enrollment.

And these regulations were taken so seriously that the company formed their own cross-functional, high-level group of multidisciplinary subject matter experts to look at those regulations and implement them on an internal basis. It was given the highest of priorities at every step of the way as soon as the

regulations were issued.

So this is not a corporation that's just out there doing their own thing, making it up as they go. They have to follow rules, and really serious rules which have really serious consequences if you break them, because if you break them, you could lose it all. And you heard that from every single witness over and over.

The regional regulators at WASC had boots on the ground. They came to investigate as well. And you heard testimony from Pat Ogden and Dr. Pattenaude as to their interactions with the regulators. You heard them tell you what they had to demonstrate for compliance. You heard them tell you what the company had to share with WASC at all levels to be found compliant under all the standards of accreditation, which were extensive.

And Ms. Ogden also told you that she had to demonstrate to the regulators that the university follows appropriate actions and federal requirements for recruiting students, specifically, the kinds of claims and allegations in this case.

So the application and visitation and interaction process is extensive at the regulatory level, particularly on the regional level.

And you also heard Ms. Ogden tell you that every step of the way, the regulators concluded that the institution follows federal requirements on recruiting students, about the overall cost of the degree, about

the employment of graduates, topics in this case. The organization has to prove that over and over again to regulators.

The same is true on addressing student complaints. They had to prove that to WASC over and over again.

The California BPPE also has a state level of oversight, as well as other states doing the same thing. These rules -- these rules are mandatory for the organization, and they follow them to a T, because it's in their business interest to do -- to do so.

That's why they also created the Ashford compliance program. The purpose of that program and the ethics and compliance area of that program was to prevent, detect, and remedy any noncompliant behavior.

And as you heard over and over again, and particularly as Mark Johnson described to you, that when he designed the program after he had served for decades in compliance roles at major corporations around the world, that he learned that there are three pillars to an effective ethics and compliance program: Having standards, values, policies, procedures, and training, prevention; monitoring, evaluating and auditing, detecting, investigating; and then remedying it, doing something about it so it doesn't happen again.

Training is intended to prevent. The call monitoring was intended to detect. The discipline procedures were intended to remedy, not just remedy the

behavior of the admissions counselors, but also student outreach when the circumstances warranted.

You heard testimony about the compliance program and the types of monitoring that were used to detect, the different levels of monitoring, the phone call monitoring methods, the random sampling, speech analytics, focused monitoring investigations, mystery shopper, exceptionally detailed processes handled by compliance specialists, who their singular job was to detect noncompliant behavior. That's their purpose in the organization.

And you also heard that the purpose and their entire function was independent of the admissions counselors and the Admissions Department. They were separate departments. So the incentives were aligned for the Admissions Department to be compliant because they saw the compliance group as someone who could help them abide by the law.

And much more important than just abide by the law, Your Honor, it's to help the organization protect the students, because the standards of compliance are extremely broad and they're taught to every admissions counselor in training.

In a nutshell, you heard Jeanne Chappell tell you that all of the training they do, all the training they're involved in, is intended to prevent -- to prevent noncompliance. That's why they support the training.

You heard Alice Parenti telling you that training was exceptionally intense. It went over the entire student lifecycle, okay? And that lifecycle isn't just talking to admissions counselors. That training is throughout the entire organization. Any student-facing employee went through training, the policies, procedures in compliance.

Matt Hallisy told you the training never really stopped. They trained and retrained.

Mark Johnson told you the goal was to train and retrain. There wasn't just an introductory training. It was programatic training, refresher training, over and over. Mark Johnson also told you that there were modules on each of the areas under the guiding principles of success that would be important as well as the Do's and Don't's or Say This Not That.

So that training happened not just in the classroom, but also on the job. It continued the entire time.

What was being trained? What were the standards of the Compliance Department? This is one of the most critical points in this case, Your Honor, because it is a point that is constantly ignored and overlooked by the Attorney General in their presentation in this case.

The breadth of what is being trained, the breadth of the standards encompass not just false and misleading statements, which are prohibited by law, not

just statements that are regulated that shouldn't be said, like FERPA, not just illegal statements with respect to other legal requirements, but also standards of professionalism, stylistic statements, best practices.

What does a company want to be? How do we wants our employees to communicate? Should they use certain words in their communication style? Should it be more formal? Should it be more informal? Should you articulate a -- an abbreviation? Should you acknowledge the student? Did you do enough to -- to explain a specific -- a specific acronym to them, what that meant? These are exceptionally broad standards.

So the standards of compliance are so, so broad that it's intended -- it's intended to be broad so that admissions counselors can be trained over and over again. That's how an organization learns, is making standards broader so that they can learn areas where they can improve. That's why it's so broad.

It's not just false, misleading, deceptive statements that are -- that are noncompliant statements. It is a critical point in this case. And you heard testimony from several witnesses that explained to you when they evaluated the -- the noncompliant scorecards, that the biggest area of concerns are documentation and FERPA -- that's the -- that's the HIPAA requirement basically for education -- and is there the right documentation? Those are issues completely unrelated to

the allegations in this complaint, Your Honor.

Quite simply, a noncompliant statement is not necessarily a lie. It is not necessarily misleading. It is not necessarily deceptive. You have to do a lot more investigation if you want to know which noncompliant statements are a lie or which are misleading or which might be deceptive. You have to do a lot more investigation. And we'll talk about that as well.

The discipline and corrective action arm of the compliance program was extensive and very, very serious. As you heard testimony from Jeanne Chappell and Mark Johnson and Matt Hallisy tell you, that they -- corrective action and discipline process had multiple levels, from coaching all the way down to termination.

But very importantly, Your Honor, they also told you that that was not necessary -- not necessarily a linear progressive type of discipline. You could be fired at any time, even if it's your first offense, if the offense is serious enough to warrant termination.

And as Mark Johnson explained to you in reviewing the trends of misadvisements, noncompliant statements, most of the noncompliant statements are at the top of that funnel. They're in the business practices, they're in the stylistic, they're in the professionalism, things that warrant a coaching or a teaching of some sort, things that don't warrant firings.

And when Mr. Regan tells you, "Well, there are a lot of noncompliant behaviors. They didn't fire enough," these are human beings we're talking about. They have livelihoods. They have families as well. Should they be fired for mispronouncing an acronym, for being a little too informal in a conversation? That's -- we're mixing apples and oranges when we talk about the issues in this case, Your Honor.

And I want to be very disciplined about how we talk about the evidence that the Attorney General is bound to in this case, because the presentation you heard this morning confuses a lot of those issues and combines them for convenience, but the evidence they're bound to needs to be examined in a very disciplined manner.

I think it's probably an appropriate time to stop here.

THE COURT: We'll stop right now then.

And Counsel, if it's all right to you, I would like to start in one hour. Is that agreed?

MS. KALANITHI: Yes, Your Honor.

MR. YEH: Yes, Your Honor.

THE COURT: One hour. Thank you.

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Lunch Recess

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SAN DIEGO, CALIFORNIA; WEDNESDAY; DECEMBER 15, 2021;
1:02 P.M.
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THE COURT: Back on the record.

Mr. Yeh, whenever you're ready, sir.

MR. YEH: Thank you, Your Honor.

Before we took a lunch break, Your Honor, we were talking about the disciplinary process, and you heard a lot of testimony about this, about the differing levels and the nonlinear path to -- to various levels of discipline.

One thing I want to highlight for the Court is that what you heard in the description of the disciplinary process was not only the different levels of discipline, but also how it was communicated to the admissions counselors.

They received written and verbal communication about it through their managers, and they had an opportunity to respond to it. It's an interactive process, like most employment processes are.

So if an admissions counselor is in a position to receive some kind of coaching, some kind of warning, some kind of suspension, they have an opportunity to be heard too at that time, and they have an opportunity to tell the Compliance Department why they did what they did.

Don't forget that key component of that process, because I'll come back to it as we talk about

some of these witnesses.

So not only did the Compliance Department train to prevent, monitor to detect, discipline to remedy, it also tracked its own effectiveness. And you heard testimony from multiple witnesses, and we're looking at Exhibit 942 at page 14 about tracking the effectiveness of the Compliance Department.

You heard from Jeanne Chappell that the performance of the Compliance Department dramatically improved from 2012 through 2019 from 75 percent in 2012 all the way up to 94.7 percent in 2018. And you heard Mark Johnson talk about that it reached almost 97, 98 percent at one point during his tenure.

It's never 100 percent. It can never be 100 percent because human beings make mistakes, and the system is designed to expand the scope of the kinds of mistakes that are monitored so that the organization can constantly improve.

Another key component in terms of the workforce, remember, the workforce isn't static, it's dynamic. There's attrition in every corporation, in every job. New people roll in. Old people roll out. New people have to be trained. They may not be trained as well as people who have been there, you know, for ten years, so there are mistakes that get made. That's why you can never reach 100 percent.

And just because you're not at 100 percent, it doesn't mean that those mistakes are authorized or

condoned or ratified. It just means that the amount of mistakes are being controlled to a point from an industry standard. You heard Mark Johnson tell you that in other industries, 93 percent is the target.

So this Compliance Department tracking itself understood that it was on the right path, that Mark Johnson had built a compliance system that was effective, and that could be operated going forward with or without him.

That effectiveness is critical, Your Honor, because you don't just have to take Ashford's word for it, you don't just have to take Zovio's word for it. That Compliance Department was independently investigated by different independent sources.

Thomas Perrelli, the Iowa AVC settlement administrator, he investigated. He had boots on the ground. He had teams of people pay surprise visits to the admissions counseling floor.

As Mr. Johnson told you, they had access to personnel, to documents, to data, to calls and recordings, virtually anything they wanted.

And through the rigorous investigation that he conducted, based on their numerous visits and observations, he found that Ashford's call centers do not have the feel of a boiler room. That's in his deposition testimony. And he told you that while there may have been some isolated issues in some areas, the administrator has not found a pattern or practice of

noncompliance with the AVC.

And he also testified that he did not report a pattern or practice of admissions counselors making misrepresentations to students and that the single most effective tool for monitoring compliance has been the ability to listen to calls between Ashford personnel and prospective students. And Ashford's compliance group did that.

A completely independent investigator, a former federal prosecutor, came to those conclusions after doing his job and trying to find out the context of what everything was -- what was happening.

Norton Norris, the mystery shopper, a company high -- let me be clear about this -- a company that was hired by Ashford to mystery shop its own personnel. The purpose of his hiring was to improve on noncompliance. A company that hires a mystery shopper is not in the business of systematically lying to students.

It is proof positive, it is proof positive that it's at the core of their principles not to lie to students because they want to identify when somebody is doing noncompliant behavior, which includes not just making false and misleading misrepresentations, but also a whole host of other stylistic and business practices and best practices.

And what Mr. Norris testified to was that Ashford's Admissions Department was not pushy, did not exhibit bad behavior, and did not coerce students to

enroll. And he also testified that Ashford's Admissions Department was "one of the more compliant we worked with."

Now, the Attorney General points to various reports that Norton Norris produced and provided and highlights various aspects of those reports. But you also heard Alice Parenti testify, and she explained to the Court that the reason they hired Norton Norris in the first place was to try to improve compliance, but the reason they stopped using Norton Norris was because they couldn't verify the actual processes and results as being reliable because, in the company's view, the reason they weren't reliable was because Ashford was unable to trace back the calls to specific admissions counselors. You couldn't get into the context, and if you couldn't investigate, the results are not helpful or reliable. You can't really help improve unless you can identify who's making these statements. That's why they stopped using them.

But even Norton Norris will tell you that their very hiring is proof positive that the company wants to do the right thing and did the right thing each and every time.

The Attorney General also used exit surveys and argued to Your Honor that various individuals felt pressure -- I'm going to talk about pressure in a few moments -- and that various employees while they're going out the door had some negative things to say.

Your Honor, that's not a shock in any organization. You read the exit interviews for any organization -- corporate, public, private, public agency -- all exit interviews are always of people that are dissatisfied with the organization at some point and more likely to have people that are unhappy.

The problem with citing to that in this case is that they're all hearsay. They're all hearsay. They cannot be relied upon as evidence. They might be able to if -- to the extent that they're offering it. To suggest we did nothing about it, that's been proven to be 100 percent false.

But to suggest that the truth of what's being said in those exit surveys is absolutely inadmissible as evidence in this case, they haven't brought a single author -- a single employee who authored anything in those exit surveys to the stand. Not a single person.

They haven't explored a single personnel file, anybody that's submitted an exit survey. They just want to be able to say, "This was said and accept it as true. Take our word for it," without any opportunity to cross-examine, without any opportunity for Your Honor to see the context of what happened to that employee, without any opportunity to see the full breadth of that person's experience. Inadmissible, unreliable evidence, unsustainable for this evidentiary record.

WASC also investigated. WASC, like the Perrelli group, happens on the ground as well. You

heard testimony from Pat Ogden and Dr. Pattenaude about the visiting team comes in and does extensive evaluation of the university. They conduct interviews of the employees and students and faculty and the board of trustees to get their understanding. They come to verify that -- that an institution is doing what they say they're doing. So it's a very, very thorough process. That's Pat Ogden's testimony on December 7th.

