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UNITED STATES DISTRICT COURT DISTRICT OFARIZONA

Federal Trade Commission

Plaintiff,

VS.

Grand Canyon Education, Inc.

Grand Canyon University and

Brian E. Mueller

Defendant.

Case Number:

CV-23-02711PHX-JZB

FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION, MONETARY JUDGMENT AND OTHER RELIEF

Plaintiff, the Federal Trade Commission TC" or "Commission"), for its complaint alleges

1. The FTCbrings this action Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C.45(a), and the FTC's Telemarketing Sales Rule, as amended, 16 C.F.R. Part 310. For these violations, there Issue Issu

relief, includingmonetaryrelief, a permanent injunotin, and other relief pursuant to Sections 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §\$53(b), 56(a), and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105.

JURISDICTION AND VENUE

- 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345
- 3. Venue is proper in this District under 28 U.S.Cl.3§1(b)(1), (b)(2), (c)(1),and(c)(2), and 15 U.S.C. §3(b). Defendants reside in and transact business in this District.

<u>PLA</u>INTIFF

4. The FTC is an independent agency of the United States
Government created by the FTC Act, which authorizes the FTC to
commence this district court civil action by its own attorneys.U.S.C.

§§ 41–58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a), which prohibits unfair or deceptive acts or practices in or affecting
commerce The FTC also enforces the Telemark4.5 (.)6.1 (Cwh)8.3 (ic)12.1 (h pr)

practices of GCU and GCEncluding the acts and practices described in this Complaint.

COMMERCE

8. At all times relevanto this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

9. Defendantsmarketpostsecondars ducational services online and through telemarketing. Despite operating the school for the profit of GCE and its investors, Defendants have deceptively advertised Grand Canyon University as a nonprofit to prospective stude(on)8.3 (a)3.5 (t4n)8.3 (pr)12.2 0 0

company in November 2008, published business plans for maximizing the financial performance of the institution, and solicited invest based on the reported and projected profit from GCEperation of this institution

11. Beginning on or about 2014, GCE and Defendant Mueller formulated a plan to transfer the name and some of the assets of Grand Canyon University a new corporation with the goal of characterizitrags a nonprofit university. In furtherance of this plan, November 18, 2014, Defendant Mueller, who was at the tinhe the Executive Officer ("CEO") of GCE, chartered a new corporation, named "Gazelle University" (later renamed Grand Canyon University, hereinafter "GCU" or "Gazelle University/GCU"),

with stockholders and reporting to investors on **GCE** ancial results and prospects.

13. Gazelle University/GCU was organized to carry on the business of selling educational services and related activities for its own profit and for the profit of GCE. Gazelle University/GCU was organized to acquire, own, and operate portions of the University owned by GCE, and use at least some of its earnings from this business to acquire property, secure loans, accumulate capital, and otherwise perpetuate and expand its business, and to increase the assets of the contion and their value. ATia thi9nipn3/hend en aGazer

University. As a result of these agreements, EQCansferred the trademarks campus and certain assets and liabilities of the institution that GCE had operated as "Grand Canyon University, GCU in exchange for GCU agreeing to pay GCE more than million plus 6% annual nterest A "Master Services Agreement" executed as part of this transaction makes GCE the service provider for certains sentia GCU operations in exchange for a bundled that is equato 60% of GCU's

tuition and fees. fIGCU revenuerom these sourcescreases at a rate faster than operating costs, GCE disproportionately benefits from the increased revenue. In additionCE does not provide services for student housing, food services, operation of the GCU hotel conference center, or athletic arena, but still receives% of the revenue from these operations. If GCU revenue from these activities increases, GCE disproportionately benefits.

18. The Master Services Agreement makes it impractical for GCU to use any provider other than GCE for essential services. GCU must receive services designated as exclusive from Gotol if GCU elects to use a third party to provide services that are not designated as exclusive to GCE, GCU is still obligated to pay GCE the entire bundled fee, equal to 60% of GCU's Adjusted Gross Revenue. As a result of the July 1, 2018 agree@Gt.

