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10 DAVID S. PHILLIPS AND BEN CHAIB

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 UNITED STATES OF AMERICA,
15 *ex rel.* DAVID S. PHILLIPS
16 and BEN CHAIB,

17 Plaintiffs,

18 v.

19 LOS ANGELES FILM SCHOOL,
20 LLC; FULL SAIL, LLC, D/B/A
21 FULL SAIL UNIVERSITY; JAMES
22 W. HEAVENER; DIANA DERCYZ-
23 KESSLER; PAUL KESSLER; AND
24 DOES 1-10,

25 Defendants.

Case No. 2:24-cv-05214-SB-RAO

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF
THE FEDERAL FALSE CLAIMS
ACT [31 U.S.C. § 3729, *et seq.*]**

**FILED IN CAMERA AND UNDER
SEAL PURSUANT TO 31 U.S.C.
§ 3730(b)(2)**

JURY TRIAL DEMANDED

1 **I. INTRODUCTION**

2 1. This is an action against Defendants Los Angeles Film Schools, LLC
3 (hereinafter “LAFS,)) Full Sail, LLC, doing business as Full Sail University,
4 (hereinafter “FS”) James W. “Bill” Heavener, Diana Derycz-Kessler, and Paul
5 Kessler to recover damages and civil penalties under the federal False Claims Act 31
6 U.S.C. § 3729 *et seq.*

7 2. As more fully alleged herein, this action arises out of the Defendants’
8 prior and continuing schemes to defraud the United States of America by knowingly
9 presenting and making, or causing to be presented and made, false claims and
10 statements that were material to their receipt of funding from federal student aid
11 programs authorized pursuant to Title IV of the Higher Education Act of 1965, as
12 amended, 20 U.S.C. §§ 1070 *et seq.* (“Title IV programs”) and the U.S. Department
13 of Veterans Affairs (“the VA”) benefits regulations codified in 38 U.S.C. § 3680 *et*
14 *seq.*

15 3. Specifically, LAFS and FS, for-profit post-secondary educational
16 institutions, certified compliance with the “gainful employment” requirements in 20
17 U.S.C. § 1088(a)(1)(A)(i). LAFS also certified compliance with California Education
18 Code § 94928. And both schools certified compliance with the Incentive Compensation
19 Ban (“ICB”) of the Higher Education Act (“HEA”), as codified in 20 U.S.C. §
20 1094(a)(20), and the U.S. Department of Veterans Affairs (the “VA”) regulations
21 codified in 38 U.S.C. § 3696(d), which mirror the ICB of the HEA, to be eligible to
22 receive federal grant and loan dollars when in fact, LAFS was not in compliance with
23 the ICB. The certifications were false. Heavener and the Kesslers caused LAFS’ false
24 certifications, and Heavener caused FS’ false certifications. LAFS and FS violated
25 federally required gainful employment requirements, violated accrediting standards
26 given by for-profit education-favorable accrediting agencies and self-financed thousands
27 of temporary employment opportunities for their graduates through schemes with non-
28 profits and paid-off vendors to give the false impression to incoming students and

1 federal regulators that their graduates were gainfully employed within the fields they
2 were educated in to continue receiving millions of dollars in federal financial aid.

3 4. The Relators were two of the highest-ranking management executives in
4 LAFS history, former Vice-President of Career Development and Special Advisor
5 to the Board David S. Phillips, and former Vice-President of Admissions Ben
6 Chaib. Each were employed by LAFS for 12 years and each served together on the
7 LAFS Executive Team, a select group of 6-8 top management executives who met
8 weekly to coordinate the operation of the institution at the direction of Heavener
9 and Kessler. Each had extensive contact with, and direction from, both Heavener
10 and Derycz-Kessler on the fraudulent schemes described herein. Each also had
11 frequent contact with, and direction from, the Executive Team at FS.

12 5. LAFS receives over \$85 million per year in federal financial assistance,
13 some \$60 million through federal student loans, and over \$19 million in veterans'
14 financial aid funds. LAFS is primarily owned and controlled by Heavener and his
15 partners (Edward Haddock, Jonathan Phelps, and Garry Jones) also own and control
16 Full Sail University (FS) in Winter Park, Florida, and the same false claims schemes
17 are operated at both locations. FS receives over \$377 million per year in federal
18 financial assistance. On information and belief, approximately \$90 million of that
19 money comes from Veterans' educational benefits. For at least the last ten years,
20 nearly all federal funds bestowed upon and taken in resulted from fraud with the
21 institution using taxpayer funds to finance and facilitate multiple, temporary
22 employment positions for LAFS graduates and through incentive payments to LAFS
23 sales representatives (hereinafter "sales reps,") prohibited for decades.

24 **A Brief Summary of the Legal Requirements and How They Were Violated**

25 6. Federal law specifically prohibits higher education institutions from
26 "provid[ing] any commission, bonus, or other incentive payment based directly or
27 indirectly on success in securing enrollments....to any persons or entities engaged in
28 any student recruiting or admission activities or in making decisions regarding the

1 award of student financial assistance....” *See* 20 U.S.C. § 1094(a)(20), 38 U.S.C. §
2 3696(d); *see also* 34 C.F.R. § 668.14(b)(22)(i). The United States Department of
3 Education (hereinafter “ED,”) requires any school seeking to be eligible to participate
4 in Title IV programs to sign a Program Participation Agreement (PPA) agreeing to
5 abide by the program’s legal requirements (34 CFR § 668.14). The PPA includes an
6 attestation that the school “will not provide any commission, bonus, *or other*
7 *incentive payment based directly or indirectly*, upon success in securing
8 enrollments.” ED specifies that the PPA can be revoked for “a failure to comply with
9 any provision set forth in this Agreement, a violation of Department regulations
10 deemed material by the Department, or a material misrepresentation in the material
11 submitted to the Department.” This includes “all statutory provisions of or applicable
12 to Title IV of the HEA, all applicable regulatory provisions prescribed under that
13 statutory authority, and all applicable special arrangements, agreements, and
14 limitations entered into under the authority of statutes applicable to Title IV...”

15 7. LAFS and FS violated the ICB by linking sales reps’ promotions and
16 corresponding salary increases to zealously tracked metrics in securing student
17 enrollments. LAFS and FS set strict monthly enrollment mandates guised as
18 “retention rates.” Sales reps who met or exceeded these mandates were promoted to
19 the next level and received salary increases. In addition, sales reps who met or
20 exceeded the sales quotas received special privileges, including private offices,
21 greater flexibility from “dress code” requirements, etc. Conversely, sales reps who
22 failed to meet the quotas were placed on performance improvement plans to create a
23 paper trail that would serve as a pretext and were denied bonuses and eventually fired.

24 8. Sales supervisors pressure the reps daily to increase enrollment
25 numbers. Sales reps were trained in high pressure sales tactics and fired if they
26 did not succeed in using them to drive enrollments.

27 9. Both Congress and the California Legislature demand that to be
28 eligible for federal education benefits a school must successfully train its students to

1 land and hold jobs in the field for which they are trained. Congress requires that a
2 school provide “a program of training to prepare students for gainful employment in
3 a recognized profession” 20 U.S.C. §1088(a)(1)(A)(i). California’s requirements,
4 upon which eligibility for Veteran’s tuition depends, are even more specific:

5 “Graduates employed in the field” means graduates who are gainfully
6 employed in a single position for which the institution represents the
7 program prepares its graduates, beginning within six months after a
8 student completes the applicable educational program. For occupations
9 for which the state requires passing an examination, the period of
10 employment shall begin within six months of the announcement of the
examination results for the first examination available after a student
completes an applicable educational program.”

11 (Cal. Ed. Code, § 94928)

12 10. Lying about placements also constitutes marketing fraud, which
13 was central to tricking students into enrolling. LAFS is prohibited from:

- 14 • Overstating the availability of jobs upon a student’s graduation;
- 15 • Advertising concerning job availability ... unless the information is
- 16 accurate and not misleading; and
- 17 • Making any untrue or misleading statement related to placement or
- 18 employment

19 (Cal Ed. Code §94897 (b),(c), and (j).)

20 11. Defendants’ fraudulent contact has not been publicly disclosed as
21 defined by 31 U.S.C. § 3730(e)(4)(A).

22 12. If there has been a disclosure, Relator David Phillips and Relator Ben
23 Chaib are each, individually an “original source” as that term is defined in §
24 3730(e)(4)(B).

25 13. Before filing this Complaint, the Relators voluntarily submitted a
26 confidential pre-filing disclosure statement (subject to the attorney-client, work
27 product and common-interest privileges) to the United States on or about May 14,
28

1 2024 containing evidence and information in their possession pertaining to the
2 allegations contained in this Complaint.

3 **II. JURISDICTION AND VENUE**

4 14. This action arises under the False Claims Act 31 U.S.C. § 3729 *et seq.*
5 This Court has jurisdiction over this case pursuant to 31 U.S.C. §§ 3732(a) and
6 3730(b). This court also has jurisdiction pursuant to 28 U.S.C. § 1345 and 28 U.S.C.
7 § 1331.

8 15. At all times material to the time frames set forth in this Complaint,
9 Defendant LAFS, Derycz-Kessler, Paul Kessler, and Bill Heavener regularly
10 conducted substantial business within the State of California and made and continue
11 to make significant revenue within California. Defendants recruit and enroll students
12 from California. Defendants are thus subject to personal jurisdiction in California.

13 16. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because,
14 at all times material to this Complaint. Defendants conducted and continue to
15 conduct business in the Central District of California.

16 **III. PARTIES**

17 17. Defendant Los Angeles Film Schools, LLC (LAFS) is incorporated in
18 California, and its sole physical campus is in Hollywood. LAFS lives on massive
19 federal financial assistance, some \$70 million through federal student loans, and
20 over \$19 million in veterans' financial aid funds. LAFS is primarily owned and
21 controlled by James. W. "Bill" Heavener, Co-Chair of the Board of Directors and
22 Chief Executive Officer. LAFS sells multiple associate and bachelor's degrees
23 ostensibly training students for supposedly gainful employment in careers such as
24 animation, music production and audio engineering, digital filmmaking,
25 "entertainment business," film, and film production. LAFS and FS are linked so
26 tightly that LAFS' accounting and paychecks are issued from within the FS Winter
27 Park, Florida offices. Heavener and his partners (Edward Haddock, Jonathan
28

1 Phelps, and Garry Jones) also own and control Full Sail University (FS) in Winter
2 Park, Florida, and the same false claims schemes are operated at both locations.

3 18. LAFS, then known as Los Angeles Recording School, was created in
4 1999 and bought by the Kesslers in 2001. In 2003, the Kesslers sold 75% of the
5 school, 25% to The Heavener Company, 25% to Haddock Education, and 25% to
6 Phelps Education West.

7 19. Defendant Full Sail LLC, AKA Full Sail University is located in Winter
8 Park, Florida and corporate filings list Edward Haddock as it's CEO. With a two-
9 hundred-acre campus for some 9,000 students (the other 10,000 or so being online,)
10 FS boasts soundstages, a film backlot, and over 100 studios for production and
11 editing. As discussed *infra*, FS offers free and below market rental rates to
12 productions and companies in exchange for the brief "hiring" of FS graduates.

13 20. Defendant James W. Bill Heavener is a Florida resident (although he
14 sometimes lived in a home in the Hollywood Hills which he purchased for actress
15 Gianna Simone.) Heavener is or has been Chair and Co-Chair of LAFS, FS, the Los
16 Angeles Recording School, and another for-profit college, the Rocky Mountain
17 School of Design. He is a long-standing member of the University of Florida Board
18 of Trustees, and he UF Business School and the Football Training Center are also
19 named after him following major donations made by Heavener.

20 21. Defendant Diana Derycz-Kessler is a California resident and member of
21 the California Bar. During times material to this case, she was President and CEO
22 of LAFS for 16 years, stepping down abruptly in 2017 while LAFS was being
23 investigated by the ED. Within weeks of resigning, Derycz-Kessler (and her husband
24 Paul Kessler, with whom she purchased LAFS and the Los Angeles Recording
25 School (they brought a legal claim against Heavener and their other LAFS & FS
26 partners, leaving the Kesslers with millions while maintaining their 25% share of the
27 LAFS real estate owned by Ivar Partners, LLC, the entity co-owned by Heavener,
28 The Kesslers, Haddock, Phelps, & Jones which purchased the

1 real estate occupied by LAFS in 2003 when Heavener and his partners formed a
2 business partnership with the Kesslers.

3 22. Defendant Paul Kessler is a California resident and the husband of
4 Diana Derycz-Kessler. With her, he became a major investor in and President of
5 Wizard World Entertainment, LLC which was used to finance and create fake jobs
6 so LAFS could claim it met federal “gainful employment” requirements.

7 23. Relator David Phillips resides in Los Angeles, California. After
8 earning a BA from Duke University and an MBA in Entertainment Management at
9 The Anderson Graduate School of Management at UCLA, he began a 20-year career
10 in the industry as an agent, manager, and executive producer of critically acclaimed
11 and commercially successful films and television productions. In mid-2010,
12 Heavener hired Phillips as LAFS’ Vice President of Career Development
13 (placement) and Special Advisor to the Board of Directors.

14 24. Relator Ben Chaib resides in California. A veteran of sales
15 management jobs at the University of Phoenix, Career Education, Heald College and
16 Kaplan University, he was recruited to become LAFS’ Vice President of Admissions
17 (Sales) in 2009.

