To: Under Secretary Ted Mitchell  
From: Borrower Defense Unit  
Date: January 9, 2017  
Re: Recommendation for Corinthian Borrowers Alleging That They Were Guaranteed Employment

Corinthian Colleges, Inc. ("Corinthian") consistently represented that all graduates obtained jobs after graduation or, relatedly, that its students were guaranteed employment after graduation. These representations were false and misleading. Accordingly, the Borrower Defense Unit recommends full relief for Corinthian borrower defense (BD) applicants who submit "guaranteed employment allegations"—that is, borrowers who (1) enrolled at any Corinthian-operated Heald, Everest, or WyoTech campus between the time Corinthian opened or acquired the campus and April 2015; and (2) alleged that they were promised, guaranteed, or otherwise assured that they would receive a job upon graduation, or that all graduates obtain employment (implicitly including themselves).

I. Summary of Corinthian's Representations to Borrowers Promising Employment  

In BD applications, borrowers who attended Heald, Everest, and WyoTech consistently allege, each in their own words, that Corinthian staff orally promised, guaranteed, or otherwise assured them that they would be placed in jobs. These oral representations sometimes took the form of a guarantee regarding the individual student and sometimes took the form of a guarantee of universal employment for graduates. In both cases, the obvious impression to students would have been that 1) the value of the education would be substantial; and 2) they would get jobs upon graduation.

These representations occurred both in person and during telephone calls with prospective students. Borrowers' allegations of "guaranteed employment" are unprompted, specific, and consistent across a span of years. Indeed, the Department has received consistent guaranteed employment claims from borrowers at every campus sampled, including borrowers who enrolled between 1998 and 2013, demonstrating that personnel made consistent guaranteed employment representations throughout the entire time that Corinthian operated its schools. Taken together, based on an evaluation of the credibility of those statements, as well as Corinthian's record of making misrepresentations to prospective students, a preponderance of the evidence demonstrates that Corinthian promised borrowers that they would receive jobs upon graduation.

A. Guaranteed Employment Representations at Heald College

At Heald, of the 1015 claims sampled, 141 (13.9% of the total) include allegations of guaranteed employment. The high incidence of guaranteed employment allegations was evident at all Heald campuses. At Heald Modesto, for example, of 61 BD claims sampled, 9 allege guaranteed employment (14.8% of the

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1 All of the above student statements came from a variety of different types of applications including the Heald, Everest, and WyoTech attestation forms ED created for job placement rate claims, various versions of the Debt Collective forms, and narratives in Word documents or the bodies of emails. The majority of these allegations are unprompted—some versions of the Debt Collective form ask about "false and misleading conduct relating to job prospects," but ED's attestation form only instructs borrowers to provide "any other information...that you think is relevant."

2 See discussion below, Section II, describing Corinthian's misrepresentations regarding job placement rates.

3 This count excludes allegations that may pertain to guaranteed jobs but that were not sufficiently clear or specific to qualify for relief. For example, allegations that Corinthian's career services offices did not assist the borrower in finding a job were not interpreted as guaranteed employment allegations.
A sample of claims from Modesto borrowers demonstrates the consistency and specificity of guaranteed employment representations made by school representatives:

- "Heald college recruiters stated, ‘I was guaranteed’ to obtain a job after graduation."
- "I was told that when I finished my program I would automatically have job placement and never received that placement."
- "Heald promised me a job placement in the field. To this day, I haven’t been able to find a job in my field, or a good paying job."
- "I was given the false pretense that I could obtain a career in law enforcement with an Associate’s degree and was guaranteed job placement."

Guaranteed employment allegations appeared with similar pervasiveness and consistency at all of the other 11 Heald campuses. A sample of these claims, detailed below, demonstrates the high incidence of guaranteed employment misrepresentations at the school.