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the University's assets, GCU has also generated revenue and profit. GCU has used its earnings to acquire property, accumulate reserves and enhance the value of its assets, and has reportedly increased the net value of its assets by more than \$125 millionGCE reports to investors that it has profited and projects that it will continue to profit of GCU's obligations to GCE GCU continues to becein most significant source of revenue.

21. GCU's operations since July 1, 2018, ainnnnt8.2 ()8.7 (20)822b (n)8.lue argeyop(e)12.1 (r)3.7 (a)3.5 (t)8.6 (e)3.5 d by1nd most of s reenhe s pha

23. Defendantsdisseminated the advertisemabove and similar
23. Defendantsdisseminated the advertisemabove and similar statements representing that CU had transitioned back to a nonprofit on
websites, social media, press releases, video marketing and social media.
Defendantsused claimshat GCU is an on profit to induce

- a. In December 2018Defendant Mueller, the Chief Executive
 Officer of GCE and President of GCU, stated in an interview that
 the characterization of GCU as a reprofit educational institution
 "is a tremendous advantage. We can recruit in high schools that
 would not let us in the past . . . We're just 90 days into this, but
 we're experiencing, we believe, a tailwind already just because of
 how many students idn't pick up the phone because we were for
 profit."
- b. On February 20, 2019, CEO Mueller stated during GCE's earnings call for the fourth quarter of 2018: "[N]estudent online growth [after the conversion of Gazelle to GCU] was more than we expected and I think it's evidence that being out there now a

26. The Department of Education determined that GCU does not meet the "operational test" for nonprofit status "that both the primary activities of the organization and its stream of revenue benefit the nonprofit itselfe"

Department concluded that materials GCU submitted to the Department concerning the July 1, 2018 transactions "demonstrate that GCE and its stockholdes—rather than Gazelle/GCU are the primary beneficiaries of the operation of GCU under the terms of Mester Services Agreement

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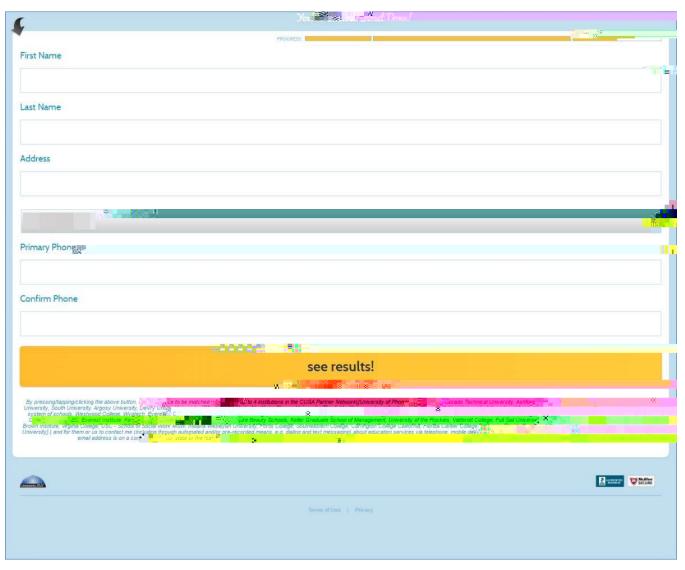
- 33. Since at least 2017, GCE has used its customer relationship management ("CRM") system to give telemarketers telephone numbers and other information about consumers that Etelemarketers use to initiate telephone calls that urge individuals to purchase educational services from GCU.
- 34. SinceJuly 2018 Defendant GCE has initiatedns of millions of telemarketing calls on behalf of GCU.
- 35. Consumers have requested that GCU and telemarketers acting on its behalf not make telemarketing calls to their numbers maintains a list of telephone numbers that have been identified in such requests.
- 36. Until at least March 2023, GCE did not remove from the CRM system, or blockheir telemarketes access to, the telephone numbers of individuals who had requested that telemarketers acting on behalf of GCU not call their numbers.
- 37. GCE telemarketer acting on behalf of GCU have initiated more than a million telemarketing calls to telephone numbers of consumers who had, prior to the call, specifically requested that telemarketing calls for GCU not be made to that telephone number.
- 38. GCU and GCE havaccess to the National Do Not Call Registry maintained by the Federal Trade Commission
- 39. Until at least March2023,GCE did not remove from the CRM system, or blockheir telemarketes' access to, the telephone numbers of any individuals whose telephone numbers were listed on the Registry. in CE,

fact, provided its telemarketers with telephone numbers listed to Registryeven if GCE had no basis for claiming that telemarketing calls on behalf of GCU to a given number were permissible.