18 **IV. THE RELATIONSHIP BETWEEN FS AND LAFS**

19 25. With both Heavener and Haddock having Director’s or Co-Chair
20 positions at both FS and LAFS it is scarcely surprising that the operations of each
21 institution paralleled one another.

22 26. In fact, LAFS’ and FS’ entire online admissions and education
23 enterprise, by far its most profitable business, are both operated from within the FS
24 campus, not on the LAFS campus. FS vice President Tamara “Tammy” Elliot
25 (formerly Gilbert) was transferred to lead LAFS as President in 2017 and other
26 executives, such as Rachel Travaglini, Sharon Griffith, Tom Lacroix, Matt Pengra,
27 Ken Goldstone, Darren Millar, and James May were frequently transferred between
28 FS and LAFS.

1 27. The companies' accounting systems and financial management were
2 closely interlinked, with LAFS having to submit its fund requisitions (called
3 EREQS) to FS.

4 28. FS and LAFS Executive team leaders participated in joint strategy
5 retreats, Board meetings, online summits, and Board meetings with outside investors
6 like TA who invested over \$150 million in the schools.

7 29. FS and LAFS Executive team leaders cooperated closely in making a
8 joint presentation to Heavener's business partner, the Haddock Family Trust.

9 30. LAFS frequently sought and received data and direction from FS
10 executives on marketing schemes and in creating the false appearance that the
11 schools were complying with all gainful employment criteria.

12 31. Heavener and the Kesslers went to great lengths to keep ED from
13 learning how closely the institutions were linked. In 2017, when an audit team
14 from ED came to LAFS, defendants anticipated that Relator Phillips would be
15 interviewed. In preparation for this ED interview, Heavener and Derycz-
16 Kessler repeatedly urged Phillips to reveal nothing about FS and/or between the
17 relationship between FS and LAFS. This was so vital that Phillips was asked to
18 participate in a last-minute meeting with Heavener and LAFS and FS Board
19 Members and owners, Haddock, Phelps, and Jones were tele-conferenced in
20 before Phillips' ED interview to flatter and thank Phillips and make sure he did
21 not mention Full Sail when he was interviewed by the ED auditors. When
22 Phillips was debriefed post-ED interview by Heavener, Heavener immediately
23 asked if FS had been discussed and reiterated how important it was that Phillips
24 had not mentioned FS or informed ED of the operational ties between the two
25 institutions.

1 **V. LEGAL REQUIREMENTS FOR FS AND LAFS**

2 **A. Schools Cannot Mislead Students or Prospective Students, or**
3 **Regulators**

4 32. 20 U.S.C. § 1094 requires institutions to refrain from engaging in
5 substantial misrepresentation of the nature of its educational program and authorizes
6 the Secretary of Education to “suspend or terminate the eligibility status” or to
7 impose civil penalties for any institution violating this provision. *See United States*
8 *ex rel Handal v. Center for Empl. Training* 2019 U.S. Dist. LEXIS 17694 (E.D. Cal.
9 2019).

10 33. Under its Section 1094 authority the Department of Education has
11 enacted regulations at 34 CFR § 668.71, 668.72, 668.74, and 668.75
12 34 C FR § 668.71 defines misrepresentation as “[A]ny false, erroneous or
13 misleading statement” made by an institution or its representatives to any student,
14 prospective student, member of the public, or to an accrediting agency or State
15 agency or to the Secretary if it “has the likelihood or tendency to mislead under the
16 circumstances. A misleading statement may be included in the institution’s
17 marketing materials, website, or any other communication to students or prospective
18 students. . . “Misrepresentation includes any statement that omits information in
19 such a way as to make the statement false, erroneous, or misleading. . .
20 Misrepresentation also includes the omission of facts as defined under §668.75”. A
21 misrepresentation “including omission of facts as defined under §668.75” is
22 substantial if “the person to whom it was made could reasonably re expected to rely,
23 or has reasonably relied, to that person’s detriment.”

24 34. §668.75 further defines an omission of fact as a
25 misrepresentation “if a reasonable person would have considered the omitted
26 information in making a decision to enroll or continue attendance”, and “includes
27 but is not limited to, the concealment, suppression, or absence of material
28 information or statement concerning . . . (e) The nature of institution’s educational

1 programs . . . or the employability of the institution’s graduates as defined in
2 §668.72-74” .

3 35. §668.72 (g) prohibits misrepresentations regarding “The availability,
4 frequency, or appropriateness of its courses and programs in relation to the
5 employment objectives that it states its programs are designed to meet.”

6 36. Most telling is §668.74 which prohibits “false, erroneous, or misleading
7 statements concerning” . . . (c) The institution’s knowledge about the current or
8 likely future conditions, compensation, or employment opportunities in the industry
9 or occupation for which the students are being prepared; or (g)(ii)(A) “Counting
10 individuals as employed who are not bona fide employees, such as individuals
11 placed on a 1-day job fair, an internship, externship, or in employment subsidized by
12 the institution”.

13 **B. The Higher Education Act Ban on Incentive Compensation**

14 37. Pursuant to Title IV of the Higher Education Act of 1965 (“HEA”), 20
15 U.S.C. §§ 1070, *et seq.*, the DOE provides financial assistance in the form of grants,
16 loans, loan guarantees and interest subsidies to eligible students to help defray the
17 costs of education. This includes the Federal Direct Student Loan Program, 20
18 U.S.C. §§ 1087a, *et seq.*, 34 CFR § 685; the Federal Perkins Loan Program, 20
19 U.S.C. § 1087aa, *et seq.*, 34 CFR § 674; the Federal Work Study Program, 42 U.S.C.
20 §§ 2751, *et seq.*, 34 CFR § 675; and the Federal Supplemental Educational
21 Opportunity Grant Program (“FSEOGP”), 20 U.S.C. §§ 1070b, *et seq.*, 34 CFR §
22 676.

23 38. One requirement of the Title IV programs is that an institution must
24 assent to a Program Participation Agreement (PPA) with the Department of
25 Education. 20 U.S.C. § 1094(a); 34 C.F.R. § 668.14(a)(1). The PPAs expressly
26 “condition the initial and continuing eligibility of the school to participate in a
27 program upon compliance with” the requirements of 20 U.S.C. § 1094 and 34
28 C.F.R. § 668.14.

1 39. The statute and the PPA require that:

2 “The institution will not provide any commission, bonus, or other
3 incentive payment passed directly or indirectly on success in securing
4 enrollments or financial aid to any persons or entities engaged in any
5 student recruiting or admission activities or in making decisions
6 regarding the award of student financial assistance.”

7 20 U.S.C. §1094(a)(20). *See also* 34 C.F.R. §668.14(b)(22).

8 40. Known commonly as the “Incentive Compensation Ban,” this
9 subsection of the statute expressly conditions the initial and continuing eligibility of
10 schools to obtain Title IV funding on the requirement that the schools not
11 compensate employees based on success in securing enrollments.

12 41. Congress prohibited incentive compensation schemes because it
13 determined that the payments led to enrolling unqualified students who received
14 federally insured student loans and defaulted on them at higher rates than schools
15 without such schemes. Since the federal government guaranteed the loans, incentive
16 compensation was tied to staggering costs to the taxpayer.

17 42. “Commission, bonus, or other incentive payment” means a sum of
18 money or something of value, other than a fixed salary or wages, paid or given to a
19 person or entity for services rendered.” 34 C.F.R. § 668.14(b)(22)(iii)(A).

20 43. Institutions may make merit-based adjustments to employee
21 compensation, provided that such adjustments are not **based in part, directly or**
22 **indirectly**, upon success in securing enrollments or the awards of financial aid. 34
23 C.F.R. § 668.14(b)(22)(ii)(A).

24 44. In each PPA, the institution certifies, “The execution of this Agreement
25 by the Institution and the Secretary is a prerequisite to the Institution’s initial or
26 continued participation in any Title IV, HEA Program.” The PPA then states, *inter*
27 *alia*:

28 “By entering into this Program Participation Agreement, the Institution
 agrees that...(22) It will not provide, nor contract with any entity that
 provides, any commission, bonus, or other incentive payment based

1 directly or indirectly on success in securing enrollments or
2 financial aid to any persons or entities engaged in any student recruiting
3 or admission activities or in making decisions regarding the awarding
4 of student financial assistance....”

5 45. The PPA also required FS and LAFS to affirm that each school would
6 "... comply with all statutory provisions of or applicable to Title IV of the Higher
7 Education Act, all applicable regulatory provisions prescribed under that statutory
8 authority, and all applicable special arrangements, agreements, and limitations
9 entered into under the authority of statutes applicable to Title IV."

10 46. The ED certification to participate in the Title IV programs lasts a
11 maximum of six years, and institutions are required to seek recertification from the
12 ED on a regular basis to continue their participation in the Title IV programs. An
13 institution must also apply for recertification by the ED if it undergoes a change in
14 control, as defined by ED regulations, and may be subject to similar review if it
15 expands its operations or educational programs in certain ways. 34 C.F.R. § 668.13.

16 47. In addition to the PPA, to withdraw federal funds LAFS and FS had to
17 use an electronic data system known as "G5", which is part of what is called the
18 Grants Management System.

19 48. Before making any individual withdrawal LAFS or FS had to enter what
20 is known as a "G5 certification", attesting that "by processing this payment request . .
21 . the funds are being expended within three business days of receipt for the purpose
22 and condition of the agreement." For purposes of Title IV and related programs the
23 "agreement" referred to in the G5 certification is the Program Participation
24 Agreement.

25 49. Neither Relator worked in the Compliance Department and therefore
26 neither had access to copies of either FS' or LAFS' PPAs. However, since a current
27 PPA was required for a school to qualify its students for federal loans, and since the
28

1 loans were continued throughout this period, Relators assert, upon information and
2 belief, that each school maintained a PPA at all times material to this Complaint.

3 **C. The October 29, 2010 Final Regulations**

4 50. On October 29, 2010, the ED published in the Federal Register final
5 regulations for improving integrity in the programs authorized under Title IV of the
6 HEA of 1965, as amended. These rules and regulations are enumerated as 75 FR
7 66832 - 66975.

8 51. 75 FR 66876 states:

9 “We note that individuals may be compensated in any fashion that is
10 consistent with the prohibition identified in section 487(a)(20) of the
11 HEA...the Department recognizes, for example, that institutions often
12 maintain a hierarchy of recruitment personnel with different amounts of
13 responsibility. As long as an institution complies with section
14 487(a)(20) of the HEA, it may be appropriate for an institution to have
15 salary scales that reflect an added amount of responsibility. Institutions
16 also remain free to promote and demote recruitment personnel, as long
17 as these decisions are consistent with HEA’s prohibition on the
18 payment incentive compensation.”

19 52. 75 FR 66877 further clarifies by stating:

20 “Section 668.14(b)(22) does not prohibit merit-based compensation for
21 financial aid or admissions staff. An institution may use a variety of
22 standard evaluative factors as the basis for this type of compensation.
23 However, consistent with section 487(a)(20) of the HEA and §
24 668.14(b)(22), an institution may not consider the employee’s success
25 in securing student enrollments or the award of financial aid in
26 providing this type of compensation. Further, an increase in
27 compensation that is based in any part either directly or indirectly on
28 the number of students recruited or awarded financial aid is
prohibited.”

53. Standard evaluative factors that an institution may take into account in
determining the compensation of employees include: seniority or length of
employment; job knowledge and professionalism; skills such as analytic ability,
initiative in work improvement, clarity in communications, use and understanding of

1 technology; traits such as accuracy, thoroughness, dependability, punctuality,
2 adaptability; peer rankings; student evaluations; and interpersonal relations. *See*
3 Federal Student Aid Handbook, Vol. 2, Ch. 3, at 2-59, 2017-2018¹

4 **D. The November 27, 2015 Final Rule**

5 54. On November 17, 2015, ED provided clarification and additional
6 information applying to the October 29, 2010 regulations.

7 55. 75 FR 73992 states:

8 “The regulations at 34 CFR 668.14(b)(22), implementing the statutory
9 ban on enrollment-based compensation to recruiters of students, 20
10 U.S.C. § 1094(a)(20), do not contain a ban on graduation-based or
11 completion-based compensation...The Department...does not interpret
12 the regulations to proscribe compensation for recruiters that is based
13 upon students’ graduation from, or completion of, educational
14 programs...In assessing the legality of a compensation structure, the
15 Department will focus on the substance of the structure rather than on
16 the label given the structure by an institution. Thus, although
17 compensation based on students’ graduation from, or completion of,
18 educational programs is not *per se* prohibited, the Department reserves
19 the right to take enforcement action against institutions if compensation
20 labeled by an institution as graduation-based or completion based
21 compensation is merely a guise for enrollment-based compensation,
22 which is prohibited. Compensation that is based upon success in
23 securing enrollments, even if one or more other permissible factors are
24 also considered, is prohibited.

20 **E. Veteran’s Administration Education Benefits Regulations**

21 56. Unlike Title IV assistance, these are not federally insured student loans.
22 They are direct tuition grants which the veterans are not required to repay. 38 U.S.C.
23 §3301 et. seq. In addition to having a lower threshold for customer buy-in (since
24 there is no debt faced by the student or service member,) the veteran’s benefits are
25

27 ¹<https://ifap.ed.gov/fsahandbook/attachments/1718FSAHbkActiveIndex.pdf>

1 popular because they pay money to the school much more quickly than insured loan
2 money comes in.

