

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CALIFORNIA ASSOCIATION OF PRIVATE)	
POSTSECONDARY SCHOOLS,)	
)	
Plaintiff,)	
)	
v.)	
)	
ELISABETH DEVOS, in her official capacity)	
as Secretary of the U.S. Department)	
of Education, <i>et al.</i> ,)	
)	Civil Action No. 17-999 (RDM)
Defendants,)	
)	
MEAGHAN BAUER,)	
80 Foster Street, Apt. 308)	
Peabody, MA 01960,)	
)	
[Proposed] Defendant-Intervenor,)	
)	
STEPHANO DEL ROSE,)	
7 Pleasant Garden Road)	
Canton, MA 02021,)	
)	
[Proposed] Defendant-Intervenor.)	
_____)	

**MEAGHAN BAUER AND STEPHANO DEL ROSE'S
MOTION TO INTERVENE AS DEFENDANTS**

Meaghan Bauer and Stephano Del Rose respectfully request that they be granted leave to intervene in this action as defendants under Federal Rule of Civil Procedure 24(a) or (b). They have interests relating to the subject matter of this action—the Department of Education’s recently promulgated regulations protecting student borrowers—and the disposition of this action may impede or impair their ability to protect those interests, which are not adequately represented by existing parties to this litigation. Specifically, Ms. Bauer and Mr. Del Rose are federal Direct Loan borrowers with claims against a proprietary school that will be directly affected by the challenged rules’ provisions concerning arbitration and class action waivers. They have an interest in

defending the lawfulness and timely effectuation of the rules, and that interest will not be adequately represented by the federal defendants, who have already announced a delay of the effective date of the rules and have suggested that they may not defend the lawfulness of the challenged provisions.

Proposed intervenors have contacted counsel for all parties to obtain their views on this motion. Plaintiff has advised that it opposes the relief sought by Ms. Bauer and Mr. Del Rose, and defendants take no position on the motion.

For the reasons set forth in the accompanying memorandum of points and authorities and declarations, this Court should grant Ms. Bauer and Mr. Del Rose's motion to intervene as defendants. Should this Court go forward with the motion hearing scheduled for June 21, 2017, Ms. Bauer and Mr. Del Rose respectfully request the opportunity through counsel to be heard.

Pursuant to Local Rule 7(c), a proposed order is attached.

Respectfully submitted,

Toby R. Merrill
Mass. BBO No. 601071
Amanda M. Savage
Mass. BBO No. 690938
Alec P. Harris
Colo. Bar No. 47547
PROJECT ON PREDATORY STUDENT LENDING, LEGAL
SERVICES CENTER OF HARVARD LAW SCHOOL
122 Boylston Street
Jamaica Plain, MA 02130
(617) 522-3003
tomerrill@law.harvard.edu

/s/ Julie A. Murray
Julie A. Murray
D.C. Bar No. 1003807
Scott L. Nelson
D.C. Bar No. 413548
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
jmurray@citizen.org

Dated: June 15, 2017

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CALIFORNIA ASSOCIATION OF PRIVATE)	
POSTSECONDARY SCHOOLS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-999 (RDM)
)	
ELISABETH DEVOS, in her official capacity)	
as Secretary of the U.S. Department)	
of Education, <i>et al.</i> ,)	
)	
Defendants,)	
)	
MEAGHAN BAUER and STEPHANO DEL)	
ROSE,)	
)	
[Proposed] Defendant-Intervenors.)	
_____)	

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE MOTION TO INTERVENE AS DEFENDANTS
FILED BY MEAGHAN BAUER AND STEPHANO DEL ROSE**

Toby R. Merrill
Mass. BBO No. 601071
Amanda M. Savage
Mass. BBO No. 690938
Alec P. Harris
Colo. Bar No. 47547
PROJECT ON PREDATORY STUDENT LENDING,
LEGAL SERVICES CENTER OF HARVARD LAW
SCHOOL
122 Boylston Street
Jamaica Plain, MA 02130
(617) 522-3003
tomerrill@law.harvard.edu

Julie A. Murray
D.C. Bar No. 1003807
Scott L. Nelson
D.C. Bar No. 413548
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
jmurray@citizen.org

Counsel for Proposed Defendant-Intervenors Meaghan Bauer and Stephano Del Rose

Dated: June 15, 2017

TABLE OF CONTENTS

Table of Authorities	ii
Factual Background	1
I. The Rules	1
II. The Proposed Intervenors	3
III. This Litigation and ED’s Recent Actions.	4
Argument	5
I. Ms. Bauer and Mr. Del Rose Are Entitled to Intervene as a Matter of Right.....	5
A. The Motion to Intervene Is Timely.....	5
B. Ms. Bauer and Mr. Del Rose’s Interest in the Effectuation of the Borrower Defense Provisions Is Legally Protected.	6
C. The Relief Sought by CAPPS Would Impair Ms. Bauer and Mr. Del Rose’s Interest.....	8
D. ED and Secretary DeVos Cannot Adequately Represent Ms. Bauer and Mr. Del Rose’s Interest.	8
II. Alternatively, This Court Should Grant Permissive Intervention.....	9
Conclusion	11

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Crossroads Grassroots Policy Strategies v. FEC</i> , 788 F.3d 312 (D.C. Cir. 2015)	5, 7
<i>Defenders of Wildlife v. Perciasepe</i> , 714 F.3d 1317 (D.C. Cir. 2013)	6, 10
<i>EEOC v. National Children’s Center, Inc.</i> , 146 F.3d 1042 (D.C. Cir. 1998)	10
<i>Forest County Potawatomi Community v. United States</i> , 317 F.R.D. 6 (D.D.C. 2016)	8
<i>Fund for Animals, Inc. v. Norton</i> , 322 F.3d 728 (D.C. Cir. 2003)	6, 8
<i>Karsner v. Lothian</i> , 532 F.3d 876 (D.C. Cir. 2008)	6
<i>Massachusetts v. Microsoft Corp.</i> , 373 F.3d 1199 (D.C. Cir. 2004)	5
<i>Mova Pharmaceutical Corp. v. Shalala</i> , 140 F.3d 1060 (D.C. Cir. 1998)	6
<i>National Resources Defense Council v. Costle</i> , 561 F.2d 904 (D.C. Cir. 1977)	8
<i>Roane v. Leonhart</i> , 741 F.3d 147 (D.C. Cir. 2014)	5, 6
<i>Smoke v. Norton</i> , 252 F.3d 468 (D.C. Cir. 2001)	6
<i>Tachiona ex rel. Tachiona v. Mugabe</i> , 186 F. Supp. 2d 383 (S.D.N.Y. 2002)	5
<i>Trbovich v. United Mine Workers</i> , 404 U.S. 528 (1972)	8
<i>United States v. American Telephone & Telegraph Co.</i> , 642 F.2d 1285 (D.C. Cir. 1980)	8, 9

Statutes, Regulations, and Rules

34 C.F.R. § 685.300	2, 3
Department of Education, Borrower Defense Regulations, 81 Fed. Reg. 75,926 (Nov. 1, 2016).....	2, 3, 8
Department of Education, Borrower Defense Procedures, 82 Fed. Reg. 6253 (Jan. 19, 2017)	2
Federal Rule of Civil Procedure 24(a)	1, 6
Federal Rule of Civil Procedure 24(b).....	1, 9, 10
Federal Rule of Civil Procedure 24(c)	5
Mass. Gen. Laws ch. 93A, § 9(3)	3
Title IV of the Higher Education Act (HEA), 20 U.S.C. § 1070 <i>et seq.</i>	1

Other Authorities

7C Charles Alan Wright et al., <i>Federal Practice and Procedure</i> § 1916 (3d ed. 2007)	6
Department of Education, Notification of Partial Delay of Effective Dates (June 14, 2017), https://s3.amazonaws.com/public-inspection.federalregister.gov/2017- 12562.pdf	4, 9

Meaghan Bauer and Stephano Del Rose respectfully request that they be granted leave to intervene in this action as defendants under Federal Rule of Civil Procedure 24(a) or (b). As explained in this memorandum and accompanying declarations, they have interests relating to the subject matter of this action—regulations recently promulgated by the Department of Education (ED) to protect student borrowers—and the disposition of this action may impede or impair their ability to protect those interests, which are not adequately represented by existing parties to this litigation. Specifically, Ms. Bauer and Mr. Del Rose are federal Direct Loan borrowers with claims against a proprietary school that will be directly affected by the challenged rules’ provisions concerning arbitration and class action waivers. They have an interest in defending the lawfulness and timely effectuation of the rules, and that interest will not be adequately represented by the federal defendants, who have already announced a delay of the effective date of the rules and have suggested that they may not defend the lawfulness of the challenged provisions.

Proposed intervenors have contacted counsel for all parties to obtain their views on this motion. Plaintiff has indicated that it will oppose this motion, and defendants take no position on the motion.

FACTUAL BACKGROUND

I. The Rules

The federal government spends more than \$125 billion annually on student aid distributed under Title IV of the Higher Education Act, 20 U.S.C. § 1070 *et seq.* Title IV is the largest stream of federal postsecondary education funding, and the bulk of funds available under it are distributed through the federal Direct Loan Program. Students use Direct Loans to attend colleges, career training programs, and graduate schools authorized to participate in the program. In exchange for these federal funds, participating schools must enter into Program Participation Agreements (PPA)

with ED and confirm in those agreements that they will comply with the Higher Education Act and all applicable regulations. 34 C.F.R. § 685.300(b).

In 2016, ED initiated a rulemaking to amend its Title IV regulations, including regulations governing a school's obligations attendant to Direct Loan Program participation. ED subsequently adopted two rules: the "Borrower Defense Regulations," 81 Fed. Reg. 75,926 (Nov. 1, 2016), and the "Borrower Defense Procedures," 82 Fed. Reg. 6253 (Jan. 19, 2017) (collectively, Borrower Defense Provisions). The amendments to ED's Title IV regulations were intended "to protect student loan borrowers from misleading, deceitful, and predatory practices of, and failures to fulfill contractual promises by institutions participating" in federal student aid programs. 81 Fed. Reg. at 75,926.

The Borrower Defense Provisions implement a statutory provision giving students the right to seek loan cancellation based on the illegal conduct of their schools. They strengthen financial responsibility standards applied to participating schools and require some institutions to provide warnings regarding their former students' loan repayment rates. Of particular importance here, the Borrower Defense Provisions also amend 34 C.F.R. § 685.300 to address the extent to which a school wishing to participate in the Direct Loan Program may rely on predispute arbitration agreements or class action waiver provisions with students to resolve claims related to the making of a Direct Loan or the education financed by that loan. Specifically, the rule provides that a school may not "enter into a predispute agreement to arbitrate a borrower defense claim, or rely in any way on a predispute arbitration agreement with respect to any aspect of a borrower defense claim." 81 Fed. Reg. at 76,088 (proposed § 685.300(f)(i)). The Final Rule similarly amends § 685.300 to require a participating school to forgo reliance on any predispute agreement with a student that

waives the student's right to participate in a class action against the school related to a borrower defense claim. *Id.* (proposed § 685.300(e)).

Once the rule takes effect, schools participating in the Direct Loan Program must include language incorporating the policy into any new contracts with students. *Id.* at 76,087, 76,088 (proposed § 685.300(e)(3)(i), (f)(3)(i)). For those contracts entered into before the effective date of the rule, schools have the option of attempting to amend the previous contracts or simply notifying affected students or former students that the schools will no longer elect to rely on predispute arbitration or class action waiver provisions included in a student's earlier contract. *Id.* at 76,087, 76,088 (proposed § 685.300(e)(3)(ii)-(iii), (f)(3)(ii)-(iii)).

II. The Proposed Intervenor

As set forth in declarations filed with this motion, proposed defendant-intervenor Meaghan Bauer and Stephano Del Rose are former students of the for-profit college New England Institute of Art (NEIA) in Brookline, Massachusetts. Bauer Decl. ¶ 3; Del Rose Decl. ¶ 3. On behalf of themselves and other former NEIA students, Ms. Bauer and Mr. Del Rose are preparing to file a lawsuit under the Massachusetts Consumer Protection Act against NEIA and its corporate parent, EDMC. Bauer Decl. ¶ 25; Del Rose Decl. ¶ 32.

The Massachusetts Consumer Protection Act requires plaintiffs to notify prospective defendants of their claims by sending a demand letter prior to filing suit, describing the defendants' unfair and deceptive practices and the injury suffered by plaintiffs. Mass. Gen. Laws ch. 93A, § 9(3). Ms. Bauer and Mr. Del Rose, on behalf of themselves and other former NEIA students, sent a demand letter asserting that NEIA and EDMC violated the Massachusetts Consumer Protection Act by arranging for them to take out unaffordable loans, and by employing high-pressure tactics and making misleading statements when recruiting students and facilitating their

loans. *See* Bauer Decl., Exh. 1. In their demand letter, Ms. Bauer and Mr. Del Rose called upon NEIA and EDMC not to enforce forced arbitration clauses to prevent students from bringing suit together. *See id.*

NEIA and EDMC responded to the demand letter by explicitly refusing Ms. Bauer and Mr. Del Rose's request that the school and its parent agree not to enforce the arbitration provision in the students' enrollment contracts. Bauer Decl. ¶ 24; Del Rose Decl. ¶ 31. Accordingly, the former students decided to file their lawsuit later this year, after the Borrower Defense Provisions' prohibition on the enforcement of forced arbitration clauses and class action waivers by schools receiving Direct Loans was slated to take effect.

III. This Litigation and ED's Recent Actions.

Plaintiff California Association of Private Postsecondary Schools (CAPPS) filed suit in late May 2017 to challenge the Borrower Defense Provisions. On June 2, it moved for a preliminary injunction against those portions of the rule that would prohibit participating schools from entering into or relying on predispute arbitration clauses and class action waivers to deny students the right to seek relief in court. ECF No. 6.

On June 14, 2017, ED announced that it will delay the effective date (July 1, 2017) for many of the Borrower Defense Provisions, including the arbitration and class action waiver provisions, until "judicial challenges to the final regulations are resolved." *See* ED, Notification of Partial Delay of Effective Dates (June 14, 2017), at 4, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-12562.pdf>. ED's announcement asserted that CAPPS had "raised serious questions concerning the validity of certain provisions of the final regulations," and stated that ED plans to "review and revise the regulations through the negotiated rulemaking process required" by the Higher Education Act. *Id.* at 6. In light of ED's notice, CAPPS withdrew

its motion for a preliminary injunction. ECF No. 21.

This Court has ordered the parties and another set of proposed intervenors to confer and file a joint status report by 6:00 pm on June 16, 2017. Ms. Bauer and Mr. Del Rose are prepared to participate in those discussions.

ARGUMENT

I. Ms. Bauer and Mr. Del Rose Are Entitled to Intervene as a Matter of Right.

Federal Rule of Civil Procedure 24(a)(2) allows for intervention as a matter of right if the prospective intervenor demonstrates the “1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor’s interest.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015). The proposed intervenors satisfy all four requirements.¹

A. The Motion to Intervene Is Timely.

This motion—which is filed only three weeks after the commencement of this action, before the filing of the defendants’ responsive pleading—is unquestionably timely. The timeliness of a motion to intervene is “to be judged in consideration of all the circumstances.” *Roane v.*

¹ Ms. Bauer and Mr. Del Rose have moved to intervene before the government’s filing of any responsive pleadings to ensure the opportunity to participate at the earliest possible point in this litigation and to permit the Court to consider their motion to intervene alongside a separate intervention motion filed by state attorneys general. Consistent with the D.C. Circuit’s practical approach to interpreting Rule 24(c), they have not filed a proposed pleading to accompany this motion to intervene. *See Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1236 n.19 (D.C. Cir. 2004); *see also, e.g., Tachiona ex rel. Tachiona v. Mugabe*, 186 F. Supp. 2d 383, 393 n.8 (S.D.N.Y. 2002) (rejecting technical reading of Rule 24(c) where the “position of the movant is apparent from other filings and where the opposing party will not be prejudiced”). Ms. Bauer and Mr. Del Rose intend to file an answer by the government’s deadline to do so and, through their declarations, have provided the parties with notice of the specific nature of their interest in the case and their intent to defend the legality of the Borrower Defense Provisions.

Leonhart, 741 F.3d 147, 151 (D.C. Cir. 2014) (quoting *Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001)). “The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case.” *Id.* (quoting 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1916, at 541 (3d ed. 2007)).

The timeliness factor is easily met in this case, where the complaint was filed on May 24, 2017—just over three weeks ago—and the government has not yet filed an answer. *See* ECF No. 1. No substantial proceedings on the merits have yet occurred, nor is there any schedule for dispositive motions. The D.C. Circuit has held that a motion to intervene is timely when it was filed “less than two months after the plaintiffs filed their complaint and before the defendants filed an answer.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003); *see also Karsner v. Lothian*, 532 F.3d 876, 886 (D.C. Cir. 2008) (finding motion timely because it was filed less than one month after an intervenor became interested in the dispute).

B. Ms. Bauer and Mr. Del Rose’s Interest in the Effectuation of the Borrower Defense Provisions Is Legally Protected.

A proposed intervenor as of right “need not show anything more than that it has standing . . . to demonstrate the existence of a legally protected interest for purposes of Rule 24(a).” *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998); *accord Defs. of Wildlife v. Perciasepe*, 714 F.3d 1317, 1323 (D.C. Cir. 2013) (acknowledging that “Article III standing satisfies [the] second element of Rule 24(a)(2)”). Like other litigants, a putative defendant-intervenor demonstrates standing by showing “injury in fact, causation, and redressability.” *Crossroads Grassroots Policy Strategies*, 788 F.3d at 316. This Circuit has “generally found a sufficient injury in fact” under circumstances like those here “where a party benefits from agency

action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Id.* at 317.