40. GCE telemarketers have initiatendillions of telemarketing calls on behalf of GCUto telephone numbers of consumers who had, prior to the call, placed their numbers on the National Do Not Call Register though GCU did not have are stablished business relationship with places on receiving the call of the consumer's express agreement, in writing, to place such telemarketing calls to the person's telephoner ket 40. Gf t, II

- d. Instruct the consumer to advance to the next screen with terms that do not indicate that doing so constitutes an agreement or authorization;
- e. Place the language regarding telephone calls below the graphic the consumerengages with to submit the form or advance to the next screen (e.g., Paragraph 42, 44 and 45);
- f. Do not name GCU as the entity that is being authorized to place telemarketing calls to the consum(erg.,Paragrapl44); or
- g. Do not include the telephone numbleat is the subject of the purported authorizatione(g.,Paragraph 42, 43).
- 42. For exampleat Grand Canyon University's main website (gcu.edu) Defendantshaveacquired telephone numbetsy presenting the following and similar online forms to solicit consumersve 64. 64

44. Defendants also purchase information about consummenslead generators. Defendants have purchased telephone numbers and other information from leadgenerators that taveused the following and similar online forms to solicit the information Defendants purchased:



45. Defendants have alsourchased information from lead generators that used the following and similar online forms to solicit the information Defendants purchased:

and were warneby professional telemarketing compliance services that, to constitute valid express written agreement authorizing compliance services that, to constitute valid express written agreement authorizing compliance services that, to constitute valid express written agreement authorizing compliance services that, to conspicuously distribute expression authorizes the seller to make telemarketing calls; must specifically indicate the seller to whom consent is being provided; must include the telephone number at which the person consents to receive calls; and must require that the consumer takeme affirmative action that indites the consumers assent.

48. Until the FTC inquired into GCE's history of calling telephone numbers on donot-call lists in 2022, Defendants did not examine GCE's call records to determine whether telemarketers were initiating calls to telephone numbers of individuals who had requestret GCUtelemarkteemxams asset

furnish telemarketers with telephone numbers vided on forms that do not authorize GCU calls, anethcouraging GCE's telemarketers to call telephone numbers obtained throughuchforms by using the CRM to furnish these numbers to telemarketers with mbols indicating that GCE deems telemarketing calls to these numbers to be exempt from the local restrictions

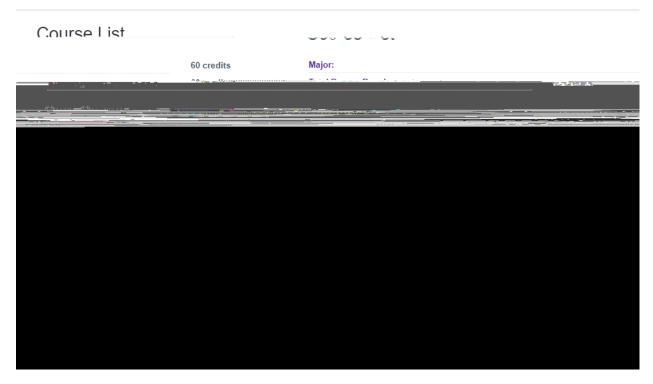
Defendants' Marketing of GCU's Doctoral Programs

- 50. Defendantsmarket educational servictes doctoral studies in the fields of psychology, education, healthd business that promise training in independent research and supervised preparation of a doctoral dissertation. Defendants represent that GCU's College of Doctoral Studies will award individuals who complete the rescribed courses and produce a dissertation of academic quality research in their chosen factor of Philosophy (PhD), Doctor of Education E(dD), Doctor of Health Administration (DHA) or Doctor of Business Administration (DHA).
- 51. Since at least 2018 marketing GCU's doctoral programs,
 Defendants have described these programs "accelerated" programs that
 enablestudents to quickly complete their degree, including quickly
 completing a dissertation. Among other statem the sendants' marketing
 for these programs has included following:

The College of Doctoral Studies at Grand Canyon University places doctoral learners on an accelerated path from the first day.