3 57. Responding to anecdotal accounts of widespread fraud in the veterans’
4 “educational” programs, in 2012 Congress added a ban on incentive compensation
5 for sales reps (38 USC §3698(b)) that paralleled the prohibition in Title IV. Earlier
6 that year President Obama issued Executive Order 13607, extending to active-duty
7 military financial assistance the same protections that were in the Higher Education
8 Act. 34 CFR § 668.71 authorized the Secretary of Education (and by extension, the
9 Secretary of Defense) to revoke a school’s eligibility to receive financial assistance
10 or get student loans for its enrollees. 34 CFR §§ 668.73-75 prohibited schools from
11 lying to students about financial aid matters, the employability of its graduates, job
12 opportunities, or the school’s “knowledge about the current or likely future
13 conditions, compensation, or employment opportunities”. Further, the schools must
14 meet all state legislative and administrative requirements. (34 CFR § 600.9)

15 58. Like the PPA, schools seeking tuition support veterans must enter into
16 a memorandum of understanding with the Department of Defense Office of the
17 Undersecretary of Defense for Personnel and Readiness. Compliance with its terms
18 is mandatory. 32 C.F.R. Pt. 68 Appendix A, ¶ 3(a)(2) and educational institutions
19 failing to comply may be removed from the program.

20 59. The schools must have policies in place that “[b]an inducements
21 including any gratuity, favor, discount, entertainment, hospitality, loan,
22 transportation, lodging, meals, or other item have a monetary value of more than a
23 de minimis amount to any individual, entity, or its agents including third party lead
24 generators or marketing firms other than salaries paid to employees or fees paid to
25 contractors in conformity with all applicable laws . . .” *Id.*, at ¶ 3(j)(1).

26 60. Executive Order 13607 extended to active-duty military financial
27 assistance the same protections that were in the Higher Education Act. 34 CFR §
28 668.71 authorized the Secretary of Education (and by extension, the Secretary

1 of Defense) to revoke a school's eligibility to receive financial assistance or get
2 student loans for its enrollees. 34 CFR §§ 668.73-75 prohibited schools from lying
3 to students about financial aid matters, the employability of its graduates, job
4 opportunities, or the school's "knowledge about the current or likely future
5 conditions, compensation, or employment opportunities". Further, the schools are
6 required to meet all state legislative and administrative requirements. 34 CFR §
7 600.9

8 61. The Veteran's assistance program requires that the eligibility of each
9 school must be determined by the "state authorizing agency" in the state in which
10 the school is located, thus importing a state regulatory matrix in addition to the
11 federal requirements. LAFS falls under the domain of the California State
12 Approving Agency for Veterans Education (CSAAVE). CSAAVE's role and
13 responsibilities are laid out in the *California Education Code* §§ 61700 *et. seq.*

14 62. Since 2016 CSAAVE must also certify that the school has been
15 approved to operate by the Bureau of Private Postsecondary Education, (BPPE) *Cal.*
16 *Ed. Code* §67103(c).

17 **F. Gainful Employment Requirements**

18 63. Both Congress and the California Legislature demand that to be eligible
19 for federal education benefits a school must successfully train its students to land
20 and hold jobs in the field for which they are trained. Congress requires that a school
21 provide "a program of training to prepare students for gainful employment in a
22 recognized profession" 20 U.S.C. §1088(a)(1)(A)(i). California's requirements,
23 upon which eligibility for Veteran's tuition depends, are even more specific:

24 "Graduates employed in the field" means graduates who are gainfully
25 employed in a single position for which the institution represents the
26 program prepares its graduates, beginning within six months after a
27 student completes the applicable educational program. For occupations
28 for which the state requires passing an examination, the period of
employment shall begin within six months of the announcement of the

1 examination results for the first examination available after a student
2 completes an applicable educational program.”

3 (Cal. Ed. Code, § 94928)

4 64. This violation is also tied to marketing fraud which was central to
5 tricking students into the program. The school is prohibited from by (Cal Ed. Code
6 §94897 (b),(c), and (j)

- 7
- 8 ■ Overstating the availability of jobs upon graduation;
 - 9 ■ Advertising concerning job availability ... unless the information is
10 accurate and not misleading; and
 - 11 ■ Making any untrue or misleading statement related to placement or
12 employment.

13 65. All members of the Executive Team, executives and program managers
14 at LAFS were fully aware of the regulatory requirements. In April of 2012, LAFS
15 assured their accrediting agency ACCSC that LAFS, a member of the state’s
16 proprietary school association, had access to a variety of webcast seminars, and that
17 is compliance officer routinely updates all department heads on new developments.
18 Moreover, the CEO, Diana Derycz-Kessler, the Vice President of Operations, Jenna
19 Langer, and Paul Bott, the Vice President for Academic Affairs, who was a former
20 ACCSC Commissioner, regularly attended seminars and conferences sponsored by
21 regulatory and accrediting agencies and trade associations.

22 66. Just as LAFS’ leaders knew what was required, its owners and Board
23 Members knew LAFS was built on a platform of deceit. Shortly before the ED
24 audit visit in 2017, Heavener told Jenna Langer, Derycz-Kessler, and Phillips that
25 full-time jobs did not exist for graduates of LAFS’ audio recording area and unless
26 LAFS could sell the concept to auditors the next day when they arrived “about a
27 third of our business is going to disappear because full-time time jobs don’t exist
28 for these people, they don’t exist.”

1 **VI. THE FRAUD SCHEMES**

2 “Most [grads] report a yearly income of 0-\$5,000 in their field of study “

3
4 #1477.1, Agenda for LAFS Career Development “Jobs” Meeting

5 "What’s the point of [getting grads] work if we cannot use it in service
6 of our accreditation obligations?"

7 #21080.1 Elaine Chekich, LAFS Career Development
8 Production Supervisor

9 67. Concerted lies to federal officials rarely occur in a vacuum. To
10 understand the intense financial pressure which drove the school to lie, and its
11 profound impact on thousands of hoodwinked students and the tens of millions of
12 dollars this cost, one must first understand why Congress demands proof of gainful
13 employment and how LAFS gamed the system.

14 68. As the Department of Education explained, “When admission
15 personnel are compensated substantially, if not entirely, upon the numbers of
16 students enrolled, the incentive to deceive or misrepresent the manner in which a
17 particular educational program meets a student's needs increases substantially.”
18 *(Student Assistance General Provisions; Federal Family Education Loan Programs;*
19 *Federal Pell Grant Program, 59 Fed. Reg. 22,348, 22,377 (Apr. 29, 1994); see also*
20 *75 Fed. Reg. 34,806, 34,817 (June 18, 2010), as quoted in United States ex rel*
21 *Brooks v. Stevens-Henager Coll. 305 F.Supp.3d 1279, 1303 (D. Utah 2018)*

22 69. Once the Los Angeles Recording School (LARS) fought litigation from
23 students in 2011 and its former instruction was absorbed into LAFS, LAFS
24 proceeded to ramp up its audio engineering program and add a music production
25 program to prey on thousands more students it knew would likely never become
26 gainfully employed after graduation. Kevin Bannerman, one of the placement
27 executives recalls that “At the beginning of 2011 . . . the market for Recording
28 students seeking engineering work was vanishing before our eyes. (Draft of Career

1 Development Business Plan.) The problem was worsened by the nature of the
2 students admitted and the graduates the school had to find jobs to maintain
3 accreditation. At the 2016 “Jobs Meeting” managers knew that 90% of the jobs
4 available to LAFS graduates were freelance. Worse yet, Phillips, an experienced
5 former entertainment industry executive and agent who for twenty-five years
6 specialized in getting clients jobs, observed the vast majority of LAFS graduates
7 were not able to obtain entry level positions. With BPPE and accreditation criteria
8 requiring that seven of every ten graduates actually be consistently employed in the
9 field they were trained in, LAFS executives estimated that only 20% of graduates
10 *might* be able to get work on their own, and that for 50%, the “we must engineer
11 gigs.” (*Ibid*, p. 2)

12 70. LAFS was instructed by Heavener and Derycz-Kessler to focus strictly
13 on the appearance of compliance. evidenced by management’s carefully granular
14 calculations, measuring *down to the day* how many placements had to be created to
15 reach the 70% number for each of the LAFS programs. And it shows that the orders
16 came directly from Derycz-Kessler. (*Id.*, p. 1.) and Bill Heavener.

17 71. Fearing the loss of its accreditation, under Heavener’s direction, LAFS
18 approached this problem through multiple fraudulent schemes to artificially prop up
19 its placement rates by intentionally misleading both its accreditors and its current
20 and prospective students. Placing 70% of its graduates was essential to Heavener
21 and he insisted upon it. Variations of these fraudulent schemes existed years before
22 either Phillips or Chaib were ever employed by LAFS or assisting Full Sail. When
23 Heavener and the Kesslers saw placements at LAFS could not be achieved honestly,
24 he and the Kesslers financed productions through multiple loan-out corporations
25 such as Jellyworks Films, LLC and First Chance Films. One such example, released
26
27
28

1 in 2009, was the film All Ages Night, which was executive produced by the
2 Kesslers, Heavener, and Full Sail co-owners Ed Haddock and Garry Jones.



11

12 <https://www.imdb.com/title/tt1081919/mediaviewer/rm1142010880/>, last visited
13 May 5, 2024.

14 72. Before Phillips' arrival, LAFS and FS also made a habit of repeatedly
15 hiring industry professionals like former Warner Brothers executive turned LAFS
16 President Thom Mount to "hire" LAFS graduates by investing in and producing
17 multiple films with him that hired LAFS and FS graduates for just a few days, long
18 enough to claim their graduates had been "placed." This was the primary reason the
19 owners invested in these films—to hire their graduates so they could claim their
20 graduates were employed-in-field and hit their placement goals when their purported
21 "employment" was entirely the result of LAFS' own self-financed schemes.

22 73. By early 2011 LAFS was under intense pressure from even the for-
23 profit industry captive "accreditors. On February 23, 2011, the Accrediting Council
24 for Continuing Education and Training (ACCET) conducted a site visit which
25 revealed that only 19-21% of graduates of the Recording Engineer program were
26
27
28

1 being placed in jobs.² After giving the school time to develop and implement a
2 corrective action plan, ACCET ultimately withdrew accreditation.

3 74. As early as March, 2011, Phillips was carrying out Heavener's
4 instructions to funnel money to the Greater Kansas City Community Foundation,
5 which would then finance projects through the Fender Music Foundation and the
6 Ricardo Montalban Foundation. Fender, Montalban, and other recipients would then
7 use the money to "hire" school graduates, thus disguising the school owners as the
8 source of the contributions. As an example, on March 31, 2011, the Fender Music
9 Foundation's Executive Director emailed Phillips, inquiring: "We received \$16,000
10 from the Greater Kansas City Community on Monday. Was that from you all?"
11 Derycz-Kessler was fully informed of the plans for this donation and Phillips is
12 informed and believes and based thereon alleges that the Kesslers also were forced
13 by Heavener to contribute a substantial share of these "donations" because Derycz-
14 Kessler complained about this to him at times.

15 75. In May, 2011 Phillips asked Heavener to confirm that Heavener wanted
16 \$18,500 sent to GKCCF for a similarly laundered donation, this time to be routed to
17 another company. Phillips noted to Heavener that this company (ETTI) had already
18 "processed" (meaning very briefly employing" 98 LAFS graduates.

19 76. Both schools leveraged their campuses and the film and recording
20 equipment they owned, offering it to production companies free or wildly below fair
21 market value on condition that its graduates be hired for the most fleeting of jobs
22 just to create a years-long façade of compliance and genuine placement. LAFS even
23 went so far as to change its official internal operations policy in 2016 to insist that
24 no one, including LAFS employees, could shoot anything on its campus unless they
25 specifically hired LAFS graduates. LAFS was only interested in employing its
26

27
28 ² At that time the school was still known by its old name, "Los Angeles Recording School". It was, nonetheless, the same business.

1 graduates in temporary jobs which could be counted as a two-day placement as it
2 had to place 35-50 graduates each month as it grew so fast. And LAFS could only
3 afford to pay for jobs lasting two days, because even at \$10-12 an hour, between
4 420-600 students a year could only be momentarily employed. So, LAFS claimed
5 that even two days of work as a production assistant, furniture mover, runner, or
6 even showing up for a position that was not really needed would count. LAFS then
7 padded its records with wildly imaginative claims that its graduates actually had
8 freelance careers. This was necessary to sidestep traditional employment
9 requirements by tricking or coercing LAFS graduates into signing freelance
10 verification forms before they were paid and instructing its “artificial employers”
11 not to pay any LAFS graduate until a freelance verification form, created by LAFS,
12 was signed by each of them. The schemes will be described in greater detail and the
13 evidence for them set forth.

14 **A. The Pay for Placements Scheme**

15 77. Heavener, and others at his direction had set these basic schemes in
16 motion at both LAFS and FS prior to Phillips’ arrival at LAFS. When Phillips came
17 to work as LAFS’ Vice President of Career Development (and Special Advisor to
18 the LAFS Board of Directors,) he was quickly initiated into Heavener’s habit of
19 laundering money through the Greater Kansas City Community Foundation
20 (GKCC) to which Heavener had donated great sums of money several years before.
21 At Heavener’s instruction, Phillips would relay the request to the GKCC that large
22 sums of money be funneled by the GKCC to others. The GKCC would then
23 distribute it, per Heavener’s direction, to other nonprofits, media and production
24 companies which had agreed to “hire,” however briefly, LAFS graduates.