Dr. Pattenaude testified that they put together an outside independent team, reads the report, comes and visits, crawls through all your materials and your papers, write a report to the commission, which is made up of peers, 20 peers, and then that commission decides whether or not to award you with accreditation.

A critical, critical prerequisite to operating this kind of business.

And WASC had conference calls with Ashford, conducted 30 meetings with more than 140 students, faculty, staff, administrative leaders, and reviewed student, faculty, staff and alumni e-mail responses submitted to a confidential WSCUC e-mail account. That's Exhibit 7539. And the evaluation process used for the special visit was extensive and involved multiple stages.

So ongoing, in-depth, boots-on-the-ground investigation by WASC determined that the claims in this case, which would have easily been discovered by them, are absolutely untrue.

In addition, you have an expert witness conduct his own investigation. Remember, Dr. Wind was skeptical -- skeptical of even coming into this case, and his one condition to being a part of this case was that he be allowed to design an analysis to reach the truth. And you heard that word several times this morning, by the Attorney General, about the truth.

And the truth involves not just what someone says, but what happens on the other side of that statement. How it's received. How it's used. How it's processed. The truth to whether someone has been misled depends on more than just what the person said.

And he designed an analysis to answer the question of whether Ashford systematically deceived students. We didn't tell him what to do. This was his design. We didn't give him the parameters and tell him what kind of result we were looking for. It was his set of parameters.

He ran multiple studies and analyzed multiple data sets to reach convergence validity to give him statistical confidence that what he was asking and measuring was reliable, and his analyses converged around the exact same conclusion, there was no systematic deception.

The choice architecture that's been set up by the company, the process and the journey that a student has to go through to make a decision is set up in such a way where there's training, a student dispute center,

and an Ashford Promise where you can get out for no consequence, and investments in those processes, all create a set of processes that is proof positive there's no systematic deception.

You wouldn't set up these kinds of processes if you were trying to trick people. The company's data and independent studies Dr. Wind did of the students, and the recorded call and text analysis, all his design, not the lawyers', all conducted by double-blind coders who didn't know the purpose or the sponsor of the study conducted the analysis.

There can be no dispute, Your Honor, that Ashford's Compliance Department was effective. The regulators agreed, the accreditors agreed, the monitors agreed. And yet, Your Honor, the Attorney General is here arguing over how many employees should have been fired, whether or not certain statements should have been said differently, whether or not employment practice -- practices should have been different.

Those are not proper grievances for this Court. They should have been brought before the regulators, the accreditors, and the monitors to which they had access, and the AG has never once initiated any administrative proceeding with a single regulator, never once.

Instead, they want to put it in the lap of this Court and wrap it all up and say, "Give us an injunction. Let's tell -- let's tell the company how to

run its business," when, in fact, the things they're complaining about are not illegal.

It's not illegal to fire low performers. That happens in every company, in every organization. If you're not performing, you're probably not going to keep your job anywhere. And you heard testimony as to why the bottom 10 percent were terminated. It's not because they weren't lying enough to students. It's because the CEO was inspired by a Jack Welch book that promoted that principle. And he did it once.

And that created fear. That's true. I can see why it creates fear. But it doesn't create fear to lie. Because every policy, every procedure, every edict from the company is to prevent you from lying, and you know that if you lie, you're going to get fired. That's a surefire way to get fired.

There's absolutely no evidence whatsoever of any corporate conduct to systematically authorize, participate in, condone, or ratify any employee, in admissions or elsewhere, to lie to students.

The evidence about the defendants' processes affirmatively disprove the accusations and elements necessary for establishing the exception to secondary liability. That was corporate conduct.

Let's talk about context for a second. And before we talk about context in terms of the specific evidence, I want to first talk about the context of the actual body of evidence, if I may. Where does the

evidence in this case come from? Where does it come from?

That evidence comes from us. It comes from Ashford. It comes from Zovio. It comes from their own Compliance Department, our own efforts to improve the organization on a business, operational and legal level. It doesn't come from any other part of the company. It comes from the Compliance Department. All of their evidence comes from there.

There is no whistleblower here. There's no hidden treasure trove of leaked documents. There are no smoking guns. There's no executives fighting over the soul of the company. It doesn't come from someone whose been trying to hide this. It came from the company's own efforts to prevent, detect, and remedy the very kind of behavior the Attorney General says it wants to prohibit. We agree.

And we collected data and evidence and tracked it over and over and over again to ensure that the company's employees weren't doing it. That's where all of the evidence to which the Attorney General is bound comes from.

The testimony in this case was uniformly consistent that the company insisted on ensuring students were fully informed to make the best decisions for themselves, and it was in the business interest of the company to do so. It is proof positive of that. Proof positive is the existence of the Compliance

Department itself and that the sole source of their evidence are documents and data collected by the Compliance Department.

It's a simple reality, Your Honor, that people make mistakes, and we know perfection is not possible in an organization of human beings, but good faith is. Good faith is possible.

I also want to talk about when this body of evidence -- when does it come from? Not a grammatically perfect sentence, but you understand where I'm coming from. When does this body of evidence originate from?

This is the timeline we showed you in opening, some of the key events in the history of this case.

And you see the Iowa AVC, it's from May of 2014, and the Attorney General files its complaint in November of 2017 and the trial in this case started November 8th.

Well, as you heard, the Attorney General called live witnesses to the stand, students, live former employees, and admitted documents with them.

The students that testified, either live or by deposition, enrolled in 2010, 2011, 2014, 2015, 2017. That's when their evidence takes place.

The employees that testified -- Ms. McKinley, Mr. Adkins, Mr. Hallisy, Jenn Stewart, Eric Dean -- they left the company in 2012, 2014, 2017. That's when the evidence comes from. Their evidence to which they're bound. And the documents they admitted during those

testimonies, the contemporaneous e-mails specifically, they all come from the same period of time. Exactly the same period of time.

The evidence is stale in terms of what they claim is happening on a regular systematic basis, and of course, there is no proof of any kind of pattern or practice or regularity. That evidence is all from nearly a decade ago.

Now, let's talk about the actual evidence in this case, the people in this case, the students in this case. You heard Dr. Wind explain to you how the choice architecture created by the company requires a student to go through an entire journey in order to make a decision. They go through the student inquiry center, then an admissions counselor who determines your fit and evaluates the relationship and then acts as a tour guide with certain subject matter experts available at the ready: Financial service advisors for financial aid, registrars available for -- for transfer credits, the disclosures, the enrollment application, the checks and balances, and the financial services process, the students advisor that takes them from there, all of them -- all of them --

Go back one slide.

-- all of them, Your Honor, who go through this journey.

And Dr. Wind told you he wanted to hear their voice because the student journey is critical to hearing

the voice of the customer, the consumer, to assess whether any student has been lied to. Who are they? Who is the ordinary, reasonable Ashford consumer?

And he also explained to you that in a situation like this, that consumers simply are not naive. It's not a simple stimulus response where you hear a statement and you make a decision. This is a high-involvement product that is expensive. It's complicated. It's going to require an investment of time. It's like buying a home. It's a complicated process. You don't make those decisions based upon one statement.

The consumer behavior is different when you have a product like this, and consumers seek multiple sources of information and conduct more research. That's why he designed a study to ask why the ordinary Ashford students makes their decision going through this journey. And he told you, in his testimony, "It's absolutely critical in terms of my approach to hear the voice of the customer." And the customer in this case were the students, the alumni, and the dropouts.

Attending Ashford is an expensive product. It's a product over time that requires major time commitment. It's a product that can affect your identity and future. It's a high-involvement product that people pay attention to, and they go through that journey. Consumers are not kind of naive who basically the only source of information they get is from the

admissions counselors.

Consumers engage in research, analysis, and discussions. Consumers are increasingly skeptical of advertising, and they rely more on other sources of information. That's why he designed the study, to ask and hear their voice and to see what they go through. What they go through are the people in the Admissions Department.

And the Attorney General told you that the culture in the Admissions Department was like a boiler room, that the student would encounter these high-pressure -- I think they called them telemarketers, notwithstanding how insulting that term is, for what these admissions counselors are trying to do.

That's simply not the case. You heard testimony over and over and over from Mr. Perrelli, who said that legislators and regulators focused on the industry have expressed significant concern about the boiler rooms at some institutions where admissions counselors were trained to use, and did use, high-pressure sales tactics using pain points to coerce students into enrolling.

This was a particular concern of the Iowa Attorney General. By and large, however, the settlement administrator did not find the use of such coercive tactics by Bridgepoint.

Norton Norris also reported in their testimony that Ashford's Admissions Department did not operate as

a boiler room and did not apply pressure on prospective students.

You also heard Dr. Pattenaude testify that "The Admissions Department was a pretty energetic, go-go kind of place with a fairly good vibe. I heard it described as a boiler room, and I just had no idea what they're talking about."

The Attorney General told you that the defendants' witnesses had no boots on the ground. Dr. Pattenaude's office was right outside the Admissions Department. His door was wide open. He would walk down there all the time unannounced.

Boots on the ground. The boots were there every day.

Kyle Curran told you that "I would not describe it as a boiler room. I wouldn't say it's a high-pressure, intense environment or anything like that -- anything like that, that I would associate with a boiler room."

Alice Parenti said that -- when asked if the admissions floor was like a boiler room, she said, "Not at all. It was a team environment. It was very vibrant and very energetic."

And Matt Hallisy also told you that "I presume when you say 'boiler room,' it's kind of something where it's unenjoyable, you know, just taskmaster-type environment. But really no, it was a lot of fun. Yeah, no, absolutely it was not a boiler room."

I want to make a point here. Some people are fit for a job. Some people are not.

You heard testimony from various witnesses. Jeanie -- Jeanne Chappell told you she worked in the Admissions Department for some time and she went into compliance because admissions -- being an admissions counselor wasn't a fit for her personality.

There's a pressure that goes with every job. If there's anybody in this room that doesn't feel pressure on the job, please raise your hand. I can't think of a single person, quite frankly. Pressure is part of professionalism. How you view that pressure is up to the individual.

And if you're a fit for the job that you're doing, you're going to view that pressure as inspiring, as exciting, as -- as Ms. Parenti described it, "as vibrant, energetic."

But if you're not a fit for a job, if it doesn't suit your personality, you're going to view that pressure very differently, and your viewpoint of that pressure is a function of yourself, not necessarily the organization.

And I'll give you an illustration of that.

Molly McKinley is someone that the Attorney General identified as someone who said she personally was subjected to pressure to mislead students, but she admitted she was not a fit for the admissions counselor position. She was there for nine months. Clearly not a

fit. And remember, she told you that she had her own personal health and financial issues which pushed her into taking this job, and she was afraid she would lose her health benefits because of her health condition if she couldn't get her performance up? That's her personal pressure, her own personal financial and health care pressures. She was afraid of losing her benefits, and that was what incentivized her to do anything to perform.

And what she heard in terms of her instructions, she interpreted to mean "Do whatever you can at any cost," even though she admitted to you, Your Honor, that she was trained not to lie, she was trained not to mislead, she was trained not to deceive.

And while she sat on the stand and testified that she misled students and feels terrible about it, she violated every single principle that the company set out for her.

And even worse, when she was disciplined at least three times for misadvising students and received five coachings in a three-week stretch, she admitted to you she never told a single compliance person or admissions manager that she felt compelled to lie to students, that she felt like it was the order of the company to do so.

She had an opportunity to do so at least eight times, and the Compliance Department was never given an opportunity to investigate that, if that was how she was

actually feeling.

So if there's a failure there, Your Honor, it's not in the company, it's not in the Compliance Department, it's in Ms. McKinley. I'm not blaming her, but she has responsibility for her own pressures, and the way she saw that job was through a prism in which she clearly understood was not a fit.

So that testimony is not reliable evidence of pattern or practice or systematic or authorized behavior of the company. In fact, it is emblematic of the opposite of what they're trying to prevent, what they're trying to detect, what they're trying to remedy. That testimony is a shining example of what not to do.

And if she had admitted at any time that she was lying to students, she probably would have lost her job. And if she had told compliance that she was being pressured by management to do it, you know from the testimony of every single Ashford witness and Zovio witness, it would have been investigated right away and rooted out right away. But she didn't give the company an opportunity to do so.

Quotas. Attorney General sitting there complaining that there were quotas as well that created pressure on people to lie to students. But when asked about that, Matt Hallisy said, quote, "No, the last quota I ever had in my life was in banking." There were no quotas in the Enrollment Department.

Alice Parenti was asked: "Did Ashford, to

your knowledge, ever have student enrollment quotas as a requirement for its admissions counselors?

"ANSWER: No."

Dr. Pattenaude stated on the stand, "You asked about do we have quotas, absolutely not, and we -- and you tell people over and over again, that is illegal."

Jim Smith was asked:

"QUESTION: Was that enrollment target, that sliver of the budgeting process, ever translated to a quota of students that had to be enrolled every year?

"ANSWER: To my knowledge, no."

The Attorney General was trying to take the budgeting process, trying to evaluate forecasts for head count and then turn that on its head to use that as evidence of quotas. It's not. They are bound to the evidence in this case. They cannot turn it on its head, and they have no evidence of quotas.

