

Michael E. Tankersley
Naomi Takagi
Brian Berggren
Federal Trade Commission
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relief, including monetary relief, a permanent injunction, 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. § 105.

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.C. § 1391(b)(1), (b)(2), (c)(1), and (c)(2) and 15 U.S.C. § 53(b). Defendants reside in and transact business in this District.

PLAINTIFF

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, 15 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 Telemarketing Sales Rule, 16 C.F.R. Part 310 (the “TSR” or “Rule”), which prohibits deceptive and abusive telemarketing practices.

DEFENDANTS

5. GRAND CANYON EDUCATION, INC. (“GCE”) is a Delaware corporation with its principal place of business at 2600

Camelback Road, Phoenix, AZ 85017. GCE stock is publicly traded under the trading symbol LOPE. GCE was previously named “Significant Education, LLC” and “Significant Education, Inc.” and changed its name to GCE in 2008. Through June 30, 2018, GCE owned and operated the university known as “Grand Canyon University” as a for-profit institution. Since July 1, 2018, as a result of a series of transactions orchestrated by GCE and its officers, GCE has been the exclusive provider of marketing services for Defendant GCU and receives most of Grand Canyon University’s revenue.

6. GRAND CANYON UNIVERSITY (“GCU”) is an Arizona corporation formerly known as Gazelle University. It acquired rights to the name “Grand Canyon University” and began using that name in July 2018. Its principal place of business is 300 W. Camelback Road, Phoenix, AZ 85017.

7. Defendant BRIAN EMUELLER is the President of GCU and the Chief Executive Officer, Chairman of the Board and a director of Defendant GCE. He directed GCE’s efforts to re-brand the University as a nonprofit, and promoted representations that the July 2018 division of operations between GCE and GCU resulted in the University returning to operation as a traditional nonprofit university. At all times relevant to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and

practices of

company in November 2008, published business plans for maximizing the financial performance of the institution, and solicited investment based on the reported and projected profit from GCE's operation 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 to a new corporation with the goal of characterizing it as a nonprofit university. In furtherance of this plan, on November 18, 2014, Defendant Mueller, who was at the time the Chief Executive Officer ("CEO") of GCE, chartered a new corporation, named "Gazelle University" (later renamed Grand Canyon University, hereinafter "GCU" or "Gazelle University/GCU"), under the Arizona Nonprofit Corporation Act, A.R.S. §§ 10-3101– 10-11702

12. Defendant Mueller also became the President of Gazelle University/GCU. In 2017, Defendant Mueller became Chairman of the Board of GCE. Since 2017, he has continuously held the offices of CEO of GCE, Chairman of the Board of GCE, and President of Gazelle University/GCU. Mueller receives salary, bonuses, and other compensation from both Defendant GCU and GCE. His compensation includes cash and stock incentives that are linked to GCE's financial performance and are explicitly designed to align his interests with those of GCE stockholders. He holds GCE stock of significant value. As CEO and Chairman of the Board of GCE, Defendant Mueller is GCE's principal representative in dealings

with stockholders and reporting to investors on GCE financial results and prospects.