Because the Borrower Defense Provisions require schools that receive Direct Loans to forgo reliance on predispute arbitration clauses and class action waivers, Ms. Bauer and Mr. Del Rose intended to file their class action lawsuit in 2017 after the Borrower Defense Provisions were to take effect. Ms. Bauer and Mr. Del Rose chose this timing in light of NEIA and EDMC's plan to attempt to enforce the forced arbitration clause and class action waiver that the school has used in its enrollment contracts. As CAPPS' now-withdrawn motion for a preliminary injunction expressly acknowledged, once the Borrower Defense Provisions go into effect, schools that intend to continue to participate in the Direct Loan Program "will need to . . . actually litigate cases, including class actions, in federal and state court." ECF No. 6 at 31. Accordingly, Ms. Bauer and Mr. Del Rose are direct beneficiaries of the Borrower Defense Provisions. The relief sought by CAPPS—invalidation of the Borrower Defense Provisions—would imminently injure Ms. Bauer and Mr. Del Rose by substantially increasing the likelihood that NEIA and EDMC will seek to enforce the forced arbitration clause and class action waiver, which Ms. Bauer and Mr. Del Rose would have to succeed in opposing in order to access the courts on behalf of themselves and a class of similarly situated borrowers.

Thus, Ms. Bauer and Mr. Del Rose meet all three standing requirements. If the Borrower Defense Provisions are invalidated, Ms. Bauer and Mr. Del Rose will suffer imminent injury: NEIA and EDMC have indicated their intention to attempt to compel Ms. Bauer, Mr. Del Rose, and other class members to individual arbitration, forcing them to litigate in opposition. This injury is traceable to the relief sought by CAPPS—invalidation of the Borrower Defense Provisions—and redressable by an order from this Court denying CAPPS' requested relief.

C. The Relief Sought by CAPPS Would Impair Ms. Bauer and Mr. Del Rose’s Interest.

Whether a proposed intervenor’s interest is impaired depends on “the ‘practical consequences’ of denying intervention.” *Fund for Animals*, 322 F.3d at 735 (quoting *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977)). The impairment requirement “is not a rigid one.” *Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 10 (D.D.C. 2016) (citing *Fund for Animals*, 322 F.3d at 735).

If granted, the relief sought by CAPPS would severely impair Ms. Bauer and Mr. Del Rose’s interest. As discussed above, if the Borrower Defense Provisions were invalidated, Ms. Bauer and Mr. Del Rose would be forced to litigate NEIA and EDMC’s motion to compel individual arbitration in order to press their claims in court in a class action lawsuit. Furthermore, invalidation of the Borrower Defense Provisions would potentially subject Ms. Bauer and Mr. Del Rose—beneficiaries of the regulations—to the harms the Borrower Defense Provisions were intended to redress, including schools’ use of forced arbitration clauses and class action waivers to “insulat[e] themselves from direct and effective accountability for their misconduct” and “deter[] publicity that would prompt government oversight agencies to react.” 81 Fed. Reg. at 76,022.

D. ED and Secretary DeVos Cannot Adequately Represent Ms. Bauer and Mr. Del Rose’s Interest.

The adequate representation factor is a “minimal” burden that is satisfied when a proposed intervenor “‘shows that representation of [its] interest may be inadequate.’” *Fund for Animals*, 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Courts ordinarily permit intervention “‘unless it is clear that the party will provide adequate representation for the absentee.’” *Id.* (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C.

Cir. 1980)). The D.C. Circuit “look[s] skeptically on government entities serving as adequate advocates for private parties.” *Crossroads Grassroots Policy Strategies*, 788 F.3d at 321.

The presumption of skepticism against government representation of private interests is especially warranted in this case because the government’s desire to move forward with the Borrower Defense Provisions is, to say the least, in doubt. ED has announced it intends to postpone until the close of litigation the effective date of many of the Borrower Defense Provisions, including the arbitration and class action provisions. *See* ED, Notification of Partial Delay of Effective Dates, at 4, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-12562.pdf>. ED’s notice further asserts that CAPPS has “raised serious questions concerning the validity of certain provisions of the final regulations,” and that ED will initiate a new negotiated rulemaking to reconsider the Provisions. *Id.* at 6.

The Department’s actions make clear that it will not adequately defend Ms. Bauer and Mr. Del Rose’s interests with respect to the arbitration and class action waiver provisions. Indeed, the proposed intervenors not only will have to defend the terms of the rules, but may also need to assert cross-claims against ED to challenge its delay of the effectiveness of the Borrower Defense Provisions.² Accordingly, Ms. Bauer and Mr. Del Rose must be permitted to participate in the litigation as of right to protect their interest.

II. Alternatively, This Court Should Grant Permissive Intervention.

In the alternative, the Court should permit Ms. Bauer and Mr. Del Rose to intervene under Rule 24(b). On timely motion, courts may permit intervention by anyone who “has a claim or

² Should Ms. Bauer and Mr. Del Rose determine that such claims are necessary and appropriate, the case for permitting their intervention is even stronger, as it would ensure resolution of these related claims in a single case involving the same interested parties rather than in a separate action, which would inevitably be treated as a related case to this one.

defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). In this Circuit, that requirement is given a “flexible” reading that “permits intervention even in situations where the existence of any nominate ‘claim’ or ‘defense’ is difficult to find.” *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). In exercising discretion to permit intervention under Rule 24(b), courts also consider whether intervention would “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Ms. Bauer and Mr. Del Rose seek to intervene in this litigation to defend on the merits the lawfulness of the Borrower Defense Provisions. Moreover, as discussed above, Ms. Bauer and Mr. Del Rose’s motion, filed just over three weeks after the complaint and before the government has filed an answer, will not cause undue delay or prejudice the adjudication of the existing parties’ rights. And even assuming that Ms. Bauer and Mr. Del Rose must show Article III standing in this Circuit to intervene permissively in support of defendants, *see Defs. of Wildlife*, 714 F.3d at 1327, as demonstrated in Part I, they have met that burden.

Thus, if this Court does not find that Ms. Bauer and Mr. Del Rose have a right to intervene under Rule 24(a), it should nonetheless permit them to intervene under Rule 24(b)(1)(B).

CONCLUSION

For the foregoing reasons, this Court should grant Ms. Bauer and Mr. Del Rose’s motion to intervene as defendants.

Respectfully submitted,

Toby R. Merrill
Mass. BBO No. 601071
Amanda M. Savage
Mass. BBO No. 690938
Alec P. Harris
Colo. Bar No. 47547
PROJECT ON PREDATORY STUDENT LENDING,
LEGAL SERVICES CENTER OF HARVARD LAW
SCHOOL
122 Boylston Street
Jamaica Plain, MA 02130
(617) 522-3003
tomerrill@law.harvard.edu

/s/ Julie A. Murray
Julie A. Murray
D.C. Bar No. 1003807
Scott L. Nelson
D.C. Bar No. 413548
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
jmurray@citizen.org

Dated: June 15, 2017

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

CALIFORNIA ASSOCIATION OF PRIVATE
POSTSECONDARY SCHOOLS,

Plaintiff,

v.

ELISABETH DEVOS, in her official capacity
as Secretary of the United States Department
of Education, and THE DEPARTMENT OF
EDUCATION,

Defendants,

MEAGHAN BAUER and STEPHANO DEL
ROSE,

[Proposed] Defendant-Intervenors.

Civil Action No. 1:17-CV-00999-RDM

DECLARATION OF MEAGHAN BAUER

I, Meghan Bauer, state under penalty of perjury that the following is true and correct:

1. My name is Meghan Bauer. I am 26 years old. I currently live in Peabody, Massachusetts.
2. I submit this declaration in support of my motion for intervention in the above-captioned case.

New England Institute of Art

3. I attended the New England Institute of Art (“NEIA”), a for-profit college in Brookline, Massachusetts, from 2011 to 2014 in the Digital Filmmaking and Video Production program. I did not finish the program and dropped out in 2014.
4. I borrowed approximately \$35,900 in federal Direct Loans to attend NEIA.

5. I was interested in NEIA's Digital Filmmaking and Video Production program because I wanted to make documentary films to make social change. I wanted to use my films to introduce viewers to new perspectives and ideas.

6. In 2011, I visited NEIA's campus and took a tour of the school with a recruiter. The recruiter did not tell me that he was being paid to enroll as many students as possible.

7. The NEIA recruiter told me a lot of things about the school that convinced me to enroll there. For example, the recruiter told me that students at NEIA had around-the clock access to top-of-the-line video equipment of the same kind used in the film industry; that all NEIA faculty members had experience working in the field; that NEIA was better than the Massachusetts College of Art and Design, another school I was considering, "in every way"; that the Art Institute brand was a well-respected brand with great industry connections to companies like ESPN, Disney, Nickelodeon, and MTV; that having Art Institute on my resume would move my resume to the "top of the pile"; that NEIA graduates had gone on to film the Olympics and professional football games; that going to NEIA would open up lots of job opportunities for me; and that NEIA would use its industry connections to help me get a job.

8. The recruiter pushed me to sign up for NEIA quickly, before classes reached capacity.

9. I signed an enrollment contract with NEIA that includes a forced arbitration clause and a class action waiver.

10. After I started at NEIA, I learned that many of the recruiter's promises were not true. For example, NEIA's promises about equipment were not true. NEIA's video equipment was outdated and it was always breaking. Equipment was always in short supply. NEIA limited

studio hours, forcing me to compete with other students to use the equipment and making it hard for me to finish projects.

11. While I was a student at NEIA, I became homeless and lived out of my car.

12. In 2014, during my third year at NEIA, I had to drop out of NEIA without a degree because my payments to the school kept going up and I could not afford to continue.

13. With accumulated interest, I currently owe approximately \$41,600 in federal student loans used toward my time at NEIA.

14. I work as a line cook at the same restaurant where I worked before going to NEIA. I earn \$15 per hour there.

15. My student loans are unmanageable. They continue to grow because I cannot afford to pay them. They are very stressful.

Demand Letter

16. In September 2016, I sent a demand letter to NEIA and its parent company on behalf of myself and a group of other NEIA students, based on the companies' violations of Massachusetts law.

17. The demand letter is the first step toward filing a class action lawsuit against NEIA and its parent company. A copy of the letter is attached as Exhibit 1.

18. The demand letter explains how NEIA and its parent company violated the Massachusetts Consumer Protection Act and Massachusetts law forbidding fraudulent misrepresentation, fraudulent inducement, unconscionability, and breach of the implied covenant of good faith and fair dealing.

19. The letter explains that the loans NEIA facilitated for me and others were structurally unfair because there was no way I was going to be able pay back so much debt with such a bad education.

20. The letter also details the companies' violations of Massachusetts law that bars for-profit colleges from false advertising, false representation of placement services, false statements concerning the nature or character of classroom instruction, misleading statements regarding student loans, and misrepresentation of opportunity and employment.

21. The demand letter spells out how NEIA's parent company, Educational Management Corporation, is also at fault because it helped and facilitated NEIA's violations of Massachusetts law.

22. The letter demands relief for me and other former NEIA students. The letter also demands that the companies not try to force me to arbitrate my lawsuit.

Response to Demand Letter

23. The companies responded to my demand letter by disputing my claims.

24. NEIA and its parent company informed me in writing that they will not waive the arbitration clause in their enrollment agreement.

Pending Lawsuit

25. I intend to file a lawsuit against NEIA and its parent company in 2017.

26. My lawsuit will be based on the claims that I identified in my demand letter.

27. I expect that NEIA and other defendants in my lawsuit will try to comply with the Department of Education's Borrower Defense regulations once they go into effect because they will want to continue receiving federal student loan funding, which is conditioned on

compliance. Specifically, I expect that NEIA and the other defendants will not try to enforce the arbitration provision in my enrollment contract once the regulations take effect.

28. If the Department of Education's regulations do not go into effect, I expect that I will have to fight with NEIA and the other defendants in my lawsuit about whether my claims must be brought in arbitration.

Sworn to under penalties of perjury on June 14, 2017, in the Commonwealth of Massachusetts, County of Essex, ss.

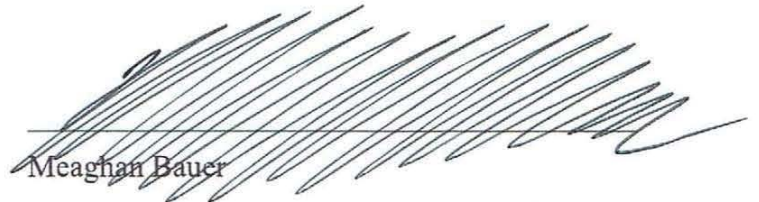

Meaghan Bauer

Exhibit 1



LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL
CENTRO DE SERVICIOS LEGALES

122 Boylston Street
Jamaica Plain, Massachusetts 02130-2246
TEL: (617) 522-3003 • FAX: (617) 522-0715

VIA FIRST-CLASS AND CERTIFIED MAIL

September 1, 2016

The New England Institute of Art, LLC
10 Brookline Place West
Brookline, MA 02445

Education Management Corporation
210 Sixth Avenue
Pittsburgh, PA 15222

The Art Institutes International II LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, PA 15222

Re: *Unfair and Deceptive Acts and Practices by The New England Institute of Art, Education Management Corporation, and The Art Institutes Regarding Stephano Del Rose of Canton, MA, Kristin Martin of Arlington, MA, Meaghan Bauer of Peabody, MA, and Similarly Situated Persons*

To Whom It May Concern:

We write on behalf of Stephano Del Rose, Kristin Martin, Meaghan Bauer, and similarly situated individuals who attended The New England Institute of Art (“NEIA”). NEIA is part of a national chain of schools operated by the Art Institutes International II LLC (“AI”), the flagship brand of the for-profit education company Education Management Corporation (“EDMC”).¹ NEIA is in the business of enrolling students in high-cost educational programs leading to associate’s and bachelor’s degrees in creative fields. As described herein, NEIA, with the participation of EDMC and AI, has operated in violation of the law, and has saddled Mr. Del Rose, Ms. Martin, Ms. Bauer, and their families with hundreds of thousands of dollars in student loan debt, in exchange for valueless credentials and slim employment prospects.

¹ For the purposes of this letter, EDMC refers to Education Management Corporation and its subsidiaries and affiliates other than AI and NEIA, including but not limited to Education Finance III LLC, Education Management Holdings II LLC, and Education Management II LLC. In addition to the addresses listed above, this letter has been sent to the following addresses: The New England Institute of Art, LLC, Corporation Service Company, 84 State Street, Boston, MA 02109; Education Management Corporation, Corporation Service Company, 84 State Street, Boston, MA 02109; Education Finance III LLC, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808; Education Management Holdings II LLC, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808; Education Management II LLC, 210 Sixth Avenue, 33rd Floor, Pittsburgh, PA 15222; and Education Management II LLC, Corporation Service Company, 84 State Street, Boston, MA 02109.

The Massachusetts Consumer Protection Act (“Act”) gives a cause of action to any person “who has been injured by another person’s use or employment of any method, act or practice” that constitutes “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]”² Arranging for loans that trap a borrower under an unmanageable debt load that she has no realistic hope of ever repaying is an unfair practice within the meaning of the Act.³

The loans arranged for by NEIA can only be described as structurally unfair.⁴ The cost of attending and completing NEIA is so high⁵ that, historically, close to 90 percent of students and their families have gone into debt in order to finance the cost of education.⁶ Despite claiming that its industry connections⁷ led to near-universal placement of NEIA graduates in well-paying jobs in their fields of study,⁸ NEIA knew that actual outcomes for its students were far worse.

First, the majority of students NEIA recruited and enrolled, such as Ms. Bauer, dropped out before completing their education, in part because of its unaffordability.⁹ Failure to complete a postsecondary program increases a student’s likelihood of defaulting on student loans threefold.¹⁰ Those who did complete inevitably left NEIA with more debt than those who

² G. L. c. 93A § 9 (incorporating by reference § 2).

³ See *Commonwealth v. Fremont Inv. & Loan*, No. 07-43737-BLS1, 2008 WL 517279, at *10 (Mass Super. Feb. 26, 2008), *aff’d*, 452 Mass. 733 (2008) (finding mortgage loans that lender reasonably knew or should have known were “doomed to foreclosure” presumptively unfair).

⁴ “Unfair” acts and practices proscribed by the Act are those that are “immoral, unethical, oppressive, or unscrupulous,” and which cause “substantial injury to consumers[.]” *Datacomm Interface, Inc. v. Computerworld, Inc.*, 396 Mass. 760, 778 (1986) (quoting *PMP Assocs. Inc. v. Globe Newspaper Co.*, 366 Mass. 595, 596 (1975)) (internal quotation marks and brackets omitted).

⁵ According to data reported to the Integrated Postsecondary Education Data System (“IPEDS”), a data collection program of the United States Department of Education (“Department”)’s National Center for Education Statistics, the cost of attending NEIA in 2014 to 2015 was \$59,798, while the cost of attending the Massachusetts College of Art and Design (“MassArt”), a nearby art school, was \$27,725.

⁶ Data reported to IPEDS. This figure has typically been at or below 50 percent for MassArt.

⁷ NEIA adopts the AI mantra that the school’s work is “[t]urning creativity into a career.” See, e.g., NEIA promotional handout, “Inspiring students. And employers.” [hereinafter “Inspiring Students’ Handout”]. To that end, NEIA consistently claims to prospective and current students that it will “turn our students into graduates who are equipped with the hands-on learning, real-world skills, industry contacts, and self-marketing tools to compete and succeed” for creative jobs. *Id.* NEIA, like other AI schools, boasts that it has “strong relationships” with employers who “seek out” AI graduates because of “the specific skills we teach.” *Id.*

⁸ See, e.g., Educ. Mgmt. Corp, Prospectus (Form 424B4) [hereinafter “EDMC 2009 Prospectus”] 3 (Oct. 10, 2009) (“Approximately 87% of undergraduate students who graduated from our institutions during the calendar year ended December 31, 2008 and were available for employment obtained a position in their field of study or a related field within six months of graduation.”); “Inspiring Students” Handout (claiming that “[o]f all 2007 graduates of [NEIA] available for employment, 90.8% were working in a field related to their program of study within six months of graduation”).

⁹ See *College Navigator: New England Institute of Art*, U.S. DEP’T OF EDUC., INST. OF EDUC. SCIS., NAT’L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/collegenavigator/?q=new+england+institute+of+art&s=all&id=167321> (36 percent of full-time students beginning their studies at NEIA returned to school the following fall and 37 percent of full-time students who began their studies at NEIA graduated within 150 percent of the “normal time” allotted for completion of the program).