25 78. A variation of this model was used by the Kesslers, when on March 31,
26 2011 Diana Derycz Kessler reported “We have done at least 3 feature films here
27 using our students through Jellyworks or 1st Chance Films.” On October 5, 2011, an
28 executive team meeting discussed the fact that Ben Chaib was achieving the same

1 results the same way: “Ben is hiring grads to film graduations and testimonials. May
2 be hired through Jellyworks.”

3 79. With the growth of LAFS graduates, the GKCC money laundering
4 turned into a large enterprise at Heavener’s direction, with money going to the
5 Fender Foundation, Kids in the Spotlight, the Montalban Foundation, Entertainment
6 Training Through Internships (ETTI) and others to specifically finance the hiring of
7 hundreds of LAFS graduates to inflate their placement rates, a practice which has
8 led the shut-down of numerous for-profit schools. In 2011, ETTI was paid \$13,000
9 for 98 placements, and another \$15,500 for yet more placements, a deal in which
10 Heavener’s accountants were directly implicated.

11 80. LAFS Career Development staff were tasked by Derycz-Kessler with
12 developing a business plan and organizational structure to systematize a plan to
13 create fully 50% of the supposed “jobs” through what were euphemistically called
14 “In-house Production Opportunities” and “Post-Graduate Apprenticeships.” In
15 truth, both categories of “jobs” were paid for by LAFS (and perversely – were paid
16 for with the money LAFS got from the federal government via insured loans or
17 Veteran’s education benefits.) Heavener and Derycz-Kessler reviewed nearly all the
18 communications surrounding the business plan’s formation.

19 81. From 2010-2017, LAFS paid nearly a million dollars to production
20 companies that would “hire” LAFS graduates, typically for two days, and LAFS was
21 on track to pay another \$360,000 for 2017. Given that the Ivar Music Group was
22 paid nearly half of that money for orchestrating placements on the LAFS campus,
23 defendants’ intentional concealment of this relationship from ED is especially
24 egregious. Most significantly, it is the Ivar Music Group contract that LAFS was
25 most careful about concealing from the ED audit team before and months after their
26 LAFS visit because Heavener and Derycz-Kessler knew that if this contract was
27 exposed, it would most certainly terminate LAFS’ Title IV and Veteran’s benefits.
28

1 82. The language written into contracts and agreed-upon arrangements with
2 vendors was built in and/or in cases intentionally camouflaged to specify how many
3 LAFS graduates would be hired in exchange for LAFS' financial support and/or
4 quid pro quos. In September 2011, LAFS paid \$55,000 to sponsor the 3D Film
5 Festival to have 40 of its graduates getting temporary work even though they had no
6 chance of turning these few hours of bought-and-paid-for "employment" into
7 reasonable and sustainable employment. This was done at the direction of and with
8 the full knowledge of Heavener and Derycz-Kessler, both of whom were involved in
9 the email chains discussing and confirming these arrangements.

10 83. Similarly, in August of 2013 LAFS promised one vendor, IES, that it
11 would sponsor a film festival by donating \$30,000 in cash and 5 days of use of the
12 LAFS-owned Ivar theater, rent free (valued at \$25,000). In return, IES would hire
13 whatever 100 graduates LAFS needed placed.

14 84. The alternative to outright cash bribes was to use the Ivar Theater and
15 the LAFS campus to offer free or below-market rental rates for space and equipment
16 to shoot on campus, in exchange for "hiring" whatever graduates LAFS sent them.
17 The entirely bogus nature of these "jobs" is glaringly apparent. In what other
18 environment does the employer have almost no say in *whom* they hire? Yet that is
19 precisely the case here as Phillips, under constant pressure from Heavener to get
20 LAFS graduates hired within specific reporting deadlines to hit 70%, was instructed
21 by Heavener to insist LAFS had to have complete control over the hirings to meet
22 its placement criteria since LAFS cared only about the current cohort of LAFS
23 graduates it needed to place right then, not any alumni who were out of school past
24 eighteen months and had already been reported upon, because LAFS did not have to
25 report on any graduates beyond the current unplaced cohort. For example, in June
26 2015, SKEE TV prepared to walk away from a contract, complaining:

1 “[W]e cannot simply employ grads to fulfill a job placement
2 requirement for LAFS with such high turnover and no value to our
3 growth. This model is ineffective for all three sides including the
4 graduate.”

5 85. The “high turnover” was also directly required by LAFS which would
6 only allow two days of “employment” so it could maximize the number of graduates
7 it claimed had “jobs”. This was a frequent source of tension. In April 2015, LAFS’
8 Compliance Director, Mark Debacco inserted language in yet another contract,
9 explaining:

10 The contract looks fine, except that unless you are otherwise confident,
11 may I suggest verbiage that gives us control over who they engage as
12 opposed to just “LAFS Graduates”. I’ve added some verbiage to article
13 5 that attempts to accomplish this. It is similar verbiage that I put in the
14 Tom Tran deal, which came in handy when they didn’t want to hire
15 who we gave them.

16 86. The tension between the needs of the vendors, productions, and LAFS’
17 effort to “place the unplaceable” continued. In December 2016, Phillips insisted “a
18 daily graduate hire commitment . . . is the single most important factor for us,” and
19 pushed a small production company to hire “10 PAs per day (even if they have
20 limited responsibility)”. That same month, LAFS insisted that if the production
21 company insisted on a five-day stint for the graduates, instead of LAFS’ preferred
22 two-day rotation with another group coming in for another two days, the company
23 would have to agree to further “hires”. LAFS’ unrelenting approach also
24 diminished whatever value there might possibly have been for the veterans who
25 were graduating. In March of 2015, a comedy event wanted to hire veterans who
26 had graduated, yet LAFS insisted that the production had to accept whoever LAFS
27 sent them. Similarly, in December 2015, Phillips had to insist that with one Skee
28 production contract the graduates “hired” by Skee would be whoever LAFS chose to
send them, and that even though they had graduated LAFS, they could not be placed

1 in positions of responsibility – only “supportive roles” so that Skee, after agreeing
2 to pay for the “LAFS graduates who had been thrust upon them,” would still have to
3 hire its own production assistants, sound technicians, lighting technicians, and
4 camera operators.

5 87. LAFS knew these arrangements were highly suspicious and worked to
6 conceal them so it could deny it controlled these “hiring” arrangements. In April
7 2017, just before a Department of Education audit, Phillips, at the direction of
8 Derycz-Kessler and Heavener, assured LAFS’ Vice President of Operations Jenna
9 Langer, who was not aware of, nor informed of these arrangements at Derycz-
10 Kessler and Heavener’s insistence, “[W]e don’t have any written quid pro quo
11 agreements like that anymore ... no one gets paid directly to hire anyone directly.”
12 In May 2017, with the Department of Education auditors barely out the door,
13 DeBacco directed a revision to yet another contract, remarking:

14 “Please remove from the document the verbiage, ‘4 graduate student
15 PA’s will be hired by the production at \$150/day per hire through
16 payroll.’ Where we appreciate Sneak Preview’s willingness to engage
17 LAFS graduates and where we believe you will find LAFS graduates
18 well prepared for entry level on set positions and where we encourage
19 Sneak Preview to engage LAFS graduates whenever you find the need
20 for trained filmmakers (our Career Development Department is always
21 ready to hook you up with some appropriate personnel to meet your
22 needs), it would not be appropriate for the contract to specify same.”

23 88. Even more telling was the second deletion:

24 “Paragraph 7, LAFS does not own the Ivar Theatre. Ivar Theatre is
25 owned by a holding company whose ultimate ownership is the same as
26 the ultimate ownership of LAFS. LAFS leases the Ivar Theatre from
27 the aforementioned holding company and LAFS holds sufficient right
28 to enter into the agreement with Sneak Preview. . .”

ibid. This was part and parcel of the Ivar Music scheme which created
fake placements for nearly a third of all LAFS graduates from 2010-
May, 2017.

1 89. LAFS had to conceal its largest “pay for placement” relationship with
2 Ivar Music Group (formerly known as Heavy Harmony, which both received LAFS
3 funds and hired and paid LAFS graduates). LAFS used these two cut-outs to pay for
4 hundreds of fake “jobs” which it financed with the federal money pouring into its
5 coffers. LAFS controlled who to hire, when to hire them, what they would be paid,
6 how much they would be paid, and even whether they would be paid (conditional
7 upon their signing LAFS’ “Self-Employment Verification forms.) To achieve this
8 LAFS financed a music publishing lab for the sole purpose of creating hundreds of
9 fake jobs, “employing” graduates for two days so LAFS could report “success” to its
10 accreditor. From 2013 to 2015, LAFS paid Heavy Harmony (and later its related
11 company, Ivar Music Group,) \$120,000 a year to create “jobs” for over 550 LAFS
12 graduates.

13 90. In 2012 Heavener held two meetings with Grimaldi and Phillips.
14 Heavener established a “handshake deal”, literally an oral contract through which
15 Heavy Harmony began to operate to create “jobs” for LAFS graduates and Heavener
16 and Kessler agreed that LAFS would finance an on-campus music publishing lab for
17 \$23,000 which would be easy for LAFS graduates to find..

18 91. LAFS’ 2013 first “arrangement” with Heavy Harmony could not have
19 been more blatant as evidenced by the agreement drafted by VP Mark Debacco per
20 Derycz-Kessler. Heavy Harmony was paid \$10,000 per month to hire and pay 12-
21 18 LAFS graduates for two-day jobs. In 2015, this arrangement morphed into a
22 written contract with the Ivar Music Group, also owned by Grimaldi, after Heavener
23 and Derycz-Kessler met with and ordered Grimaldi to create a different sister
24 company (which would become Next Level) to avoid the appearance that LAFS was
25 directly paying money to the same company paying the LAFS graduates. Derycz-
26 Kessler explained to Grimaldi and to Phillips in order to execute the new deal with
27 Ivar Music Group, LAFS needed this to hide the flow of money from LAFS to the
28 ostensible “employer” which it had not done when Heavy Harmony hired LAFS

1 graduates. The 2013 agreement draft between LAFS and Heavy Harmony specified
2 that the money from LAFS was used to pay graduates \$25 per hour for up to 8 hours
3 of work. And the work had to be performed over a two-day period to create LAFS'
4 colorable "placement" claim. In 2016, when LAFS needed more audio and music
5 production graduates hired to reach its placement goals, these monthly payments to
6 Ivar Music Group sometimes spiked to \$13,500 per month if Next Level
7 "employed" up to 24-36 graduates.

8 92. But midway through the contract revisions, LAFS apparently decided
9 that even the ruse of having Ivar spawn Next Level (so Next Level could pretend to
10 "employ" the graduates,) was not enough protection. Although the arrangement
11 evidenced in the 2013 draft contract was the *de facto* operative agreement, the
12 written contract with Ivar Music Group was sanitized to avoid any admission of the

13 behalf of LAFS focused on the subject of music publishing. LAFS shall designate adequate staff as
14 needed to work with IVAR staff. IVAR is responsible for the development and design of curriculum, with
15 input from appropriate IVAR staff and subject to the approval of LAFS, intended to meet the objectives
16 and goal of providing LAFS's graduates with sufficient knowledge and skills for entry level work in the
17 music publishing industry. IVAR is responsible for the setup and configuration and maintenance of the
18 necessary Educational Assets – Training Equipment as well as the engagement of and management of the
19 necessary Educational Assets – Faculty required to operate and deliver the curriculum. IVAR is
20 responsible for the operation and delivery of the workshop curriculum to the designated LAFS graduates
21 in a manner and sequence as required by LAFS in order to meet the objectives and goal of providing
22 LAFS's graduates with sufficient knowledge and skills for entry level work in the music publishing industry.

18 delivery of the intended curriculum. IVAR will also be granted free use of the Ivar Theatre at LAFS to
19 bring in productions which will seek to hire LAFS graduates whenever possible, such grant shall be
20 subject to availability based upon LAFS class meetings schedule as well as third parties which LAFS may
21 book into the Ivar Theatre from time to time. This includes use of the Brick Box VIP area, main room and

20 pay for placement scheme. Beginning in December 2014 or January 2015, the old
21 contract was slowly sanitized so that the final version read:

22 93. Although LAFS disguised the fake job creation scheme behind phrases
23 like "providing LAFS' graduates with sufficient knowledge and skills for entry level
24 work in the music publishing industry," the contract admits that the graduates hired
25 for the workshop were still controlled by LAFS since those hired are still
26 "designated LAFS graduates in a manner and sequence as required by LAFS." *ibid.*

94. Despite the outward-facing disguise, LAFS boasted of this job creation internally to its employees. A slide deck prepared for an all-employee meeting in February, 2015 tells the real story:

The IVAR

Objectives:

- Education Live Sound
- Music Community & Events
- Graduate Job Placement

95. And the “pay for placement scheme continued unabated, with LAFS using its cut-out, Ivar as the bait: “Ivar will also be granted free use of the Ivar Theatre at LAFS to bring in productions which will seek to hire LAFS graduates whenever possible” (according to a March 9, 2015, agreement signed by Defendant Diana Derycz-Kessler). At this February 11, 2015, all-employee meeting, LAFS boasted internally of all its graduates “hired” by the companies LAFS was bribing for this very purpose – including Skee, Wizard World, Heavy Harmony, etc. Derycz-Kessler continued in this vein signing yet another pay for placement contract with Wizard World the very month of the ED audit team’s visit.