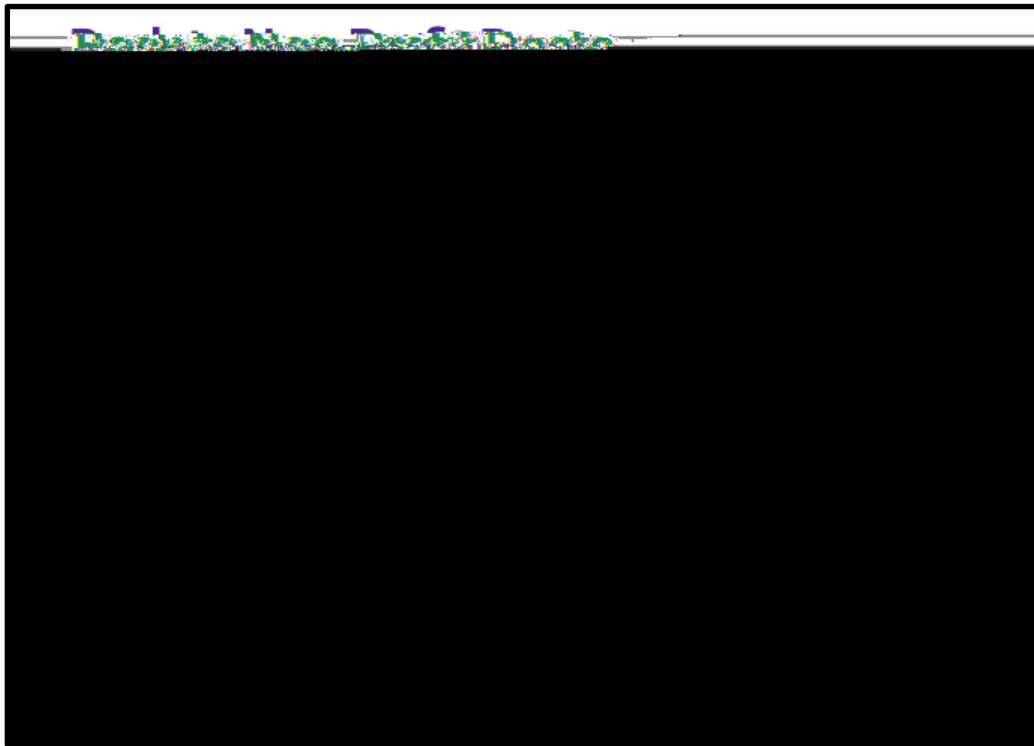
13. The articles of incorporation of Gazelle University/GCU present that it is organized and operated exclusively for charitable, religious, scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding these articles of incorporation, Gazelle University/GCU was in fact, organized by GCE and Defendant Mueller to advance GCE's for-profit business and advance Defendant Mueller's interests as officer, chairman, director, stockholder and promoter of investment in GCE. Accordingly, Defendant Gazelle University/GCU has been operated to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act. 15 U.S.C. § 44.

14. On July 1, 2018, GCE executed interrelated agreements that resulted in Gazelle University assuming its current name, Grand Canyon University. As a result of these agreements, GCE transferred 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 \$875 million plus 6% annual interest. A "Master Services Agreement" executed as part of this transaction makes GCE the service provider for certain essential GCU operations in exchange for a bundled fee that is equal to 60% of GCU's "Adjusted Gross Revenue

15. Since July 1, 2018, pursuant to the Master Services Agreement, GCE has been the exclusive provider of marketing for GCU and services

Defendants Have Marketed GCU as a Nonprofit

21. Beginning shortly after transfer of the “Grand Canyon University” name to GCU on July 1, 2018, Defendants began promoting GCU advertising and telemarketing as a private “nonprofit” university and disseminated digital and print advertising like the following, stating that GCU had gone “Back to NonProfit Roots” and “transitioned back to a non-profit institution.”



22. Defendants disseminated the advertisement above and similar statements representing that GCU had transitioned back to a nonprofit on websites, social media, press releases, video marketing and social media. Defendants used claims that GCU is a nonprofit to induce enrollment in

24. Defendants discontinued and removed most statements characterizing GCU as a nonprofit shortly after November 6, 2019. On that date, the Department of Education rejected GCU's request that it be recognized as a nonprofit institution under the Higher Education Act, and classified GCU as *for-profit* participant in federal education programs. As part of the Department's action on GCU's application, the Department concluded that "GCU must cease any advertising or notices that refer to its 'nonprofit status.' Such statements are confusing to students and the public, who may interpret such statements to mean that the Department considers GCU a nonprofit under its regulations."

25. 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 itself." The Department concluded that materials GCU submitted to the Department concerning the July 1, 2018 transactions "demonstrate that GCU and its stockholders—rather than Gazelle/GCU—are the primary beneficiaries of the operation of GCU under the terms of the Master Services Agreement. This violates the most basic tenet of nonprofit status—that the nonprofit be primarily operated for a tax-exempt purpose and not substantially for the benefit of any other person or entity."