¹⁰ See U.S. Dep’t of Educ., Fact Sheet: Focusing Higher Education on Student Success, <https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success>.

dropped out, yet had shockingly low success in finding employment.¹¹ And when students did find jobs, those jobs were low-paying,¹² and not sufficient to allow them to reasonably afford to make loan payments.¹³ Across the board, NEIA programs failed students.¹⁴

NEIA deliberately targeted its predatory educational product and associated unmanageable debt to individuals from precarious and unprivileged socioeconomic backgrounds,¹⁵ with few familial and community financial resources and limited experience with the postsecondary educational landscape. When students like Mr. Del Rose, Ms. Martin, and Ms. Bauer inevitably fail to find jobs that allow them to afford their debt, they have little cushion to fall back on, amplifying the harm associated with an extremely high debt load.¹⁶ NEIA took advantage of these students and their families, using unscrupulous and deceptive recruiting practices calculated to prey upon their sincere desire for educational attainment.¹⁷ These students were sold on the idea that NEIA was part of a national network of schools with cutting-edge training and facilities, and a wealth of the kinds of industry connections necessary to get jobs in the highly competitive creative fields into

¹¹ See, e.g., NEIA handout, “Disclosure Required by Massachusetts Regulation 940 CMR 31.00, Media Arts & Animation – Bachelor of Science” [hereinafter “NEIA Disclosure Handout”] (“22% of graduates during 2012-2013 calendar years obtained full-time, non-temporary jobs in their field of study.”).

¹² See, e.g., “Inspiring Students” Handout (citing \$30,864 as average starting salary of 2007 NEIA graduates); New England Inst. of Art, Graduate Employment Statistics [hereinafter “NEIA Graduate Employment Statistics”], <https://content.edmc.edu/assets/pdf/AI/Student-Consumer-Information/Graduate-Employment-Statistics/nea.pdf> (citing \$29,010 as average starting salary of graduates from July 1, 2014 through June 30, 2015).

¹³ NEIA Disclosure Handout (50 percent of NEIA students defaulted on, or failed to repay even a dollar of the principal balance, of their loans during the period of cohort year 2010).

¹⁴ The Department’s gainful employment (“GE”) regulations sanction schools when graduates’ annual loan repayment amount exceeds 12 percent of their annual earnings, or 30 percent of discretionary income. See 34 C.F.R. § 668.403(c)(2). GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private nonprofit institutions such as community colleges, because these programs purport to provide training for specific occupations. Of the 11 programs offered by NEIA, only one had graduates with the minimum amount of earnings required to pass the Department’s 2012 GE metrics. It is especially striking that NEIA failed these metrics, given that the Department’s GE rates have built-in features that vastly understate the cost and overstate the earnings of NEIA graduates. For example, the GE rates do not account for students who withdrew from a program and who often take on massive amounts of student loan debt without earning a degree. *Id.* § 668.404(b)(1)(i). Additionally, the total loan amounts used to calculate the GE rates do not include federal Parent PLUS loans and, therefore, do not accurately represent the true cost of a program. *Id.* § 668.404(d)(1)(i). Furthermore, although private student loan amounts are included in the GE calculation, the federal interest rate is used in the calculation as opposed to the actual interest rates of the loans, which are invariably much higher. *Id.* § 668.404(b)(2)(ii). Finally, the GE rates are calculated based on a 15-year amortization, but a standard repayment plan under the federal student loan program is 10 years.

¹⁵ According to data reported to IPEDS, since 2011, over half of all students enrolled at NEIA have received Pell Grants, a form of federal aid to students from the neediest socioeconomic backgrounds. This is in contrast to area art schools such as MassArt and the School of the Museum of Fine Arts, where a quarter or fewer students qualify for such aid.

¹⁶ *Accord Fremont*, 2008 WL 517279 at *5, 11 (finding structural unfairness in light of target audience of loan product, because risk of subprime lending was “greatest for those borrowers with the highest debt-to-income ratios and the fewest assets, since they had no cushion to deal with financial adversity”).

¹⁷ EDMC is alleged to have used an illegal compensation scheme in which recruiters were directly compensated according to the number of individuals they could successfully persuade to enroll in—and obtain loans to pay for—AI programs. See Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011). Such compensation schemes are illegal under federal law, 20 U.S.C. § 1094(a)(20), and inevitably cause the kind of high pressure sales tactics experienced by Mr. Del Rose, Ms. Martin, and Ms. Bauer. Such tactics are *per se* unfair and deceptive under Massachusetts law. 940 Code Mass. Regs. § 31.04.

which the school purported to launch graduates.¹⁸

The structural unfairness of these NEIA-related loans is further highlighted by the extraordinarily disparate position of students relative to NEIA, AI, and EDMC.¹⁹ The consequences of these structurally unfair loans are borne entirely by students, such as Mr. Del Rose, Ms. Martin, and Ms. Bauer, their families, and others in their position.²⁰ Now that the true nature of NEIA's programs has come to light, the school is shuttering—AI and EDMC are walking away.²¹ But Mr. Del Rose, Ms. Martin, and Ms. Bauer are stuck with debt that they have no way of getting out from underneath.²²

I. *Unfulfilled Promises and Unmanageable Debt*

Mr. Del Rose, Ms. Martin, and Ms. Bauer's experiences demonstrate that, in addition to the unfair and illegal practice of saddling its students with unmanageable student loan debt, NEIA engaged in numerous additional unfair and deceptive business practices proscribed by the Massachusetts Attorney General's regulations of for-profit colleges,²³ including false advertising;²⁴ false representation of placement services;²⁵ false statements concerning the nature or character of classroom instruction;²⁶ misleading statements regarding student loans,²⁷ and

¹⁸ "Inspiring Students" Handout ("With a system of over 40 schools throughout North America, The Art Institutes is able to help students connect with local and national employers who value – and often seek out – our talented graduates. A number of these employers offer internship opportunities that allow students to gain real-world experience while still in school. Our programs in design, media arts, and fashion are led by experienced instructors, many of whom work in the fields in which they teach. Our strong relationships with area companies help us make sure that our programs accurately reflect the demands of the real world. Those relationships truly benefit both our graduates and employers who are looking for the specific skills we teach.").

¹⁹ *Accord Fremont*, 2008 WL 517279 at *9 ("The unfairness . . . rest[s] . . . in the equities between the parties.").

²⁰ *See id.* at *11 (finding structural unfairness where lenders are able to "take a quick profit, and avoid the risks inherent in the loan").

²¹ As of May 6, 2015, NEIA is no longer enrolling new students, and will shut down entirely once all currently enrolled students complete or withdraw. The decision to close and "teach out" NEIA was made by EDMC and AI, and was presented to NEIA's Board of Trustees on April 23, 2015. In May 2015, EDMC announced that it would close NEIA and 14 other campuses: The Art Institute of Atlanta - Decatur; The Art Institute of Ohio - Cincinnati; The Art Institute of Fort Worth; The Art Institute of Houston - North; The Art Institute of Jacksonville; The Art Institutes International - Kansas City; The Art Institute of Michigan - Troy; The Art Institute of New York City; The Art Institute of Salt Lake City; The Art Institute of California - Silicon Valley; The Illinois Institute of Art - Tinley Park; The Art Institute of Washington - Dulles; The Art Institute of Wisconsin; and The Art Institute of York - Pennsylvania. Fain, *For-Profit Chains Announce a New Wave of Closures and Sell-Offs*, Inside Higher Ed (May 7, 2015), <http://www.insidehighered.com/news/2015/05/07/profit-chains-announce-new-wave-closures-and-selloffs> (linking to list of closing campuses).

²² Student loan debt is different from, and more punitive than, consumer and other debt in several respects. There is no statute of limitation on the collection of federal student loans. 20 U.S.C. § 1091a. The Department has the ability to collect student loans by garnishing wages and seizing tax refunds and public benefits without going to court. 31 U.S.C. §§ 3716; 3720D; 3720A. Both federal and private student loan debts are extremely difficult to discharge through bankruptcy. 11 U.S.C. § 523(a)(8) (exempting an educational loan from discharge unless it would "impose an undue hardship on the debtor or the debtor's dependents").

²³ The specific actions prohibited, while illustrative of practices that are always violative of the Act, are "not intended to be all inclusive as to the types of activities prohibited by" the statute, and thus NEIA's conduct may be considered unfair or deceptive even in the absence of such explicit rulemaking. 940 Code Mass. Regs. § 31.02.

²⁴ *Id.* 31.04(1).

²⁵ *Id.* 31.04(5).

²⁶ *Id.* 31.04(14).

misrepresentation of opportunity and employment.²⁸ In addition to violating the Massachusetts Consumer Protection Act, these misrepresentations also constitute common law violations, including fraudulent misrepresentation and fraudulent inducement,²⁹ unconscionability,³⁰ and breach of the implied covenant of good faith and fair dealing.³¹

A. Mr. Del Rose

Mr. Del Rose is 24 years old. He studied design and visual communication at a vocational high school in Canton, Massachusetts. NEIA representatives recruited him there, giving a presentation, distributing promotional materials, and obtaining the names and contact information of Mr. Del Rose and other students. After receiving numerous calls from NEIA, Mr. Del Rose and his parents visited NEIA and met with admissions and financial aid representatives. At the meeting, NEIA representatives praised Mr. Del Rose's video portfolio and urged him to choose NEIA over other schools, citing NEIA's superior industry connections. A financial aid representative promised Mr. Del Rose and his parents that an education at NEIA would be inexpensive compared to other art schools in Boston, and that tuition costs would not increase. To assuage Mr. Del Rose and his parents' concerns about Mr. Del Rose's ability to repay his loans, an NEIA admissions representative assured them that NEIA had a 90 to 97 percent job placement rate, and that Mr. Rose would earn enough money to repay his student loans within one to two years of graduation. Mr. Del Rose also attended a tour of NEIA, during which an NEIA admissions representative told him that NEIA was always "on the cutting edge" with respect to technology.

NEIA's assertions were starkly belied by Mr. Del Rose's subsequent experiences. After enrolling in NEIA's Digital Film and Video Production program in 2009, Mr. Del Rose was required to purchase a \$500 video kit, which contained equipment for which he had no use. NEIA's own video equipment was outdated and in limited supply, which forced Mr. Del Rose to compete with other students for access and made it difficult for him to complete his projects. Every semester, NEIA financial aid representatives hounded Mr. Del Rose and his father, pressuring them to sign further loan documents with the threat that Mr. Del Rose would otherwise be unable

²⁷ *Id.* 31.07(1).

²⁸ *Id.* 31.04(7).

²⁹ Massachusetts law prohibits the fraudulent "misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or refrain from action in reliance thereon in a business transaction." *Graphic Arts Finishers, Inc. v. Boston Redevelopment Auth.*, 357 Mass. 40, 44 (1970); *see also Int'l Totalizing Sys., Inc. v. PepsiCo, Inc.*, 29 Mass. App. Ct. 424, 431 (1990) ("One who fraudulently makes a representation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.") (citing RESTATEMENT (SECOND) OF TORTS § 525 (1977)).

³⁰ Under Massachusetts law, unconscionability is "determined on a case by case basis, giving particular attention to whether, at the time of the execution of the agreement, the contract provision could result in unfair surprise and was oppressive to the allegedly disadvantaged party." *Zapatha v. Dairy Mart, Inc.*, 381 Mass. 284, 292-93 (1980) (internal citation omitted).

³¹ The covenant of good faith and fair dealing is a "pervasive requirement," *Fortune v. Nat'l Cash Register Co.*, 373 Mass. 96, 102 (1977), of Massachusetts contracts that "requires that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to the fruits of the contract." *T.W. Nickerson, Inc. v. Fleet Nat'l Bank*, 456 Mass. 562, 570 (2010) (internal citations and quotations omitted).

to attend, and thus fail, his courses. As the cost of tuition rose, Mr. Del Rose's father had to pay out-of-pocket for costs that were not covered by loans. NEIA's promised industry connections never materialized: when Mr. Del Rose was searching for an internship, NEIA's assistance consisted of posting a list of Craigslist advertisements. Mr. Del Rose ultimately found an internship on his own. NEIA was also of limited assistance as Mr. Del Rose applied for positions after graduating in 2014, proposing that Mr. Del Rose accept a \$12.50 per hour position at a Bose call center. Mr. Del Rose found his current position on his own, with no help from NEIA.

B. Ms. Martin

Ms. Martin is 31 years old. She was seeking a career in graphic design, and learned about NEIA through an online advertisement. After completing an online form, Ms. Martin was immediately contacted by an NEIA representative, and made an appointment to tour the campus. On the tour, an NEIA representative told Ms. Martin that NEIA was a "very good school," and suggested that it was superior to other art schools, including the Massachusetts College of Art and Design ("MassArt"), because of its more technical course offerings. Despite this purported selectivity, Ms. Martin was admitted to NEIA without a portfolio, and enrolled in 2009.

Although Ms. Martin was concerned about NEIA's high tuition cost, financial aid representatives assured her that it was "not a big deal," and led her to believe that she would be able to repay her loans with the money she would earn following graduation. Ms. Martin, who was the first in her family to attend college, believed NEIA representatives when they told her that the vast amount of student loan debt she would have to take on was a "healthy" debt and an investment in her future.

Far from equipping Ms. Martin with the skills necessary to launch a career in graphic design, NEIA failed to offer instruction in the programs and techniques most sought by employers. Although Ms. Martin contacted the career services office after graduating from NEIA in 2013, the staff was of little assistance. The "leads" provided by career services included postings from Craigslist and jobs paying \$10 or \$12 per hour. Ms. Martin thus struggled to obtain employment in her field. She found her current position—an internship at which she earns \$10 per hour—with no assistance from NEIA.

C. Ms. Bauer

Ms. Bauer is 25 years old. She learned about NEIA while researching art schools online. Ms. Bauer was interested in NEIA's Digital Film and Video Production program, and attended a tour during which an NEIA representative showed her around a high-end studio facility and promised her access to top-of-the-line equipment. Ms. Bauer felt a rapport with her admissions representative, who mentioned that he had previously worked at the restaurant where Ms. Bauer was employed. Ms. Bauer was also considering MassArt, but her admissions representative assured her that NEIA was superior. Her admissions representative urged her to sign up for classes before they reached capacity, so Ms. Bauer scheduled a meeting with a financial aid representative, which she attended with her mother. At the meeting, the financial aid representative encouraged Ms. Bauer's mother to take out a Parent PLUS loan; Ms. Bauer's mother refused because she wanted Ms. Bauer to attend a community college. Ms. Bauer

returned on her own, and ultimately took out approximately \$35,917 in student loans.

Ms. Bauer felt confident that she would be able to find a job that would allow her to repay her loans, because NEIA representatives informed her that NEIA was the most prestigious school at which to study video production. NEIA representatives emphasized that as part of AI, NEIA belonged to a well-known network of schools whose graduates were highly sought after by employers. NEIA representatives led Ms. Bauer to believe that an NEIA education would open up endless opportunities, and that the school would employ its industry connections to assist her in finding a job.

After enrolling in 2011, Ms. Bauer had to compete with other students to obtain studio time and gain access to NEIA's video equipment, which she discovered was outdated and subpar. Although NEIA representatives had promised Ms. Bauer access to the facilities at all times, NEIA limited its opening hours while Ms. Bauer was enrolled.

Ms. Bauer also struggled to obtain sufficient financial aid to meet NEIA's high tuition costs. In 2013, while enrolled at NEIA, she became homeless, and lived out of her car. The next year, NEIA financial aid representatives told her that she had "used up" all of her financial aid. She was unable to take out further loans without a co-signer, and was forced to withdraw from NEIA in 2014 without obtaining her degree. She is currently working at a restaurant and studying for a paralegal associate's degree at a community college.

II. *Structurally Unfair Loans*

The loans NEIA facilitated for student borrowers like Mr. Del Rose, Ms. Martin, and Ms. Bauer were structurally unfair because, from the outset, they created unmanageable debt that those borrowers had little realistic hope of ever being able to repay. The unmanageability and structural unfairness of these loans was or should have been known to NEIA. Historically, an NEIA enrollee has been more likely than not to drop out of school before ever completing.³² And those who persist to graduation have had less than a 50 percent likelihood of obtaining full-time employment in their field of study.³³ By NEIA's own data, contained in fine-print disclosures, in 2012 and 2013, only 22 percent of its graduates obtained full-time, non-temporary jobs in their fields of study.³⁴ In 2014 and 2015, fewer than 50 percent of graduates in graphic design, Ms. Martin's major, and Digital Film and Media Production, Mr. Del Rose and Ms. Bauer's major, respectively, obtained full-time jobs in a related field.³⁵

Even if NEIA assumed that Mr. Del Rose, Ms. Martin, and Ms. Bauer would be in the minority of graduates who obtained full-time employment at the average salaries in their fields of study, those average salaries would be insufficient to support their loan debt. For example, NEIA's own data show that the average salary of its graduates between July 2014 and June 2015 was

³² See *supra* note 9.

³³ See *supra* note 11.

³⁴ *Id.*

³⁵ NEIA Graduate Employment Statistics.