- Heald Concord: “During my experience, they promised me jobs after graduation . . . I still have the same jobs after graduation and Heald did nothing to help me . . . Heald College promised that they will find job for me upon graduation.”
- Heald Honolulu: “Upon admission, my admission’s advisor, Roy Honjo, informed that an associate’s degree in applied science in Health Information Technology (HIT) would provide me many job opportunities . . . He insisted I would find a job that would suit me and would be a smart decision to pursue.”
- Heald Roseville: “When I first looked into Heald College and spoke with the Academic Advisor, I was promised a job position within six months. It is now 2015 and I have yet to have ever worked in a medical office. The degree has done nothing for me.”
- Heald Salinas: “When I first enrolled, they said I had a job at the end of my education.”
- Heald San Jose: “They stated on many occasions that after I graduate and complete the program that I would be placed in a job where I would be able to pay off my student loans easily . . . They guaranteed job placement and never delivered.”
- Heald San Francisco: “Heald College’s promises of guaranteed job placement after graduation sold me on becoming a student.”

4 The Modesto campus was selected because relatively few Modesto borrowers qualified for relief based on ED’s findings regarding job placement rates. Modesto was a relatively new campus, and therefore had calculated placement rates for fewer years in the period surveyed.

3 BD155524.
4 BD155784.
5 BD156698.
6 BD154018.
7 BD151426.
8 BD1600328.
9 BD157436.
10 BD151163.
11 BD153799.
12 BD152784.
B. Guaranteed Employment Representations at Everest and WyoTech

The high incidence of guaranteed employment allegations at Heald was evident at Everest and WyoTech, as well. At Everest, 231 out of 1277 BD claims sampled, or 18.1%, made guaranteed employment allegations. At Everest Brandon, for example, 45 of 305 claims sampled, or 14.8% of the total, alleged guaranteed employment. A sample of claims from Everest Brandon borrowers follows:

- "They told me that every student that graduated the program was placed."15
- "I was told that I would be able to attain a job in my field with no problem. I have applied to multiple agencies and was told I was not qualified."16
- "I was told I would find a job in my field . . . I 'graduated' and still can't find a job that will honor my degree."17
- "I was told that I would be placed into a career field of my studies, but I was not."18

The Department sampled claims at 22 Everest campuses19 across ten separate states (AZ, FL, MI, MA, TX, VA, CO, WI, NY, CA). Just like the Everest Brandon campus discussed above, the guaranteed employment allegations were common at all of these campuses and were distributed roughly evenly throughout the period those campuses were owned and controlled by Corinthian. Most importantly, the review of these claims across campuses and years demonstrates that students made substantially similar guaranteed employment allegations—whether the student enrolled at Brandon in 1998 or Rochester in 2008.

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15 BD151311.
16 BD150332
17 BD1612793.
18 BD1614055.
19 The oldest Everest campuses were opened in California in 1995. Others opened anywhere between 1996 and 2012. The 22 campuses contained in the chart opened or came under Corinthian control between 1996 and 2004.
Similarly, at WyoTech, 64 out of 455 BD claims sampled, or 14.1%, alleged guaranteed employment. At WyoTech Laramie, for example, 8 of 31 claims, or 25.8% of the total, alleged guaranteed employment. A sample of claims from WyoTech Laramie borrowers follows:

- "They promised me a high paying career and said they would find it for me after graduation. They stated that all of the students who pass the program . . . will have jobs waiting for them." 20
- "The education was sold as a way to guarantee future employment, with access to a nationwide network of job placement experts." 21
- "The school was promising a career in the field after schooling." 22
- "[They] would say that just by speaking the name Wyotech you so get hired and make over 100K a year. They said it would be automatic hiring and that the industry knows the Wyotech name." 23
- "We were recruited hard and we were promised [that] [name redacted] . . . would have his choice of many fine, well-paying positions once he completed his studies." 24

The tables below summarize the number of guaranteed employment allegations at Everest and WyoTech for all of the sampled campuses:

<table>
<thead>
<tr>
<th>Campus</th>
<th>Applications reviewed</th>
<th>Applications alleging guaranteed employment representation</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Everest Brandon</td>
<td>305</td>
<td>45</td>
<td>14.8%</td>
</tr>
<tr>
<td>Everest Grand Rapids</td>
<td>46</td>
<td>3</td>
<td>6.5%</td>
</tr>
<tr>
<td>Everest Largo</td>
<td>31</td>
<td>6</td>
<td>19.4%</td>
</tr>
<tr>
<td>Everest Ontario Metro</td>
<td>34</td>
<td>7</td>
<td>20.6%</td>
</tr>
<tr>
<td>Everest Orange Park</td>
<td>36</td>
<td>9</td>
<td>25.0%</td>
</tr>
<tr>
<td>Everest Orlando North</td>
<td>47</td>
<td>6</td>
<td>12.8%</td>
</tr>
<tr>
<td>Everest Orlando South</td>
<td>226</td>
<td>33</td>
<td>14.6%</td>
</tr>
<tr>
<td>Everest Phoenix</td>
<td>81</td>
<td>40</td>
<td>49.4%</td>
</tr>
<tr>
<td>Everest Pompano Beach</td>
<td>97</td>
<td>9</td>
<td>9.3%</td>
</tr>
<tr>
<td>Everest Rochester</td>
<td>53</td>
<td>14</td>
<td>26.4%</td>
</tr>
<tr>
<td>Everest Tampa</td>
<td>32</td>
<td>9</td>
<td>28.1%</td>
</tr>
<tr>
<td>Everest San Bernardino</td>
<td>15</td>
<td>1</td>
<td>6.6%</td>
</tr>
<tr>
<td>Everest Milwaukee</td>
<td>38</td>
<td>6</td>
<td>15.8%</td>
</tr>
<tr>
<td>Everest Colorado Springs</td>
<td>37</td>
<td>10</td>
<td>27.0%</td>
</tr>
<tr>
<td>Everest Ft. Worth South</td>
<td>54</td>
<td>8</td>
<td>14.8%</td>
</tr>
<tr>
<td>Everest Tyson's Corner</td>
<td>15</td>
<td>2</td>
<td>13.3%</td>
</tr>
<tr>
<td>Everest Vienna</td>
<td>21</td>
<td>2</td>
<td>9.5%</td>
</tr>
<tr>
<td>Everest Arlington</td>
<td>31</td>
<td>4</td>
<td>12.9%</td>
</tr>
<tr>
<td>Everest Aurora</td>
<td>50</td>
<td>3</td>
<td>6%</td>
</tr>
<tr>
<td>Everest Thornton</td>
<td>4</td>
<td>1</td>
<td>25%</td>
</tr>
<tr>
<td>Everest Chelsea</td>
<td>12</td>
<td>6</td>
<td>50%</td>
</tr>
<tr>
<td>Everest Brighton</td>
<td>12</td>
<td>7</td>
<td>58.3%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1277</td>
<td>231</td>
<td>18.1%</td>
</tr>
</tbody>
</table>

\[20 \text{BD150863.} \\
21 \text{BD152602.} \\
22 \text{BD1555621.} \\
23 \text{BD151128.} \\
24 \text{BD151903.}\]
Significantly, just as the aforementioned Heald, Everest, and WyoTech claims at each campus corroborate each other, the number of similar allegations at and across all Corinthian schools and campuses strongly suggests that promises of employment were endemic to Corinthian’s institutional culture.

C. Guaranteed Employment Claims Consistent Across a Span of Years

Although the Borrower Defense Unit has received fewer claims from borrowers that attended Corinthian schools in earlier years,25 such claims bear the same indicia of reliability as claims from students who attended more recently. Student statements about admissions representatives’ misrepresentations are consistent across a span of years, as demonstrated by claims from former students at Everest – Orlando South:

- [1999]: “Everest recruiters told students that they were ‘guaranteed’ to obtain jobs.”26
- [2001]: “They... told me I would be guaranteed a job once I graduated.”27
- [2002]: “I was told I would get a job right away...”28
- [2003]: “I was lured into this organization with false promises of 100% job placement...”29
- [2005]: “They said I was guaranteed job placement after I graduated.”30
- [2006]: “Everest guaranteed me career placement upon graduation.”31
- [2007]: “They told me that I will be guaranteed a job placement after I graduate.”32
- [2008]: “They told me I was guaranteed a job.”33
- [2009]: “I was promised job placement, high salaries and success.”34
- [2010]: “I was guaranteed a job from my Academic advisor and Career Counselor.”35
- [2011]: “...told me I was guaranteed a job in my profession after I graduated making twice as much as minimum wage at least.”36
- [2012]: “I was promised employment after graduation.”37

The Department’s outreach has targeted borrowers from more recent years in an attempt to reach borrowers that may be eligible for relief on the basis of misrepresented job placement rates.

25 BD155177.
26 BD156179.
27 BD1600004.
28 BD151816.
29 BD150148.
30 BD157758.
31 BD153166.
32 BD153136.
33 BD156038.
34 BD1605002.
35 BD155731.
36 BD1615288.
[2013]: “They called me over and over and promise jobs after graduating...”