96. LAFS could make this boast because, as Phillips described, the Ivar Music Group scheme went on exactly as before, with LAFS selecting grads to be hired based solely on the school's placement needs, stretching out two days of paid work over weeks. And just as Heavy Harmony did before, Next Level withheld the "employees' pay" until they signed the "Self-Employment Verification" forms LAFS demanded of them. In January of 2015, Derycz-Kessler had been personally involved in Skee's contract trading space at the Ivar for guaranteed brief-sting "hiring" for LAFS graduates.

97. Heavy Harmony was founded and owned by George Grimaldi, a former Sony Music executive who owned a contemporary music library (music that is produced to be used in film, television, or radio.) Grimaldi began working for

1 LAFS as an independent contractor in 2013. On April 9, 2014, Derycz-Kessler, told
2 Grimaldi that Heavener was adamant that “There must be separation between the
3 school and you. You cannot be part of the school” and instructed him to establish
4 two independent companies, one to receive money from LAFS, and the other to use
5 some of that money to pay wages to the hundreds of graduates who were briefly
6 employed there. Again, an email from Debacco tells the tale. On January 7, 2014,
7 he wrote to Phillips:

8
9 “I don’t see Ivar Music in the California Secretary of State’s database
10 of business entities. But I do see Heavy Harmony. See below. I assume
11 it is still Heavy Harmony and the name change to Ivar Music has not
12 been processed yet. Is the below our Heavy Harmony and is it a
13 business entity “we” control? . . . Is the below the entity in question
and do we have control of the entity sufficient to obtain insurance
coverage on behalf of the business entity.”

14 98. As with the other companies, Heavy Harmony and Next Level had no
15 control over whom it “hired.” LAFS would send Grimaldi its list of hires for the
16 week who needed to be placed (the ones in a specific cohort to be reported on
17 eighteen months after their graduation from LAFS, and Grimaldi would hire them
18 no questions asked. No other students from any other school other than LAFS were
19 to be hired, and these LAFS graduates did not have to even interview for these
20 opportunities—their hiring was 100% guaranteed.

21 99. Similar arrangements were clearly on offer at FS. Heavener and at
22 least two of his partners, Ed Haddock and Jonathan Phelps, invested in Creative
23 Platinum, a media company owned by John Matta and gave it space on the FS
24 campus, where it “employed” FS graduates. Similarly, Mitch Wright of ESPN told
25 Phillips that ESPN had moved onto the FS campus because it was so inexpensive.
26 On information and belief FS was also the low bidder to get Maker Studios to move
27 to FS, and to also “employ” FS graduates.

1 **B. Pretending the Graduates Have Sustainable Freelance “Careers”**

2 100. Heavener, Derycz-Kessler, Aharoni and other executives knew LAFS’
3 claims about freelance careers would not stand up to scrutiny. As early as February
4 2012, LAFS Vice President of Operations Jenna Langer was suggesting to
5 Heavener, Derycz-Kessler, and Phillips that before evidence of graduate “self-
6 employment” was submitted to ACCSC for review, “placement records reflecting
7 ‘self-employments’ **will have no actual dates of employment listed, just ‘self-**
8 **employment’ written on them.”** Also, “**Updated photocopies** (not masters) of
9 docs that were **originally flagged as potentially problematic**’ will be provided ...”
10 Jenna Langer and “Compliance” Director Mark Debacco also directed that CD staff
11 “update” graduates’ resumés when a “placed” graduate had “helpful information
12 that could simply look good. Pursuant to January 2012, instructions from Derycz-
13 Kessler, much of this was done at her direction.

14 101. Under pressure from Heavener, LAFS kept lowering the bar for “proof”
15 that its graduates were somehow self-employed. In August of 2013, the former head
16 of ACCSC, who was then an LAFS consultant pronounced that if “we have made
17 and documented multiple attempts to contact graduates to no avail, but have
18 evidence that they are in fact working, then we should document that and count
19 them as placed.”

20 102. By 2014, LAFS was listing one and two day “jobs” with its “pay for
21 placement” partners as evidence that a graduate’s employment was “sustainable.”
22 LAFS elected to interpret the ACCSC Guidelines for Employment Classification,
23 Appendix VII of ACCSC’ Standards of Accreditation as meaning that two days of
24 employment was somehow evidence of reasonable sustainability. And as noted,
25 *supra*, the “jobs” invoked by LAFS were not jobs in any sense of the word. The
26 graduates did not apply, were not interviewed, and did not go through a hiring
27 process. They simply showed up when and where LAFS officials told them. And as
28 also noted *supra*, the graduates were kept from being asked to take on any real

1 responsibilities, and frequently worked moving furniture, painting sets, or working
2 on “crowd control”, none of which made use of their purported training in the
3 technical aspects of film production, animation, or audio engineering as revealed by
4 2015 email exchanges between a vendor and Career Development, and a 2016
5 database compiled by Career Development. This has long been standard procedure.
6 In 2012 one graduate was counted as employed because he had a “front of the
7 house” job in a comedy club. “Front of the house” is an industry term for an
8 audience-facing position, taking tickets, preparing or serving drinks, etc. In 2016
9 LAFS’ Director of Alumni Engagement, Joe Byron estimated that only 20% of the
10 graduates were actually employed in the industry.

11 103. Integral to this scheme was forcing, and in most cases simply tricking
12 graduates to sign forms claiming that they had actively embarked on “careers”
13 seeking freelance work. LAFS desperately needed a scheme to create evidence of
14 “self-employment” so LAFS compliance executives developed a form they insisted
15 everyone in Career Development use and give to employers to pass out to LAFS
16 graduates. In 2012, LAFS would count a graduate as placed if there was “any
17 evidence at all that they were working”, or even trying to get work. In addition to
18 lying, LAFS sometimes resorted to outright trickery. In a 2012 email exchange that
19 included the compliance manager, Debacco, an LAFS “advisor” wrote about that:

20 I need to be sneaky with this and have her quickly sign whatever we
21 need all in one shot when she first arrives. Once she signs what we
22 need I’m going to inform her there is no job for her and that
23 threats/ultimatums don’t work out so well in the real world.

24 104. George Grimaldi of the Ivar Music Group and Heavy Harmony has
25 confirmed that LAFS controlled the graduates he “hired” were told (after traveling
26 to the LAFS campus for “fake work” and before they ended the seminar on the
27 LAFS campus) that they would not get their two-day paychecks unless they signed
28 LAFS forms claiming “I have continued to pursue freelance opportunities which are

1 related to the training which I received. [¶] By pursuing freelance work, I am
2 continuing to progress toward achieving my career objectives. I am taking steps
3 toward building a client base, and I am earning income from industry-related
4 services rendered.”

5 **C. 2017 False Statements to United States Department of Education**

6 105. To survive, LAFS repeatedly lied on the Program Participation
7 Agreements which require LAFS to attest that it was not paying incentive
8 compensation to the sales force. It then had to maintain those lies to an ED audit
9 team that visited the school in May, 2017.

10
11 **From:** Cupp, Jason
12 **Sent:** Wednesday, May 3, 2017 2:09 PM
13 **To:** McAuley, Patricia <Patricia.McAuley@ed.gov>
14 **Cc:** Espinosa, Adeline <Adeline.Espinosa@ed.gov>
15 **Subject:** Response to Follow-Up Question on Employer Agreements

16 Patricia,

17 Thank you for the recent e-mail and we are happy to provide additional information regarding various arrangements
18 LAFS had with entities from 2014-2016. As we mentioned in our most recent submission, LAFS does not have any
19 agreements with employers or potential employers that involve payments related to the placement of graduates and
20 similarly had no such arrangements during the referenced period. However, the school has entered into various

21 program advisory/support efforts. None of these arrangements contemplated any direct hiring by these individuals
22 and there is no expectation for them to do so. In addition to Dan Morrell (d/b/a Mix Mastered Studios), Del
23 Breckenfeld (d/b/a Music Depot) and Simone Bartesaghi (d/b/a Siba Media), described in the prior submission, LAFS
24 also utilized the occasional services of the following from 2014-2016: Joe Mazzone (d/b/a Another Music Library,
25 LLC), J4U Entertainment, Inc., the Ricardo Montalban Foundation, and Adrian Ross (d/b/a Media Music Productions)
26 during the 2014-2016 period. Due to time constraints involved in compiling information for the latest request, we
27 have not discussed all the details for each, but are happy to discuss before, during, or after the upcoming visit.

1 106. This was entirely untrue. Less than four months before this email to
2 ED LAFS President and CEO Derycz-Kessler signed a contract with ABC stating:

3 **10.1 To help Producer with the Production, as a minimum, Producer agrees to**
4 **retain the services of the Los Angeles Film School's Graduates pursuant to a**
5 **separate Agreement between Producer and the Graduates and according to the**
6 **following schedule:**

7 **LAFS ABC Final Executable**

8 **Date(s): January 20, 24, 25, 26 & 27, 2017; # of Graduates: 10 (over the**
9 **course of the 5 day shoot) @ \$112.00 per day.**

10 **And**

11 **Date(s): TBD; # of Graduates: 15 (for 2 days each, within 90 days of shoot**
12 **dates, on any other ABC shoot at any location) @ \$112.00 per day.**

13 107. LAFS continued to lie to the ED auditors. Before arriving at LAFS the
14 ED requested additional information about any “arrangements or agreements the
15 school had with employers or potential employers”, its claimed gainful employment
16 statistics, and the length of employment behind each claim. The school claimed that
17 “[w]ith respect to regular employment, LAFS typically requires that the graduate be
18 employed for at least a week to be considered sustainable for reporting to ACCSC.”
19 Although the school admitted that it considered two days of work sufficient for the
20 “self-employed” graduates, it specifically hid the hundreds of jobs LAFS bought
21 through its “pay for placement” scheme.

22 108. Although LAFS never stopped lying to ED, they did accelerate their
23 evasive actions. Executives laid the groundwork for this before the auditors arrived.
24 On April 28, 2017, “Compliance Director” Debacco claimed to have “just learned”
25 LAFS had been improperly counting many students as self-employed based on
26 rumors instead of signed attestations from the graduates. In June 2017, Phillips was
27 forced out of his Vice President/Special Advisor to the Board of Directors role by
28 Heavener immediately after the ED visit in May 2017 and given an "LAFS & FS
Board-identified consultant role" which removed Phillips from all oversight of

1 Career Development but preserved his salary, benefits, office, and staff support.
2 LAFS President & CEO Diana Derycz-Kessler resigned from both roles on July 14,
3 2017 (as she feared losing her law license and was certain million-dollar fines and
4 closures for LAFS and FS were imminent.) This was confirmed to Chaib by LAFS
5 Vice President of Operations Jenna Langer who told Chaib "Diana resigned to save
6 her law license because she signed the contracts that authorized LAFS to buy all
7 those jobs for LAFS graduates for so many years with government funds, and her
8 and the owners needed Dave to be the guy they blamed their schemes on."

9 109. Nor did this stop after the audit. In 2019, Phillips reported to Tammy
10 Elliott that "Angelia worked with from the Music Supervisors' Guild to book 40-
11 something "2 day" gigs by utilizing our facilities which still afforded us hires when
12 needed..." George Grimaldi recently learned this year, in May 2024, from a current
13 LAFS employee in Career Development, that LAFS' pay for placement deals still
14 exist on the LAFS campus with the Music Supervisors Guild under LAFS President
15 Tammy Elliott

16 110. LAFS' deception continued notwithstanding (or in conjunction with)
17 these cosmetic changes. After the ED audit team left, it followed up with some
18 document requests based on information LAFS gave to the auditors. It could not,
19 however, follow-up on the information purposely withheld from them. Although a
20 number of the arrangements with pay for placement vendors were listed by LAFS,
21 **Ivar Music Group**, by far LAFS' largest vendor accounting for approximately 137
22 LAFS "two-day" audio graduate hires per year, which received the most money
23 from LAFS and generated the most placements for them, was missing from LAFS'
24 disclosures to the ED. Phillips was instructed by LAFS to say nothing to ED of this
25 particular relationship during interviews, and LAFS submitted nothing before or
26 after the ED visit to the ED which would have clearly disclosed LAFS' contractual
27 relationship with Ivar Music Group to receive LAFS funds to train, hire, employ,
28 and verify payment to hundreds of LAFS graduates on campus from 2015-2017. In

1 addition, four months later, in October, 2017, Heavener emailed Phillips, then a
 2 consultant with LAFS, to personally request Phillips check his files and send him
 3 any evidence that could be used for ED discovery that mentioned “every CD
 4 vendor” LAFS dealt with from 2013-2017, except Ivar Music Group and George
 5 Grimaldi, were both intentionally removed from the list to be provided from LAFS
 6 to the ED, again, as LAFS was betting on the ED not discovering them any
 7 connection between Grimaldi, the Ivar Music Group, and Next Level.