\$29,010.³⁶ Contrary to NEIA's promises, graduates do not in fact realize increased earnings or obtain viable careers from having attended NEIA.³⁷

Contrast these modest earnings with the substantial debt load of NEIA graduates. Data reported by the school indicate that the average federal student loan debt of an NEIA graduate—counting *only* federal student loan debt and *not* private student loans or Parent PLUS loans borrowed by students' families—was \$29,444.³⁸ Even using this data, which dramatically undercounts debt attributable to attendance at NEIA, and ignores students who drop out of NEIA, an average NEIA graduate on a standard repayment plan would have to pay \$4,068 annually to service her loan debt.³⁹ This amounts to approximately 14 percent of average annual income going toward loan repayment, which is unsustainable as determined by the Department of Education.⁴⁰

In reality, NEIA students graduated with much higher debt loads, as is illustrated by the experiences of Mr. Del Rose, Ms. Martin, and Ms. Bauer. For example, Mr. Del Rose and his family borrowed approximately \$111,000 for him to complete NEIA's Digital Film and Video Production program. NEIA offered this program at a cost that mandated such a high amount of debt, despite knowing that graduates had slim chances of finding a job in digital film and video production after completing the program. For example, only 41.7 percent of graduates between July 2014 and June 2015 obtained jobs in this field.⁴¹ And in any event, whether a student was working in the field or not, as NEIA was aware, his earnings were not high enough—according to NEIA, the average salary of graduates of this program was \$26,372—⁴² to justify such substantial debt. Although in actuality Mr. Del Rose earns approximately \$24,000—less than the average—even using the higher average annual earnings data provided by NEIA, his debt requires him to pay \$15,324 annually on a standard repayment plan, or approximately 58 percent

³⁶ *Id.* These numbers are generous, i.e., they overstate the income of graduates, because, as NEIA states, “for graduates who are paid on an hourly basis, we use an average of hours worked per week over the most recent thirty days based on information provided to us by the graduate or employer.” *Id.* Therefore, the annual salaries use projections based on assumptions about how many hours students worked and the consistency of those hours, leading to potentially exaggerated incomes.

³⁷ Studies suggest that credentials from for-profit education providers in fact *impair* the earning power of graduates. *See, e.g.*, Stephanie Riegg Cellini, Nicholas Turner, Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data, National Bureau of Economic Research Working Paper No. 22287 (May 2016) (on average, associate's and bachelor's degree students experience a decline in earnings after attendance at a for-profit college, relative to their own earnings in years prior to attendance); David Deming, Claudia Goldin, Lawrence F. Katz, The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?, J. of Econ. Perspectives vol. 26 n. 1 (Winter 2012) (finding that for-profit students end up with higher unemployment and “idleness” rates and lower earnings six years after entering programs than do comparable students from other schools, and that they have far greater student debt burdens and default rates); *see also* Rajeev Darolia et al., Do Employers Prefer Workers Who Attend For-Profit Colleges? Evidence from a Field Experiment, National Center for Analysis of Longitudinal Data in Education Research Working Paper No. 116 (Aug. 2014), at 25 (“We find no evidence that job applicants who attended for-profit colleges attract greater interest from employers than those who attended public community colleges or no college at all.”).

³⁸ *College Scorecard: New England Institute of Art*, U.S. DEP'T OF EDUC., <https://collegescorecard.ed.gov/school/?167321-The-New-England-Institute-of-Art>.

³⁹ This number was calculated using the federal student loan repayment estimator, assuming all loans are unsubsidized and have the current standard federal interest rate of 6.8 percent. *See Repayment Estimator*, U.S. DEP'T OF EDUC., FED. STUDENT AID, <https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action>.

⁴⁰ *See* 34 C.F.R. §668.403(c)(2)(ii).

⁴¹ NEIA Graduate Employment Statistics.

⁴² *Id.*

of his annual income.⁴³ These numbers do not even take into account the reality that such unmanageable debt is highly likely to be in negative amortization because even the interest payments are unaffordable. Mr. Del Rose and his family's NEIA debt has ballooned to approximately \$160,000 and is likely to grow.

Ms. Martin's experience further illustrates the structural unfairness of NEIA's practices. Ms. Martin borrowed approximately \$85,510 to complete the Graphic Design program. According to NEIA, she could expect only a 45 percent chance of obtaining a job in this field.⁴⁴ The average earnings of graduates for the Graphic Design program, according to NEIA, were \$27,426.⁴⁵ In actuality Ms. Martin earns approximately \$20,000, but even using the average earnings data, under a standard repayment plan, she would have to pay \$11,808 annually towards her loan debt, or approximately 43 percent of her annual income. In actuality, her debt burden is much higher, as approximately \$28,000 of the \$85,510 that she borrowed is in private loans, which carry interest rates up to almost eight points higher than the standard 6.8 percent interest rate charged for federal loans. Like Mr. Del Rose, Ms. Martin has seen her unmanageable debt result in negative amortization. Today, she owes approximately \$114,000 as a result of attending NEIA, a figure that is likely to grow.

Ms. Bauer borrowed approximately \$35,917 to begin NEIA's Digital Film and Video Production program. Ms. Bauer was unable to complete the program because she had no more federal loans at her disposal, and she had neither the resources to self-pay or borrow from family members, nor the credit history to secure a private loan. It is not uncommon for NEIA students to exhaust their eligibility for federal student loans before being able to complete their programs.⁴⁶ Although Ms. Bauer's debt load is lower than that of Mr. Del Rose and Ms. Martin, her debt is no less unmanageable or structurally unfair. As a result of being unable to complete her program, Ms. Bauer is statistically three times more likely to default on her loans.⁴⁷ Acknowledging that Ms. Bauer did not graduate from NEIA, but assuming she was somehow able to earn the average salary associated with her program, \$26,372, she would have to devote 19 percent of her annual income to paying off her loans.⁴⁸ Had Ms. Bauer been able to self-pay or secure private loans and finish the program, her loan debt would surely have been double or triple, increasing her debt load to an even more unmanageable amount. Now, Ms. Bauer is not only saddled with her debt from NEIA, but is studying for an associate's degree at a community college and working to support herself. Only six of her 78 credits from NEIA transferred to the community college.

Mr. Del Rose, Ms. Martin, and Ms. Bauer's stories illustrate how NEIA has consistently facilitated the borrowing of unmanageable debt that leaves little hope of ever being repaid, and

⁴³ This and all debt-to-income ratios in this section were calculated using the approximate debt, including any private loans, owed by the individual (and, in Mr. Del Rose's case, the approximate debt owed by his father), as an unsubsidized federal loan, at the standard interest rate of 6.8 percent.

⁴⁴ NEIA Graduate Employment Statistics.

⁴⁵ *Id.*

⁴⁶ The federal student loan program limits the aggregate amount borrowed by a dependent student to \$31,000, and no more than \$23,000 may be in subsidized loans. *See Subsidized and Unsubsidized Loans: How much can I borrow?*, U.S. DEP'T OF EDUC., FED. STUDENT AID, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much>.

⁴⁷ *See* U.S. Dep't of Educ., Fact Sheet: Focusing Higher Education on Student Success, *supra* note 10.

⁴⁸ Ms. Bauer currently makes approximately \$26,000 annually waitressing.

has further engaged in unfair and deceptive business practices proscribed by both the Massachusetts Consumer Protection Act and the common law. Mr. Del Rose, Ms. Martin, and Ms. Bauer's inability to make payments on their structurally unfair loans has destroyed their credit, hindering each one's ability to rent an apartment, save money, or consider buying a car or home. Ms. Martin has been pursued and harassed by debt collectors, and her financial insecurity has exacerbated her existing health issues. Furthermore, the great disparity between NEIA representatives' misrepresentations and Mr. Del Rose's, Ms. Martin's, and Ms. Bauer's educational experiences and career outcomes has caused all three to suffer significant distress. Mr. Del Rose's, Ms. Martin's, and Ms. Bauer's families have also been injured. After losing his job, the debt Mr. Del Rose's father incurred became insurmountable. Both Mr. Del Rose and Ms. Martin remain financially dependent on their families, and debt collectors have contacted Ms. Martin's grandfather about her student loan debt. The harms suffered by Mr. Del Rose, Ms. Martin, Ms. Bauer, and their families were directly caused by NEIA's unfair and deceptive acts and practices.

III. *Corporate Growth Imperative that Puts Profits Over Students*

AI and EDMC both actively facilitated and participated in the deceptive acts and practices of NEIA described herein. NEIA operates under the pervasive control of its corporate grandparent, EDMC, and parent, AI. NEIA is a wholly-owned subsidiary of AI, which acquired it in 2000. AI, in turn, is a wholly-owned subsidiary of EDMC, and is the company's central brand. EDMC was first publicly traded in 1996, before being purchased for \$3.4 billion in 2006 by two private equity firms, Providence Equity Partners and Leeds Equity Partners, together with Goldman Sachs.⁴⁹ EDMC incurred significant indebtedness through the transaction,⁵⁰ and planned to repay a portion of that indebtedness with proceeds received from an initial public offering ("IPO") in 2009.⁵¹ EDMC's indebtedness led the company to pursue an aggressive growth strategy that involved consistently increasing enrollment, and thereby revenue.⁵²

Indeed, enrollment at EDMC schools grew more than fourfold between 2001 and 2010,

⁴⁹ See Andrew Sorkin, *Education Management Said to Be Sold for \$3.4 Billion*, N.Y. TIMES, http://www.nytimes.com/2006/03/06/business/education-management-said-to-be-sold-for-34-billion.html?_r=0 (March 6, 2006).

⁵⁰ Educ. Mgmt. Corp, Amendment No. 6 to Form S-1 (Form S-1/A) (Sept. 21, 2009). The transaction entailed entering into a \$300 million revolving credit facility with a six year maturity, which was increased to \$322.5 million in February 2008 and to \$388.5 million in August 2009.

⁵¹ EDMC expected to receive net proceeds from the IPO of approximately \$353.4 million, and expected to contribute up to \$323.9 million of those proceeds to its subsidiary, Education Management LLC, to, *inter alia*, repay a portion of its indebtedness. After EDMC's IPO, Goldman Sachs continued to own 41.8 percent of the company; Providence Equity Partners 31.5 percent; and Leeds Equity Partners 7.6 percent. Educ. Mgmt. Corp, Annual Report (Form 10-K) (Aug. 30, 2011). EDMC subsequently delisted from NASDAQ in 2014, citing the costs of compliance with SEC reporting obligations and NASDAQ listing requirements. *Education Management Announces Intention to Voluntarily Delist Shares from NASDAQ*, EDUC. MGMT. CORP. (Oct. 23, 2014), <http://www.prnewswire.com/news-releases/education-management-announces-intention-to-voluntarily-delist-shares-from-nasdaq-255232737.html>.

⁵² In 2009, in advance of its IPO, EDMC explained to investors that its "business model benefits from scale and permits us to leverage fixed costs across our delivery platforms," and that "we have made significant investments in numerous areas of our workforce in order to support future enrollment growth." EDMC 2009 Prospectus 3.

expanding from 38,047 students to 158,300 students.⁵³ More than half (64 percent) of this growth took place after EDMC was bought by Goldman Sachs and private equity interests.⁵⁴ This trend was observed at NEIA as well. Enrollment at this EDMC/AI branch more than doubled between 2001 and 2008, growing from 1,149 students to a peak enrollment of 2,495.⁵⁵ Revenues increased accordingly at NEIA, growing from \$13.29 million in 2001 to \$45.3 million in 2009.⁵⁶ This increase in revenue is not solely accounted for by the growth in enrollment. In fact, over this period of growth, tuition and fees increased substantially at NEIA, from an annual cost of \$14,500 in 2001 to \$23,100 in 2009.⁵⁷

This growth did not redound to the benefit of students. Substantial portions of EDMC revenue, which is almost entirely attributable to the tuition and fees paid by students, which in turn is almost entirely represented in the form of debt on the part of EDMC students and their families, were devoted to profit for owners, and investment in recruiting even more students.⁵⁸ Marketing and recruiting functions were centralized, and students were recruited into NEIA by EDMC/AI employees trained to overcome objections, “find the pain,” and emphasize misleading or false job placement statistics in order to convince students to enroll.⁵⁹ Decisions were made at the corporate level that had direct and adverse impacts on NEIA students, but nonetheless were made in order to enhance the bottom line. For example, tuition was raised. Content of programming and methods of teaching were streamlined.⁶⁰ EDMC and AI dictated that NEIA change from a semester to quarter system, which meant that programs became more expensive for students.⁶¹ Full-time faculty were replaced by cheaper, part-time instructors with less investment in students. Access to facilities and studios, advertised as round-the-clock, was cut for financial reasons. Classes became crowded, and teachers could not keep up with the needs of all students.⁶² In short, NEIA, AI, and EDMC employed a business model whose profitability was predicated on increasing numbers of enrollees taking out vast amounts of debt in the form of

⁵³ SENATE COMM. ON HEALTH, EDUC., LABOR & PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS [hereinafter “HELP Report”] 451(2012) (calculating enrollment using Securities and Exchange Commission filings).

⁵⁴ *Id.*

⁵⁵ Data reported to IPEDS.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ For example, in 2009, EDMC allocated 21.6 percent of its revenue, or \$435 million, to marketing and recruiting, and 16 percent, or \$319 million, to profit. HELP Report 456. In its 2009 Prospectus, EDMC explained to investors that, since being bought by Goldman Sachs and private equity, EDMC had experienced a 180 percent increase in the number of admissions representatives it employed. EDMC 2009 Prospectus 78.

⁵⁹ See HELP Report 462-63; Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana ¶¶ 105-19, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011).

⁶⁰ The 2009 Prospectus explains to investors that EDMC “pursue[s] additional efficiencies through our centralized and standardized infrastructure, systems and processes.” EDMC 2009 Prospectus 7.

⁶¹ In January 2013, NEIA’s then-President explained in a letter to students that NEIA “is the only Art Institutes school in a system of more than 50 campuses that is on semesters. . . . We have spent the past year working with faculty and staff here at NEiA as well as at our corporate offices in Pittsburgh to facilitate a smooth transition.” Letter from David G. Warren, President, New England Inst. of Art, to NEIA students.

⁶² See *College Navigator: New England Institute of Art*, U.S. DEP’T OF EDUC., INST. OF EDUC. SCIS., NAT’L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/collegenavigator/?q=new+england+institute+of+art&s=all&id=167321> (“This institution has an open admission policy.”); 940 MASS. CODE REGS. 31.06(6) (prohibiting enrollment of unqualified students).

structurally unfair student loans.

IV. *Demand for Relief*

NEIA, AI, and EDMC have engaged in unfair practices in violation of the Massachusetts Consumer Protection Act and Massachusetts common law proscriptions on fraudulent misrepresentation, fraudulent inducement, unconscionability, and breach of the implied covenant of good faith and fair dealing.

To insulate themselves from meritorious student complaints about their unfair and deceptive practices, and the corresponding scrutiny of the Department of Education, law enforcement agencies, and the New England Association of Schools and Colleges (NEIA's accreditor), NEIA, AI, and EDMC required students, as a condition of enrollment, to waive their legal rights by signing enrollment agreements containing forced arbitration clauses.

Mr. Del Rose, Ms. Martin, and Ms. Bauer have reason to believe that NEIA, AI, and EDMC's unfair acts and practices have caused similar injuries to numerous other similarly situated former NEIA students, and thus Mr. Del Rose, Ms. Martin, and Ms. Bauer also demand relief on their behalf. Together with these former students, Mr. Del Rose, Ms. Martin, and Ms. Bauer demand that NEIA, AI, and EDMC compensate them for their injuries. Specifically, they demand that NEIA pay off all of their student loans, reimburse them for payments they have made on those loans, and compensate them for lost wages and time. Mr. Del Rose, Ms. Martin, Ms. Bauer and similarly situated former NEIA students also demand that NEIA, AI, and EDMC refrain from moving to compel arbitration of any lawsuit that may arise from their actions. A complete statement of demands is set forth in Appendix A, attached to this letter.

Failure to make a reasonable written tender of relief within thirty days of this demand may result in your liability for multiple damages, costs, and Mr. Del Rose's, Ms. Martin's, and Ms. Bauer's reasonable attorney's fees.

Sincerely,

/s/

Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

By:

Erica Kyzmir-McKeon
Tel.: 617-390-2739
Email: ekyzmirmckeon@law.harvard.edu

Victoria Roytenberg
Tel.: 617-390-2740
Email: vroytenberg@law.harvard.edu

Amanda Savage
Tel.: 617-390-2710
Email: asavage@law.harvard.edu

cc: Robert Kaye, *Chief Enforcement Officer*, United States Department of Education,
Federal Student Aid
Elizabeth Williamson, *Northeast HUB Leader*, United States Department of Education
David Angel, *Commission Chair*, Higher Education – CIHE, New England Association
of Schools and Colleges
Carlos E. Santiago, *Commissioner of Higher Education for Massachusetts*, Massachusetts
Department of Higher Education
Attorney General Maura Healey
Senator Elizabeth Warren

Appendix A

We wish to publicly **AFFIRM** to ourselves, our families, the public, and to those who control our debts, that we enrolled in the New England Institute of Art (“NEIA”) in good faith. We did what was expected of us; we jumped through all of the hoops that you required. We took on an extraordinary amount of debt in order to learn. We did this because we believed what you, and those who vouched for you, told us. We enrolled on the belief that we could better our lives and contribute as much as possible to our society. Our goal was not to become rich. We held up our end of the bargain, but you did not.

Now, having taken your profits, you are shutting your doors. The world will recognize your business for the fraud that it was, and we are glad that you will no longer lure other well-intentioned students into your trap. But your closure affirms the worthlessness of our credits and degrees. We do not have the luxury to walk away from our debts.

We, students of NEIA and our families, do not accept that your hands are clean. On account of the numerous illegal, deceptive and unfair acts and practices you, the New England Institute of Art, The Art Institutes, Inc., and Education Management Corporation (“EDMC”), have committed, and to all those who have vouched for and enabled you, we **DEMAND** the following:

REMEDY the harm that you have caused to us, our families, and the public. Cancel all of our debts. Repay the money that we borrowed to attend your school. Remove bad reports from our credit histories. Compensate us for the time and resources that we squandered.

STOP enrolling new students in any of your schools, and shut down entirely. Immediately. Stop denying your wrongdoing. Stop using unfair and oppressive arbitration “agreements” to hide your fraud and prevent us from acting together. Stop retaliating against employees and former employees who speak out to expose your abuse.

ADMIT to us and our families, to the public, and to those who control our debts, that because of your illegal conduct, our debts are invalid and unenforceable. You lied to us and to those who are supposed to regulate and oversee you. You falsely advertised your school. You used manipulative and deceptive tactics to enroll us, even though you knew that our student loan debt would be unmanageable. You knew that employers do not respect the name or training of Art Institute students. You knew that we would not be able to succeed.