And the admissions counselors that the students would encounter, you heard multiple sources of testimony that told you that the philosophy of the Admissions Department was to put students first always, Ashford second, and you last.

So if there's any pressure, there was a pressure to make sure that the students were fit. That was the pressure, is to find a relationship and find people that you vet to be a fit for the company. Students, Ashford, and you. That philosophy played itself out not just in a sort of subjective philosophy,

it was taught in a classroom.

You heard about the number of classroom trainings that everybody had to go through, not just as a new hire, but on a regular basis. People had to be retrained, and they were retrained not only in the classroom, but they were also trained on the job.

You heard Matt Hallisy tell you about that, Alice Parenti tell you about that, Jeanne Chappell tell you about that. They also had written examples in their training of how to speak to students so that they weren't misled.

You saw these exhibits admitted, Exhibit 74830, the Say This Not That on cost of attendance. Exhibit 7480 at page 3, on cost of attendance, Say This Not That. Say This Not That training on financial aid, Exhibit 1328. Exhibit 1323, another Say This Not That on financial aid. Very explicit descriptions of what you should say and what you shouldn't say. Say This Not That on transfer credits, Exhibit 1332. Say This Not That on career goals, Exhibit 1040.

Every single subject alleged by the Attorney General in this case is the subject of express written training by the company to avoid. That is proof positive there's no systematic, authorized, or ratified conduct in contravention of those standards.

Which takes us to informed decisions. Now, I believe Jeanne Chappell testified that it was the goal

of the Compliance Department to ensure that the students were fully informed to make the best decisions for themselves. That was the philosophy. And not only were the -- were the admissions counselors trained what to say verbally on the calls, the company provided other types of information to help the student make their decisions.

Disclosures. And I'm going to pause right here for a moment, Your Honor. I want to be really clear. We're about to go through several disclosures to which the Attorney General has referred to as "fine print," fine print, and how fine print doesn't get cured later. It doesn't get -- get to cure a misstatement earlier.

Every single disclosure that we've shown you in this case is express, it's explicit, it's in front of them, just like every disclosure you have to read when you buy a house, when you buy a car. You don't get out of those just because somebody misspoke to you. They have meaning. A lot of work went into them. A lot of regulations require them. They're not fine print. They're disclosures.

And I'm going to walk you through some of them.

Disclosures on program costs, Exhibit 7740 at page 23524-25. An explicit disclosure on what your education is going to cost.

Exhibit 7740, also on the website, the Ashford

net price calculator, an actual tool, interactive tool, that you can use to inform yourself, that is made available to the students. At page 27075.

The enrollment agreement. The enrollment agreement that every single student went through with every single admissions counselor gives a clear and unmistakable disclosure about cost of attendance. Exhibit 1122 at page 13.

The academic catalog on online undergraduate programs gives express, explicit disclosure on what's involved in cost of attendance. And while, yeah, there are a lot of pages in the academic catalog, that's what a catalog does. But it is available, and you heard testimony from multiple witnesses that the catalog is made available to students when they go through their journey.

And, yes, maybe some admissions counselors said, "Don't download it." But "Don't download it" doesn't mean "Don't review it," "Don't look at it," "Ignore it," "You never have to take it into consideration," "Anything in there doesn't bind you to anything."

There's never been one single piece of testimony in this case where an admissions counselor said, "You're not bound to anything other than what I say." These disclosures have meaning.

On the website, Exhibit 7740 at 30020, financial aid disclosures on the website, explicit, in

writing.

Financial aid application disclosures, explicit, in writing, Exhibit 7825.

Financial aid academic catalog, multiple portions of that catalog at Exhibit 9037, page 91 talking about the financial aid plan, the median loan debt, the federal student aid eligibility, could not be more specific.

Don't forget the EFIP, a mandated Electronic Financial Impact Platform, a tool required by the CFPB. And you heard Jim Smith explain what that tool was, how it works, and what the student has to go through. And, yes, if a student puts inaccurate information into the tool, he or she is going to get inaccurate information out of the tool. But the tool is made available, and it's part of the disclosure process to help them make an informed decision.

It is not the company's responsibility to ensure that the student is truthful about the information they put in or accurate about the information. There's only so much that a company can do.

We are entitled to rely on the disclosures that are given to the students.

Jim Smith explained to you how the EFIP was a core financial aid document. It's designed and mandated disclosure that Ashford required every single student using federal financial aid to complete the EFIP before

enrolling, and it provides a big picture of your out-of-pocket costs, as well as any contributions, again, cash or amounts that you're taking before a loan, and then your debt to basically come up with an out-of-pocket balance that would be remaining.

And he said what it attempts to do is, again, summarize for the prospective student the loans of their first year based on the program length that they picked at the first page, does the mathematics to say, "This is your loans for your program based on what you selected," and then it applies interest, fees, and other to get to your total cost of repayment. That was the testimony on the record in this case.

Let's not forget the enrollment agreement disclosures. You saw them over and over and over again.

Exhibit 1122 at page 15. Exhibit 1122 at page 29 on transferability of credits. The academic catalog on transfer credits. Exhibit 9037 at 219 and 221.

Licensure and career goals, disclosures on the website, specific admonishments that "An online degree from Ashford University does not lead to immediate teacher licensure in any state," Exhibit 1047 at 2. Could not be more express disclosure.

In the enrollment agreement. Again, on licensure and career goals. "The University does not guarantee employment to any applicant as a result of their application, acceptance, attendance, completion,

or graduation from any course or in any program," Exhibit 1122 at page 20 and 23.

The academic catalog also on licensure and career goals.

I'm sorry, Your Honor, there's a lot of them. I just want to get through them for the record.

Exhibit 9037, 262 and 263. Licensure and career goals.

Reminder -- it's not just on the website. It's not just in the enrollment agreement. It's not just in the EFIP.

There are e-mails that then get sent later as reminders, "Hey, don't forget, you have to go through these steps to verify that what you're going to get is what you think you're going to get." Exhibits 175, 176, 177. Those reminders are sent at the 30, 60 and 90 credits level.

Time to complete a degree, clearly stated on the website. Exhibit 1047 at 3 through 5.

In the enrollment agreement, expressly stated. Exhibit 1122 at 19, Exhibit 1122 at 21.

In the academic catalog, time to complete a degree, over and over and over again. Exhibit 9037 at 158, at 212, at 263.

Each and every student that testified in this case admitted to you that they certified and acknowledged every one of those disclosures, that they had the opportunity to read and understand them, and

that they took responsibility for not doing so.

Your Honor, that's not fine print. It's not a tiny piece of font at the bottom of some document. Those are stacks of written disclosures that the company is entitled to rely on, the certification of these individuals who said they read them, they understood them. And, in fact, they did.

You heard testimony from Ms. Perez, for example, Roberta Perez. She told you she certified that she read and understood them. She told you she had the opportunity to do it.

And we're not blaming her for her misunderstanding, but she also admitted to you that she took responsibility for it. She said to you on the stand she didn't want her kids -- she didn't want to admit to her kids that her mom screwed up.

Every one of these students that testified admit responsibility for reading and understanding them. Whether they did or they didn't, I'm not here to dispute that. I take them at their word, their experience. I trust that they misunderstood.

And my heart goes out to them. And I'm telling you, Your Honor, the hearts of every single Ashford employee and Zovio employee goes out to them. They don't want that for any of these students, but we are entitled to rely on the process we've set out, and we're entitled to rely on the acknowledgment that they read and understood.

Another witness, Ms. Tomko, I believe was referred to in the Attorney General's comments.

Charles, can we toggle over to her notes.

Attorney General showed you these notes that she took and how she testified that, "Well, you know, I got some misinformation from -- from my admissions counselor about GPA, tests, interstate agreements and somehow I could be certified to become a public school teacher."

As you know, the disclosures in the enrollment agreement and everywhere else tell her she needs to check with her local accrediting licensing body. And what she told you on the stand was she took detailed notes of that conversation. Detailed notes of that conversation. She even took down the phone number of the Department of Education and certification.

But her testimony is that the admissions counselor told her not to call for four years? That's just simply not credible. She took detailed notes on everything, but she didn't write down, "Don't call until the end of your education"? Not credible, Your Honor.

She had the information. She had the phone number. She had the ability. She had the intellectual capability to understand. And she chose not to do it. And she took -- took responsibility for not making that call, and she regrets not having done so.

Thank you, Charles.

These kinds of services, processes put into

place, ensured from a corporate perspective, as best as the corporation could do, as much disclosure -- not just disclosure, Your Honor, but communication of as much information as possible to have the student fully informed to make their decisions.

And don't forget the Ashford Promise. If they didn't really understand it, they're going to find out pretty fast if they didn't. They have three weeks to change their mind. And if it's past the three weeks, there's the student dispute center to raise an issue.

None of these students raised an issue while they were at Ashford. None of them. That process demonstrates proof positive, there's no systematic, authorized behavior on behalf of the company to mislead students.

And the admissions counselors who testified that they were -- they were actually misleading students, they were actually disciplined. They actually testified that there was constant improvement.

A similar process existed for the employees as well. If they felt they were being pressured to do something illegal, they had options as well.

There was a tipline. They knew the Compliance Department was listening. They could go to the Compliance Department at any time. Yet none of these employee witnesses ever did. Eric Dean, Ms. McKinley, Mr. Adkins all had corrective actions and never once told a compliance officer that they were either lying to

people, misleading people, or being pressured to do so. Because if they did, you can sure bet something would have been done because this process was set up to root that out.

Now, perhaps the most important part of this lawsuit -- it hasn't been talked about by the Attorney General very much -- and that is the student body. We've heard from a few, but there are 695,000 students during this relevant time period of 12 years that attended Ashford. 695,000 students. And the law requires the Court to look at who is affected.

Dr. Wind told you that examining the context requires that students must be considered in the analysis.

So let's explore who are these students.

Ashford's student body is a nontraditional student body. The average age is between, I believe, 35 to 37, but certainly older than 25. They're not your average high school graduate who comes out of living at home and doesn't really know the way of the world yet. Most of them, over 70 percent, work full time during school.

This is from Exhibit 7558.

And most of them, as Dr. Pattenaude described to you, have difficult life circumstances. 94 percent of them have no family financial support. They're raising families. They have full-time jobs. They have historically faced obstacles that, quite frankly, many

of us in this room have the luxury of not having had to face, and they are struggling to educate themselves and improve themselves and overcome those obstacles for their own personal pride, for their own personal confidence, to set an example for their children.

Every single Ashford student that enrolls has overcome some obstacle and enrollment is a personal success for them because they don't have the luxury of being able to enroll at a traditional university. It's not a fit for them. It's not the right fit for them.

They're all different stories. They all have different reasons. Even the Attorney General's own student witnesses all have very different stories and different pathways to get to where they are and where they're going.

The student satisfaction survey -- before I go to student satisfaction. What does "nontraditional" mean? Nontraditional students, you heard Dr. Pattenaude describe them as at risk for not completing their degree, okay? And they're at risk for a few reasons, okay? They're not at risk because they're not intelligent enough.

Dr. Pattenaude told you, "I found Ashford students -- and I'm teaching a course that's about a year in, and is that -- consistently very good students, well informed, good writers by the time they reach me. So, no, I would not say that these are low-intelligence students. These are students who have had tough lives.

That's different."

Having a tough life is much different than not being able to understand, not being able to read, not being able to comprehend. The average Ashford student has already been very successful in life to even get to this point, and Ashford offers them an opportunity to improve themselves through education.

And Ashford tries to assess whether those students who have accomplished at least that first level of success in enrolling, whether they are satisfied with the experience. And you heard Mr. Nettles describe to you the Net Promoter Score and the results of our own tracking of student experience as being very high. These are high rates, particularly in comparison to other educational institutions. That's Mr. Nettles' testimony about Exhibit 7330.

Now, the Attorney General might discount that by saying, "Oh, well, it doesn't measure satisfaction in enrollment." These people enrolled. They're satisfied with the enrollment.

Are they satisfied with the education? The answer is absolutely "yes." It is not a sham. The university is not a sham. This Compliance Department is not a sham.

So of 695,000 potential students, they brought in a handful to testify about various complaints. They invited all 695,000, in 2017, to file a complaint. Only 614 out of 695,000 actually submitted a PIU or a

declaration, less than one-tenth of one percent.

The Attorney General never wants to talk about those that are happy with their experience, those success stories. And, Your Honor, personally that bothers me. My personal feelings are really irrelevant to this, but it really does upset me quite a bit because all of these students who've enrolled, all of these graduates have succeeded in getting their education, they have succeeded.

And the only people in their life that told them they're a failure is the Attorney General of California. They held this press conference in 2017 and said, "If you went to Ashford, your education is valueless. Valueless. You didn't succeed. You failed."

Every one of these student witnesses, that is offensive. And in order to support that proposition, not only does the Attorney General do it in a press conference and in their complaint and in this trial, they hire an expert.

Dr. Cellini, who's testified that their education at Ashford has no value, but, Your Honor, Dr. Cellini's testimony is not evidence and should be given zero weight because she fails to consider that students are, in fact, human beings. They are not wage earners. They are not just wage earners. She reduces every single student to a statistical earner and values them only for their ability to earn.