8 111. To enhance the ruse, LAFS Chief Financial Officer Pam Payawal sent
 9 the Department of Education a budget that falsely removed over \$400,000 of
 10 payments to the Ivar Music Group. The actual budget for 2014 through March or
 11 April of 2017 was this:

A	B	C	D	E
The Los Angeles Film School				
List of Vendor Payments				
For years 2014 - 2017				
	PAYMENT			
Vendor Name	2014	2015	2016	
Media Music (Adrian Ross)	5,400.00	13,320.00	10,500.00	5,250.00
Another Music (Joseph A Mazzone)	4,428.00	14,231.00	4,250.00	9,040.00
Cecil Cox	8,000.00	-	-	-
Mixmastered Acoustics (Dan Morrell)	20,000.00	35,000.00	55,475.00	20,000.00
Dash Radio Inc.	-	1,762.50	-	-
Entertainment Marketing Concepts, Inc. (Music Depot LA/Del Breckenfeld)	-	18,500.00	49,825.00	18,825.00
Plan B Events, LLC (Del Breckenfeld)	71,000.00	16,000.00	-	-
Heavy Harmony	4,000.00	-	-	-
Ivar Music Group	135,000.00	120,000.00	120,000.00	43,500.00
J4U Ent., Inc.	-	-	10,625.00	12,750.00
Montalban Foundation	24,000.00	1,000.00	-	-
Siba Media, LLC (Simone Bartesaghi)	42,000.00	32,875.00	48,000.00	11,850.00
Thomas Tran	5,000.00	-	-	-
	318,828.00	252,688.50	298,675.00	121,215.00

1 112. However, Payawal told Phillips that she had been instructed by
2 Heavener to send a budget that included only the vendors on this list:

3
4

Vendor
Another Music (Joseph A Mazzone)
Avalon Hollywood
Blend Studios LLC
Dan Morrell
Entertainment Marketing Concepts, Inc. (Music Depot LA)
Heavy Harmony Publishing, Inc.
J4U Ent., Inc.
Media Music (Adrian Ross)
Mixmastered Acoustics
Montalban Foundation
Plan B Events, LLC
Siba Media, LLC

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16 113. This misrepresentation was material to the Education Department's
17 decision to let LAFS off with the lightest of wrist slaps, as it did not know, and did
18 not have to address the vast sums of money being paid to an entity that "employed"
19 hundreds of LAFS graduates each year.

20 114. On information and belief that in presentations and correspondence to
21 ED, LAFS specifically avoided mentioning anything about the Heavy Harmony
22 arrangement and the Ivar Music Group contract which were financed by LAFS
23 through the use of over \$1 million in federal funding as line items in yearly Career
24 Development budgets approved by LAFS, Heavener, and Derycz-Kessler which
25 disclosed and proved the exact nature of the consistent pay-for-play hiring schemes
26 conducted directly from the LAFS campus.

D. LAFS Has Violated the California Education Code and Had BPPE Known the School's Operation Would Not Have Been Approved, Leading to a Loss of CSAAVE Certification

115. Since 2016 the CSAAVE for veterans must also certify that BPPE has approved the school. This depends upon the school's compliance with the California state regulatory scheme. LAFS has falsely claimed compliance with state requirements. First, the California Education Code prohibits:

- Overstating the availability of jobs upon graduation;
- Advertising concerning job availability ... unless the information is accurate and not misleading; and
- Making any untrue or misleading statement related to placement or employment

(Cal Ed. Code §94897 (b),(c), and (j))

116. LAFS former VP of Admissions Chaib reports that the sales reps were told they could tell students anything about placement rates that was in LAFS' submissions to ACCSC. But the ACCSC submissions did not include the information that most of the "gainful employment" reports were based on LAFS' paying people to "employ" the graduates, or that the average industry-related income for graduates was estimated to be \$0-5,000 per year, or that the graduates were not legitimately hired for the two-day "jobs" the school paid for, or that many of those "jobs" did not involve doing any of the work for which they had been supposedly trained.

117. Similarly, LAFS falsely claimed to be complying with 5 Cal. Code of Regulations §7112(d)(3)(C) which allowed it to claim credit for a placement if:

"The graduate is self-employed or working freelance as reasonably evidenced by, but not limited to, a business license, fictitious business name statement, advertising (other than business cards,) website, or business receipts or other evidence of income from

1 business; or an attestation signed by the graduate of self-employment or
2 freelance work and dated after graduation.”

3 118. Forcing graduates to sign an attestation by withholding “pay” from
4 them unless they did so, or by otherwise tricking them into signing is not reasonable
5 evidence that the graduate is working freelance. Concealing these facts was material
6 to BPPE’s continued tolerance of LAFS, without which it CSAAVE certification
7 and Veterans’ benefits would have been lost.

8 **E. The Incentive Compensation Ban Scheme**

9 Dana and Bill, I will send you start performance for the reps via txt not
10 email . . . We need to remember safe harbors were removed and we do
11 not want email asking for start numbers when considering
12 compensation.

12 Ben Chaib to Bill Heavener, 2015

13 119. Defendants LAFS, Heavener, and both of the Kesslers violated ICB,
14 as codified in 20 U.S.C. § 1094(a)(20), and of the VA regulations, as codified in
15 38 U.S.C. § 3696(d), (collectively, “the ICB”) by linking sales reps’ promotions
16 and corresponding salary increases to their success in securing student
17 enrollments. LAFS set monthly enrollment quotas and sales reps who met or
18 exceeded them were promoted to the next level and received a salary increase, in
19 addition to other employment perks (casual dress, private offices, eligibility to
20 work highly paid overtime hours, etc.) And reps who failed to meet the quotas
21 were demoted or eventually fired.

22 120. Incentive compensation schemes for schools receiving Title IV support
23 have been illegal for over thirty years. Congress banned them after receiving
24 numerous reports that sales reps were wildly misleading potential customers so they
25 could earn commissions for enrolling them. Efforts to disguise incentive
26 compensation have been at the heart of numerous private school FCA cases, and
27 ours is no exception. Relator Ben Chaib, former Vice President of Admissions was
28 recruited, *inter alia*, to LAFS for this purpose. Chaib’s extensive experience with

1 these schemes in the for-profit school industry began in 2001. By the time he
2 reached LAFS in 2008 he had worked for University of Phoenix which only
3 bonused and promoted its sales staff based on enrollments they sold, called “starts”³.
4 Although sales reps were nominally evaluated on various “soft skills,” none of them
5 mattered. The real criteria for bonuses, salary increases, or promotions was a sales
6 rep’s start performance. In 2004, Chaib moved to Career Education Corporation’s
7 American International University division. There, Chaib reports, salaries would be
8 increased or decreased at least twice a year, again, based primarily on starts.⁴ Chaib
9 then went to Heald College, whose sales operation was quite similar, and then to
10 Kaplan University.⁵

11 121. A headhunter for LAFS recruited Chaib away from Kaplan for a
12 meeting with Heavener and the Kesslers at the Beverly Hills Hotel. At Heavener’s
13 direction, LAFS hired Chaib and instructed him to build and disguise an incentive
14 compensation program at LAFS. The goal was to maximize profits above all else.

15 122. As directed, Chaib, and his then-wife, Amber Chaib, who was hired as
16 a high-ranking sales executive, proposed to Heavener a five-level pay scale with
17 salaries ranging from \$45,000 to \$90,000 per year, with “Starts Required to be
18 Promoted” as the sole criteria, ranging from 45 to 105 “starts” every six months
19

20 ³ The University of Phoenix paid \$80 million in 2009 to settle a declined *qui tam* action,
21 including \$67.5 million to the United States with another \$12 million in attorney’s fees.

22 ⁴ In 2019 Career Education Corporation resolved a false claims case that was pursued by a
23 team of state AGs. CEC waived its right to collect nearly \$500 million in student debt, paid the
24 states \$10 million, and another \$22 million to relators’ counsel. Federal involvement appeared
25 minimal as ED’s leadership included ED’s General Counsel who had represented CEC, the Acting
26 Undersecretary of Education had been a senior Vice President, and a senior advisor to the
Secretary had been CEC’s Vice President of regulatory operations. In April, 2024 the United
States intervened in an incentive compensation case, United States ex rel Hitrost, LLC v. Study
Across the Pond, LLC, et. al. 1:21-cv-10274, D. Mass.

27 ⁵ In 2015 Heald settled its FCA case for \$30 million, although it was based on falsified
28 employment statistics, not illegal sales incentives.

until 2011. After July 2011 the criteria to be promoted were changed to 120 to 210 starts per year. This meant that even a low-lever “Rep 1” was generating \$1.9 million in tuition money, and the highest paid reps were generating \$4.5 million in annual sales. Although LAFS mimicked CEC and the University of Phoenix by claiming to evaluate reps by many other criteria, just like those defendants, enrollments were the only thing carefully tracked and the only thing that mattered. Reps whose enrollment pace faltered were swiftly demoted or fired, and it was made clear to them that the demotion was based on their sales statistics. The stratification was rapidly implemented. Although sales reps could theoretically earn “merit increases” that were at least partially based on their “soft” skills, those merit increases ranged from 0% to 5% of salary, so a rep earning \$50,000 per year could get an extra \$0-2500m meaning they could get nothing. The merit increases paled in comparison to the \$10,000 – 24,000 set increase at each level, which looked like this:

Starts Required to be Promoted

Admission Rep I to Admissions Rep II	Admission Rep II to Senior Rep	Senior Rep to Master Rep	Master Rep to Executive Rep
60	75	90	105

The Promotional Salary Ranges for each job level are:

Level	Promotional Salary Range		
Admissions Rep I	\$ 45,000	to	\$ 54,000
Admissions Rep II	\$ 55,000	to	\$ 64,000
Senior Admissions Rep	\$ 65,000	to	\$ 74,000
Master Admissions Rep	\$ 75,000	to	\$ 80,000
Executive Admissions Rep	\$ 81,000	to	\$ 90,000

1 And in the fall of 2017, after the ED audit, it was raised to:

2
3 **The Salary Ranges for each job level are:**

4

Level	Salary Range		
Admissions Rep I	\$ 45,000	to	\$ 57,000
Admissions Rep II	\$ 55,000	to	\$ 69,000
Senior Admissions Rep	\$ 67,000	to	\$ 87,000
Master Admissions Rep	\$ 85,000	to	\$ 99,000
Executive Admissions Rep	\$ 95,000	to	\$ 123,000

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9 123. In July of 2011, with the elimination of “safe harbors” that LAFS felt
10 allowed it to get away with incentive compensation, Chaib, at Heavener’s direction,
11 issued a new compensation policy that was exactly like the previous one, but simply
12 eliminated mention of the start requirements as *the* criterion. But as shown by his
13 2015 warning to Heavener, starts – and only starts mattered. Closer regulation of
14 compensation practices barred schools from adjusting a rep’s supposed “salary”
15 more than once a year to reduce the effective pressure from disguised incentive
16 compensation schemes. But LAFS circumvented this with its “overtime” program.
17 Reps that were meeting their sales quotas – at whatever level, were allowed to work
18 5 hours of overtime per week, or 260 hours per year, earning 150% of their hourly
19 wage. For even a Level I rep earning \$20 an hour, this was an extra \$5,000 per year.
20 Reps who failed to meet their sales quotas would lose their right to overtime, which
21 was an immediate goal to increase starts, even before they were demoted or fired.

22 124. Beginning September 1, 2017 LAFS instituted a new incentive
23 compensation plan in an effort to conceal its operation from the government. The
24 new plan allowed sales reps to be bonused \$250 for each student they recruited who
25 graduated from a bachelor degree program and \$150 for each associate degree
26 graduate. For a salesperson even working only at the Rep II level, this could mean a
27 bonus between \$18,000-30,000 per year.

1 125. But bonus eligibility was still linked to sales volume. Only sales reps
2 in “good standing” were eligible to receive student graduation bonuses, And LAFS’
3 practice was to put any rep who was not making their sales quota onto a
4 “Performance Improvement Plan”, thus removing them from “good standing” and
5 making them ineligible for bonuses. This was intended to and did have the effect of
6 ensuring that only reps who had met their sales quota were eligible for bonuses.

7 126. The incentive compensation system was so integral to the sales effort
8 that it was used on the managers as well in an incentive structure mirroring the
9 illegal incentives for the sales reps. Managers would be promoted or demoted based
10 solely on their team’s sales performance. Although “enrollment managers” could
11 legally be the targets of incentive compensation based strictly on sales results
12 (“starts,”) aggressively doing so guaranteed that they would closely manage the
13 sales reps under them to ensure that only sales results would be rewarded, and only
14 their lack would be punished.

15 127. Perversely, even ostensible compliance efforts were turned into
16 weapons that protected the most effective high-pressure sales reps and punished the
17 less effective ones. When regulatory changes made it riskier to demote less
18 aggressive reps, Heavener’s solution was to fire them instead. Heavener would
19 demand of Chaib, “Why are these people still here? They’re not hitting their
20 numbers. You should get them off the team.” Chaib explained to Heavener that they
21 /could not fire people just “for numbers only” so LAFS devised a scheme to use one
22 of its few compliance tools to find pretextual reasons to fire them.

23 128. LAFS had a system for covertly monitoring sales calls. Although
24 LAFS claimed in a self-evaluation report to ACCSC that every sales rep had at least
25 one call monitored each week, this was untrue. Enrollment managers would target
26 the calls of low-sales reps and monitor them, waiting to detect some violation of
27 policy which they would then seize upon as a pretext to fire the rep and hope that
28 the replacement was more aggressive. Since the high-selling reps went

1 unmonitored, the tricks they used, and half-truths they told, went undetected and
2 uncorrected.