From day one, you are on an accelerated path with the support needed to grow & thrive. Concerned about your dissertation? Don't be. At GCU, dissertations are built into your coursework so you move forward to graduation step by step.

At Grand Canyon University, the doctoral journey is truly unique. From day one, you are placed on an accelerated path that will prepare you to succeed in your academic journey and career.



53. Defendants have distributed rollment agreements to prospective doctoral students for doctoral degrees like the enrollment agreement below. Many of these prollment agreement the agreement below, clude a list of twenty courses and an itemized list of per credit costs and fees, and then state a specific amount as the "Total Program Tuition and Fees," for the doctoral program covered by the agreement. The "Total Program Tuition and Fees" listed in such agreements is based on the tuition affind fees twenty courses. The specific amounts in these agreements were between \$40,850 and \$50,000, depending on the program and date of the agreement.

In the agreement below, the specific amount quoted for Total Program Tuition and Fees" is \$43,720:



- 61. GCU very rarely awards doctoral degrees to students upon completion of 60 credits, representing twenty courses. For example, between July 1, 2018, and December 31, 2022, of the students who obtained GCU doctoral degrees requiring a dissertation:
 - a. GCU required continuation courses for 98.5% of the doctoral students to whom it awarded degrees; only 3 out of every 200 successful doctoral students received a degree from GCU upon completing just 60 credits;
 - b. For 78% of these students, GCU required five or more continuation courses;
 - c. For more than half of these students, GCU required ten or more continuation courses;
 - d. For fourteen percent of these students, GCU required twenty or more continuation courses in addition to the twenty courses listed as the required courses for their degree.
- 62. The average number of courses GCU required of doctoral grhses8.2 (e)3.6 (ir)3.7 ()8.7 (a)12.1 on 2(s f)30991 Td19(t)828.3 (um)1228.3 (u Tc -0.0

necessary to fulfill GCU's requirements beyond the twenty courses identified as required. Many students discover that GCU requires more funds or time than Defendants represented only after they have paid thousands of dollars in tuition and devoted years to GCU courses. Many of these students withdraw or are compelled to leave GCU without a doctoral degree.

64. To the extent that Defendants have communicated to prospective students that GCU doctoral programs require more than the twenty courses, they have done so in buried disclaimers, misleading statements, or presentations that distort the program requirements. For example, in some enrollment agreements and other materials, Defendants have included a buried disclaimer, stating that "on average, doctoral students who graduated required 5.2 continuation courses to complete their doctoral degree." The 5.2 average was based on information about students graduating between 2DittlwamBEAHQ(24)936(62)s4044Ts25D(628.fh(d)8837n(i2eT315(2))(8.8 (t)8)8n(3.6)(a)8.60001Ts

- 65. After Defendants received notice of the Commission's investigation, Defendants added a section to GCU's website that acknowledged that GCU, on average, required doctoral students to complete significantly more than 5.2 continuation courses. Initially, GCU posted a statement in this section that the average number of continuation courses for doctoral graduates since 2011 was 9.5. GCU later revised this section to state that, by the end of 2022, the average for all doctoral graduates since 2011 was 9.9 continuation courses. These statements acknowledging the number of continuation courses GCU has required are buried in the gcu.edu website and come too late for students enrolled prior to their release. Moreover, this addition to GCU's website does not acknowledge the cost of these continuation courses. Nor does GCU include these statements about the average number of continuation courses in the descriptions of the requirements for doctoral degrees, like those described in Paragraph 52, that appear on GCU's main website. Additionally, the number of continuation courses GCU has required has increased since 2011, and the average GCU reports in these statements understates the number of continuation courses GCU has required of recent doctoral graduates.
- 66. Based on the facts and violations of law alleged in this Complaint, the FTC has reason to believe that Defendants are violating or are about to violate laws enforced by the Commission because, among other things:
- Defendants continued their unlawful acts or practices despite complaints and lawsuits;