EXPLAIN to us and our families, to the public, and those who control our debts, where all of the money that we paid you, through our debts, has gone. Who got rich from our debts? Who owns you now? Who made the decision to close down NEIA and other Art Institutes/EDMC schools, and why?

ACKNOWLEDGE to us and our families, to the public, and to those who control our debts, that you targeted us for enrollment in your programs because you believed you could take advantage of us for your own financial gain. You perceived that your power was greater than ours, knowing as you did that we do not come from rich and powerful families. You used aggressive, manipulative, and deceptive tactics to recruit us and convince us to enroll in your expensive and worthless programs. We worked hard and sacrificed. All the while, corporate profits were more important to you than any of us. You treated us like numbers. You have harmed us all.

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

CALIFORNIA ASSOCIATION OF PRIVATE
POSTSECONDARY SCHOOLS,

Plaintiff,

v.

ELISABETH DEVOS, in her official capacity
as Secretary of the United States Department
of Education, and THE DEPARTMENT OF
EDUCATION,

Defendants,

MEAGHAN BAUER and STEPHANO DEL
ROSE,

[Proposed] Defendant-Intervenors.

Civil Action No. 1:17-CV-00999-RDM

DECLARATION OF STEPHANO DEL ROSE

I, Stephano Del Rose, state under penalty of perjury that the following is true and correct:

1. My name is Stephano Del Rose. I am 25 years old. I currently live in Canton, Massachusetts.

2. I submit this declaration in support of my motion for intervention in the above-captioned case.

New England Institute of Art

3. I attended the New England Institute of Art (“NEIA”), a for-profit college in Brookline, Massachusetts, from 2009 to 2014 in the Digital Filmmaking and Video Production program. I graduated from NEIA in 2014.

4. I borrowed approximately \$31,000 in federal student loans to attend NEIA. I borrowed ten federal student loans in total. Nine of my loans are Direct Loans. My father also borrowed approximately \$92,300 in federal Parent PLUS loans for my attendance at NEIA.

5. NEIA appealed to me because I had studied design and visual communication in high school, and was interested in both web design and filmmaking. One of my dreams was to produce commercials for an advertising agency.

6. I visited NEIA's campus and took a tour of the school twice in 2009.

7. Both times that I visited NEIA I met with recruiters. The recruiters did not tell me that they were being paid to enroll as many students as possible.

8. The NEIA recruiters and financial aid staff told me many things about the school that convinced me to enroll there. For example, NEIA staff told me that NEIA was better than other schools because of its "cutting-edge" technology and better industry connections; that NEIA would help me find a job in the field; that NEIA's career services would remain available to me after graduation and throughout my career; that NEIA had connections at Plymouth Rock Studios, a new film and television studio in Massachusetts, and that NEIA would place students there for internships and post-graduate employment; that NEIA had a 90 to 97 percent job placement rate; that NEIA was inexpensive compared to other art schools in Boston; that I would earn enough money to repay my student loans within three years of graduation; and that I would be able to repay both my loans and my father's loans because I would get a high-paying job after graduating from NEIA.

9. The financial aid staff at NEIA completed the loan paperwork for me and my father and rushed us to sign.

10. I signed an enrollment contract with NEIA that includes a forced arbitration clause and a class action waiver. A redacted copy of that agreement is attached as Exhibit 1.

11. After I started at NEIA, I learned that many of the things NEIA staff told me before I enrolled were not true. For example, NEIA's equipment was outdated, often broken, and in limited supply. I had to compete with other students for access to the equipment, which made it difficult for me to complete my projects. In addition, although my program had a required internship, NEIA did not help me find an internship.

12. During school, NEIA financial aid employees hounded me and my father every term, pressuring us to sign loan documents and pay additional costs out of pocket. They told us that if we did not sign, I would not be able to continue classes.

13. I thought about transferring to another school, but decided not to because my father and I had already borrowed so much for NEIA and my credits would not transfer.

14. NEIA did not help me find a job in digital filmmaking and video production after I graduated. Instead, NEIA staff pointed me to jobs outside of my field—in audio or technical support—that did not even require a college degree. For example, NEIA staff told me about a position at a Bose call center that paid \$12.50 per hour.

15. For a while after I graduated from NEIA, I worked at Walgreens earning \$9.25 an hour, the same job I had while I was in school at NEIA.

16. I am currently working as a patient advocate. I earn \$15.00 an hour.

17. With accumulated interest, I currently owe over \$40,000 in federal student loans for my time at NEIA.

18. My student loans are unmanageable. They continue to grow because I cannot afford to pay them.

19. With accumulated interest, my father owes over \$100,000 in Parent PLUS loans for my enrollment at NEIA. He thinks that he will never be able to afford to retire because of his enormous student loan debt. There is no way I can pay my father's loans in addition to my own.

20. My student loans continue to grow because I cannot afford to pay them.

21. The loans I took out to attend NEIA are very stressful. It makes me anxious to have so much debt that I cannot afford.

22. I live with my parents because I unable to support myself without their assistance.

Demand Letter

23. In September 2016, I sent a demand letter to NEIA and its parent company on behalf of myself and a group of other NEIA students, based on the companies' violations of Massachusetts law.

24. The demand letter is the first step toward filing a class action lawsuit against NEIA and its parent company. A copy of the letter is attached as Exhibit 2.

25. The demand letter explains how NEIA and its parent company violated the Massachusetts Consumer Protection Act and Massachusetts law forbidding fraudulent misrepresentation, fraudulent inducement, unconscionability, and breach of the implied covenant of good faith and fair dealing.

26. The letter explains that the loans NEIA facilitated for me and others were structurally unfair because there was no way I was going to be able pay back so much debt with such a bad education.

27. The letter also details the companies' violations of Massachusetts law that bars for-profit colleges from false advertising, false representation of placement services, false

statements concerning the nature or character of classroom instruction, misleading statements regarding student loans, and misrepresentation of opportunity and employment.

28. The demand letter spells out how NEIA's parent company, Educational Management Corporation, is also at fault because it helped and facilitated NEIA's violations of Massachusetts law.

29. The letter demands relief for me and other former NEIA students. The letter also demands that the companies not try to force me to arbitrate my lawsuit.

Response to Demand Letter

30. The companies responded to my demand letter by disputing my claims.

31. NEIA and its parent company informed me in writing that they will not waive the arbitration clause in their enrollment agreement.

Pending Lawsuit

32. I intend to file a lawsuit against NEIA and its parent company in 2017.

33. My lawsuit will be based on the claims that I identified in my demand letter.

34. I expect that NEIA and other defendants in my lawsuit will try to comply with the Department of Education's Borrower Defense regulations once they go into effect because they will want to continue receiving federal student loan funding, which is conditioned on compliance. Specifically, I expect that NEIA and the other defendants will not try to enforce the arbitration provision in my enrollment contract once the regulations take effect.

35. If the Department of Education's regulations do not go into effect, I expect that I will have to fight with NEIA and the other defendants in my lawsuit about whether my claims must be brought in arbitration.

Sworn to under penalties of perjury on June 14th, 2017, in the Commonwealth
of Massachusetts, County of Suffolk, ss.



Stephano Del Rose

Exhibit 1



10 BROOKLINE PLACE WEST, BROOKLINE, MA 02445
phone: 800.903.4425 fax: 617.582.0974 www.artinstitutes.edu/boston

ENROLLMENT AGREEMENT

Name _____
Last Name First Name Middle
Present Address _____
City State Zip
Telephone: Home _____
Business (_____
Cell Phone (_____
E-mail Address: _____

Check the program for which you are applying:

Associate in Science degree:

☐ Audio Production (61 credits)☐ Broadcasting (61 credits)☐ Photography (61 credits)

Bachelor of Science degree:

☐ Advertising (121 credits)☐ Audio & Media Technology (121 credits)☒ Digital Filmmaking & Video Production (123 credits)☐ Fashion & Retail Management (121 credits)☐ Graphic Design (120 credits)☐ Graphic Design Evening and Weekend Option (120 credits)☐ Interior Design (121 credits)☐ Media Arts & Animation (120 credits)☐ Photography (121 credits)☐ Web Design & Interactive Media (120 credits)

START DATE:

☐ Winter 2009☐ Winter II 2009☐ Summer 2009☐ Summer II 2009☒ Fall 2009☐ Fall II 2009

Financial Information-Current Schedule of Charges+

Tuition is charged at \$715 per credit.

The student can expect an increase in the per credit hour rate at least once per year, which will increase the total amount for the program. The tuition and fees contained in this Enrollment Agreement are subject to change.

Current tuition and fees applicable to The New England Institute of Art programs are as follows:

	Audio Production (61 credits)	Broadcasting (61 credits)	Photography (61 credits)	Advertising (121 credits)	Audio & Media Technology (121 credits)	Digital Filmmaking & Video Production (123 credits)	Fashion & Retail Management (121 credits)	Graphic Design (120 credits)	Graphic Design Evening and Weekend Option (120 credits)	Interior Design (121 credits)	Media Arts & Animation (120 credits)	Photography (121 credits)	Web Design & Interactive Media (120 credits)
Per Credit	\$715	\$715	\$715	\$715	\$715	\$715	\$715	\$715	\$715	\$715	\$715	\$715	\$715
Application Fee++	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Administrative Fee++	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Tuition Per Semester*	\$10,725	\$10,725	\$10,725	\$10,725	\$10,725	\$10,725	\$10,725	\$10,725	\$8,580	\$10,725	\$10,725	\$10,725	\$10,725
Student Services Fee (one time)	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50
Technology Fee	\$325	\$125	\$132	\$132	\$325	\$125	\$132	\$125	\$125	\$125	\$125	\$132	\$125
Online Class Fee	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	\$800	n/a	n/a	n/a	n/a
Supply Kit (First Semester Only)	\$795	\$830	\$2,090**	\$715	\$795	\$965	\$715	\$810	\$810	\$1,040	\$850	\$2,090**	\$835
Total Program Tuition & Fees***	\$45,910	\$45,145	\$46,433**	\$88,486	\$90,110	\$90,110	\$88,486	\$87,810	\$88,860	\$88,755	\$87,850	\$89,861**	\$87,835

+Not including credit hour tuition increases that may occur throughout the duration of the program.

++The Application and Administrative fees are paid by new and transfer students.

* Students enrolled in the Graphic Design Evening & Online Option take 12 credits per semester. All other students take 15 credits per semester.

**All Photography Supply Kits include a Digital-SLR with lens, camera bag, media, card reader, and portable hard drive. Students who wish to provide their own digital-SLR and supplies must receive departmental approval.

*** Based on current credit hour rate. Total cost will increase with each credit hour tuition increase.

The current tuition amount charged for any program will be increased from the above stated charges if a student is required to take transitional studies courses. Additional tuition for those courses can vary between \$2,145 and \$4,290 depending on the number of transitional studies courses required.

I understand that I am responsible for tuition and fees pertaining to the program's required course of study. The tuition and fees contained in this Enrollment Agreement are subject to change. The per credit hour rate is subject to an increase in at least once per calendar year which will increase the total amount for the program. The adjustment to the per-credit hour rate may occur before I begin classes and my program will be calculated using the new rate. Any changes to tuition and fees will be published to students.

Student's Right to Cancel without Penalty or Obligation

You, the student may cancel your enrollment without any penalty or obligation at any time prior to midnight of the fifth business day after signing this Enrollment Agreement. You may also cancel your enrollment if upon a doctor's order, you cannot physically receive the services, or you may cancel your enrollment if the service ceases to be offered by the institute. (See reverse side for refund policy prior to matriculation.)

Please do not sign this Enrollment Agreement before you read it in its entirety. You will be given an exact copy of the Enrollment Agreement you sign. Please also note that the provisions of any attached rider(s) signed by you are also part of the Enrollment Agreement.

Student Acknowledgments

I have received and read a copy of The New England Institute of Art's current catalog, the provisions of which I accept. I have read and understand all provisions of this Enrollment Agreement, and I have been given a copy of it for my records. (Parents must also sign the Enrollment Agreement if you are under 18 years of age.)

I understand that my enrollment and The New England Institute of Art's obligations under this Enrollment Agreement (except the cancellation and refund provisions) may be terminated by The New England Institute of Art if I fail to comply with The New England Institute of Art's attendance, conduct, academic, financial or other requirements. I understand that The New England Institute of Art also reserves the right to cancel my enrollment if The New England Institute of Art determines (1) that I have demonstrated poor academic potential (as determined by evaluation of transcript records, or any other academic evaluations deemed appropriate for the program selected), and/or (2) that I do not meet all financial obligations related to enrollment and continuing enrollment. I understand that my financial obligations to The New England Institute of Art must be paid in full before a degree may be awarded and before transcripts will be issued. I accept that, to the extent permitted by law, I am responsible for all reasonable collection agency and attorney fees incurred in attempting to collect my unpaid debt to The New England Institute of Art. Both sides of this Enrollment Agreement and the financial plan shall constitute the entire Enrollment Agreement. I understand and agree that they supersede any prior or contemporaneous oral or written agreements or statements and may not be modified without the written agreement of the President of The New England Institute of Art. I also understand that this Enrollment Agreement shall not be binding until it is accepted by The New England Institute of Art.

Student's Agreement

Now, having read and received a copy of this Enrollment Agreement and intending to be legally bound by it, the parties have signed this Enrollment Agreement on the dates below written.

Student's signature _____ Date _____

Signature of accepting official from _____ Date _____

Title of accepting official _____ Date _____

Parent's (or Guardian's) signature _____ Date _____

Parent's (or Guardian's) address _____ State _____ Zip Code _____

Further Financial Information

An application fee of \$50 is to be submitted with your application for admission. The administrative fee of \$100 is due within 10 days after this Enrollment Agreement is signed.

The student understands and agrees that s/he will be liable for interest charges that will be assessed on his/her account balances until the balance is paid in full. Interest will be charged at 12% per annum on the student's adjusted outstanding balance at the end of each month. The adjusted outstanding balance is defined as all charges incurred by the student for attendance at The New England Institute of Art at the end of the prior month, including but not limited to tuition, fees, housing charges, late registration fees, fines, damages, etc., less the total amount paid to the student's account at the end of the current month including financial aid that the student has been awarded but has not been paid for the semester provided that the student and/or the student's parent(s) have completed all of the requirements for the award. The student understands and agrees that his/her adjusted outstanding balance is different from his/her student payment plan and that the student's financial aid award may be reduced or eliminated if the student does not complete all of the requirements for financial aid.

The Application Process

As part of the application process, applicants must independently conceive and write an essay of approximately 150 words stating how their education at The New England Institute of Art will help them to attain their career goals. Applicants must also present a record of accomplishment and core academic courses as evidenced through high school transcript grade point average or upon evaluation of GED scores. Official high school transcripts must be provided as well as official transcripts for any colleges attended. Successful admission into The New England Institute of Art and a satisfactory program start is dependent on the level of accomplishment exhibited in the essay, all grade point averages, evaluation of GED scores, a personal interview with an admissions representative, and meeting all other requirements stated in this Enrollment Agreement.

First semester tuition and fees for new students become due 30 days prior to entry. Thereafter, semester tuition for each succeeding semester is due upon registration, approximately six weeks prior to the end of each academic semester. Students may not register for any academic semester of study unless all tuition and fees that are due have been paid, or unless students have made arrangements for, and adhered to an approved alternative payment plan. Tuition is charged on a semester-by-semester basis. Students are not obligated beyond the semester they are currently attending. Tuition for repeat courses is charged on a per credit basis.

Refund Policy Prior to Matriculation

Applicants may cancel their enrollment in person or in writing before the beginning of classes. An applicant not requesting cancellation before the scheduled starting date indicated on this Enrollment Agreement will be considered a student.

1. The \$100 administrative fee paid by applicants will be refunded if they are not accepted for admission.
2. Applicants requesting cancellation before the first scheduled class date will receive a refund of all monies paid, less the \$50 application fee and \$100 administrative fee.
3. All monies paid by applicants will be returned, if requested, five business days after their first visit to The New England Institute of Art or within three business days of the regularly scheduled orientation program for their starting semester, whichever comes first.
4. Refunds will be made within 30 calendar days after the applicant's/student's request or within 30 calendar days after his/her first scheduled class day.
5. The application and administrative fee is valid for three consecutive semesters, including the original start date semester. Students wishing to reapply after three semesters will be required to submit a new application and administrative fee.

Refund Policy After Matriculation - All Semesters

In the event of withdrawal by the student or suspension by The New England Institute of Art from all courses registered during any semester of study:

1. Prepaid tuition for any period beyond the student's current semester will be refunded in full.
2. The student may voluntarily withdraw from The New England Institute of Art by notifying their Department Chair in person or in writing to the Registrar.
3. Refunds due shall be paid within 30 days of the notification date, unless the student is withdrawing at the end of the semester. Refunds for a student notifying The New England Institute of Art prior to the end of a semester that s/he will be withdrawing at the end of that semester will be paid within 14 days of the last day of that semester.
4. Refunds for a student who completes a previous semester of study and does not notify The New England Institute of Art prior to the end of that semester that s/he will not be returning for the following semester will be paid within 30 days of the first day of that following semester in which the student was expected to return.
5. In the event of a fully documented extreme illness or personal emergency that makes it impractical for the student to complete the program, The New England Institute of Art may modify the tuition refund policy as deemed appropriate to the circumstances.
6. Each academic semester is 15 weeks in duration (summer semesters are 12 weeks in duration and the mid-semester sessions are seven weeks in duration). The calculation of refunds is based upon the last day of attendance within the semester. Any portion of a week's attendance is considered a full week of attendance for refund purposes.

REFUND POLICY - THE NEW ENGLAND INSTITUTE OF ART**Return of Federal Title IV Aid:**

A percentage of Federal Title IV Aid will be returned if the student withdraws during the first 60% of the semester. The amount returned will be based on the percentage of days remaining in the semester. The New England Institute of Art will determine the calendar days completed in the semester divided by the total number of calendar days in the semester. If the amount is less than or equal to 60%, that percent of the Federal Title IV Aid received is the amount that can be retained. The difference will be returned to the Federal Title IV Aid program from which funds were received in this order: Unsubsidized Stafford Loan, Subsidized Stafford Loan, Perkins Loan, PLUS Loan, Pell Grant, SEOG.