3 129. Because these tactics are wildly successful, Heavener continued to
4 pressure the sales department, demanding reports on a daily basis to remind his
5 managers that past performance matters little – only today’s results will save them.

6 130. Heavener and Derycz-Kessler continued their own active involvement
7 in, and direction of, these manipulations. Just two weeks after the ED audit they
8 were reviewing and approving reports of ongoing plans to reduce the bonuses of
9 sales reps who were not meeting their quotas after their prior sales exploits won
10 them promotions.

11 **F. Substantial Misrepresentations About the Job Market and Likely**
12 **Employability**

13 131. Both Relators witnessed multiple examples of 34 CFR 668.74
14 violations which were encouraged and directed by Heavener. The “Graduate sizzle
15 reel” that was used on both the LAFS and FS campuses on every tour for
16 prospective students sells an utterly illusory vision of graduate success. The “sizzle
17 reels” used by the schools include chryrons (small words, usually at the bottom of
18 the screen, purporting to show graduates who may have worked once on a film).
19 This is used to create the impression that graduates commonly work on major film
20 productions. This is so false that it is unconscionable. In fact, a FS consultant hired
21 by Heavener named Rick Breden was asked for a detailed report on graduate
22 success and when he turned in his report, it was so bad Heavener shelved it. Only a
23 literal handful of the thousands of graduates get to work on such productions.

24 132. Similarly, each campus produces an annual Hall of Fame and Spotlight
25 ceremony to lionize perhaps one graduate out a thousand who has success in the
26 entertainment industry, but conceals the majority of graduates who never get into
27 entertainment for more than a few days, and have no career whatsoever.
28

1 133. In fact, Heavener told Phillips that the schools are only required to
2 report placement once, 18 months after graduation and bragged how they could
3 launch and keep any degree program open for at least 5 years before it was shut
4 down by accreditors. Heavener explained that his business model at both campuses
5 was to apply for, launch and market another similar degree varying only the slightest
6 of details before the first one was even shut down. Phillips and Chaib so both
7 campuses regularly do exactly this, as was discussed frequently in senior level
8 management meetings.

9 **G. The Individual Defendants Knew Exactly What Was Going On –**
10 **and Furthered It.**

11 134. Although Relators do not know if the Kessler defendants had any
12 financial interest in FS, as opposed to LAFS, they witnessed both Paul Kessler and
13 Diana Derycz-Kessler join with Heavener in discussing affairs at FS, and in
14 advising Heavener how to effectuate illegal schemes.

15 135. Within the first three months after Chaib was hired, he participated in a
16 meeting with Heavener and both of the Kesslers to discuss incentive compensation.
17 Derycz-Kessler had previously informed Chaib that according to Heavener, some
18 FS representatives were able to earn up to \$300,000 per year. Once the incentive
19 compensation multistep salary structure had been approved for use at LAFS,
20 Heavener, with Derycz-Kessler's knowledge, instructed Chaib to share it with FS
21 sales directors, and to work with them on FS' program.

22 136. In April, 2011, for example, Heavener instructed Chaib to contact Full
23 Sail Senior Vice President of Admissions, Matt Pengra. These discussions (via text)
24 continued through the next month as Chaib worked to design a structure for FS
25 similar to the structure Heavener and Derycz-Kessler had approved for LAFS, with
26 discussions taking place in December 2012, July of 2013, and November -
27 December 2014.

1 137. In November, 2021, Heavener again instructed Chaib to work with
2 FS's Chief Financial Officer, Deborah Lamb-Magruder and Chief Operations
3 Officer Ken Goldstone about sales ("starts") volume.

4 138. In 2017 Heavener had Chaib contact FS VP of Admissions, Tom
5 Lacroix about incentive compensation structures for the sales reps, a discussion that
6 continued through

7 139. The degree of integration was so great that Heavener had Chaib, on
8 October 28, 2014, ask Goldstone about presenting financial information to the
9 "board" of owners that controls all three schools. (Earlier that year Chaib and
10 Goldstone discussed the schools' involvement with WWE (Worldwide Wrestling
11 Entertainment) Similarly, when James Winstead, LAFS' Vice President of
12 Marketing wanted to increase publicity for LAFS-specific advertising, on June 7,
13 2018, Chaib asked Goldstone for suggestions.

14 140. Another example is a January, 2016 "Online Growth Summit" was
15 scheduled for the Full Sail campus with the anticipated participants including
16 Heavener, both Kesslers, seven high level executives from FS, six high level
17 executives from LAFS (in addition to both of the Kesslers), and from the third
18 school Heavener, Haddock, and Phelps owned, Rocky Mountain School of Design
19 Academy.

20 141. Derycz-Kessler and Heavener had numerous meetings with Chaib
21 regarding compensation plans and salary adjustments. Each time a new
22 compensation plan was being created or an existing one revised for any individual
23 sales rep or group of reps, Derycz-Kessler participated in the review and approval
24 process. Heavener, in Derycz-Kessler's presence most typically began the
25 discussion asking "what are the start results?". It was clear in each of these
26 conversations that a sales rep's compensation was closely tied to that rep's sales
27 volume. Despite (or because of) the obvious illegality Derycz-Kessler, after
28

1 reviewing the sales performance data, would give written authorization for any pay
2 increases she and Heavener agreed upon.

3 142. Heavener knew this was a heavily regulated area, as he made multiple
4 comments about schools “getting burned” both directly to Chaib and in meetings
5 where Chaib was present. Nonetheless, Heavener repeatedly emphasized to Chaib
6 that his goal was to incentivize sales performance without technically calling it
7 incentive-based.

8 143. On September 22, 2015 Paul Kessler replied to an email inquiry from
9 David Wurth, who was looking for videographers. Kessler told Wurth that he
10 would have to pay for “interns” but hastened to assure him, “I am sure we can assist
11 in mitigating costs” in violation of 34 CFR 668.74 (g)(ii)(A). Kessler directed
12 Wurth to work with “Diana’s team” and one of Wurth’s employees, in a follow-up
13 email helped conceal the involvement of both Kesslers, saying that she was moving
14 them to “bcc” status on the email chain. Phillips replied to a later email, explaining
15 to Wurth’s associates, with the Kesslers still presumably on “bcc” status, that the
16 Kesslers will have to approve the budget for the project.

17 144. On October 1, 2015, Paul Kessler responded to another person looking
18 to use LAFS’ space or equipment, stating that “Grads are normally available for this
19 type of thing. I have copied Dave Phillips for this purpose as he manages this
20 process as VP overseeing this process. Know that under current CA law
21 interns/grads do require payment for their services yet it is normally very fair and
22 reasonable and the school normally goes further supporting these efforts with
23 facilities and equipment when available.”

24 145. On November 25, 2015, Jon Cody of TV4 wrote Paul Kessler, offering
25 to hire “no less than **200 grads next year**” (emphasis in original). Heavener and
26 Derycz-Kessler were both copied on the email. Within five days Cody’s associates
27
28

1 were scheduling a walk-through of the LAFS spaces on offer, with the knowledge of
2 both Kesslers.

3 146. Similarly, on July 17, 2016, John Matta of Wizard World wrote to
4 Diana Derycz-Kessler, ccing Paul Kessler and Randy Malinoff from Wizard World
5 to propose “that Wizard World would house its streaming media operation at the
6 Los Angeles Film School. From the point of view of Wizard Word this would be a
7 truly mutually-beneficial relationship because the contemplation is that the entire
8 staff of the Wizard World streaming media service would be composed of graduates
9 of the Los Angeles Film School.” Maatta went on to express his expectation that the
10 required capital expenditure for the space would be "extremely
11 manageable". Derycz-Kessler forwarded the entire proposal to Phillips who, as Paul
12 Kessler had previously noted “manages this process as VP overseeing this process”.

13 **H. These Violations Are Material to Payment and Payment-Related**
14 **Decisions.**

15 147. As noted above, 20 U.S.C. §1094 authorized the Secretary to
16 promulgate regulations (34 CFR 668.71 et. seq.) which define materiality for
17 purposes of these violations. Misrepresentations, including omissions, which
18 influence or have the tendency to influence Department officials, state regulators,
19 accreditors, or students or would have the tendency to rely upon to their detriment.
20 The Department of Justice filed a Statement of Interest in *United States ex rel*
21 *Handal, et. al. v. Center for Emp. Training*, 2:13-CV-1697 (E.D. Cal.) explaining
22 exactly that.

23 148. Also as noted, the ban on incentive compensation is taken so seriously
24 by the United States that it is buttressed by a statute and regulation. 20 U.S.C. §
25 1094(a)(20), 34 C.F.R. § 668.14 (and the U.S. Department of Veterans Affairs (the
26 “VA”) regulations codified in 38 U.S.C. § 3696(d), and the Program Participation
27 Agreement itself.
28

149. The United States has prosecuted lawsuits, administrative actions, and has absolved borrowers of hundreds of millions of dollars in student loans because schools have sought to disguise their violations of the incentive compensation ban. The United States has also filed Statements of Interest in numerous False Claim Act cases in support of relators seeking to enforce the ban in cases the Department of Justice has declined.

150. Failure to meet gainful employment guidelines or misleading statements about the employability of a school’s graduates is also material to payment decisions (20 U.S.C. §1088(a)(1)(A)(i)) and to the BPPE’s CSAAVE certification without which Veteran’s Administration money (Cal. Educ. Code §94928(e)(1) carefully defining “gainful employment as holding a **“single position”** (within six months of graduation.).

151. The materiality of the gainful employment requirement was certainly clear to LAFS's President, Derycz-Kessler. Beginning in the second half of 2016 she frequently came to M7 senior executive meetings with articles and other accounts of other schools which had been shut down or sued by the Government for their failure to meet these deadlines and repeatedly expressed concern about LAFS.

FIRST CAUSE OF ACTION

31 U.S.C. § 3729(a)(1)(A)

Los Angeles Film School's False Claims

Against Defendants Los Angeles Film School,

Bill Heavener, Paul Kessler, and Diana Derycz-Kessler

152. Relators repeat and replead each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

153. As set forth above, from at least 2010 to the present, and ongoing, Defendants knowingly presented or caused to be presented false or fraudulent claims that LAFS was eligible to participate in programs that would result in the receipt of payment from the United States, in violation of the FCA 31 U.S.C. § 3729(a)(1)(A).

1 Specifically, Defendants sued in this cause of action knowingly submitted or caused
2 to be submitted false certifications regarding compliance with the requirements of
3 Title IV of the HEA, in, *inter alia*, their PPAs, to obtain LAFS' eligibility to
4 participate in Title IV programs and receive Title IV funding, when in fact LAFS'
5 gainful employment practices, incentive compensation practices, and substantial
6 misrepresentations did not and do not comply with Title IV of the HEA and its
7 associated regulations in ways set forth in this Complaint above. The PPAs call for
8 the signature of either a school's President or Chief Executive Officer. Derycz-
9 Kessler was both. On information and belief, either she signed the PPAs or
10 authorized or directed someone else to sign them.

11 154. Regardless of who signed them, each of the defendants knowingly
12 engaged in actions which caused the certifications made in the PPAs to be false. The
13 certifications required the promise that the school "will not provide any commission,
14 bonus, or other incentive payment based in any part, directly or indirectly, upon
15 success in securing enrollments or the award of financial aid, to any person or entity
16 who is engaged in any student recruitment or admission activity, or in making
17 decisions regarding the award of title IV, HEA program funds." These certifications
18 were false because LAFS created fake jobs to falsely represent the school as meeting
19 gainful employment standards and promoted and gave corresponding salary
20 increases, demotions, and terminations of sales reps based directly, or indirectly, on
21 their success in securing student enrollments, and substantially misrepresented core
22 elements of the program to students, prospective students, federal and state
23 regulators, and accreditors.

24 156. The Defendants sued in this cause of action also knowingly submitted
25 or caused to be submitted false certifications regarding compliance with the
26 requirements of the VA to obtain GI Bill benefits and other VA education benefits
27 listed herein in, *inter alia*, their application to the SAA, when in fact Defendants'
28 compensation practices did not and do not comply with VA regulations banning

1 incentive compensation and in fact lied about LAFS' gainful employment
2 achievements in ways set forth in this complaint. They also knowingly submitted or
3 caused the submission of G5 drawdown requests, which impliedly certified
4 compliance with the same requirements and were therefore false.

5 157. The Defendants sued in this cause of action knew that LAFS was
6 paying employees based on their success in securing student enrollments and paying
7 others to temporarily employ their graduates and that LAFS' representations to the
8 Government to the contrary were false. Defendants' claims for Title IV funds and
9 VA education funds based on these false representations are fraudulent. When the
10 Defendants request, receive, and retain Title IV funds or VA education funds,
11 Defendants know they are ineligible for those funds because of their intentional
12 violations of the ICB.

13 158. These fraudulent representations were material to the ED's and the
14 VA's decision to make LAFS eligible for these financial aid programs as well as GI
15 Bill benefits and other VA education benefits listed herein, respectively, and to pay
16 funds under Title IV programs and the GI Bill benefits/other VA education benefits
17 listed herein. Therefore, each and every one of the claims Defendants submitted or
18 caused to be submitted violated the FCA. The violations were material in
19 accordance with caselaw interpreting the term.

20 159. In submitting or causing to be submitted such certifications and
21 applications, Defendants acted with actual knowledge, reckless disregard, or
22 deliberate ignorance of the truth or falsity of the claims.