That is offensive. Absolutely offensive. To justify the conclusion that an Ashford education -- by the way, only at the College of Education -- has no value, they get her to testify that they're all failures.

But, Your Honor, even the Attorney General's own student witnesses told you that they received value, they received tangible benefit, that an Ashford degree was the first step to further educational goals, it was the first step to licensure requirements, that they were earning more now than before they started.

They also told you about the intangible benefit, the pride it brought them, the role model they could be to their children, the confidence it gave them.

And, Your Honor, that's consistent with the common experience of every single person in this room, whether they've gone to college or not. That's the value of education. You can't quantify that, and you can't dismiss a person because they don't earn more than the cost of what they paid for that education. In fact, those are the true success stories, people who don't earn more, and they did it for the value of the education.

And while they want to dismiss the value of friendship, mentoring, and networking, just think about the value that plays in our own lives. That's what I tell my son to focus on in his education, my daughter to focus on in her education, what relationships are you

developing, what kind of networks are you developing, what are you learning about life in your education? That's the value of education. It's offensive to reduce it to a wage.

But the Attorney General has convinced their testifying student witnesses that their education journeys, like that of 695,000 students during the relevant time period, was of no value.

They didn't care when this lawsuit was filed or as they prosecuted it that their desired destruction of Ashford would eliminate educational access and opportunity to millions of underserved, nontraditional students across the country.

They reduced them to a dollar figure. They reduced their stories to a dollar figure. They reduced their stories to costs of their education and valued napping in that cost and told them they're failures.

Your Honor, shame on them. Shame on them. They're here to protect consumers. They're treating -- they're treating consumers and students as if they have no intellectual capability whatsoever to fend for themselves, to read, to understand, and to grow.

Shame on them. It's offensive to them. It's offensive to every student, every graduate. It's offensive to every faculty member. It's offensive to every Ashford employee and Zovio employee who spent their professional careers at these companies working sincerely to change people's lives and the hundreds of

thousands of graduates. Shame on them for telling them they're failures.

I want to talk about the evidence. To prove their case, the Attorney General has asked you to look at the evidence that they're bound by in a way that has never been sanctioned before in a court of law. It looks like it's been sanctioned before in a court of law, but it never has.

And I'm going to go into a bit of detail on this subject because I consider myself a student of that process of proof of the evidence, much like everybody else in this room.

But let's first start with the manner of proof, okay? The manner of proof in this case, they told you they were going to prove that there were lies. They told you this morning they were going to prove lies. Lies are deliberate and voluntarily -- they deliberately and voluntarily framed this case around lies, intentional misrepresentations that the admissions counselors thought they were making to students.

Then they hired Dr. Lucido to give you his professional opinion. He didn't look for the lies. What he told you was he looked for false, misleading, or deceptive statements that might be perceived from the student's perspective. He looked only for statements he personally considered would be false, misleading, or deceptive to a student.

And then they hired the expert, Mr. Regan,

comments -- who looked only -- I'm sorry -- who looked only at noncompliant calls. He's looking at it from the Compliance Department's perspective.

So which is it? Are we here to look at evidence of lies? Are we here to look at evidence of false, missing leading, or deceptive statements? Are we here to regulate and punish noncompliant statements? Which one is it? It's a constant moving target.

The manner of proof in this case comes in two alternative forms. It comes in two alternative forms. And I want to be very clear about that.

The first form is live witness testimony, the testimony of former students and former employees. All right?

And the second comes in the form of data sampling of recorded calls, transcripts, scorecards, and then extrapolation. And the scope of that extrapolation, as you see, you call five live student witnesses.

They have 614 that responded to the press conference, and there's 692,000 or so enrolled students. That's the data set of live -- of live testimony. That's the denominator of the people they asked.

The scope of extrapolation, live adverse employees, two, maybe three -- it depends on how you consider the designations -- out of 74,000 employees over the relevant time period that they want to extrapolate from.

And I want to take a moment here to talk about that kind of anecdotal evidence, because Your Honor -- Your Honor has seen anecdotal evidence before at trial, right?

And the reason they rely on anecdotal evidence is because there's no direct evidence, right? There's no direct smoking gun policy that people lie to students. There's no testimony that people should lie to students. There's no order from management or from executives to lie to students.

So there's no direct evidence, and they know that. So they want to prove it circumstantially through anecdotal evidence. But anecdotal evidence is not reliable in this way, and there's oftentimes when anecdotal evidence cannot be relied on at all.

I'll give you an example. For example, if I said, "My grandfather smoked his entire life and lived to be 95; therefore, smoking isn't harmful to people."

We all know that is not an appropriate anecdotal conclusion to extrapolate, to take the anecdote and extrapolate because the farther away you get from the subject of the anecdote, the less reliable is the conclusion and inference, right? This would not be an appropriate thing for us to draw from my example because it's too far removed from the actual subject itself.

And most importantly, Your Honor, there is no other data to link the anecdote to the inference or

projection. There's no link between my grandfather smoking, living to 95, to it being healthy for the general population. Pretty simple to understand.

The anecdote may be appropriate to draw an inference about my grandfather's health. It would not be appropriate to draw a conclusion about the general population from the experience of a single individual. All right?

Now, I want to draw your attention to this slide, because when I said the word "alternative," that is probably one of the most important words in this case, the word "or." Their manner of proof is either live witness testimony or data sampling. It is not both. It is not a combination of the two. And let me explain what I mean by that.

The people that testified have not shown any evidentiary link to a policy, procedure, or any kind of systematic behavior of the company to the general population as a whole of 75,000 employees, for example, or that the few live student witnesses are representative of all the witnesses.

There's no evidentiary link there. There's also no evidentiary link between the small data set to the larger population they're trying to extrapolate to. And I'll explain what I mean by that.

First, there is no link between any of the live witnesses the AG called and any of the data sampling they rely on to demonstrate the false,

misleading, or deceptive statements. I'll be very clear about that. The former students and the former employees that testified were never evaluated by Mr. Lucido. None of the former students were evaluated by Mr. Lucido in any of his calls. They don't appear on his calls. None of the former employees that testified were evaluated by Mr. Regan in his scorecard analysis. There's no evidentiary link between them and the data sampling analysis the experts do. None.

So you have to look at them in that disciplined fashion. The live witness testimonies stand on their own. They cannot be projected to the entire population without some evidentiary link that they are representative of the 74,000 employees or the 692,000 students.

And proof positive of all the efforts of the Compliance Department, everything that I just articulated before we got to this point, there's no systematic behavior of the company for these experiences that testified. They are isolated incidents that the Attorney General has brought.

And remember, we are not litigating individual student claims in this case. We're not litigating individual employment lawsuits in this case. We're litigating a pattern or practice of a systematic and authorized pattern of deception, and you can't use the live witness testimony as evidence upon which to make that conclusion because there's no evidentiary link. On

the data sampling, equally there's no evidentiary link.

The small data sets -- and we'll go through this in great detail. The small data sets are not appropriate to be extrapolated the way it's being extrapolated.

First of all, the small data sets are not reliable evidence anyways. And I'll explain why that is for a variety of process reasons and substantive analysis reasons. But they certainly cannot be extrapolated by simple math without some evidentiary link of a systematic pattern or practice.

You cannot say because there's this number that we multiplied, that is evidence of a pattern or practice. You can't create the evidentiary link ipso facto through the math. It's got to be the other way. There's got to be a link between the sample and the evidence to project it. You can't just do math to create that evidentiary inference. It's never been accepted. It's never been accepted.

On the live witness testimony, all of those witnesses agree they were given the appropriate disclosures, acknowledged they read and understood them, never reported a problem with their understanding, and ultimately accepted responsibility.

On the data sampling, we're going to demonstrate how there is absolutely confirmation bias, selection bias, and design bias. Neither -- neither bucket -- neither bucket of anecdotes can be

extrapolated for the evidentiary purposes for which they're being offered in this case. The most important word there is "or." It's "or."

Now let's talk about the data sampling. Dr. Bernard Siskin. So being unable to rely on the specific anecdotal illustrations themselves, the Attorney General instead hires a statistician to create a method to prove their claim that defendants lied to students on a systematic basis.

And in order to do that, Dr. Siskin picked a small sample of Ashford's 11 million calls and then shrunk that down to about 2,236 calls, which was then further shrank down to 568 calls through a relevance process that was wholly controlled and managed by the Attorney General, not by Dr. Siskin. There was no assurance that the relevant work that was done through Dr. Siskin's sampling process was not biased.

In fact, the testimony was just to the contrary. It was unapologetic that it was controlled by the Attorney General. In fact, Dr. Siskin admitted to you that he had no involvement in the training of the Epiq coders, that he -- he and the Epiq coders knew the sponsor of the study, that they knew the purpose of the sampling. That's baking in selection bias right there.

The evidence showed that Epiq and Dr. Siskin also made mistakes and, very important, Your Honor, that Dr. Siskin relied on the Attorney General's direction that 20 to 25 percent of calls would be deceptive. That

was their instruction to him, "that's what you should look for." And lo and behold, that's what he found, and that's what the other experts found. It's not a shocker.

This is a process controlled by the Attorney General's Office, a process managed by them for the specific purpose of reaching a conclusion. It is not the pursuit of truth. It is the pursuit of a conclusion.

After going through his process, those 568 calls were then handed off to a subject matter expert, Dr. Lucido. And Dr. Lucido and his assistant reviewed the selection of calls hand-selected by the Attorney General's consulting firm.

Neither Dr. Lucido nor his assistant was an objective coder. They knew the sponsor and knew the purpose of the study.

And Dr. Wind described for you the inherent danger in having that done. Dr. Wind even told you in his study he recused himself from that process because he knew who the sponsor was, even though we told him, "You design it. You do it."

So in this case, Dr. Lucido absolutely knew who the sponsor and purpose of the study was. He had the complaint. He knew what they were after, and he found that the percent of deceptive calls -- the AG told Siskin to expect. He found the exact same ratio. That's a shocker. Or maybe it's not.

He provided his personal opinion on best practices with no evidence of what a reasonable consumer would do. He couldn't distinguish between express misrepresentations, implied misrepresentations, or omissions.

Remember, you were told this morning that the Attorney General had proved lies, lies, lies, lies. And every example they brought to you this morning showed that there was a statement, and the Attorney General then said, "What the admissions counselor didn't say was the following" or that "The admissions counselor downplayed another fact."

Those are not lies, Your Honor. Those are implied results from a statement that could possibly lead to deception, but those are not lies. Those are implied misrepresentations that Dr. Lucido could not on the stand identify for you what was misleading about that. He couldn't even identify what was deceptive about calls without referring to his own notes.

He ignored context -- he ignored context, even though he said it was critical, even though he said context matters. What was said or shown before, during, or after the call didn't matter to him. He wouldn't look at it. It was outside the scope of his assignment.

How many times did he say that during his examination, "Outside the scope of my assignment"? He didn't know if any of the 126 prospective students actually enrolled and didn't know if any of the 126

prospective students made any payments to Ashford or received value from Ashford. He just can't support restitution clearly.

So to the extent they cite to him for restitution, there is no evidentiary link between his expertise and restitution because he specifically carved that out and said he's -- he's not testifying about value or restitution.

He never examined what happened before the call or after the call. He didn't listen to the actual calls like the compliance officers do. He didn't look at the visual portions of the call, which the compliance officers actually do.

When the admissions counselors are on the phone with a student, they're having a verbal communication. But that communication, not just verbal, it's also visual because the admissions counselor will take a student through an online tour of various things including the EFIP, the website, the campus. The compliance officers do the same thing when they listen to a call. Dr. Lucido did not. It was outside the scope of his assignment.

And while the Attorney General says he showed his work, he absolutely could not show his work. We asked him to show his work on the stand, and he told you, "I -- I can't tell you why I reached this conclusion. Even though I cited to a specific statement, I can't tell you why I concluded that to be

deceptive unless I looked at my notes."

He couldn't show his work perhaps because he didn't do the work, Your Honor. This is a process controlled from start to finish, to reach a result and a conclusion that the Attorney General wanted. He spent hours reviewing call transcripts, drafting the report. I don't know how he possibly could have done the work, but the work isn't there and it's not shown and he can't explain it.

Context matters. He believes context matters. He told you that, whether it was stated overtly or implied, the notion of a misrepresentation would be dependent upon the context of the conversation and the call and the discussion being made. He told you that at trial November 15th.

Everybody agrees that is true. It is not possible to assess whether a statement is misleading without context.

Jeanne Chappell told you that to determine whether a call is misleading, "We" -- "If they go to a website, we do that. If they" -- and she's talking about compliance officers reviewing calls -- "If they talk about numbers, we pull up the resources. If they talk about classroom or program details, we go to the website and look that up as well. Everything they say, we -- we will actively find the document that would go with that."

Alice Parenti told you that "I would have to

have the additional context on the call" to determine if the statement was misleading to a student.

Matt Hallisy told you that "To determine whether a student was misled, I would look at the context, and I believe my -- my team would look at the context as well, and we would look at the questions that were being asked, we would look at how the student responded."