If Federal Title IV Aid funds have been given to the student, and if the student withdraws during the first 60% of the semester, the student may need to return some of those funds. If the student needs to return funds, The New England Institute of Art will notify the student how much is owed, and how it is to be returned.

Adjustment of Charges

In accordance with The New England Institute of Art policy, The New England Institute of Art will earn tuition and fees as follows:
Week One - 25%; Week Two - 50%;
Week Three and Four - 75%; After Week Four - 100%
With Mid-Semester Starts it is:

Week One - 25%; Week Two - 50%; Week Three - 75%;
After Week Three - 100%

The New England Institute of Art will first calculate how much needs to be returned under the Federal Return of Title IV Aid Policy. The amount will then be subtracted from the amount that was paid for the semester of withdrawal to get the adjusted amount paid. The New England Institute of Art will then calculate how much of the charges can be retained based on The New England Institute of Art policy. The amount that can be retained will be subtracted from the adjusted amount paid. If there is additional money to be refunded from Federal funds after calculating the Return of Title IV formula and the refund policy, the refund will be made to the student, or, with the student's authorization, to the Federal loan program(s) in the following order, up to the amount received, for the term of withdrawal: Unsubsidized Stafford Loan, Subsidized Stafford Loan, Perkins Loan, PLUS Loan. If there is an additional credit balance made up of non-Title IV funds, it will be refunded in the following order, up to the amount received for the term of withdrawal: Unsubsidized Stafford Loan, Subsidized Stafford Loan, Perkins Loan, PLUS Loan, other loans, other aid (if required), and student.

All refunds or return of funds will be made within 30 days of the date that the student notifies The New England Institute of Art of the withdrawal.

Examples of the calculations for this policy are available in the Student Accounting office.

GENERAL INFORMATION AND UNDERSTANDINGS**Handling of Student Complaints**

If a student feels that a concern or complaint has not been adequately resolved using the Student Grievance Procedure described in the Student Handbook, the student may direct his/her complaint or concern in writing to The New England Association of Schools and Colleges, 209 Burlington Road, Bedford MA 01730-1433 or to the Commonwealth of Massachusetts, Board of Higher Education, One Ashburton Place, Room 1401, Boston, MA 02108-1696.

Arbitration

You and The New England Institute of Art ("NEIA") agree that any dispute or claim between you and NEIA (or any company affiliated with NEIA, or any of its officers, directors, trustees, employees or agents) arising out of or relating to this Enrollment Agreement or, absent such Agreement, your enrollment or attendance at The New England Institute of Art, whether such dispute arises before, during, or after your attendance and whether the dispute is based on contract, tort, statute, or otherwise, shall be, at your or The New England Institute of Art's election, submitted to and resolved by individual binding arbitration pursuant to the terms described herein.

If you decide to initiate arbitration, you may select either JAMS or the National Arbitration Forum ("NAF") to serve as the arbitration administrator pursuant to its rules of procedure. If The New England Institute of Art intends to initiate arbitration, it will notify you in writing by regular mail at your latest address on file with The New England Institute of Art, and you will have 20 days from the date of the letter to select one of these organizations as the administrator. If you fail to select an administrator within that 20-day period, The New England Institute of Art will select one.

The New England Institute of Art agrees that it will not elect to arbitrate any individual claim of less than \$5,000 that you bring in small claims court (or in a similar court of limited jurisdiction subject to expedited procedures). If that claim is transferred or appealed to a different court, however, or if your claim exceeds \$5,000, The New England Institute of Art reserves the right to elect arbitration and, if it does so, you agree that the matter will be resolved by binding arbitration pursuant to the terms of this Section.

IF EITHER YOU OR NEIA CHOOSES ARBITRATION, NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL, TO ENGAGE IN DISCOVERY, EXCEPT AS PROVIDED IN THE APPLICABLE ARBITRATION RULES, OR OTHERWISE TO LITIGATE THE DISPUTE OR CLAIM IN ANY COURT OTHER THAN IN SMALL CLAIMS OR SIMILAR COURT. AS SET FORTH IN THE PRECEDING PARAGRAPH, OR IN AN ACTION TO ENFORCE THE ARBITRATOR'S AWARD. FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT YOU OR NEIA WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

The arbitrator shall have no authority to arbitrate claims on a class action basis, and claims brought by or against you may not be joined or consolidated with claims brought by or against any other person. Any arbitration hearing shall take place in the federal judicial district in which you reside. Upon your written request, The New England Institute of Art will pay the filing fees charged by the arbitration administrator, up to a maximum of \$3,500 per claim. Each party will bear the expense of its own attorneys, experts and witnesses, regardless of which party prevails, unless applicable law or this Agreement gives a right to recover any of those fees from the other party. If the arbitrator determines that any claim or defense is frivolous or wrongfully intended to oppress the other party, the arbitrator may award sanctions in the form of fees and expenses reasonably incurred by the other party (including arbitration administration fees, arbitrators' fees, and attorney, expert and witness fees), to the extent such fees and expenses could be imposed under Rule 11 of the Federal Rules of Civil Procedure.

The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1, et seq., shall govern this arbitration provision. This arbitration provision shall survive the termination of your relationship with NEIA. If you have a question about the arbitration administrators mentioned above, you can contact them as follows: JAMS, 45 Broadway, 28th Floor, New York, NY 10006, www.jamsadr.com, 800-352-5267; National Arbitration Forum, P.O. Box 50191, Minneapolis, MN, 55405, www.arb-forum.com, 800-474-2371.

The above supersedes any inconsistent arbitration provision published in any other document such as your catalog or, where applicable, your Enrollment Agreement.

Housing

The New England Institute of Art offers limited housing opportunities. Please see Student Affairs for more information on housing assistance.

Transfer of Credits

The New England Institute of Art is licensed by the Commonwealth of Massachusetts Board of Higher Education to confer the Bachelor's of Science degree, Associate's in Science degree, and diploma and accredited by the New England Association of Schools and Colleges Commission on Institutions of Higher Learning, an accrediting agency recognized by the United States Department of Education. However, the fact that a school is licensed and accredited is not necessarily an indication that credits earned at that school will be accepted by another school. In the U.S. higher education system,

transferability of credits is determined by the receiving institution taking into account such factors as course content, grades, accreditation and licensing.

The mission of The New England Institute of Art is to help you to prepare for entry-level employment in your chosen field of study. The value of degree programs like those offered by The New England Institute of Art is their deliberate focus on marketable skills. The credits earned are not intended as a stopping-stone for transfer to another institution. For this reason, it is unlikely that the academic credits you earn at The New England Institute of Art will transfer to another school.

Programs offered by one school within the Art Institute system may be similar to but not identical to programs offered at another school within the system. This is due to differences imposed by state law, use of different instructional models, and local employer needs. Therefore, if you decide to transfer to another school within The Art Institutes system, not all of the credits you earn at The New England Institute of Art may be transferable into that college's program.

If you are considering transferring to either another school within The Art Institutes system or an unaffiliated school, it is your responsibility to determine whether that school will accept your Art Institute credits. We encourage you to make this determination as early as possible. **The New England Institute of Art does not imply, promise, or guarantee transferability of its credits to any other institution.**

Graduation Completion Rates

Information on graduation/completion rates for first-time full-time students is available through the Admissions Office. These rates are calculated according to guidelines in the "Student-Right-To-Know" Act.

Employment Assistance

The New England Institute of Art does not guarantee employment or any particular level of compensation following graduation. The New England Institute of Art does, however, offer assistance in finding employment to all eligible graduates at no additional charge. Graduates who confine employment considerations within the metropolitan area served by The New England Institute of Art may limit the particular employment opportunities available to them.

Policies and Procedures

Each student is enrolled on a continuing semester-by-semester basis and agrees to comply with all published college policies and procedures. The New England Institute of Art reserves the right to add, delete, or modify its policies and procedures without notice.

Class Sessions

Classes are in session six (6) days a week, Monday through Saturday. Class sessions are normally between 9-11:50, 12:30-3:20, 4:00-6:30, 7:10-10:00.

The New England Institute of Art reserves the right to change a class session schedule from time to time, without notice, according to classroom, studio and/or lab availability, and academic and student distribution circumstances. From time to time, instructional activities may occur at an off campus location appropriate for the particular activity.

Instructional Equipment

Use of instructional equipment will be made available according to the program curriculum. Each student will be provided the opportunity to acquire an understanding of the fundamental principles that s/he would encounter in an entry-level position in the field. Such equipment must be shared by the students. Accordingly, The New England Institute of Art cannot guarantee hands-on usage of such equipment beyond that called for in the curriculum. To complete the requirements of the program, each student will likely find it necessary to schedule use of the equipment outside normal classroom hours.

Homework

In addition to regular attendance at scheduled classes, each student will be required to devote additional time each week outside the classroom to study and work on assigned projects.

Curriculum

The New England Institute of Art reserves the right to revise course contents, course titles, and the sequence of classes subject to applicable regulator approval.

Cancellation of Start Date

Cancellation of a scheduled class start date for any program shall entitle the student to elect either: (1) a guaranteed reservation in the next scheduled class for that program, or (2) cancellation of enrollment with a full refund of all monies paid.

Non-Discrimination

The New England Institute of Art does not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, age, sexual orientation, disability or any other characteristic protected by state, local or federal laws in the administration of any of its educational programs or activities, or with respect to admission or employment. For information on The New England Institute of Art's Equal Opportunity Policy and grievance procedures, please contact the Dean of Academic Affairs, The New England Institute of Art, 10 Brookline Place West, Brookline, MA 02445.

Sale, Discount, or Transfer of Agreement

The student consents to the sale, discount, or other transfer of this Enrollment Agreement with the understanding that, in such event, the cancellation and refund policies would continue to apply.

Consent for publication of photograph, artwork, video tape, film, and/or verbal or written statements

I hereby give my consent to The New England Institute of Art (and to those whom it may authorize) to photograph, film, and/or videotape me, and/or to use a photographic reproduction of me or my work, to identify me by name, and/or with school and employment information, and/or to quote or record statements made by me, for any editorial, promotional, advertising trade, or other purpose on a royalty-free, perpetual, worldwide basis.

Requirements for Graduation

To be qualified to graduate, the student must:

1. Receive a passing grade or credit for all required course work.
2. Earn the required credits in each of the disciplines for their major.
3. Achieve a minimum CGPA of 2.0.
4. Satisfy all financial obligations to The New England Institute of Art.
5. Satisfy the residence requirements of 30 credits minimum for the Associate's in Science degree and 60 credits for the Bachelor's of Science degree at The New England Institute of Art.
6. Complete an internship.
7. Complete a loan counseling exit interview with Student Financial Services.

Exhibit 2



LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

CENTRO DE SERVICIOS LEGALES

122 Boylston Street

Jamaica Plain, Massachusetts 02130-2246

TEL: (617) 522-3003 • FAX: (617) 522-0715

VIA FIRST-CLASS AND CERTIFIED MAIL

September 1, 2016

The New England Institute of Art, LLC
10 Brookline Place West
Brookline, MA 02445

Education Management Corporation
210 Sixth Avenue
Pittsburgh, PA 15222

The Art Institutes International II LLC
210 Sixth Avenue, 33rd Floor
Pittsburgh, PA 15222

Re: *Unfair and Deceptive Acts and Practices by The New England Institute of Art, Education Management Corporation, and The Art Institutes Regarding Stephano Del Rose of Canton, MA, Kristin Martin of Arlington, MA, Meaghan Bauer of Peabody, MA, and Similarly Situated Persons*

To Whom It May Concern:

We write on behalf of Stephano Del Rose, Kristin Martin, Meaghan Bauer, and similarly situated individuals who attended The New England Institute of Art (“NEIA”). NEIA is part of a national chain of schools operated by the Art Institutes International II LLC (“AI”), the flagship brand of the for-profit education company Education Management Corporation (“EDMC”).¹ NEIA is in the business of enrolling students in high-cost educational programs leading to associate’s and bachelor’s degrees in creative fields. As described herein, NEIA, with the participation of EDMC and AI, has operated in violation of the law, and has saddled Mr. Del Rose, Ms. Martin, Ms. Bauer, and their families with hundreds of thousands of dollars in student loan debt, in exchange for valueless credentials and slim employment prospects.

¹ For the purposes of this letter, EDMC refers to Education Management Corporation and its subsidiaries and affiliates other than AI and NEIA, including but not limited to Education Finance III LLC, Education Management Holdings II LLC, and Education Management II LLC. In addition to the addresses listed above, this letter has been sent to the following addresses: The New England Institute of Art, LLC, Corporation Service Company, 84 State Street, Boston, MA 02109; Education Management Corporation, Corporation Service Company, 84 State Street, Boston, MA 02109; Education Finance III LLC, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808; Education Management Holdings II LLC, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808; Education Management II LLC, 210 Sixth Avenue, 33rd Floor, Pittsburgh, PA 15222; and Education Management II LLC, Corporation Service Company, 84 State Street, Boston, MA 02109.

The Massachusetts Consumer Protection Act (“Act”) gives a cause of action to any person “who has been injured by another person’s use or employment of any method, act or practice” that constitutes “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]”² Arranging for loans that trap a borrower under an unmanageable debt load that she has no realistic hope of ever repaying is an unfair practice within the meaning of the Act.³

The loans arranged for by NEIA can only be described as structurally unfair.⁴ The cost of attending and completing NEIA is so high⁵ that, historically, close to 90 percent of students and their families have gone into debt in order to finance the cost of education.⁶ Despite claiming that its industry connections⁷ led to near-universal placement of NEIA graduates in well-paying jobs in their fields of study,⁸ NEIA knew that actual outcomes for its students were far worse.

First, the majority of students NEIA recruited and enrolled, such as Ms. Bauer, dropped out before completing their education, in part because of its unaffordability.⁹ Failure to complete a postsecondary program increases a student’s likelihood of defaulting on student loans threefold.¹⁰ Those who did complete inevitably left NEIA with more debt than those who

² G. L. c. 93A § 9 (incorporating by reference § 2).

³ See *Commonwealth v. Fremont Inv. & Loan*, No. 07-43737-BLS1, 2008 WL 517279, at *10 (Mass Super. Feb. 26, 2008), *aff’d*, 452 Mass. 733 (2008) (finding mortgage loans that lender reasonably knew or should have known were “doomed to foreclosure” presumptively unfair).

⁴ “Unfair” acts and practices proscribed by the Act are those that are “immoral, unethical, oppressive, or unscrupulous,” and which cause “substantial injury to consumers[.]” *Datacomm Interface, Inc. v. Computerworld, Inc.*, 396 Mass. 760, 778 (1986) (quoting *PMP Assocs. Inc. v. Globe Newspaper Co.*, 366 Mass. 595, 596 (1975)) (internal quotation marks and brackets omitted).

⁵ According to data reported to the Integrated Postsecondary Education Data System (“IPEDS”), a data collection program of the United States Department of Education (“Department”)’s National Center for Education Statistics, the cost of attending NEIA in 2014 to 2015 was \$59,798, while the cost of attending the Massachusetts College of Art and Design (“MassArt”), a nearby art school, was \$27,725.

⁶ Data reported to IPEDS. This figure has typically been at or below 50 percent for MassArt.

⁷ NEIA adopts the AI mantra that the school’s work is “[t]urning creativity into a career.” See, e.g., NEIA promotional handout, “Inspiring students. And employers.” [hereinafter “Inspiring Students’ Handout”]. To that end, NEIA consistently claims to prospective and current students that it will “turn our students into graduates who are equipped with the hands-on learning, real-world skills, industry contacts, and self-marketing tools to compete and succeed” for creative jobs. *Id.* NEIA, like other AI schools, boasts that it has “strong relationships” with employers who “seek out” AI graduates because of “the specific skills we teach.” *Id.*

⁸ See, e.g., Educ. Mgmt. Corp, Prospectus (Form 424B4) [hereinafter “EDMC 2009 Prospectus”] 3 (Oct. 10, 2009) (“Approximately 87% of undergraduate students who graduated from our institutions during the calendar year ended December 31, 2008 and were available for employment obtained a position in their field of study or a related field within six months of graduation.”); “Inspiring Students” Handout (claiming that “[o]f all 2007 graduates of [NEIA] available for employment, 90.8% were working in a field related to their program of study within six months of graduation”).

⁹ See *College Navigator: New England Institute of Art*, U.S. DEP’T OF EDUC., INST. OF EDUC. SCIS., NAT’L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/collegenavigator/?q=new+england+institute+of+art&s=all&id=167321> (36 percent of full-time students beginning their studies at NEIA returned to school the following fall and 37 percent of full-time students who began their studies at NEIA graduated within 150 percent of the “normal time” allotted for completion of the program).

¹⁰ See U.S. Dep’t of Educ., Fact Sheet: Focusing Higher Education on Student Success, <https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success>.

dropped out, yet had shockingly low success in finding employment.¹¹ And when students did find jobs, those jobs were low-paying,¹² and not sufficient to allow them to reasonably afford to make loan payments.¹³ Across the board, NEIA programs failed students.¹⁴

NEIA deliberately targeted its predatory educational product and associated unmanageable debt to individuals from precarious and unprivileged socioeconomic backgrounds,¹⁵ with few familial and community financial resources and limited experience with the postsecondary educational landscape. When students like Mr. Del Rose, Ms. Martin, and Ms. Bauer inevitably fail to find jobs that allow them to afford their debt, they have little cushion to fall back on, amplifying the harm associated with an extremely high debt load.¹⁶ NEIA took advantage of these students and their families, using unscrupulous and deceptive recruiting practices calculated to prey upon their sincere desire for educational attainment.¹⁷ These students were sold on the idea that NEIA was part of a national network of schools with cutting-edge training and facilities, and a wealth of the kinds of industry connections necessary to get jobs in the highly competitive creative fields into

¹¹ See, e.g., NEIA handout, “Disclosure Required by Massachusetts Regulation 940 CMR 31.00, Media Arts & Animation – Bachelor of Science” [hereinafter “NEIA Disclosure Handout”] (“22% of graduates during 2012-2013 calendar years obtained full-time, non-temporary jobs in their field of study.”).