D. Corinthian Employee Statements and Other Employment-Related Misrepresentations Corroborate Guaranteed Employment Claims

The similarity of student statements across schools, campuses, and years strongly suggests that the misrepresentations were system-wide and, indeed, part of Corinthian’s institutional culture. This conclusion finds further support in the affidavits of former employees, who admitted that Corinthian employees misled prospective students about their employment prospects. For example, a former instructor at Everest’s Chelsea campus stated, “People in corporate told prospective students they guaranteed jobs... They saw job placement not as job placement in the students’ fields of study, but as a student getting any job.” An admissions representative from the same campus stated, “Admissions representatives told prospective students that medical assistants are in high-demand and that they would have no problem finding jobs... and they will definitely find jobs.”

Furthermore, guaranteeing jobs to prospective students appears to have been part of a pattern of employment-related misrepresentations at Corinthian. An internal Corinthian audit of admissions calls from one of its campuses found that that 21% of admissions representatives “provided [a] false or misleading statement (such as best case scenario),” which likely pertained to employment outcomes. Further, in a letter issuing a nearly $30 million fine to Heald, the Department found that Heald “represented with regard to many of its programs that it placed 100% of its graduates in jobs,” but Heald was unable to provide evidence to substantiate these representations. The Department further noted that based on the evidence that Heald was able to provide, the job placement rates appeared to be substantially lower than 100%, and for several programs, below 50%. At the same time that Corinthian was making false representations about its job placement rates, executives at Corinthian were putting heavy pressure on campuses to attract new students. One admissions director reported that his superiors at Corinthian instructed him to “enroll your brains out.” In this context, it is unsurprising that staff at the campus level would be guaranteeing students a job.

Accordingly, we recommend no further year-by-year or campus-by-campus breakdown for additional Corinthian campuses. The hundreds of claims reviewed corroborate that Corinthian personnel made guaranteed employment representations beginning shortly after Corinthian opened or gained control of a campus.

II. Evidence of the Falsity of the Alleged Representations

Corinthian’s own records show that the school was unsuccessful at placing large numbers of Corinthian graduates. The Everest records, for example, reveal that nearly half of the school’s programs placed 50% or fewer of the program graduates. Further, evidence from Corinthian’s internal communications shows that they were aware that the school could not live up to their promises of employment. For example, an internal email from Corinthian’s Vice President for Operations stated that, “at some campuses” they had “not been
consistent delivery on the promise to students to “find a position that will help them launch a successful career.”

The narratives in borrower defense applications also support these conclusions. Many students that make guaranteed employment allegations—and many other BD applicants—state that they were unable to find a job upon graduation; that they were unable to find employment that used their degree; or that they were forced to remain in the job that they had prior to enrolling at Heald, Everest, or WyoTech. In sum, the evidence overwhelmingly shows that Corinthian campuses could not truthfully guarantee prospective students employment upon graduation.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for Borrowers Alleging Guaranteed Employment Misrepresentations Under Applicable State Law, Subject to Reduction for Borrowers Affected by the Statute of Limitations

For the reasons set forth below, the Corinthian borrowers’ applications for borrower defense relief predicated on a guaranteed employment allegation: a) are reviewed under California law; and b) have a valid claim under the “unlawful” and “fraudulent” prongs of California’s Unfair Competition Law (“UCL”), which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations. Moreover, given the lack of value conferred by Corinthian credits and/or degrees, these students should be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. The Department will apply California Law to These Claims.

To prevail with a defense to repayment, a borrower must assert acts or omissions “that would give rise to a cause of action against the school under applicable state law.” With the assistance of the Office of General Counsel, we have examined specifically whether borrowers making the claims described in this memo could bring a cause of action in California and determined that they could. Specifically, the Department has concluded not only that students who were subjected in California to the acts complained of here would have been able to bring their cases in California courts under California law, but also that borrowers who attended Corinthian in other states could have brought their claims in the context of a class action in a California court, which would have applied California law.