- Defendantsacted to mitigate their abusive telemarketing practices only after Civil Investigative Demand from the FTC required that GCE acknowledge the extent of GCE's violations;
- c. Defendantscontinued their deceptive marketing of doctoral practices despite investigations by the Department of Education and the FTC;
- d. Defendants have continued to characterize GCUnanaparofit, and
- e. DefendantsGCU and GCE engaged in their unlawful acts and practiceswillfully,

- b. transitioned back tits prior manner of operating as non-profit institution
- 70. The representations set forth in Paragrapharefalseor misleading or were not substantiated at the time the representations were made.
 - 71. TherefbbbffbTaadi-8.2 (s)da4.4 (nt)-85 (s)-8.2 ()'4.3 (e)]TJ 0.004 Tc -0.0

74. Therefore Defendants' representations as set forth in Para@12aph constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)

75. Congress directed the Commission to prescribe rules prohibiting

- Under the TSR, a telemarketer "means anyperson two, in connection the telemarketing intiates or receives telephone calls to or from a customer or donor of the strong of t
- tis a deceptive telemarketingact or practice and a violation of the TSR for anyseller or telemarketer to misrepresent, directly or by implication, in the sale of gods or services, anyof the following naterial information:
 - a The total costs to purchase, receive, or use, and the quantity of, any gods or services that are the subject of a sales offer;
 - b Anymaterial aspect of the performance, efficacynature, or central characteristics of gods or services that are the subject of a sales offer

6CFR \$103(a)())()

- Under the TSR, an but bound telephone call means a telephone call intiated by a telemarketer to induce the purchase of gods or services or to solict a chartable contributation \$300 kg.
- The TSR prohibts sellers and telemarketers from initiating out bound telephone calls to any consumer two has previously stated that he or she does not but to receive an out bound telephone call made by or on behalf of the seller two se gods or services being of fered, or made by or

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b sbd (n " Ethity - Sb Do No Ch rest ". 15 CE.R. § 30.4 (b()()(A).

- 83. The TSR phs sies all theires from thing a that the hat to be an the Rigtry has the sie (1 ha bid the serie pass gen, in with to be shale, o (2) ha establishes rhish ith the sen, all the sen hat stad the hap shale to ish to rive shale.
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84. Prest to Sen 3 (c f the Thing At, 5 U.S.C.

- § 602()c, d Sen B()d(3) 6 th FTC Ac, 5 U.S.C. § 57a()d(3), a vhin 6 th TSR patitus a fin o five a o pair in vhin 6 Sen 5 ()a 6 th FTC Ac, 5 U.S.C.45§()a.
- 85. Del GCE is a there'd in the ign at the test are all in the ISR.
- 86. Dal GCU is a STE' glin thhig a the ten ae flin the TSR.
- 87. Dels he glin thinking by a par program or general than the first thanking by a par program or general than the sevie by the

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91. In numerous instances, in connection with telemarketing, Defendant haveinitiated or caused others to initiate an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered in violation of the RTS16 CF.R. § 310.4(b)(1)(iii)(A).

CtV

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92. In numerous instances, in connection with telemarketing,
Defendants have initiated or caused others to initiate an outbound telephone
call to a person's telephone number on the National Do Not Call Registry in
violation of the TSR.16 C.F.R. § 310.4(b)(1)(iii)(B).

93. Consumersare sufferinghave suffered and will continue stuffer substantialnjury as a result of Defendants' violations of the FTC and the TSR. Absent injunctive relief by this Cou 0 Tw0l8.5eD8.9 (R)8 (e)3.6 (f)3.6 (e)

- A. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants;
 - B. Award monetary and other relief within the Court's power to grant; and
- C. Award any additional relief the Court determists be just and proper.

Datedthis 5th day of September 2024

Respectfully submitted,

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Michael E. Tankersley Brian Berggren Carlton B. Mosley

Attorneys for Plaintiff Federal Trade Commission