Jeanne Chappell also told you that compliance listens to the calls with students, quote, "because in order to get the context, you have to hear the tone, you have to hear the pauses, you have -- you have to listen to the conversation."

And Dr. Wind told you, quote, "You have to understand the context of the journey before you can conclude is there deception or not with respect to one single source."

This is not a shocking concept, Your Honor. This is not a shocking concept to require context to understand whether or not something has happened. In fact, context is an essential element of justice. You have to have it. And Dr. Lucido put blinders onto it.

Equally important are the examples that he pointed out. Dr. Lucido claimed that quoting costs less than what are published is deceptive. But in the example that Mr. Hummel examined him about on the stand, all he said was that the admissions counselor used the phrase "ballpark." That was the deceptive statement.

"Ballpark" was the deceptive statement.

And when asked why is that deceptive, he couldn't answer without going to his notes. The admissions counselor was wrong about the number of credits, but that was a mistake, not a violation of law. But to use the word "ballpark," that's a deceptive statement? That's Exhibit 2399.

Dr. Lucido claimed that credits will be accepted by Ashford or the admissions counselor makes clear that transfer credits are not guaranteed. There was absolutely nothing misleading about not offering pre-evaluations.

In fact, it says, "It depends on your previous classes." And the admissions counselor also says in the call, "I'll send you an e-mail so you have all the information about the program. And then, you know, if you have any questions, feel free to e-mail me or call."

Dr. Lucido expressly and affirmatively did not ask for any e-mails about this caller. He absolutely -- he actually ignored the most important context that's actually in the call, a reference to a further communication.

The next example, downplaying debt. In this example, Exhibit 2 -- 2350, the counselor did not actually downplay the debt. The prospective student said he would be able to afford debt payment. Also not an example of an express misstatement. Something that's implied or something that's omitted is what Dr. Lucido

has been talking about.

But he can't tell you how many of these or how many of his 126 calls are actually implied omissions, how many are express misstatements. How many, he has to go to his notes for. How many Your Honor has to look at to determine which ones are actually deceptive. You just have to take his word for it.

And, Your Honor, we've demonstrated his word is unreliable in this case because the integrity of the process was corrupted from the start, and the substantive standard he applied to it is not supportable in any way, shape, or form.

None of these 126 calls that he's identified are -- are reliable evidence that can be relied upon to demonstrate a false, misleading, deceptive statement was made. Not a one of them. Not a one of them. There's no basis upon which the Attorney General can say there's a sample from which to extrapolate. That's step one.

Furthermore, before we get to the next step, these are the areas that Dr. Lucido affirmatively told you he was not offering an opinion about. He told you it was outside the scope of his assignment to render any opinion about the organization, its management, its policies and procedures, its training, its disclosures, its compliance, its discipline, its student outreach.

He also told you it was outside the scope of his assignment and he wasn't rendering any opinion about the admissions counselors and their training, the

adequacy of their training, the admissions counselors' prior calls or follow-up calls or e-mails that were sent, or the visual part of their calls, or the corrective outreach, or the student outreach.

He also told you that it was outside the scope of his opinion to opine about the students and their journey, their payment, their value. It was also outside of the scope of his assignment to talk about other subject matter experts like financial aid, registrar, and student advisors. That's what he is not offering an opinion about.

So when the Attorney General tells you that there's been a systematic pattern and practice of misrepresentations and they base it on these 126 calls, there is absolutely no evidentiary link between that conclusion and this data set. It is simply his personal review of a curated set of data in which he renders his personal judgment, which he can't support or identify or break out in terms of what is actually false, misleading, or deceptive.

It is unreliable evidence. It is an unsustainable evidentiary record upon which any liability can be based, or any remedy as well.

Now, this is how the Attorney General based its case. It's taken 11 million calls. The defendants agreed to 1.57 million as a sample. There's actually a typo in that next circle. It's actually, I believe, 35,000, not 335,000, which was then shrank to 2,234 by

Dr. Lucido, which then resulted in his sub-sample delivered to -- Lucido, 126 calls. Okay. That's the -- that's the context of this data that he had. 11 million down to 126.

And then Dr. Siskin wants to then do something with that 126. And I want to make an observation here that it's -- it's axiomatic that extrapolations are only as good as the data being extrapolated. They are limited to the same limitations as the data, okay?

And as we've just discussed, Dr. Lucido expressly limited his opinions to his personal judgment that those 126 calls were generally false, misleading, or deceptive without being able to explain and having any evidentiary basis to explain why, what kind, or describe the reasons such -- such statements are likely to deceive.

Not only should Lucido's opinion be given no weight and the Attorney General should be deemed to have offered no evidence of any actual false, misleading, or deceptive statement, but this extrapolation cannot be allowed because there is simply no evidentiary link to do so, even if -- even if you accepted 126 calls as being false, misleading, or deceptive, which there's no evidentiary basis to do so.

The evidence is clear and unequivocal that the defendants' corporate incentives were aligned to prohibit false, misleading, or deceptive statements. It runs counter to the business model, student retention,

profitability, accreditation standards, and other regulatory obligations, the existence of a robust Compliance Department to prevent, detect, and remedy not just false, misleading, deceptive statements, but also a much broader swath of statements, including best practices, stylistic, professionalism standards, as proof positive that anomalous and isolated mistakes by individuals were not authorized, approved, or ratified by the company.

And therefore, these isolated incidents cannot be, from an evidentiary perspective, extrapolated to -- to a degree that, quite frankly, Your Honor, shocks the conscience. It shocks the conscience.

If there's no evidentiary link to expand this, it is shocking to see what they think it represents. In other words, this data set, this small, this flawed in selection and its content, are just simple anecdotal examples that cannot be argued to be representative of the population as a whole, particularly with indisputable evidence that the company expressly trains or prohibits its employees from making such mistakes.

The process integrity failures in the selection and picking efforts of the experts prohibits any of the data from being considered in the first instance or extrapolated in the second.

But nevertheless, here's what they do. They take 126 and they add that multiplier. They take that multiplier to make it 88,742, and they tell Your Honor

in this court, there's 126 false and misleading calls. That means, from the sample -- we'll do the math -- there's 88,000 calls in California. That is shocking. What's more shocking is what they do next.

They tell you nationwide is 816. Just multiply again. They don't say, Your Honor, look at the evidence. They're doing it backwards. They're doing the math and telling you that the math is the evidence. And the math is not the evidence. The evidence is the evidence. The evidence to which the Attorney General is bound is the evidence. The math is not.

And this kind of manner of proof has never been authorized in a single case in California, nor should it ever as a matter of fairness, as a matter of due process, as a matter of justice.

They don't just stop there. It's not just Dr. Siskin. They try to do a belts-and-suspenders and they hired Mr. Regan to do an analysis as well. Dr. Siskin found 20 percent because the Attorney General told him that's what he should find. Dr. Lucido found 20 percent because that's what he was told he should find.

And Dr. Regan is then hired to review compliance scorecards from the Compliance Department. And the Attorney General attempts to use his accounting analysis of the compliance scorecards as evidence.

This is an even more egregious manner of proof, Your Honor, because Regan analyzed the company's

database of noncompliant scorecards, data that wouldn't exist if Zovio didn't maintain a robust and industry-leading compliance operation. It wouldn't exist.

Nevertheless, they take that data, and he tries to conduct an analysis and reach some conclusions about it, conclusions that the Attorney General told him that's what they were looking for.

Now, as a preliminary matter -- this is really important -- he conceded to you on the stand that he was not assessing whether any Ashford employee made any statement that was false, misleading, or deceptive, even though he is a certified fraud examiner.

He's a certified fraud examiner, and the Attorney General didn't ask him to look at fraud. They just asked him to count how many noncompliant scorecards there are. They gave him a counting function. Not an accounting function, but a counting function.

This concession that he didn't look at anything relating to false, misleading, or deceptive statements renders his entire opinion completely irrelevant to this case. Completely irrelevant to this case. It is not admissible evidence in any way, shape, or form and bars, as a matter of law, any of his conclusions from being used as a basis to calculate penalties or restitution.

Do you remember the exercise that Mr. Lake did here with -- with Mr. Regan on the stand and he asked

him, "Well, how many -- how many scorecards is that?" "Okay, what's that times $5,000?" That shocks the conscience, Your Honor, when Mr. Regan has testified already he didn't evaluate anything that is illegal.

So now, are we here to penalize a company for monitoring its own employees to try and improve them so they can help protect consumers? That's what we're here to do? That is crazy.

The scope of compliance standards is broad, as you know. We've talked about that and encompasses best practices on the one hand and illegal activity on the other. But not all best practices are required by law or have any legal significance relative to this case.

Furthermore, the process that Mr. Regan used was controlled by the Attorney General from start to finish and deliberately skewed to increase his findings. Not only was he looking at irrelevant information, he used the wrong data set, which explains the vast majority of his noncompliant scorecards.

He told you that he looked at the Excel and SQL databases, the two different databases, one that included incomplete scorecards and one that the company relies on, which has complete information for its daily operations. He combined the two and created his own data set.

And he admitted to you on the stand that the reason that he did that was so that he could increase the count of scorecards, to increase the count, so you

have more from which to pick, so he can increase both the numerator and the denominator.

And you heard Jeanne Chappell describe for you how that is the wrong thing to do, how the Excel data has incomplete information. And Dr. Wind acknowledged that for you as well.

He also excluded 70,000 scorecards from the denominator by not including other scorecards that would have had a relevant topic. As -- as we've described and as Jeanne Chappell testified, scorecards do not measure compliance. They're trying to find noncompliance.

And so if there's a compliant statement in a scorecard on a relevant topic, it's not going to be picked up in the scorecard necessarily. You would have to look at the scorecard and then look at the call and then listen to the call to determine all of the different areas of relevant compliance statements.

That's just not something that the Compliance Department tracks because that's not its function. Its function is to find mistakes and make it better. Its function is not to find compliant behavior and then hand out gold stars to everybody. That's not its function.

So by excluding the other scorecards, he excluded 70,000. He manipulated the denominator. He had the wrong denominator.

Additionally, he used the AG's created relevance standard on the compliance verbiages to increase the count of noncompliant scorecards. "I

didn't attempt to figure out whether a noncompliant statement was a false, deceptive, or misleading statement." He just took the AG's word as to what was relevant to the case. "My analysis was compliant versus noncompliant," he said, "and I did not see a description on the scorecard containing a false, misleading statement."

So if he's not looking for that, he's trusting the word of the Attorney General that the relevance standard is accurate, appropriate, and is relevant to the actual issues in the case. But as we demonstrated to Your Honor, there are a lot of areas in those verbiages. There are over 900 verbiages just even in the Attorney General's count that are covered in the scorecards. Mr. Regan used 840. Nevertheless, that's still a lot.

But you remember the actual spreadsheet that Mr. Regan used to count all of the scorecards, right? And the spreadsheet he used came from that combined data set that he used. He excluded compliant scorecards.

Now I want to talk about what he did with the compliance verbiages. So he has too small of a denominator. We've already talked about that.

Let's talk about the numerator. By looking at scorecards with relevant topics that have nothing related to the issues in this case, he could pick a larger number for the numerator. He has more to choose from to pick the numerator, okay? And he used relevance

topics like encouraging the student to use a third-party website for transference of financial documents, representative offered student an unapproved gift incentive or promotion, representative referred to the university as a company, AC recommended password for the student to use.

All of these issues have no germane relationship to any issue in this case, yet that was the relevant standard given to Mr. Regan by the Attorney General. He trusted that they were accurate and appropriate for this case.

But, Your Honor, you have that exhibit, Exhibit 3727. And if you go into that Excel spreadsheet on the verbiage tab and you plug in the word "false" to find verbiages related to false, there's three of them. If you plug in the word "misleading" or "misled" on that spreadsheet, you find 22 of them. If you plug the word "misrepresented" on there, you'd find 14 of them.

So instead of 840 relevant verbiages that would result in a large number of noncompliant scorecards, you would only have a universe as small as this. And it's actually smaller. We've taken the best case scenario for those -- for those statements.

If you did that yourself, you would see how out of 840, only these handful might be relevant for the case. And the only way you can tell if they're actually relevant is then you would actually have to go to the call and listen to the call and hear the context and

listen to what's being said and visually see what the student is going through to determine if they were actually -- if they were likely to be deceived. That's what you would have to do. Mr. Regan did none of that.

So in other words, Your Honor, this -- this method of proving pattern and practice is simply not appropriate and turns the process on its head. A statistical analysis in pattern and practice cases like disparate impact cases, they analyze the impact on the protected class. They analyze the impact on the protected class.

Mr. Regan only analyzed the behavior of the company. Mr. Lucido only analyzed what was said by the company. None of them -- and Dr. Siskin did none of that. None of them looked at the impact on the protected class.

The AG didn't survey a single student. They didn't look at student account files. They didn't want to hear the student's voices. And they haven't done so here, and they refuse to do so because statistical evidence cannot be used in this manner, particularly without an independent evidentiary basis to support it. It violates every principle of due process, and the consequences of this form of proof violate every notion of fair play and justice.

Now, Your Honor, I'm about to conclude on the remedies. Perhaps we want to take a five-minute break for the court reporter.

THE COURT: That would be a nice idea, I would think.