¹² See, e.g., “Inspiring Students” Handout (citing \$30,864 as average starting salary of 2007 NEIA graduates); New England Inst. of Art, Graduate Employment Statistics [hereinafter “NEIA Graduate Employment Statistics”], <https://content.edmc.edu/assets/pdf/AI/Student-Consumer-Information/Graduate-Employment-Statistics/nea.pdf> (citing \$29,010 as average starting salary of graduates from July 1, 2014 through June 30, 2015).

¹³ NEIA Disclosure Handout (50 percent of NEIA students defaulted on, or failed to repay even a dollar of the principal balance, of their loans during the period of cohort year 2010).

¹⁴ The Department’s gainful employment (“GE”) regulations sanction schools when graduates’ annual loan repayment amount exceeds 12 percent of their annual earnings, or 30 percent of discretionary income. See 34 C.F.R. § 668.403(c)(2). GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private nonprofit institutions such as community colleges, because these programs purport to provide training for specific occupations. Of the 11 programs offered by NEIA, only one had graduates with the minimum amount of earnings required to pass the Department’s 2012 GE metrics. It is especially striking that NEIA failed these metrics, given that the Department’s GE rates have built-in features that vastly understate the cost and overstate the earnings of NEIA graduates. For example, the GE rates do not account for students who withdrew from a program and who often take on massive amounts of student loan debt without earning a degree. *Id.* § 668.404(b)(1)(i). Additionally, the total loan amounts used to calculate the GE rates do not include federal Parent PLUS loans and, therefore, do not accurately represent the true cost of a program. *Id.* § 668.404(d)(1)(i). Furthermore, although private student loan amounts are included in the GE calculation, the federal interest rate is used in the calculation as opposed to the actual interest rates of the loans, which are invariably much higher. *Id.* § 668.404(b)(2)(ii). Finally, the GE rates are calculated based on a 15-year amortization, but a standard repayment plan under the federal student loan program is 10 years.

¹⁵ According to data reported to IPEDS, since 2011, over half of all students enrolled at NEIA have received Pell Grants, a form of federal aid to students from the neediest socioeconomic backgrounds. This is in contrast to area art schools such as MassArt and the School of the Museum of Fine Arts, where a quarter or fewer students qualify for such aid.

¹⁶ *Accord Fremont*, 2008 WL 517279 at *5, 11 (finding structural unfairness in light of target audience of loan product, because risk of subprime lending was “greatest for those borrowers with the highest debt-to-income ratios and the fewest assets, since they had no cushion to deal with financial adversity”).

¹⁷ EDMC is alleged to have used an illegal compensation scheme in which recruiters were directly compensated according to the number of individuals they could successfully persuade to enroll in—and obtain loans to pay for—AI programs. See Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011). Such compensation schemes are illegal under federal law, 20 U.S.C. § 1094(a)(20), and inevitably cause the kind of high pressure sales tactics experienced by Mr. Del Rose, Ms. Martin, and Ms. Bauer. Such tactics are *per se* unfair and deceptive under Massachusetts law. 940 Code Mass. Regs. § 31.04.

which the school purported to launch graduates.¹⁸

The structural unfairness of these NEIA-related loans is further highlighted by the extraordinarily disparate position of students relative to NEIA, AI, and EDMC.¹⁹ The consequences of these structurally unfair loans are borne entirely by students, such as Mr. Del Rose, Ms. Martin, and Ms. Bauer, their families, and others in their position.²⁰ Now that the true nature of NEIA's programs has come to light, the school is shuttering—AI and EDMC are walking away.²¹ But Mr. Del Rose, Ms. Martin, and Ms. Bauer are stuck with debt that they have no way of getting out from underneath.²²

I. *Unfulfilled Promises and Unmanageable Debt*

Mr. Del Rose, Ms. Martin, and Ms. Bauer's experiences demonstrate that, in addition to the unfair and illegal practice of saddling its students with unmanageable student loan debt, NEIA engaged in numerous additional unfair and deceptive business practices proscribed by the Massachusetts Attorney General's regulations of for-profit colleges,²³ including false advertising;²⁴ false representation of placement services;²⁵ false statements concerning the nature or character of classroom instruction;²⁶ misleading statements regarding student loans,²⁷ and

¹⁸ "Inspiring Students" Handout ("With a system of over 40 schools throughout North America, The Art Institutes is able to help students connect with local and national employers who value – and often seek out – our talented graduates. A number of these employers offer internship opportunities that allow students to gain real-world experience while still in school. Our programs in design, media arts, and fashion are led by experienced instructors, many of whom work in the fields in which they teach. Our strong relationships with area companies help us make sure that our programs accurately reflect the demands of the real world. Those relationships truly benefit both our graduates and employers who are looking for the specific skills we teach.").

¹⁹ *Accord Fremont*, 2008 WL 517279 at *9 ("The unfairness . . . rest[s] . . . in the equities between the parties.").

²⁰ *See id.* at *11 (finding structural unfairness where lenders are able to "take a quick profit, and avoid the risks inherent in the loan").

²¹ As of May 6, 2015, NEIA is no longer enrolling new students, and will shut down entirely once all currently enrolled students complete or withdraw. The decision to close and "teach out" NEIA was made by EDMC and AI, and was presented to NEIA's Board of Trustees on April 23, 2015. In May 2015, EDMC announced that it would close NEIA and 14 other campuses: The Art Institute of Atlanta - Decatur; The Art Institute of Ohio - Cincinnati; The Art Institute of Fort Worth; The Art Institute of Houston - North; The Art Institute of Jacksonville; The Art Institutes International - Kansas City; The Art Institute of Michigan - Troy; The Art Institute of New York City; The Art Institute of Salt Lake City; The Art Institute of California - Silicon Valley; The Illinois Institute of Art - Tinley Park; The Art Institute of Washington - Dulles; The Art Institute of Wisconsin; and The Art Institute of York - Pennsylvania. Fain, *For-Profit Chains Announce a New Wave of Closures and Sell-Offs*, Inside Higher Ed (May 7, 2015), <http://www.insidehighered.com/news/2015/05/07/profit-chains-announce-new-wave-closures-and-selloffs> (linking to list of closing campuses).

²² Student loan debt is different from, and more punitive than, consumer and other debt in several respects. There is no statute of limitation on the collection of federal student loans. 20 U.S.C. § 1091a. The Department has the ability to collect student loans by garnishing wages and seizing tax refunds and public benefits without going to court. 31 U.S.C. §§ 3716; 3720D; 3720A. Both federal and private student loan debts are extremely difficult to discharge through bankruptcy. 11 U.S.C. § 523(a)(8) (exempting an educational loan from discharge unless it would "impose an undue hardship on the debtor or the debtor's dependents").

²³ The specific actions prohibited, while illustrative of practices that are always violative of the Act, are "not intended to be all inclusive as to the types of activities prohibited by" the statute, and thus NEIA's conduct may be considered unfair or deceptive even in the absence of such explicit rulemaking. 940 Code Mass. Regs. § 31.02.

²⁴ *Id.* 31.04(1).

²⁵ *Id.* 31.04(5).

²⁶ *Id.* 31.04(14).

misrepresentation of opportunity and employment.²⁸ In addition to violating the Massachusetts Consumer Protection Act, these misrepresentations also constitute common law violations, including fraudulent misrepresentation and fraudulent inducement,²⁹ unconscionability,³⁰ and breach of the implied covenant of good faith and fair dealing.³¹

A. Mr. Del Rose

Mr. Del Rose is 24 years old. He studied design and visual communication at a vocational high school in Canton, Massachusetts. NEIA representatives recruited him there, giving a presentation, distributing promotional materials, and obtaining the names and contact information of Mr. Del Rose and other students. After receiving numerous calls from NEIA, Mr. Del Rose and his parents visited NEIA and met with admissions and financial aid representatives. At the meeting, NEIA representatives praised Mr. Del Rose's video portfolio and urged him to choose NEIA over other schools, citing NEIA's superior industry connections. A financial aid representative promised Mr. Del Rose and his parents that an education at NEIA would be inexpensive compared to other art schools in Boston, and that tuition costs would not increase. To assuage Mr. Del Rose and his parents' concerns about Mr. Del Rose's ability to repay his loans, an NEIA admissions representative assured them that NEIA had a 90 to 97 percent job placement rate, and that Mr. Rose would earn enough money to repay his student loans within one to two years of graduation. Mr. Del Rose also attended a tour of NEIA, during which an NEIA admissions representative told him that NEIA was always "on the cutting edge" with respect to technology.

NEIA's assertions were starkly belied by Mr. Del Rose's subsequent experiences. After enrolling in NEIA's Digital Film and Video Production program in 2009, Mr. Del Rose was required to purchase a \$500 video kit, which contained equipment for which he had no use. NEIA's own video equipment was outdated and in limited supply, which forced Mr. Del Rose to compete with other students for access and made it difficult for him to complete his projects. Every semester, NEIA financial aid representatives hounded Mr. Del Rose and his father, pressuring them to sign further loan documents with the threat that Mr. Del Rose would otherwise be unable

²⁷ *Id.* 31.07(1).

²⁸ *Id.* 31.04(7).

²⁹ Massachusetts law prohibits the fraudulent "misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or refrain from action in reliance thereon in a business transaction." *Graphic Arts Finishers, Inc. v. Boston Redevelopment Auth.*, 357 Mass. 40, 44 (1970); *see also Int'l Totalizing Sys., Inc. v. PepsiCo, Inc.*, 29 Mass. App. Ct. 424, 431 (1990) ("One who fraudulently makes a representation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.") (citing RESTATEMENT (SECOND) OF TORTS § 525 (1977)).

³⁰ Under Massachusetts law, unconscionability is "determined on a case by case basis, giving particular attention to whether, at the time of the execution of the agreement, the contract provision could result in unfair surprise and was oppressive to the allegedly disadvantaged party." *Zapatha v. Dairy Mart, Inc.*, 381 Mass. 284, 292-93 (1980) (internal citation omitted).

³¹ The covenant of good faith and fair dealing is a "pervasive requirement," *Fortune v. Nat'l Cash Register Co.*, 373 Mass. 96, 102 (1977), of Massachusetts contracts that "requires that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to the fruits of the contract." *T.W. Nickerson, Inc. v. Fleet Nat'l Bank*, 456 Mass. 562, 570 (2010) (internal citations and quotations omitted).

to attend, and thus fail, his courses. As the cost of tuition rose, Mr. Del Rose's father had to pay out-of-pocket for costs that were not covered by loans. NEIA's promised industry connections never materialized: when Mr. Del Rose was searching for an internship, NEIA's assistance consisted of posting a list of Craigslist advertisements. Mr. Del Rose ultimately found an internship on his own. NEIA was also of limited assistance as Mr. Del Rose applied for positions after graduating in 2014, proposing that Mr. Del Rose accept a \$12.50 per hour position at a Bose call center. Mr. Del Rose found his current position on his own, with no help from NEIA.

B. Ms. Martin

Ms. Martin is 31 years old. She was seeking a career in graphic design, and learned about NEIA through an online advertisement. After completing an online form, Ms. Martin was immediately contacted by an NEIA representative, and made an appointment to tour the campus. On the tour, an NEIA representative told Ms. Martin that NEIA was a "very good school," and suggested that it was superior to other art schools, including the Massachusetts College of Art and Design ("MassArt"), because of its more technical course offerings. Despite this purported selectivity, Ms. Martin was admitted to NEIA without a portfolio, and enrolled in 2009.

Although Ms. Martin was concerned about NEIA's high tuition cost, financial aid representatives assured her that it was "not a big deal," and led her to believe that she would be able to repay her loans with the money she would earn following graduation. Ms. Martin, who was the first in her family to attend college, believed NEIA representatives when they told her that the vast amount of student loan debt she would have to take on was a "healthy" debt and an investment in her future.

Far from equipping Ms. Martin with the skills necessary to launch a career in graphic design, NEIA failed to offer instruction in the programs and techniques most sought by employers. Although Ms. Martin contacted the career services office after graduating from NEIA in 2013, the staff was of little assistance. The "leads" provided by career services included postings from Craigslist and jobs paying \$10 or \$12 per hour. Ms. Martin thus struggled to obtain employment in her field. She found her current position—an internship at which she earns \$10 per hour—with no assistance from NEIA.

C. Ms. Bauer

Ms. Bauer is 25 years old. She learned about NEIA while researching art schools online. Ms. Bauer was interested in NEIA's Digital Film and Video Production program, and attended a tour during which an NEIA representative showed her around a high-end studio facility and promised her access to top-of-the-line equipment. Ms. Bauer felt a rapport with her admissions representative, who mentioned that he had previously worked at the restaurant where Ms. Bauer was employed. Ms. Bauer was also considering MassArt, but her admissions representative assured her that NEIA was superior. Her admissions representative urged her to sign up for classes before they reached capacity, so Ms. Bauer scheduled a meeting with a financial aid representative, which she attended with her mother. At the meeting, the financial aid representative encouraged Ms. Bauer's mother to take out a Parent PLUS loan; Ms. Bauer's mother refused because she wanted Ms. Bauer to attend a community college. Ms. Bauer

returned on her own, and ultimately took out approximately \$35,917 in student loans.

Ms. Bauer felt confident that she would be able to find a job that would allow her to repay her loans, because NEIA representatives informed her that NEIA was the most prestigious school at which to study video production. NEIA representatives emphasized that as part of AI, NEIA belonged to a well-known network of schools whose graduates were highly sought after by employers. NEIA representatives led Ms. Bauer to believe that an NEIA education would open up endless opportunities, and that the school would employ its industry connections to assist her in finding a job.

After enrolling in 2011, Ms. Bauer had to compete with other students to obtain studio time and gain access to NEIA's video equipment, which she discovered was outdated and subpar. Although NEIA representatives had promised Ms. Bauer access to the facilities at all times, NEIA limited its opening hours while Ms. Bauer was enrolled.

Ms. Bauer also struggled to obtain sufficient financial aid to meet NEIA's high tuition costs. In 2013, while enrolled at NEIA, she became homeless, and lived out of her car. The next year, NEIA financial aid representatives told her that she had "used up" all of her financial aid. She was unable to take out further loans without a co-signer, and was forced to withdraw from NEIA in 2014 without obtaining her degree. She is currently working at a restaurant and studying for a paralegal associate's degree at a community college.

II. *Structurally Unfair Loans*

The loans NEIA facilitated for student borrowers like Mr. Del Rose, Ms. Martin, and Ms. Bauer were structurally unfair because, from the outset, they created unmanageable debt that those borrowers had little realistic hope of ever being able to repay. The unmanageability and structural unfairness of these loans was or should have been known to NEIA. Historically, an NEIA enrollee has been more likely than not to drop out of school before ever completing.³² And those who persist to graduation have had less than a 50 percent likelihood of obtaining full-time employment in their field of study.³³ By NEIA's own data, contained in fine-print disclosures, in 2012 and 2013, only 22 percent of its graduates obtained full-time, non-temporary jobs in their fields of study.³⁴ In 2014 and 2015, fewer than 50 percent of graduates in graphic design, Ms. Martin's major, and Digital Film and Media Production, Mr. Del Rose and Ms. Bauer's major, respectively, obtained full-time jobs in a related field.³⁵

Even if NEIA assumed that Mr. Del Rose, Ms. Martin, and Ms. Bauer would be in the minority of graduates who obtained full-time employment at the average salaries in their fields of study, those average salaries would be insufficient to support their loan debt. For example, NEIA's own data show that the average salary of its graduates between July 2014 and June 2015 was

³² See *supra* note 9.

³³ See *supra* note 11.

³⁴ *Id.*

³⁵ NEIA Graduate Employment Statistics.

\$29,010.³⁶ Contrary to NEIA's promises, graduates do not in fact realize increased earnings or obtain viable careers from having attended NEIA.³⁷

Contrast these modest earnings with the substantial debt load of NEIA graduates. Data reported by the school indicate that the average federal student loan debt of an NEIA graduate—counting *only* federal student loan debt and *not* private student loans or Parent PLUS loans borrowed by students' families—was \$29,444.³⁸ Even using this data, which dramatically undercounts debt attributable to attendance at NEIA, and ignores students who drop out of NEIA, an average NEIA graduate on a standard repayment plan would have to pay \$4,068 annually to service her loan debt.³⁹ This amounts to approximately 14 percent of average annual income going toward loan repayment, which is unsustainable as determined by the Department of Education.⁴⁰

In reality, NEIA students graduated with much higher debt loads, as is illustrated by the experiences of Mr. Del Rose, Ms. Martin, and Ms. Bauer. For example, Mr. Del Rose and his family borrowed approximately \$111,000 for him to complete NEIA's Digital Film and Video Production program. NEIA offered this program at a cost that mandated such a high amount of debt, despite knowing that graduates had slim chances of finding a job in digital film and video production after completing the program. For example, only 41.7 percent of graduates between July 2014 and June 2015 obtained jobs in this field.⁴¹ And in any event, whether a student was working in the field or not, as NEIA was aware, his earnings were not high enough—according to NEIA, the average salary of graduates of this program was \$26,372—⁴² to justify such substantial debt. Although in actuality Mr. Del Rose earns approximately \$24,000—less than the average—even using the higher average annual earnings data provided by NEIA, his debt requires him to pay \$15,324 annually on a standard repayment plan, or approximately 58 percent

³⁶ *Id.* These numbers are generous, i.e., they overstate the income of graduates, because, as NEIA states, “for graduates who are paid on an hourly basis, we use an average of hours worked per week over the most recent thirty days based on information provided to us by the graduate or employer.” *Id.* Therefore, the annual salaries use projections based on assumptions about how many hours students worked and the consistency of those hours, leading to potentially exaggerated incomes.