California has general jurisdiction over Corinthian. As to the law a California court would have applied, California courts have recognized that a forum state (such as California) “may apply its own substantive law to the claims of a nationwide class without violating the federal due process clause or full faith and credit clause if the state has a ‘significant contact or significant aggregation of contacts’ to the claims of each class member such that application of the forum law is ‘not arbitrary or unfair.’” Washington Mut. Bank, FA v. Superior Court, 15 P.3d 1071, 1080 (Cal. 2001) (quoting Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 821 (1985)). California is neither an arbitrary nor an unfair state for a class of Corinthian borrowers to bring a

44 Exhibit 36 - CA AG Default Motion.
45 CAL. BUS. & PROF. CODE § 17200, et seq.
46 34 C.F.R. § 685.206(c) (emphasis added).
47 Corinthian was headquartered in California, and was therefore a resident corporation subject to the state’s general jurisdiction. Furthermore, even a non-resident corporation is subject to a forum’s general jurisdiction “if [its] contacts in the forum state are substantial[,] continuous and systematic.” Vons Companies, Inc. v. Seabest Foods, Inc., 926 P.2d 1085, 1092 (Cal. 1996) (internal quotation marks and alterations omitted). In such a case, “defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction,” and there is no need to determine whether the specific acts alleged in the suit meet the threshold for specific jurisdiction. Id. Such is the case with Corinthian; the largest numbers of both campuses and students were located in California.
claim, and the conduct at issue had significant contacts with California insofar as the students were enrolling in a California-based school and recruiters were receiving at least some of their training from high levels of administration at the school.

Furthermore, under California’s choice-of-law test, the court considers both the defendant’s headquarters and the state where many students attended the school. 48 Another key factor in the choice-of-law analysis under California law is the location “where the wrong occurred.” 49 At Corinthian, the largest numbers of both campuses and students were located in California. Further, as proved to be the case in the Department’s investigation of Corinthian, the fact that a school is headquartered in a given state will often mean that “some or all of the challenged conduct emanates” from that state, another common factor in choice of law determinations. 50 At Corinthian, former employees report that corporate decision makers based in California directed admissions staff to make misleading statements and engage in various high-pressure sales tactics to increase enrollment. 51

Based on these factors – that Corinthian was headquartered and had its principal place of business in California, that the largest numbers of its campuses and students were located in California, and that decisions and policies made by its California based corporate leadership harmed students across the nation – it is reasonable for the Department to determine that a California court would apply California law to these claims. Therefore, BD claims submitted by former students from all Corinthian campuses will be considered under the California UCL.

B. Corinthian Students Making Guaranteed Employment Allegations Have A Valid Claim Under the “Unlawful” and “Fraudulent” Prongs of the UCL

California’s UCL prohibits unfair competition, providing civil remedies for “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].” 52 Here, Corinthian’s statements leading prospective students to believe that they were guaranteed employment constitute “unlawful” and “fraudulent” business practices under the UCL.

1. The Unlawful Prong

The UCL bars “anything that can properly be called a business practice and that at the same time is forbidden by law.” 53 Thus, if a business practice violates any law, this is per se a UCL violation. 54 Corporate

49 Mazza v. Am. Honda Motor Co., 666 F.3d 581, 593–94 (9th Cir. 2012). See also McCann v. Foster Wheeler LLC, 225 P.3d 516, 534 (Cal. 2010) (“Although California no longer follows the old choice-of-law rule that generally called for application of the law of the jurisdiction in which a defendant’s allegedly tortious conduct occurred without regard to the nature of the issue that was before the court, California choice-of-law cases nonetheless continue to recognize that a jurisdiction ordinarily has the predominant interest in regulating conduct that occurs within its borders.” (internal citation and quotation marks omitted)).
51 See Deposition of Scott Lester, Everest Milwaukee Director of Admissions, Later President. WI AG, Ex. 15; Interview Report, Ivan Limpin, Former Employee, Corinthian Schools Call Center (Feb. 28, 2013).
52 CAL. BUS. & PROF. CODE §17204, Kwikset Corp. v. Superior Court, 51 Cal. 4th 310, 320 (Cal. App. Ct. 2011); see also Cel-Tech Communications v. Los Angeles Cellular Telephone Co., 973 P.2d 527, 540 (Cal. 1999).
misrepresentations like Corinthian's promises of employment are prohibited by a number of state and federal laws. In particular, Corinthian's misrepresentation regarding its students' employment prospects violates the prohibition against "unfair or deceptive acts or practices" in the Federal Trade Commission Act ("FTC Act"). Determining whether statements to consumers violate the FTC Act involves a three-step inquiry considering whether: "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."  