Ms. Court Reporter, five or ten?

THE REPORTER: Ten, please.

THE COURT: It will be ten. This is straight reporting. Ten minutes.

(Recess.)

THE COURT: Shall we continue, Counsel?

MR. YEH: Yes, Your Honor.

THE COURT: Thank you.

MR. YEH: One note I did want to bring to the Court's attention, in terms of Regan's use of verbiages, when Dr. Wind used Regan's verbiages but with the correct data set, he found less than 5 percent noncompliant. 5 percent noncompliant, not 20.5 percent.

So let's get to remedies, Your Honor, and I'll be brief with these because you've heard so much argument on it already.

But the question is, "What does the Attorney General want here?" And I submit to you that the Attorney General and the defendants want the same thing. We both want students to get accurate information and to be fully informed. We both want students to succeed. The injunctive terms are already in place for the issues that have been raised by the Attorney General. An injunction is only appropriate to prohibit ongoing conduct. It's not equitable when allegedly deceptive conduct has ceased.

And in this case, Your Honor, the Iowa AVC measures already moot the request for injunction. Paragraph 21 of the AVC addresses specifically the AG's request today for an order to prohibit the defendants from engaging in any misleading statements in four areas. It's already in paragraph 21.

You heard Mark Johnson's testimony about the measures implemented that were already in place and implemented to further address that. It's moot. Every single area of their requested injunction has already been covered.

I just want to make another note. They requested on the injunction today a retention of calls for five years. This is the first time we've heard that request. We had an argument with Your Honor on the motions in limine on October 14th, and we had a big argument over what do they want? And they brought out this big set of discovery responses, said, "It's in there," but it's not really in there because it doesn't identify the right defendants. And they promised to amend that to give us an idea so we knew how to try the case of what they wanted, and they still didn't amend it. And today, they still haven't amended it.

This is a new request. And they've proposed to Your Honor a post-trial briefing? It's too late. This is the close of evidence today. This is the close of the case. They don't know what they want because everything's already moot. We're already doing

everything that should be done, everything that they've requested.

Ashford is no longer in operation, Zovio has a limited role, and there is no evidence of current conduct. All of the AG's evidence is absolutely dated.

And this one piece of evidence, this e-mail from Emiko Abe in 2021 expressing concern over somebody who said there was pressure in the sales -- in the -- in the Admissions Department, Ms. Abe evaluated exit interviews over an approximately six-month period and found one exit interview mentioning feeling pressure.

That's in her deposition. She raised this with her supervisor and requested a review. The review found that the employee's manager was no longer in a managerial role, and the company was unsuccessful in several attempts to reach out to the author of the exit survey.

The purpose of her e-mail was to really ask HR to be very diligent in its investigation of that one particular exit survey and to not leave any stone unturned. That is exactly what she should have been doing when hearing somebody say that. And that person isn't there. It couldn't be verified. This is what the Compliance Department does. It doesn't mean that a conduct is ongoing. It just means that a company is continually vigilant about monitoring for anything that would put anybody in a position to do something inappropriate. There's no evidence of ongoing conduct.

So ask yourself, "If behavior isn't what they're after, what do they want?" If they wanted to hurt the company, they already have. This four-year campaign has been devastating to the company's reputation, it's had its desired effect on the finances, the reputations, and the personal lives of the company and the thousands of jobs that have left to Arizona.

This case, Your Honor, I submit to you, is not about behavior. This case is about money. This case is a fund-raiser for the Attorney General's Office, and the Attorney General is trying to pioneer a new way to raise money that will be the legacy of what they want to leave behind for their office, that they can have a court judicially -- judicially regulate a company where primary jurisdiction is elsewhere so they can come into any company, find one or two isolated incidents, and then extrapolate that into a companywide penalty.

It is -- it is prosecutorial taxation, Your Honor, and that, Your Honor, is inappropriate. We've briefed this extensively. This should not be allowed, quite frankly.

And let's talk about the money for a second. Restitution. You heard a lot of argument on this already. I won't go into great detail on it. Mr. Hummel addressed it with you yesterday. But here, there's no evidentiary basis for restitution whatsoever. There's been no expert calculation by Dr. Lucido or Mr. Regan that can form the evidentiary basis for

restitution. There's no fact witness for that calculation. That number is not based upon the number of students harmed, nor is it based on an amount paid by any student individually or in the aggregate. It is literally picked out of thin air.

The Attorney General only identified 601 individuals in interrogatory responses who were supposedly injured, Special Interrogatory 16 through 29. But the $25 million demand has no connection to those individuals.

You can't have a claims process take place post trial. The law is clear in California, you have to have evidence of the restitution number in evidence in the trial before the close of trial. It has to be objective. It has to be in the record who was harmed, by how much, what their value was, what's left over, what's the actual number, and what's the objective standard. They haven't done that. They're proposing a claims process where somebody has to retry the merits of these subjective claims.

It's simply not allowed under California law under Kraus vs. Trinity Management, and the Attorney General has already gone through their claims process. They filed this lawsuit and held a press conference. They got 614 claims. But they've provided no substantial evidence, which is their burden, as to what those 614 individuals suffered, why they suffered, how much they suffered, what the amount is. None. There's

no specific amount found owing for any of those 614 individuals. They've gone through their claims process. They've had their day in court. There is no evidence to support it.

The standard for restitution, as you know, is the price paid minus the value received. You've seen this discussion many times. I won't belabor the point, but you know the law on that.

In this case, there's no evidence of that. Lucido's 126 calls didn't address restitution whatsoever. He affirmatively denied that it was anywhere near any of his opinions.

The same is true for Regan, except he also concedes that he didn't even identify deceptive calls, only noncompliant calls. You don't get restitution for noncompliant calls.

Professor Cellini provides no basis for restitution either. She looked at a maximum of 30 students, and there's no evidence on any of those students as to what they paid or the value they received. Every single witness testified to value. There's no evidentiary record for restitution whatsoever. It is an unsustainable evidentiary record for restitution.

And there's no basis to calculate restitution for testifying witnesses. Every one of the testifying witnesses testified about the value they received. Ms. Tomko, Ms. Roberts, Ms. Perez, Ms. Evans, Ms. Embry,

all in their -- all in their testimony testified that they received value, got jobs, that they got a degree that was a first step in their educational process, obtained a job in the psychology field, on and on and on. They got value.

Jessica Ohland, Renee Winot, Joseph Ybarra, Jasmine Cox, all testified the same. They graduated with a degree. They got the value of flexibility. They needed online school as a single mom with four kids. They got that flexibility and ability to get an education, over and over and over.

And the evidence is clear that Ashford did not accept the benefit of any alleged misstatement. In fact, Craig Swenson described for you yesterday in this e-mail, Exhibit -- I can't read it -- 1255, how "We have as a good faith measure adjusted a student's account."

When it's discovered that a student was somehow misled or misunderstood something or there was a problem with their account, you saw how the university reacted and sought to remedy it.

You also heard from Dr. Pattenaude how he approved a waiver of a balance owing on an account as well. That happens on a routine basis.

There's simply an unsustainable evidentiary record for any amount of restitution.

Finally, civil penalties. You've heard all of the civil penalty factors, the nature and seriousness of the misconduct, the number of violations, persistence of

misconduct, length of time, willfulness, defendants' assets and liabilities.

With respect to the nature and seriousness of the misconduct, there's no proof how many calls that Dr. Lucido evaluated were literally untrue, impliedly misleading. The worst statement that they were able to identify was that somebody said a figure was ball parked. That is not the kind of seriousness that's contemplated in the law for this type of penalty. It simply has not been established. Nature and seriousness has not been established.

The number of calls has not been established. We've talked about how Dr. Lucido's evaluation of 126 is faulty in its process and its substance and how there's no evidentiary link for extrapolation by Dr. Siskin. The number of violations has not been established.

The persistence of the conduct, all you've seen are isolated incidents that take place over time. That's all you've seen. That does not demonstrate a pattern or practice. That demonstrates what you would normally expect in every single organization in the world. There are going to be mistakes. You've not seen persistence of misconduct. That's not established.

And the length of time over which the misconduct occurred, it's 12 years only by -- by agreement that we look at that relevant time period, but there's been no systematic behavior over those 12 years.

The Attorney General has shown no systematic

behavior, no authorization, no -- no ratification, no approval during any of that time period, only unauthorized isolated incidents.

The willfulness of the misconduct. That's an easy one. I've spent all day talking about that. No systematic. Not established.

And finally, the defendants' assets and liabilities and net worth in this case. The Attorney General talked about cash available. They didn't talk about liabilities. It's really not relevant, Your Honor, in that respect.

The defendants' assets, liabilities, and net worth in this case, as you heard from Jim Smith, are in such a condition that if a judgment in the amount requested by the Attorney General were rendered in this case, it would realistically ruin this company.

The liabilities of the company are greater than their unrestricted cash. That's what's in evidence. If they get this kind of judgment, the company will be ruined. The impact will be on thousands of employees who've been forced to move to Arizona because of this kind of prosecution, and it would eliminate the industry-leading provider of compliance expertise and technology in this country.

The incentives it would create are perverse. Think about the incentive this case creates for corporate America. If a judgment is rendered in this case against a Compliance Department that is one of

the -- that is world-class and has done an effective job at rooting out not just illegal behavior, false and deceptive statements, but also noncompliant behavior, and that evidence from its own Compliance Department is used to punish it in a way that it ruins the company, the incentive for corporate America is to stop monitoring compliance.

That is not, that is not the purpose of this law. That is not the purpose of justice. That is not the purpose of what should be happening in this case. And the incentive for prosecutors to prosecute to raise money is not justice. This simply, Your Honor, is not justice at all.

If you look at the number of calls -- and I want to address that question specifically for Your Honor because you asked it. The number of actual calls evaluated by Dr. Lucido in the pre-AVC period are 29, the AVC period is 71, the post-AVC is 26.

We've also broken it down for you by year. In 2013, the Lucido calls can be broken down to 21 in 2013, 24 in 2014. The AVC was signed on May 15, 2014. 28 in 2015, 26 in 2016, 6 in 2017, 9 in 2018, 8 in 2019, and 4 in 2020.

That's also proof positive that there's not ongoing misconduct. In fact, you can see the trend is that it shrinks over time, even if you accept Dr. Lucido's premise, which is faulty on its face.

More importantly, Your Honor, the law

recognizes -- pardon me. Let's talk about debt collection first for a moment. The Attorney General identified debt collection as an element of its penalties request. It is not requesting penalties for debt collection.

The AG does not seek any remedy based upon debt collection itself, and the Attorney General has no evidence of an actual legal violation. If you read the stipulation, it does not concede liability.

Not a single student testified that they paid in response to an allegedly unlawful debt collection letter. The collection was a pass-through, and Ashford earned no profit on the fee. Ashford voluntarily stopped the debt collection practices in 2013.

So to the extent the Attorney General wants to consider in terms of seriousness and misconduct, that practice ended in 2013. So debt collection provides absolutely no basis for a remedy.

Now, the law recognizes that what the Attorney General is seeking here is not justice and, in fact, grants Your Honor discretion in this case. Joe Lake asked Mr. Regan to multiply times $5,000, 2500 for UCL and 2500 for FAL. But the actual text of the statute says the penalties, to the extent Your Honor believes they are mandatory, shall not exceed $5,000. So the penalty can be between $1 to $5,000.

And I submit, Your Honor, if there is a penalty, which there shouldn't be, a $1 penalty is just

where the circumstances support it, where the violations are de minimus, where the company did everything it could have.

The law also further -- goes even further, the good faith defense. California law is clear that good faith is an absolute defense to civil penalties. Good faith defense -- good faith, bad faith is relevant to the evaluation of the fine assessed against the defendant. Equitable considerations may guide the Court in fashioning the appropriate remedy in a UCL action.

I submit, Your Honor, given extensive history of the facts and the evidence in this case about corporate conduct and what the corporation has done to try and root out the very kind of behavior being sought to be prohibited here, good faith is absolutely established on this evidentiary record. No penalties are justified because we absolutely acted in good faith.

Ashford never authorized misrepresentations. There's no circumstantial evidence of authorization through pattern, practice, or culture. Ashford always looked for affirmative steps to prevent misrepresentations. And there's no reliable evidence from which the number of violations or amount of restitution can be estimated. There's no proof of actual ongoing misconduct or threat of misconduct.

Your Honor, I want to thank you for your time.

And in closing, I want to say that this case should have never been brought to trial, much less filed

in the first instance.

If the Attorney General doesn't like the specific way these companies are trying to prevent, detect, and remedy false statements that might lead to prospective students being misled, this is the wrong forum for that. They cannot and must not be allowed to regulate industries through the courts.

The case law is clear, when a corporate defendant has done everything in its power to prevent the kind of misconduct being alleged, it is not subject to secondary liability under the UCL or False Advertising Law.

I ask, what more could Zovio do? What more could Ashford do? This is the exact case the California Supreme Court contemplated when articulating the exception to corporate liability in Ford Dealers.

It is the perfect case for this court and the Court of Appeal to affirm the factors articulated in Ford Dealers. This is not a case to split or compromise. It is an unsustainable evidentiary record upon which to do so, and doing so would be unjust.