³⁷ Studies suggest that credentials from for-profit education providers in fact *impair* the earning power of graduates. *See, e.g.*, Stephanie Riegg Cellini, Nicholas Turner, Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data, National Bureau of Economic Research Working Paper No. 22287 (May 2016) (on average, associate's and bachelor's degree students experience a decline in earnings after attendance at a for-profit college, relative to their own earnings in years prior to attendance); David Deming, Claudia Goldin, Lawrence F. Katz, The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?, J. of Econ. Perspectives vol. 26 n. 1 (Winter 2012) (finding that for-profit students end up with higher unemployment and “idleness” rates and lower earnings six years after entering programs than do comparable students from other schools, and that they have far greater student debt burdens and default rates); *see also* Rajeev Darolia et al., Do Employers Prefer Workers Who Attend For-Profit Colleges? Evidence from a Field Experiment, National Center for Analysis of Longitudinal Data in Education Research Working Paper No. 116 (Aug. 2014), at 25 (“We find no evidence that job applicants who attended for-profit colleges attract greater interest from employers than those who attended public community colleges or no college at all.”).

³⁸ *College Scorecard: New England Institute of Art*, U.S. DEP'T OF EDUC., <https://collegescorecard.ed.gov/school/?167321-The-New-England-Institute-of-Art>.

³⁹ This number was calculated using the federal student loan repayment estimator, assuming all loans are unsubsidized and have the current standard federal interest rate of 6.8 percent. *See Repayment Estimator*, U.S. DEP'T OF EDUC., FED. STUDENT AID, <https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action>.

⁴⁰ *See* 34 C.F.R. §668.403(c)(2)(ii).

⁴¹ NEIA Graduate Employment Statistics.

⁴² *Id.*

of his annual income.⁴³ These numbers do not even take into account the reality that such unmanageable debt is highly likely to be in negative amortization because even the interest payments are unaffordable. Mr. Del Rose and his family's NEIA debt has ballooned to approximately \$160,000 and is likely to grow.

Ms. Martin's experience further illustrates the structural unfairness of NEIA's practices. Ms. Martin borrowed approximately \$85,510 to complete the Graphic Design program. According to NEIA, she could expect only a 45 percent chance of obtaining a job in this field.⁴⁴ The average earnings of graduates for the Graphic Design program, according to NEIA, were \$27,426.⁴⁵ In actuality Ms. Martin earns approximately \$20,000, but even using the average earnings data, under a standard repayment plan, she would have to pay \$11,808 annually towards her loan debt, or approximately 43 percent of her annual income. In actuality, her debt burden is much higher, as approximately \$28,000 of the \$85,510 that she borrowed is in private loans, which carry interest rates up to almost eight points higher than the standard 6.8 percent interest rate charged for federal loans. Like Mr. Del Rose, Ms. Martin has seen her unmanageable debt result in negative amortization. Today, she owes approximately \$114,000 as a result of attending NEIA, a figure that is likely to grow.

Ms. Bauer borrowed approximately \$35,917 to begin NEIA's Digital Film and Video Production program. Ms. Bauer was unable to complete the program because she had no more federal loans at her disposal, and she had neither the resources to self-pay or borrow from family members, nor the credit history to secure a private loan. It is not uncommon for NEIA students to exhaust their eligibility for federal student loans before being able to complete their programs.⁴⁶ Although Ms. Bauer's debt load is lower than that of Mr. Del Rose and Ms. Martin, her debt is no less unmanageable or structurally unfair. As a result of being unable to complete her program, Ms. Bauer is statistically three times more likely to default on her loans.⁴⁷ Acknowledging that Ms. Bauer did not graduate from NEIA, but assuming she was somehow able to earn the average salary associated with her program, \$26,372, she would have to devote 19 percent of her annual income to paying off her loans.⁴⁸ Had Ms. Bauer been able to self-pay or secure private loans and finish the program, her loan debt would surely have been double or triple, increasing her debt load to an even more unmanageable amount. Now, Ms. Bauer is not only saddled with her debt from NEIA, but is studying for an associate's degree at a community college and working to support herself. Only six of her 78 credits from NEIA transferred to the community college.

Mr. Del Rose, Ms. Martin, and Ms. Bauer's stories illustrate how NEIA has consistently facilitated the borrowing of unmanageable debt that leaves little hope of ever being repaid, and

⁴³ This and all debt-to-income ratios in this section were calculated using the approximate debt, including any private loans, owed by the individual (and, in Mr. Del Rose's case, the approximate debt owed by his father), as an unsubsidized federal loan, at the standard interest rate of 6.8 percent.

⁴⁴ NEIA Graduate Employment Statistics.

⁴⁵ *Id.*

⁴⁶ The federal student loan program limits the aggregate amount borrowed by a dependent student to \$31,000, and no more than \$23,000 may be in subsidized loans. *See Subsidized and Unsubsidized Loans: How much can I borrow?*, U.S. DEP'T OF EDUC., FED. STUDENT AID, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much>.

⁴⁷ *See* U.S. Dep't of Educ., Fact Sheet: Focusing Higher Education on Student Success, *supra* note 10.

⁴⁸ Ms. Bauer currently makes approximately \$26,000 annually waitressing.

has further engaged in unfair and deceptive business practices proscribed by both the Massachusetts Consumer Protection Act and the common law. Mr. Del Rose, Ms. Martin, and Ms. Bauer's inability to make payments on their structurally unfair loans has destroyed their credit, hindering each one's ability to rent an apartment, save money, or consider buying a car or home. Ms. Martin has been pursued and harassed by debt collectors, and her financial insecurity has exacerbated her existing health issues. Furthermore, the great disparity between NEIA representatives' misrepresentations and Mr. Del Rose's, Ms. Martin's, and Ms. Bauer's educational experiences and career outcomes has caused all three to suffer significant distress. Mr. Del Rose's, Ms. Martin's, and Ms. Bauer's families have also been injured. After losing his job, the debt Mr. Del Rose's father incurred became insurmountable. Both Mr. Del Rose and Ms. Martin remain financially dependent on their families, and debt collectors have contacted Ms. Martin's grandfather about her student loan debt. The harms suffered by Mr. Del Rose, Ms. Martin, Ms. Bauer, and their families were directly caused by NEIA's unfair and deceptive acts and practices.

III. *Corporate Growth Imperative that Puts Profits Over Students*

AI and EDMC both actively facilitated and participated in the deceptive acts and practices of NEIA described herein. NEIA operates under the pervasive control of its corporate grandparent, EDMC, and parent, AI. NEIA is a wholly-owned subsidiary of AI, which acquired it in 2000. AI, in turn, is a wholly-owned subsidiary of EDMC, and is the company's central brand. EDMC was first publicly traded in 1996, before being purchased for \$3.4 billion in 2006 by two private equity firms, Providence Equity Partners and Leeds Equity Partners, together with Goldman Sachs.⁴⁹ EDMC incurred significant indebtedness through the transaction,⁵⁰ and planned to repay a portion of that indebtedness with proceeds received from an initial public offering ("IPO") in 2009.⁵¹ EDMC's indebtedness led the company to pursue an aggressive growth strategy that involved consistently increasing enrollment, and thereby revenue.⁵²

Indeed, enrollment at EDMC schools grew more than fourfold between 2001 and 2010,

⁴⁹ See Andrew Sorkin, *Education Management Said to Be Sold for \$3.4 Billion*, N.Y. TIMES, http://www.nytimes.com/2006/03/06/business/education-management-said-to-be-sold-for-34-billion.html?_r=0 (March 6, 2006).

⁵⁰ Educ. Mgmt. Corp, Amendment No. 6 to Form S-1 (Form S-1/A) (Sept. 21, 2009). The transaction entailed entering into a \$300 million revolving credit facility with a six year maturity, which was increased to \$322.5 million in February 2008 and to \$388.5 million in August 2009.

⁵¹ EDMC expected to receive net proceeds from the IPO of approximately \$353.4 million, and expected to contribute up to \$323.9 million of those proceeds to its subsidiary, Education Management LLC, to, *inter alia*, repay a portion of its indebtedness. After EDMC's IPO, Goldman Sachs continued to own 41.8 percent of the company; Providence Equity Partners 31.5 percent; and Leeds Equity Partners 7.6 percent. Educ. Mgmt. Corp, Annual Report (Form 10-K) (Aug. 30, 2011). EDMC subsequently delisted from NASDAQ in 2014, citing the costs of compliance with SEC reporting obligations and NASDAQ listing requirements. *Education Management Announces Intention to Voluntarily Delist Shares from NASDAQ*, EDUC. MGMT. CORP. (Oct. 23, 2014), <http://www.prnewswire.com/news-releases/education-management-announces-intention-to-voluntarily-delist-shares-from-nasdaq-255232737.html>.

⁵² In 2009, in advance of its IPO, EDMC explained to investors that its "business model benefits from scale and permits us to leverage fixed costs across our delivery platforms," and that "we have made significant investments in numerous areas of our workforce in order to support future enrollment growth." EDMC 2009 Prospectus 3.

expanding from 38,047 students to 158,300 students.⁵³ More than half (64 percent) of this growth took place after EDMC was bought by Goldman Sachs and private equity interests.⁵⁴ This trend was observed at NEIA as well. Enrollment at this EDMC/AI branch more than doubled between 2001 and 2008, growing from 1,149 students to a peak enrollment of 2,495.⁵⁵ Revenues increased accordingly at NEIA, growing from \$13.29 million in 2001 to \$45.3 million in 2009.⁵⁶ This increase in revenue is not solely accounted for by the growth in enrollment. In fact, over this period of growth, tuition and fees increased substantially at NEIA, from an annual cost of \$14,500 in 2001 to \$23,100 in 2009.⁵⁷

This growth did not redound to the benefit of students. Substantial portions of EDMC revenue, which is almost entirely attributable to the tuition and fees paid by students, which in turn is almost entirely represented in the form of debt on the part of EDMC students and their families, were devoted to profit for owners, and investment in recruiting even more students.⁵⁸ Marketing and recruiting functions were centralized, and students were recruited into NEIA by EDMC/AI employees trained to overcome objections, “find the pain,” and emphasize misleading or false job placement statistics in order to convince students to enroll.⁵⁹ Decisions were made at the corporate level that had direct and adverse impacts on NEIA students, but nonetheless were made in order to enhance the bottom line. For example, tuition was raised. Content of programming and methods of teaching were streamlined.⁶⁰ EDMC and AI dictated that NEIA change from a semester to quarter system, which meant that programs became more expensive for students.⁶¹ Full-time faculty were replaced by cheaper, part-time instructors with less investment in students. Access to facilities and studios, advertised as round-the-clock, was cut for financial reasons. Classes became crowded, and teachers could not keep up with the needs of all students.⁶² In short, NEIA, AI, and EDMC employed a business model whose profitability was predicated on increasing numbers of enrollees taking out vast amounts of debt in the form of

⁵³ SENATE COMM. ON HEALTH, EDUC., LABOR & PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS [hereinafter “HELP Report”] 451(2012) (calculating enrollment using Securities and Exchange Commission filings).

⁵⁴ *Id.*

⁵⁵ Data reported to IPEDS.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ For example, in 2009, EDMC allocated 21.6 percent of its revenue, or \$435 million, to marketing and recruiting, and 16 percent, or \$319 million, to profit. HELP Report 456. In its 2009 Prospectus, EDMC explained to investors that, since being bought by Goldman Sachs and private equity, EDMC had experienced a 180 percent increase in the number of admissions representatives it employed. EDMC 2009 Prospectus 78.

⁵⁹ See HELP Report 462-63; Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana ¶¶ 105-19, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011).

⁶⁰ The 2009 Prospectus explains to investors that EDMC “pursue[s] additional efficiencies through our centralized and standardized infrastructure, systems and processes.” EDMC 2009 Prospectus 7.

⁶¹ In January 2013, NEIA’s then-President explained in a letter to students that NEIA “is the only Art Institutes school in a system of more than 50 campuses that is on semesters. . . . We have spent the past year working with faculty and staff here at NEiA as well as at our corporate offices in Pittsburgh to facilitate a smooth transition.” Letter from David G. Warren, President, New England Inst. of Art, to NEIA students.

⁶² See *College Navigator: New England Institute of Art*, U.S. DEP’T OF EDUC., INST. OF EDUC. SCIS., NAT’L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/collegenavigator/?q=new+england+institute+of+art&s=all&id=167321> (“This institution has an open admission policy.”); 940 MASS. CODE REGS. 31.06(6) (prohibiting enrollment of unqualified students).

structurally unfair student loans.

IV. *Demand for Relief*

NEIA, AI, and EDMC have engaged in unfair practices in violation of the Massachusetts Consumer Protection Act and Massachusetts common law proscriptions on fraudulent misrepresentation, fraudulent inducement, unconscionability, and breach of the implied covenant of good faith and fair dealing.

To insulate themselves from meritorious student complaints about their unfair and deceptive practices, and the corresponding scrutiny of the Department of Education, law enforcement agencies, and the New England Association of Schools and Colleges (NEIA's accreditor), NEIA, AI, and EDMC required students, as a condition of enrollment, to waive their legal rights by signing enrollment agreements containing forced arbitration clauses.

Mr. Del Rose, Ms. Martin, and Ms. Bauer have reason to believe that NEIA, AI, and EDMC's unfair acts and practices have caused similar injuries to numerous other similarly situated former NEIA students, and thus Mr. Del Rose, Ms. Martin, and Ms. Bauer also demand relief on their behalf. Together with these former students, Mr. Del Rose, Ms. Martin, and Ms. Bauer demand that NEIA, AI, and EDMC compensate them for their injuries. Specifically, they demand that NEIA pay off all of their student loans, reimburse them for payments they have made on those loans, and compensate them for lost wages and time. Mr. Del Rose, Ms. Martin, Ms. Bauer and similarly situated former NEIA students also demand that NEIA, AI, and EDMC refrain from moving to compel arbitration of any lawsuit that may arise from their actions. A complete statement of demands is set forth in Appendix A, attached to this letter.

Failure to make a reasonable written tender of relief within thirty days of this demand may result in your liability for multiple damages, costs, and Mr. Del Rose's, Ms. Martin's, and Ms. Bauer's reasonable attorney's fees.

Sincerely,

/s/

Project on Predatory Student Lending
Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

By:

Erica Kyzmir-McKeon
Tel.: 617-390-2739
Email: ekyzmirmckeon@law.harvard.edu

Victoria Roytenberg
Tel.: 617-390-2740
Email: vroytenberg@law.harvard.edu

September 1, 2016
Page 13 of 13

Amanda Savage
Tel.: 617-390-2710
Email: asavage@law.harvard.edu

cc: Robert Kaye, *Chief Enforcement Officer*, United States Department of Education,
Federal Student Aid
Elizabeth Williamson, *Northeast HUB Leader*, United States Department of Education
David Angel, *Commission Chair*, Higher Education – CIHE, New England Association
of Schools and Colleges
Carlos E. Santiago, *Commissioner of Higher Education for Massachusetts*, Massachusetts
Department of Higher Education
Attorney General Maura Healey
Senator Elizabeth Warren

Appendix A

We wish to publicly **AFFIRM** to ourselves, our families, the public, and to those who control our debts, that we enrolled in the New England Institute of Art ("NEIA") in good faith. We did what was expected of us; we jumped through all of the hoops that you required. We took on an extraordinary amount of debt in order to learn. We did this because we believed what you, and those who vouched for you, told us. We enrolled on the belief that we could better our lives and contribute as much as possible to our society. Our goal was not to become rich. We held up our end of the bargain, but you did not.

Now, having taken your profits, you are shutting your doors. The world will recognize your business for the fraud that it was, and we are glad that you will no longer lure other well-intentioned students into your trap. But your closure affirms the worthlessness of our credits and degrees. We do not have the luxury to walk away from our debts.

We, students of NEIA and our families, do not accept that your hands are clean. On account of the numerous illegal, deceptive and unfair acts and practices you, the New England Institute of Art, The Art Institutes, Inc., and Education Management Corporation ("EDMC"), have committed, and to all those who have vouched for and enabled you, we **DEMAND** the following:

REMEDY the harm that you have caused to us, our families, and the public. Cancel all of our debts. Repay the money that we borrowed to attend your school. Remove bad reports from our credit histories. Compensate us for the time and resources that we squandered.

STOP enrolling new students in any of your schools, and shut down entirely. Immediately. Stop denying your wrongdoing. Stop using unfair and oppressive arbitration "agreements" to hide your fraud and prevent us from acting together. Stop retaliating against employees and former employees who speak out to expose your abuse.

ADMIT to us and our families, to the public, and to those who control our debts, that because of your illegal conduct, our debts are invalid and unenforceable. You lied to us and to those who are supposed to regulate and oversee you. You falsely advertised your school. You used manipulative and deceptive tactics to enroll us, even though you knew that our student loan debt would be unmanageable. You knew that employers do not respect the name or training of Art Institute students. You knew that we would not be able to succeed.

EXPLAIN to us and our families, to the public, and those who control our debts, where all of the money that we paid you, through our debts, has gone. Who got rich from our debts? Who owns you now? Who made the decision to close down NEIA and other Art Institutes/EDMC schools, and why?

ACKNOWLEDGE to us and our families, to the public, and to those who control our debts, that you targeted us for enrollment in your programs because you believed you could take advantage of us for your own financial gain. You perceived that your power was greater than ours, knowing as you did that we do not come from rich and powerful families. You used aggressive, manipulative, and deceptive tactics to recruit us and convince us to enroll in your expensive and worthless programs. We worked hard and sacrificed. All the while, corporate profits were more important to you than any of us. You treated us like numbers. You have harmed us all.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CALIFORNIA ASSOCIATION OF PRIVATE)	
POSTSECONDARY SCHOOLS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-999 (RDM)
)	
ELISABETH DEVOS, in her official capacity)	
as Secretary of the U.S. Department)	
of Education, <i>et al.</i> ,)	
)	
Defendants,)	
)	
MEAGHAN BAUER and STEPHANO DEL)	
ROSE,)	
)	
Defendant-Intervenors.)	
_____)	

[PROPOSED] ORDER

Upon consideration of the motion to intervene as defendants filed by Meaghan Bauer and Stephano Del Rose and all supporting documents, it is hereby

ORDERED that the motion to intervene as of right under Federal Rule of Civil Procedure 24(a) is granted.

So **ORDERED** this ____ day of _____, 2017.

Randolph D. Moss
United States District Judge