Applying that three step inquiry, Corinthian clearly violated the FTC Act.

1. As described above, Corinthian made representations to students regarding guaranteed employment;
2. Also as described above, those representations were false, erroneous, and misleading; and
3. As discussed below, the representations regarding guaranteed employment were material.

To be material, "a claim does not have to be the only factor or the most important factor likely to affect a consumer’s purchase decision; it simply has to be an important factor"; furthermore, express claims are presumptively material. Representations that students are guaranteed employment meet the FTC Act’s materiality threshold because borrowers considered the promise of employment to be important when making their enrollment decisions. In attestations submitted to the Department, these borrowers have specifically identified false promises of employment as the misconduct giving rise to their claim. Moreover, given that Corinthian schools were heavily career-focused, the guarantee of a job would have been highly material to a prospective student’s evaluation of the school. Students enrolled “primarily to gain skills and find a position that will help them launch a successful career.” Corinthian’s own marketing materials emphasized that the school was a pathway to employment, often noting “solid industry employment contacts” and the availability of “lifetime career services.” For many students, the principal purpose of attending a career college like


55 Though the analysis below focuses exclusively on the FTC Act, Corinthian’s misrepresentations to students may also violate other state and federal laws. For example, the California Education Code states that an institution shall not "promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation." Cal. Educ. Code §94897, et seq. However, because the conclusion below is that Corinthian’s conduct violates the FTC Act, this memo does not reach the issue of whether it may be unlawful under other applicable rules.

56 See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the “unlawful” prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See Stop Youth Addiction, Inc. v. Lucky Stores, Inc., 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also Rose v. Bank of Am., N.A., 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.").

57 F.T.C. v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994).

58 Novartis Corp., 127 F.T.C. 580 at 686, 695 (1999); see also FTC v. Lights of America, Inc., No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (“Express claims ... are presumed to be material.”).

59 Exhibit 36 - CA AG Default Motion.

60 Exhibit 179, Part 1; Declaration of Jacinto P. Fernandez (CA AG), Exhibit Y
Everest, Heald or WyoTech was to obtain employment in a particular field. Based on the school's misrepresentations, individuals considering enrollment reasonably believed that they were certain to find employment upon graduation. Accordingly, Corinthian's false or misleading misrepresentations regarding guaranteed employment were material and therefore violated the unlawful prong of the FTC Act and constituted an unlawful business practice under the UCL.

2. The Fraudulent Prong

Corinthian's misrepresentations regarding employment prospects also are a fraudulent business practice under the UCL, and therefore are another form of unfair competition providing an independent basis for borrower defense relief for Corinthian students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived." The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code. Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information. As noted, the representations Corinthian made to students guaranteeing employment were false and likely to deceive, for the reasons discussed above and in Section II.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and... lost money or property" as a result of the deceptive practice alleged. However, for a consumer who was deceived into purchasing a product—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing" the individual's decision. Rather, "[i]t is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."

Express or implied claims like those made by Corinthian about employment prospects are presumptively material, and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance." However, as discussed above, the preponderance of evidence also demonstrates, independently, that employment was a central consideration for these borrowers—one which each of the applications in question identified, unprompted, as the crux of their dissatisfaction with their decision to

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61 Under these circumstances, students' reliance on a guarantee of employment was reasonable. Prospective students would have taken seriously a guarantee of employment and not interpreted it as mere "puffery." The large volume of claims making guaranteed employment allegations is a clear indication that students believed what they were told.
62 See Bank of the West, 2 Cal. 4th at 1254.
63 CAL. CIV. C. § 1709.
66 See Kwikset Corp. v. Superior Court, 51 Cal. 4th 316 (Cal. 2011).
67 In re Tobacco II Cases, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).
68 Id. (internal quotation marks omitted).
69 See, e.g., Telebrands Corp., 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); FTC v. Lights of America, Inc., No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were per se material because they were express, and "that even if they were implied claims, they were material because the claims relate to the efficacy of the product."); FTC v. Bronson Partners, LLC, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).
70 In re Tobacco II Cases, 46 Cal. 4th at 298.
Statements by large numbers of borrowers across Corinthian campuses make clear that the promise of employment entered substantially into their choice to attend a Corinthian school.