Let's be crystal clear here. There are no facts. There's no law that supports the Attorney General's efforts to take credit for an unprecedented, unlawful, and constitutional restitution class of yet unnamed students. And the Attorney General's effort to raise tens of millions of dollars in penalties for the general fund in this way is completely inappropriate.

Doing so would only victimize the hundreds of thousands of graduates and students whose educations at Ashford are meaningful and valuable to them personally and professionally. It would victimize the prospective nontraditional students that need this kind of educational access and opportunity from an organization that is world-class in its efforts to protect them.

It would victimize the tens of thousands of faculty and employees that have spent their careers trying to do the right thing and would create an entirely new class of corporate targets for this kind of unconscionable effort to punish those who are doing the right thing.

This is not justice, Your Honor. It simply is not. This is opportunism at its worst. Judgment should be rendered in favor of the defendants.

And I thank you for your time.

THE COURT: Mr. Yeh, thank you for your arguments. Both you and the Attorney General have represented your respective parties very well.

Can I assume you've got over -- you can do this in less than an hour?

MS. KALANITHI: Absolutely, Your Honor.

THE COURT: Okay. Here's what we're going to do. We're going to take another 12-minute break for Madam Reporter. You'll be done by 4:30 at the latest?

MS. KALANITHI: At the latest. I think more like a half hour.

THE COURT: Thank you. Perfect. 12 more minutes for Madam Reporter.

MS. KALANITHI: Thank you, Your Honor.

THE COURT: You're welcome.

(Recess.)

THE COURT: Whenever you're ready. We shall now have rebuttal by the People.

MS. KALANITHI: Thank you, Your Honor. Emily Kalanithi, again, for the People.

If I could please have Slide 49, I will try to not go over anything I went over earlier, just responding to a few points from defendants' closing.

THE COURT: Sure.

MS. KALANITHI: And I think I'd like to start where defendants left off, and that was the Ford Dealers case. Actually, if we could go to Slide 50, please.

So defendants rely very heavily on what is indicta in a footnote in the Ford Dealers case. That footnote seems to be doing a lot of heavy lifting here. And defendants argue that they should be excused for their misrepresentations based on that exception, and that's an exception to the general rule.

And to be clear, under Ford Dealers, three elements must be shown, and the burden of proof lies with defendants. And even in that case, it's still not clear from that footnote that that would be enough, the court says. It may be possible to not have liability if all three of these things are shown.

Defendants must show that they made every effort to discourage misrepresentations, and here, defendants cannot do so considering their employees' deceptive statements, but continued for over a decade unabated.

That includes statements by employees who, as defendants' counsel characterized, were not a fit or not a good fit. Even then, defendants are liable for those employees' misstatements.

Defendants can also not -- also cannot show that they have no knowledge of their employees' misrepresentations. So that's the second element under Ford Dealers.

And here, defendants had such knowledge through their own compliance data, their mystery shopper reports, and the ombudsman reports, among the other evidence that we've reviewed today.

And finally, defendants have not and cannot show that they refused to accept the benefits of the misrepresentation. That's the third element.

Instead, defendants took the tuition dollars from deceived students and are fighting to this day to hold on to those ill-gotten gains.

Defendants pointed to one exhibit that Mr. Swenson was on, and that is one instance where they learned of a student complaint and gave a refund or a partial refund. But that one single instance cannot satisfy the third element of Ford Dealers. It's

defendants' burden to show they refused to accept the benefits of the misrepresentations.

They were notified of misrepresentations, as I said, in the ombuds report, in their own compliance data, and in the Norton Norris reports, and in none of those instances did they refuse to accept the benefits of those students' tuition.

If I could please have slide 5.

Just very briefly. Defendants said at the beginning that this was a case about omissions, but, in fact, this is a case about false statements and misleading half-truths.

When Ms. Tomko's counselor said Ashford was a part of an interstate agreement that allowed her to begin student teaching right after graduation, that is a false statement. And whether it's a false statement or a misleading half-truth, the same standard applies, which is defendants are liable if the statement is likely to deceive a reasonable consumer.

So just to be clear, we're not in a world of omissions, we're in a world of false statements as shown by the testimony and evidence in this case.

I'd like to talk a little bit about compliance.

And if I could have Slide 66, please.

Defendants said their compliance program was designed to prevent, detect, and remedy, but Ms. Chappell testified earlier this week that detecting

was actually the bulk of the compliance work, not preventing or remedying.

Now, worse still, defendants hollowed out their compliance structure over time. They left multiple management positions permanently unfilled as they deemed compliance executives like Mark Johnson, who testified yesterday, redundant.

And defendants reduced the number of operations compliance specialists, and those are the employees who actually did the detecting of misrepresentations. They reduced their number fivefold.

Defendants also switched their speech analytics software simply to save $5 million.

And finally defendants ended all mystery shopping.

And as to focused monitoring, defendants gave admissions counselors a heads-up before placing them on focused monitoring.

And talking about the detection, as to the small percentage of calls that were monitored, defendants' shrinking compliance staff detected tens of thousands of noncompliant calls.

In fact, as we went over before, defendants detected noncompliant statements in more than 20 percent of calls. Those are relevant noncompliant statements. Yet defendants did very little to remedy this extensive noncompliance.

In particular, as Mr. Regan found nearly a

thousand admissions counselors had at least 10 noncompliant statements. And as Mark Johnson testified to yesterday, from 2017 through September 2019, defendants only terminated four representatives, even though their compliance staff detected 3,289 noncompliant calls. So instead of remedying, defendants let admissions counselors continue to make noncompliant statements for years.

And, for example, Ms. Chappell testified earlier this week that she decided to only issue a written warning to an admissions counselor, Ralph Mastraccio, even though she knew that he had already made 50 noncompliant statements to students.

So while defendants may detect noncompliance by admissions counselors, the evidence establishes that they've continued to cut compliance resources while failing to prevent or remedy noncompliance and leaving defendants' students to pay the price.

While we're on the topic of compliance, I'd like to discuss some statements that defendant made about the expert Mr. Regan.

If I could have Slide 65, please.

Defendants' attempt to poke holes in Mr. Regan's testimony using -- because he used their own compliance data, and what he found was that there's been extensive misconduct by the admissions counselors. But defendants' attacks fall flat.

First, they argue that Mr. Regan should not

have used defendants' Excel compliant scorecards. Those were in use from 2010 to 2018. So first, it's a bit confusing that defendants raise questions about their own compliance data and what that might imply about the efficacy of their compliance program.

But in any event, if Mr. Regan uses either his consolidated data set or only the SQL data, in either case he finds at least one noncompliant statement in 20 percent of relevant calls and 25 percent of all calls. That's a fact that defendants have not challenged.

Also, Mr. Regan made extensive efforts to remove any duplicates from the Excel scorecards before consolidating them with the SQL data. That's another fact the defendants have not challenged.

Defendants' second argument as to Mr. Regan is that his list of relevant statements by admissions counselors is overinclusive, yet defendants ignore that the percent of calls with at least one noncompliant statement actually goes up when looking at all calls versus only those containing relevant statements.

Defendants also argue that Mr. Regan's analysis is flawed because there are not many statements included in his analysis that contain the words "false" or "misleading" or "misrepresentation," those exact words. But Mr. Regan included many statements that are misleading, even if the -- they don't include the word "misleading," whether or not they contain that word, and

those include the admissions counselors, quote, "Guaranteed students' credits will transfer into their program" or "Admissions counselor advised that financial aid will cover the student's entire cost of tuition."

So not only were those statements misleading, they were made on over 200 calls each, so it's no surprise that defendants attempt to undercut Mr. Regan's analysis.

But these critiques are only around the margins and fail to rebut his findings that defendants' made relevant noncompliant statements in over one out of five calls leading to 750,000 students nationwide receiving misrepresentations from defendants.

If I could please have Slide 97.

I'd like to briefly discuss defendants' expert, Dr. Wind, and in particular the student survey that he conducted.

Dr. Wind's student survey should be given no weight just as the court in United States v. Dentsply gave another survey by Dr. Wind no weight due to its low response rate, plus his failure to study nonrespondents to dispel the possibility of nonresponse bias.

Here, Dr. Wind's student survey had a .4 percent response rate. Dr. Wind also deliberately excluded students who are aware of litigation against defendants, students on defendants' Do Not Call list, and associate's degree and graduate degree students.

Dr. Wind set out to conduct a survey that

would reflect the views of Ashford's entire student body, but his low response rate and affirmative exclusions of important subgroups of Ashford students defeated that goal.

Next slide, please.

And even if Dr. Wind's survey could be taken seriously, it doesn't help defendants' theories. Dr. Wind purposefully avoided key questions about whether students read the catalogs or enrollment agreements, and even among the few surveys that Dr. Wind did analyze, 24.1 percent of them showed that an advisor's promise was key to the student's decision to attend Ashford.

The Court can rely on Dr. Wind's -- cannot rely on Dr. Wind's flawed consumer survey to hear, as counsel put it, the voice of the consumer. Instead, the People would urge the Court to rely on the experiences of the real live students who sat on the stand and explained how they did exactly what defendants claim never happens, rely on the promises of their counselors when deciding to enroll.

Slide 94, please.

Just briefly on the issue of WASC.

Defendants rely heavily --

This is the accreditor.

THE COURT: I know who it is.

MS. KALANITHI: Thank you.

-- on the fact that Ashford was accredited by

WASC, and it's notable that while defendants wish to use the WASC accreditation as some sort of third-party approval of their Admissions Department, they, in fact, called no witness from WASC to testify during this trial, no witness to testify about what their impressions are of Ashford's Admissions Department, what information they received, what conclusions they drew, and why they continued accrediting Ashford.

So what is in the record is that Ashford provided no admissions calls to WASC during the period of accreditation which Ashford first applied for in 2011, no call recordings, that is, until 2019, at which point WASC reviewed 50 call recordings. We have no evidence about how those 50 were chosen or what standard WASC used to review them.

We also have evidence that despite issuing notices of concern about Ashford's low retention and graduation rate year after year, including a notice to UAGC this year, WASC continues to accredit the university. So the fact that the university is accredited is by no means evidence that WASC approved of its entire operations or its Admissions Department.

I'd like to talk a little bit about Dr. Lucido and Dr. Siskin.

Defendants say Dr. Lucido did not determine if any student who heard a misrepresentation actually enrolled, so restitution, they say, can't be based on his analysis. But for restitution purposes, that issue

will be addressed because the People's claims process will require that a student actually enrolls.

Dr. Lucido's analysis just shows the scope of harm in this case, and as to penalty purposes, whether the student actually enrolled is irrelevant because the misrepresentation becomes actual -- actionable the moment it's spoken.

Defendants also say that Dr. Lucido failed to identify any actual lies, only omissions or implied misrepresentations, but that's a distinction without a difference given the UCL and FAL covering anything that's likely to deceive.

Defendants say that Dr. Lucido ignored other calls and written disclosures, the context, but first, that's legally irrelevant because even if other truthful information exists, it can't cure a misrepresentation in one of the calls that Dr. Lucido identified.

And further, as I explained earlier, there's significant evidence in the record that Ashford counselors actually discouraged students from reading the catalog and rushed them through the applications.

Defendants say that Dr. Lucido did not apply a reasonable student standard and that he applied his own personal opinion about good practice, but what Dr. Lucido actually did was he used his 40 years of experience leading Admissions Departments, advising students and families about college decision-making, and setting standards in the entire profession for how

counselors should speak to students. Based on all that experience, he's clearly qualified to offer an opinion about what is likely to deceive a student.

And this substantive specific experience is actually what sets him apart from Dr. Wind and Dr. Wind's call review. Dr. Wind's general marketing knowledge did not help him identify clear misrepresentations in the calls he reviewed.

Defendants say that Dr. Lucido could not identify certain misrepresentations when he was pressed to do so on the stand. During his analysis, Dr. Lucido reviewed 4,000 pages of transcripts. The fact that he did not recall the details of every misrepresentation without the benefits of his notes is not surprising or not particularly remarkable.

He easily testified to each call once he was provided the notes, and these memory tests aside, defendants did not actually show that Dr. Lucido wrongly identified any misrepresentation.

Defendants say that Dr. Lucido was biased because he knew the sponsor of his study, but as Dr. Lucido explained, he considered himself an independent researcher when carrying out the study and he clearly set out his work. Defendants were free to show how this supposed bias caused him to wrongly identify a call as deceptive, and they could not.

This was a task that required someone with Dr. Lucido's experience in admissions, financial aid,

and transfer credits. It was not possible to use blind data coders. And as the People showed, defendants' attorney coders missed critical misrepresentations because they didn't have the expertise to identify them.

Finally, defendants say Dr. Lucido should have listened to the calls instead of reading the transcript. Dr. Lucido used court-reported transcripts of the calls, which allowed him to carefully read and reread the calls. This is another argument that defendants can make in the abstract, but in practice, they did not show a single call where the audio would have made a difference to whether or not the call was deceptive.

As to Dr. Siskin, defendants criticize his reliance on the data firm Epiq, which they know was hired and trained by the Attorney General's Office. They argue that Epiq was biased or made mistakes which undermined Dr. Siskin's results.