23 160. By virtue of these false or fraudulent claims, the United States
24 suffered damages in an amount to be determined at trial.

25 161. The Defendants are jointly and severally liable to the United States
26 under the False Claims Act for treble damages in an amount to be determined at
27 trial, plus a civil penalty of \$5,500 to \$11,000 (adjusted for inflation) for each
28 false claim they presented and caused to be presented for payment.

SECOND CAUSE OF ACTION

31 U.S.C. § 3729(a)(1)(A)

Full Sail University's False Claims

Against Defendants Full Sail University and Bill Heavener

162. Relators repeat and replead each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

163. As set forth above, from at least 2010 to the present, and ongoing, Defendants knowingly presented or caused to be presented false or fraudulent claims that FS was eligible to participate in programs that would result in the receipt of payment from the United States, in violation of the FCA 31 U.S.C. § 3729(a)(1)(A). Specifically, Defendants sued in this cause of action knowingly submitted or caused to be submitted false certifications regarding compliance with the requirements of Title IV of the HEA, in, *inter alia*, their PPAs, to obtain LAFS' eligibility to participate in Title IV programs and receive Title IV funding, when in fact LAFS' gainful employment practices, incentive compensation practices, and substantial misrepresentations did not and do not comply with Title IV of the HEA and its associated regulations in ways set forth in this Complaint above. The PPAs call for the signature of either a school's President or Chief Executive Officer. Heavener was both the Co-Chairman and CEO of FS at all times material to this action. On information and belief, either he signed the PPAs or authorized or directed someone else to sign them.

164. Regardless of who signed them, Heavener knowingly engaged in or caused actions which caused the certifications made in the PPAs to be false. The certifications required the promise that the school "will not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV, HEA program funds." These certifications

1 were false because FS created fake jobs to falsely represent the school as meeting
2 gainful employment standards and promoted and gave corresponding salary
3 increases, demotions, and terminations of sales reps based directly, or indirectly, on
4 their success in securing student enrollments, and substantially misrepresented core
5 elements of the program to students, prospective students, federal and state
6 regulators, and accreditors.

7 165. The Defendants sued in this cause of action also knowingly submitted
8 or caused to be submitted false certifications regarding compliance with the
9 requirements of the VA to obtain GI Bill benefits and other VA education benefits
10 listed herein in, inter alia, their application to the SAA, when in fact Defendants'
11 compensation practices did not and do not comply with VA regulations banning
12 incentive compensation and in fact lied about FS' gainful employment achievements
13 in ways set forth in this complaint. They also knowingly submitted or caused the
14 submission of G5 drawdown requests, which impliedly certified compliance with the
15 same requirements and were therefore false.

16 166. The Defendants sued in this cause of action knew that FS was paying
17 employees based on their success in securing student enrollments and paying others
18 to temporarily employ their graduates and that FS' representations to the
19 Government to the contrary were false. Defendants' claims for Title IV funds and
20 VA education funds based on these false representations are fraudulent. When the
21 Defendants request, receive, and retain Title IV funds or VA education funds,
22 Defendants know they are ineligible for those funds because of their intentional
23 violations of the ICB.

24 167. These fraudulent representations were material to the ED's and the
25 VA's decision to make LAFS eligible for these financial aid programs as well as GI
26 Bill benefits and other VA education benefits listed herein, respectively, and to pay
27 funds under Title IV programs and the GI Bill benefits/other VA education benefits
28 listed herein. Therefore, each and every one of the claims Defendants sued in this

1 cause of action submitted or caused to be submitted violated the FCA. The
2 violations were material in accordance with caselaw interpreting the term.

3 168. In submitting or causing to be submitted such certifications and
4 applications, Defendants sued in this cause of action acted with actual knowledge,
5 reckless disregard, or deliberate ignorance of the truth or falsity of the claims.

6 169. By virtue of these false or fraudulent claims, the United States
7 suffered damages in an amount to be determined at trial.

8 170. The FS and Heavener are jointly and severally liable to the United
9 States under the False Claims Act for treble damages in an amount to be
10 determined at trial, plus a civil penalty of \$5,500 to \$11,000 (adjusted for
11 inflation) for each false claim they presented and caused to be presented for
12 payment.

13 **THIRD CAUSE OF ACTION**

14 **31 U.S.C. § 3729(a)(1)(B)**

15 **Los Angeles Film School's False Statements Material to False Claims**
16 **Against Defendants Los Angeles Film School, Bill Heavener, Paul Kessler,**
17 **and Diana Derycz-Kessler**

18 171. Relators repeat and replead each and every allegation set forth in the
19 preceding paragraphs as though fully set forth herein.

20 172. As set forth above, from at least 2011 to the present, and ongoing,
21 Defendants knowingly made, used, or caused to be made or used false records or
22 statements material to false or fraudulent claims, in violation of 31 U.S.C. §
23 3729(a)(1)(B). Specifically, Defendants knowingly made, used, and caused to be
24 made or used, false certifications regarding compliance with the requirements of Title
25 IV of the HEA, in, inter alia, LAFS' PPAs, in order to obtain eligibility to participate
26 in Title IV programs and to receive Title IV funding, when in fact, Defendants'
27 gainful employment compensation practices did not and do not comply with Title IV
28 of the HEA and its associated regulations in ways set forth in this Complaint above.

1 Derycz-Kessler was President and Chief Executive Officer and thus occupied the two
2 positions eligible to sign the PPA. On information and belief she either signed the
3 PPA or directed a duly authorized director or agent of LAFS to sign. She therefore
4 either falsely certified or caused the false certifications described in this cause of
5 action, expressly certifying that LAFS met gainful employment standards, that LAFS
6 “will not provide any commission, bonus, or other incentive payment based in any
7 part, directly or indirectly, upon success in securing enrollments or the award of
8 financial aid, to any person or entity who is engaged in any student recruitment or
9 admission activity, or in making decisions regarding the award of title IV, HEA
10 program funds”, and that LAFS did not make substantial misrepresentations about
11 material aspects of its program. These certifications were false because the University
12 promotes and gives corresponding salary increases, demotes, and terminates
13 enrollment sales reps based in any part, directly or indirectly, on their success in
14 securing student enrollments, lies about gainful employment, and substantially
15 misrepresents its program to federal and state regulators, accreditors, students, and
16 prospective students..

17 173. The Defendants sued in this cause of action also knowingly made,
18 used, and caused to be made or used, false certifications regarding compliance
19 with the requirements of the VA to obtain GI Bill benefits and other VA education
20 benefits listed herein in, inter alia, their application to the SAA, when in fact
21 Defendants’ compensation practices did not and do not comply with VA
22 regulations banning incentive compensation in ways set forth in this Complaint
23 above.

24 174. The Defendants sued in this cause of action knew they were paying
25 employees based on their success in securing student enrollments and that their
26 representations to the Government were false. Defendants’ claims for Title IV
27 funds and VA education funds based on these false representations are fraudulent.
28 When the Defendants request, receive, and retain Title IV funds or VA education

1 funds, Defendants know they are ineligible for those funds because of their
2 intentional violations of the ICB. They also knowingly submitted or caused the
3 submission of G5 drawdown requests, which impliedly certified compliance with
4 the same requirements and were therefore false

5 175. In making, using, or causing to be made or used such false records
6 and statements, Defendants acted with actual knowledge, reckless disregard, or
7 deliberate ignorance of the truth or falsity of the claims.

8 176. These false records and statements were material to the ED's and the
9 VA's decision to make LAFS eligible for these financial aid programs and
10 benefits, respectively, and to pay funds under Title IV programs as well as GI Bill
11 benefits/other VA education benefits listed herein. Therefore, each and every one
12 of the statements Defendants sued in this cause of action made or caused to be
13 made in support of claims submitted violated the FCA. The violations were
14 material in accordance with 34 CFR 668.71 et. seq. and with caselaw interpreting
15 the term.

16 177. By virtue of these false or fraudulent claims, the United States
17 suffered damages in an amount to be determined at trial.

18 178. The Defendants are jointly and severally liable to the United States
19 under the False Claims Act for treble damages, in an amount to be determined at
20 trial, plus a civil penalty of \$5,500 to \$11,000 (adjusted for inflation) for each
21 false statement they made, used, or caused to be made or used that were material
22 to a false or fraudulent claim.

23 **FOURTH CAUSE OF ACTION**

24 **31 U.S.C. § 3729(a)(1)(B)**

25 **Full Sail University's False Statements Material to False Claims**

26 **Against Defendants Full Sail University and Bill Heavener**

27 179. Relators repeat and replead each and every allegation set forth in the
28 preceding paragraphs as though fully set forth herein.

1 180. As set forth above, from at least 2011 to the present, and ongoing, FS and
2 Heavener knowingly made, used, or caused to be made or used false records or
3 statements material to false or fraudulent claims, in violation of 31 U.S.C. §
4 3729(a)(1)(B). Specifically, FS and Heavener knowingly made, used, and caused to
5 be made or used, false certifications regarding compliance with the requirements of
6 Title IV of the HEA, in, inter alia, FS's PPAs, in order to obtain eligibility to
7 participate in Title IV programs and to receive Title IV funding, when in fact, FS'
8 gainful employment compensation practices did not and do not comply with Title IV
9 of the HEA and its associated regulations in ways set forth in this Complaint above.
10 Heavener was Co-Chairman and Chief Executive Officer and thus occupied the two
11 positions eligible to sign the PPA. On information and belief he either signed the
12 PPA or directed a duly authorized director or agent of LAFS to sign. He therefore
13 either falsely certified or caused the false certifications described in this cause of
14 action, expressly certifying that LAFS met gainful employment standards, that LAFS
15 "will not provide any commission, bonus, or other incentive payment based in any
16 part, directly or indirectly, upon success in securing enrollments or the award of
17 financial aid, to any person or entity who is engaged in any student recruitment or
18 admission activity, or in making decisions regarding the award of title IV, HEA
19 program funds", and that FS did not make substantial misrepresentations about
20 material aspects of its program. These certifications were false because FS promotes
21 and gives corresponding salary increases, demotes, and terminates enrollment sales
22 reps based in any part directly or indirectly, on their success in securing student
23 enrollments, lies about gainful employment, and substantially misrepresents its
24 program to federal and state regulators, accreditors, students, and prospective
25 students..

26 181. FS and Heavener also knowingly made, used, and caused to be made
27 or used, false certifications regarding compliance with the requirements of the VA
28 to obtain GI Bill benefits and other VA education benefits listed herein when in

1 fact FS' compensation practices did not and do not comply with VA regulations
2 banning incentive compensation in ways set forth in this Complaint above.

3 182. FS and Heavener knew FS was paying employees based on their
4 success in securing student enrollments and that their representations to the
5 Government were false. FS' claims for Title IV funds and VA education funds
6 based on these false representations are fraudulent. FS, via the G5 requested,
7 received and retained Title IV funds or VA education funds, when FS and
8 Heavener know they were ineligible for those funds because of their intentional
9 violations of the ICB. G5 drawdown requests impliedly certified compliance with
10 the same requirements and were therefore false.

11 183. In making, using, or causing to be made or used such false records
12 and statements, FS and Heavener acted with actual knowledge, reckless disregard,
13 or deliberate ignorance of the truth or falsity of the claims.

14 184. These false records and statements were material to the ED's and the
15 VA's decision to make LAFS eligible for these financial aid programs and
16 benefits, respectively, and to pay funds under Title IV programs as well as GI Bill
17 benefits/other VA education benefits listed herein. Therefore, each and every one
18 of the statements FS and Heavener made or caused to be made in support of
19 claims submitted violated the FCA. The violations were material in accordance
20 with 34 CFR 668.71 et. seq. and with caselaw interpreting the term.

21 185. By virtue of these false or fraudulent claims, the United States
22 suffered damages in an amount to be determined at trial.

23 186. The FS and Heavener are jointly and severally liable to the United
24 States under the False Claims Act for treble damages, in an amount to be
25 determined at trial, plus a civil penalty of \$5,500 to \$11,000 (adjusted for
26 inflation) for each false statement they made, used, or caused to be made or used
27 that were material to a false or fraudulent claim.
28

PRAYER FOR RELIEF

WHEREFORE, the Relators, on behalf of the United States and on behalf of themselves hereby pray that after a trial, this Court:

1. On all Causes of Action, enter judgment holding the Defendants liable for the maximum amount of civil penalties, adjusted for inflation, for each violation of the False Claims Act committed by the Defendants jointly and severally;

2. On all Causes of Action, enter judgment against the Defendants, jointly and severally, for three times the amount of damages sustained by the United States because of the acts of the Defendants;

3. Award the Relators a percentage of the proceeds of the action in accordance with 31 U.S.C. § 3730;

4. Award the Relators their costs and reasonable attorneys' fees incurred in prosecuting this action.

DATED: October 14, 2025

Respectfully submitted,

KLEIMAN RAJARAM

By: 

Mark Kleiman

Attorneys for Plaintiffs/Relators
DAVID S. PHILLIPS and
BEN CHAIB

DEMAND FOR JURY TRIAL

Relators, on behalf of themselves and the United States, demand a jury trial on all claims alleged herein.

DATED: October 14, 2025

Respectfully submitted,

KLEIMAN RAJARAM

By: 
Mark Kleiman

Attorneys for Plaintiffs/Relators
DAVID S. PHILLIPS and
BEN CHAIB