C. Weak Disclaimers In Some of Everest and WyoTech's Written Materials Do Not Cure Its False and Misleading Representations Guaranteeing Employment

Corinthian's promises of employment were false and misleading, despite the limited disclaimers on some Everest and WyoTech enrollment agreements. Although those enrollment agreements state that the school does not guarantee "job placement" or "a salary," such written information did not change the overall impression created by the oral representations.

For example, if a student examined an Everest enrollment agreement, the student would have to read through two pages of fine print to find a box entitled "Enrollment Agreement" and subtitled "The Student Understands." Part of the way through that box of fine print, item number 2 states that Everest "does not guarantee job placement to graduates upon program / course completion or upon graduation, and does not guarantee a salary or salary range to graduates." That item is not highlighted or bolded in any way. The agreement then continues on with an additional page of fine print disclaimers. The WyoTech enrollment agreement includes a similar disclaimer on its first page: "The school does not guarantee employment following graduation, but does offer placement assistance to graduates." This is included as item "(a)" in a list of nine fine print disclaimers following a paragraph-long disclaimer about the cost of books and tools.

These disclaimers do not cure the falsity of Everest and WyoTech's oral promises regarding employment prospects. First, courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations. The California Supreme Court has also held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.

The written disclaimers were hidden in text and provided only after admissions representatives orally promised employment. Moreover, here, Corinthian's disclaimers were particularly ineffective when considered in the context of Corinthian's unsophisticated student population and high-pressure admissions practices.

Corinthian documents show that the school sought to enroll vulnerable people who had "low self-esteem," were "stuck, unable to see and plan well for the future" and "isolated," had "few people in their lives who care about them," and were "impatient, want[ed] quick solutions." Corinthian's CEO, in a letter to

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71 Because deception occurs at the time of decision, or for Everest students, at the time of enrollment, it is sufficient for Everest students to say that they chose to enroll based upon a guaranteed employment misrepresentation, regardless of any subsequent employment.

72 See, e.g., Everest Institute Brighton/Chelsea Enrollment Agreement.

73 BD150633, Attachment #3, page 7.

74 See, e.g., FTC v. Minuteman Press, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also Chapman v. Skype Inc., 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype's oral representation that a calling plan was "unlimited" was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

75 Chern v. Bank of Am., 15 Cal. 3d 866, 876 (Cal. 1976) ("the fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant's practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.").

76 The nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students consistently reported that they were rushed through the enrollment process and subjected to high pressure sales tactics.

77 CA AG Quach Decl. Ex 113.
Federal Student Aid, wrote that the school enrolled “a predominantly high risk student body that is underserved by traditional higher education institutions. Many of our campuses are located in or near difficult inner-city areas and provide access to students who have not previously achieved educational success.”

Corinthian advertised on daytime TV, targeting the un- or under-employed. In some instances, Corinthian personnel actively recruited homeless individuals as students, despite the additional challenges they would face in completing their studies, even offering monetary incentives to take campus tours. In sum, the net impression of the oral misrepresentations on the typical Corinthian student likely would not have been altered by buried written disclosures.

Finally, the fact that the 436 Corinthian claims reviewed to date that allege Corinthian guaranteed employment make no mention of any written disclaimer further supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population Corinthian targeted, and the high pressure sales tactics and oral representations that Corinthian personnel employed, these disclaimers do not offset the net impression of the school’s misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following Corinthian students making guaranteed jobs allegations should be eligible for relief: any claimant who attended a Corinthian campus and who alleges that they were promised, guaranteed, or otherwise assured employment or job placement.