But first, there's no evidence of bias. Epiq was simply coding basic objective data, like what department the speaker stated they were calling from. There's no evidence that Epiq knew what the purpose of the study was. They didn't.

Further, this process was necessary in part because defendants did not retain any metadata for their own calls, a fact which is in evidence, which would have allowed for filtering by department. This case is about admissions calls, so it was necessary to separate those calls from the entire universe of calls from defendants.

With respect to errors, Dr. Siskin clearly testified that any errors in Epiq's process would actually work in defendants' favor; that is, correcting any error could only keep the number of deceptive calls the same or make it higher. This is not a valid critique of Dr. Siskin's analysis.

Defendants point out that counsel for the People provided Dr. Siskin certain estimates about the rate of relevant calls and deceptive calls at the outset of his review. As Dr. Siskin testified, the only purpose of this was to provide some datapoints from which he could estimate the necessary sample size to achieve his desired accuracy.

As he explained, those estimates did not influence his actual results in any way. Whatever Dr. Lucido found is what Dr. Siskin reported and used to estimate the deception in the full population, completely independent from any estimates used to inform the initial sample-size selection.

Defendants say that no expert opined that defendants authorized misrepresentations. They have a number of statements they made about certain things that experts didn't opine about, but this was not these experts' tasks, specifically Dr. Siskin and Dr. Lucido.

And whether -- it's irrelevant because the People separately provided evidence that defendants were aware of the deception and that they had the right to control the admissions representatives.

Defendants also say that no expert critiqued defendants' Compliance Department, and again, that was not the task of these experts and there was no need for an expert to critique defendants' Compliance Department when the paper trail from that department speaks for itself.

What Dr. Siskin did say, though, is if there are a large number of misrepresentations being made in the calls, quote, "It would mean if the training and compliance is to eliminate those, it's not effective."

Very briefly on debt collection.

Defendants -- just a number of points to respond to what defendants said on debt collection.

First to clarify, the People are, in fact, seeking remedies for debt collection violations, both penalties and restitution, and --

Can I have one moment, Your Honor? Thank you.

(Attorneys confer.)

MS. KALANITHI: Sorry, Your Honor. I will say that again.

The People seek remedies for debt collection violations, penalties, restitution of fees paid, and an injunction.

Second, the evidence of the legal violation is not only the stipulation, the fact stipulation that the parties entered into, but also the testimony of Scott Moore, the deposition expert -- excerpts that were entered into evidence and the exhibits to that

deposition.

Third, defendants say they did not profit from the fee, but to the contrary, defendants passed the cost of their -- the collection agency commissions to students. They did not have to absorb the cost themselves, so that means more money for defendants. They never repaid that money, and that is the violation. That is the profit from the fee.

Very briefly on defendants' net worth.

Zovio is a publicly-traded company. Its SEC filings speak for themselves. Defendants have presented no evidence beyond that, even though it would be their burden to present any evidence on the penalty factor related to assets and net worth if they assert that it should be taken into account in their favor.

There's no evidence in the record to show that defendants' financial picture is anything other than what's in their SEC filings. That picture shows tens of millions of dollars in cash, millions of dollars of additional assets, and a lucrative future contract with UAGC. There's no basis for limiting penalties due to defendants' assets and net worth.

The People further should not be penalized for the choices the company made to transfer over $54 million to the University of Arizona Global Campus within the last year.

Just a couple points on restitution.

Defendants said that the People's restitution

request was untethered to the evidence and that the proposal is a fluid recovery fund that's not allowed.

So just to address that briefly, neither of those is true. The People's restitution request is supported by the scale of deception as the expert analyses showed and by the exemplar experiences of the student witnesses who were so harmed by the misrepresentations they were told.

Also, this is not a fluid recovery fund. The case law says that a fluid recovery fund is similar to a Cy Pre Fund, a pool of money that does not even go to the victims directly harmed by the challenged conduct, and that's the opposite of what we are proposing here with the claims process.

In fact, in the Kraus case -- that's the case defendants cite for the fluid recovery fund proposition -- the Court specifically said what is allowed -- where a fluid recovery fund is not allowed, what is allowed is a court-ordered process by which victims are identified, located, and given the opportunity to submit a claim for relief, which is exactly what the People are proposing happen here with the claims administrator.

Defendants also say that there's no nonclass-action case that has used this sort of claims process. But, again, that ignores the clear examples that the People have cited in multiple briefs to the Court on this issue. That's the Sarpas case and the

Fremont Life case. The fact that defendants ignore that case law does not mean it doesn't exist.

Thank you, Your Honor.

The final point I'll leave this Court with is the concept of willfulness, one of the penalty factors. So -- that's one of the penalty factors under the UCL and FAL, as Your Honor knows.

As you heard in Mr. Yeh's statements, as defendants see it, Ms. Perez screwed up -- that's the language used in the closing -- that Ms. Tomko screwed up, that other students who testified apparently also screwed up.

Defendants' corporate representatives, including Dr. Pattenaude and Dr. Swenson, sat through most of this six-week trial, yet not once have their witnesses expressed an ounce of remorse for what these students experienced, the students who testified live, the students who testified via deposition, the hundreds of students defendants identified today who submitted claims to the Attorney General's office public inquiry unit, the students identified in the Norton Norris reports and in the ombudsman reports, the students who are implicated by all the misrepresentations that were identified there.

The People request that this Court use the full scope of remedies available under the law to penalize defendants for their wrongs, remedy the harms they have caused, and to stop their willful misconduct

from continuing.

Thank you, Your Honor.

THE COURT: Thank you, Counsel.

The Court would like the statements of decisions. For the record, I use them, so let's talk about timing, and then I'll tell you the process that I've done, that I always go through. This case will be no exception.

What type of time frame are you look -- we only do one. I don't -- you have one shot here. Maybe that's not the right -- one statement of decision, one statement of decision, and you're done. There's no cross coming back or anything like that. Everybody understand that?

MR. HUMMEL: Yes, Your Honor.

MS. KALANITHI: Yes, Your Honor.

THE COURT: Thank you.

Let's talk about time frames.

People, how much time do you think you need to do a statement of decision? Realizing that in two weeks, I'm off -- well, just tell me your time frame.

MS. WANG: We had suggested January 18th to defendants.

THE COURT: Wow. And notice I said, "Wow." That's pretty quick.

MR. HUMMEL: Yeah, I think that's too quick. We'd request the 20 -- either the 28th of January or February 4th. I understand the Court has 90 days from

submission today, so whatever the Court wants, we will meet, but that's -- given the holidays and a trial I have, that would be good.

THE COURT: It depends how I structure that 90 days. If I continue it --

MR. HUMMEL: I get it.

THE COURT: Just so you know, so -- but you know that. But now I have to think. What was your -- you said that January when?

MR. HUMMEL: 28th, 28th or February 4th.

Can we go off the record for a minute, Your Honor?

THE COURT: Sure.

(A discussion was held off the record.)

THE COURT: Proposed statement of decisions, January 28th. It will take me a month to do what I'm going to do. Easily a month. And then what I do, which I always do, I'll make my final decisions, I put it away for two weeks. I've always done this. Forget about it. And then I go back and read it again to make sure that I'm comfortable. And if I'm comfortable with that two weeks, out it goes.

So I'm trying to figure what time frame does that get me in. So let's say I get it done by March 1st -- oh, no. That's within the 90 days, isn't it?

MR. HUMMEL: Well, it depends on when you deem it submitted.

THE COURT: Well, thank you, Judge Sturgeon. How about that? No, that will work fine. Because that gives me the months -- and there's some holidays in there, so it gives me plenty of time to get it done, okay? So let's do that. Just put down it will be done by January 28th.

MR. HUMMEL: Thank you, Your Honor.

THE COURT: Anything else from the People?

MS. WANG: Can we reach an agreement on page limits? The People suggest 50 pages.

MR. HUMMEL: Fine with us.

THE COURT: That's a good number. 50 pages.

MR. HUMMEL: Would you like it in Word too?

THE COURT: Yes. Thank you for reminding me. Send it in Word, okay?

MR. HUMMEL: To your -- we'll make arrangements, yes.

THE COURT: Right here. Right here.

MR. HUMMEL: Perfect.

THE COURT: Send it to Steph. Do you have Stephanie's --

MR. HUMMEL: Yes.

THE COURT: That's who I want it sent to.

People? Anything else.

MS. WANG: There is one more final housekeeping matter --

THE COURT: Take your time.

MS. WANG: -- Your Honor.

There are about 15 exhibits that we would ask the Court for permission -- admitted exhibits we would ask the Court if we can not submit paper versions of them because they're extremely burdensome to even format for printing, and then once they're printed, it's going to run into the hundreds of thousands of pages. We've provided the list to defendants.

THE COURT: So I assume you want to do it on a thumb drive?

MS. WANG: Yes, they've already been provided on a thumb drive.

THE COURT: Haven't we already done one -- we've already admitted one like that, haven't we?

MR. HUMMEL: Yes, Your Honor, the website.

THE COURT: Yes. First of all, I don't have any objection.

MR. HUMMEL: We have no objection.

THE COURT: And if the appellate court wants to do something, they'll let you know. But I think they should be fine with that, I would think.

MS. WANG: And would the Court like the specific exhibit numbers that that would apply to, or should we do a stipulation?

THE COURT: Do a stipulation.

People, anything else?

MS. WANG: One other thing, which is, the parties had submitted a stipulation regarding all the different exhibits that had been substituted in for

because of the PII, the personally identifying information.

I think I see on the docket that Your Honor already signed the proposed order that went with it. If I could confirm, or if we don't need it, I just --

THE COURT: Confirmed.

MS. WANG: Okay. Perfect.

THE COURT: I would assume that all of you, or at least one from each side, will determine the list and agreed upon all admitted exhibits. I would like that done. We've been doing it as we go along, so I don't think it's going to be that big of an issue. But that's very important, if you could do that for the Court.

MR. HUMMEL: We'll do that.

THE COURT: Thank you.

MR. LAKE: Yes, Your Honor.

MS. WANG: Yes, Your Honor.

THE COURT: Anything else?

MR. HUMMEL: Yes, Your Honor. On the defense side, there are -- there's a thumb drive of the pages from the website, Exhibit 7740, that the Court had requested that were referenced, and we can provide that to Your Honor or make it part of the record.

And we too have to replace four exhibits that eliminate PII. And I'll read those for the record now, and we'll do that by stipulation as well. But they are Exhibit 666.

THE COURT: Slow down.

Mr. Clerk, are you marking it with me?

THE CLERK: Yes. Can you give me that first one, Your Honor?

(The Court and the clerk confer off the record.)

THE COURT: And these are the following exhibits.

Nice and slow, Counsel.

MR. HUMMEL: The exhibits that we're replacing with PII redacted versions are 666, 1255, 1281, 3780.

And, Your Honor, what was on the thumb drive are the website pages referenced per the parties' stipulation on Exhibit 7740. And we've agreed to this with the People.

THE COURT: And is that all going to be on one thumb drive?

MR. HUMMEL: Yes, Your Honor.

THE COURT: People clearly understood?

MS. WANG: Yes, Your Honor.

THE COURT: Agree?

MS WANG: No objection, yes.

THE COURT: And put it in a -- we've got -- see those little yellow -- make sure it goes into one of these.

MR. HUMMEL: We will.

THE COURT: We've got about 40 of them over there --

MR. HUMMEL: Okay.

THE COURT: -- for the record, okay?

MR. HUMMEL: Nothing further from the defense.

THE COURT: Anything else?

MS. WANG: Nothing further from the People.

THE COURT: Just a few comments from the bench.

I appreciate -- I've done a number of what I call not only complex cases, but major complex cases. The -- and I really mean this. I've done it all.

The efficiency that your team (indicating) and your team (indicating) have done, admirable. You did not waste one minute of this Court's time, and you all know how busy I am, and I can't -- I mean, it's a big deal, people. It is a big deal. I'm telling you, this could have went on for months.

But because of your efficiency, the Court is really pleased. This is the way to do a complex litigation case. And you know I get a lot of requests for speeches. Well, I'm going to be talking about you all -- not about the case -- just how efficient you were, and I mean it.

And the other thing is the lawyering. A lot of smart people in this room, but you're professional, you know what you're doing, you deal with me. I've got that. Trust me, I clearly -- but I'm just -- you know, this is -- this is what it's all about. You're all very good. And your clients should be very proud of you.

All right. Do your work. Thank you.

SIMULTANEOUS SPEAKERS: Thank you, Your Honor.

(Proceedings adjourned at 4:07 p.m.)

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STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

I, Christina Lother, CSR No. 8624, Official Reporter Pro Tempore for the Superior Court of the State of California, in and for the County of San Diego, do hereby certify:

That as such reporter, I reported in machine shorthand the proceedings held in the foregoing case;

That my notes were transcribed into typewriting under my direction and the proceedings held on December 15, 2021 contained within pages 1 through 197, are a true and correct transcription.

Dated this 16th day of December, 2021.

Christina Lother

(DIGITALLY SIGNED)

_____
Christina Lother, CSR No. 8624
Official Reporter Pro Tempore
San Diego Superior Court

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