The Department will not undertake a case-by-case analysis of borrowers to determine whether they ultimately secured employment. As we found in the job-placement-rate analysis, the misrepresentation in this case went to the overall value of the education (a school that can guarantee its students jobs must be a very good school indeed), and was substantial regardless of a borrower’s ultimate ability to secure employment. Furthermore, in this case, the Department’s review of the borrower applications suggests that a presumption should be made that borrowers who raised this issue were not, in fact, able to secure employment.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, courts rely on cases interpreting the Federal Trade Commission Act. In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the Figgie and Ivy Capital

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78 Letter from Jack D. Massimino, CEO, Corinthian, to James W. Runcie, Chief Operating Officer, U.S. Office of Federal Student Aid (Nov. 12, 2014).
79 CA AG Quach Decl. Ex 113.
80 CA AG Decl. of Holly Harsh.
82 See, e.g., FTC v. Stefanchik, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include “the full amount lost by consumers rather than limiting damages to a defendant’s profits”); FTC v. Figgie International, 994 F.2d 595, 606 (9th Cir. 1993) (“The injury to consumers... is the amount consumers spent... that would not have been spent absent [the] dishonest practices.”); FTC v. Security Rare Coin & Bullion Corp., 931 F.2d 1312, 1316 (8th Cir. 1991) (“restoration of the victims of [defendant’s] con game to the status quo ante” by use of defendant’s gross receipts is proper for restitution); FTC v. Ivy Capital, Inc., No. 2:11-CV-283 JCM (GWG), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).
approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.\(^{83}\)

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value attendant to their Corinthian education. See Makaeff, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery). The Department has found that Corinthian repeatedly misled students, regulators and accreditors regarding its ability to place students in jobs, systematically inflated its job placement rates, misrepresented job placement rates to a programmatic accreditor, and even engaged in an elaborate job placement fraud to maintain its accreditation.\(^{84}\) Given this well-documented, pervasive, and highly publicized misconduct at Corinthian, the value of an Everest, Heald or WyoTech education has been severely limited.

Borrower defense applications confirm the lack of value of a Corinthian education as many Corinthian students report that their degree or affiliation with the school has been an impediment rather than an asset as they seek employment. For example, one Everest student reports: “I was only working part time when I was attending school and this degree has done nothing to help me obtain better employment. I am also embarrassed to even put this on my resume because any potential employer who looks this school will discover it was a fraud.”\(^{85}\) Another reports: “I cannot find a job using my degree. I find one faster if I leave the fact that I didn't go to college at all. People just laugh in my face about Everest saying that it is not a ‘real school.’”\(^{86}\) A student from WyoTech states: “Any association with WyoTech hurts my chances for employment. I was promised jobs with big salaries, a career I would hold for life and all WyoTech gave me was debt and shame. I was told by two interviewers, that they would NEVER hire a WyoTech graduate...”\(^{87}\) And a Heald student states: “The school is not reputable no other institution recognizes the credits earned and jobs stray away from Heald graduates, claiming they lack in teaching students current and up to date information in the coding industry. I have yet to work in my field of study and utilize my degree. I have a useless degree from a closed college.”\(^{88}\)

Finally, awarding full relief to students who make guaranteed employment allegations is consistent with the Department’s approach to providing relief to Corinthian students seeking BD relief on the basis of false job placement rates. Indeed, the Department granted full relief to students who alleged that they relied on Corinthian job placement rate representations, without offsetting the relief based on any value that students may have received by attending Corinthian. Given the Department’s approach to date, it would be inconsistent to limit the relief of students who make guaranteed employment allegations—which are essentially 100% job placement claims—while providing full relief to those students who qualify for job placement rate relief.


\(^{84}\) See Letter from Robin S. Minor, Acting Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Apr. 14, 2014); see also Letter from Mary E. Gust, Director, Administrative Actions and Appeals Service Group, U.S. Office of Federal Student Aid, to Jack D. Massimino, CEO, Corinthian (Aug. 22, 2014) (finding that “Everest Institute submitted false placement data to ACCSC to maintain the accreditation of Everest Decatur” and that the school’s job placement rates were based on “CORINTHIAN-designed programs through which Everest Decatur paid employers to hire its graduates” for short time periods in order to inflate placement rates).

\(^{85}\) BD1614100.

\(^{86}\) BD1602593.

\(^{87}\) BD151191.

\(^{88}\) BD157356.
In sum, in these circumstances, and consistent with the Department's prior actions related to Corinthian, it is appropriate to award eligible borrowers full relief, subject to reduction for borrowers affected by the statute of limitations.

CONCUR:

[Signature]
Office of the General Counsel

[Date]

89 This approach also is consistent with the Department’s new regulations in that the Department has considered whether the value of the education provided by Corinthian was such that it would be appropriate to offset the relief provided to borrowers who were guaranteed employment. The Department has concluded that the Corinthian education lacked sufficient value to do so.