26. GCU is challenging the Department of Education's November 6, 2019 decision. *See Grand Canyon University v. Cardona*, No. 2:21-cv-00177, Order (D. Ariz., Dec. 1, 2022)

36. GCE telemarketers 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.

37. GCU and GCE have access to the National Do Not Call Registry maintained by the Federal Trade Commission.

38. Until at least March 2023, GCE did not remove from the CRM system, or block their telemarketers' access to, the telephone numbers of any individuals whose telephone numbers were listed on the Registry, in fact, provided its telemarketers with telephone numbers listed on the Registry even if GCE had no basis for claiming that telemarketing calls on behalf of GCU to a given number were permissible.

39. GCE telemarketers have initiated millions of telemarketing calls on behalf of GCU to telephone numbers of consumers who had, prior to the call, placed their numbers on the National Do Not Call Registry even though GCU did not have an established business relationship with the person receiving the call or the consumer's express agreement, in writing, to place such telemarketing calls to the person's telephone number.

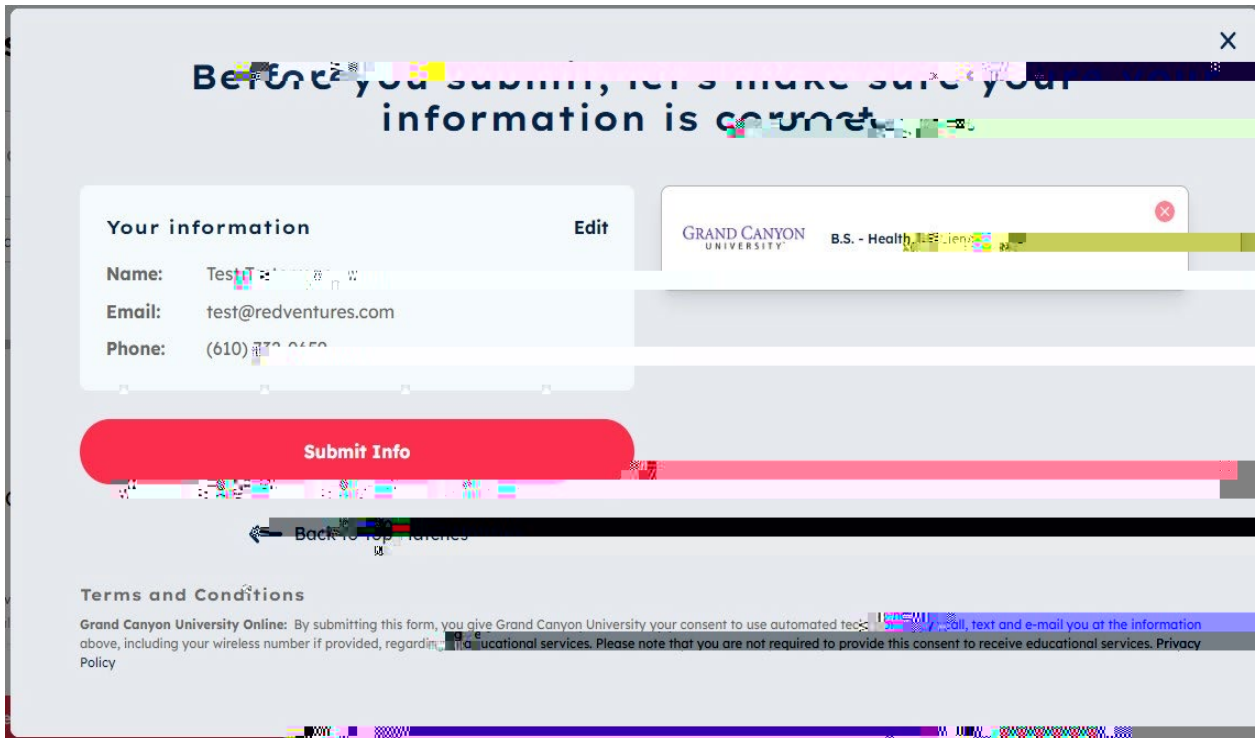
40. Defendants also have made millions of telemarketing calls to telephone numbers on the National Do Not Call Registry after GCE notified telemarketers that the telephone numbers are exempt from do-not-call restrictions

to consumers the language purporting to authorize telemarketing because they:

- a. Present the language regarding telephone calls in small type;
- b. Present the language regarding telephone call

41. For example at Grand Canyon University's main website (gcu.edu) Defendants have acquired telephone numbers by presenting the

42. Defendants have acquired telephone numbers by presenting the following and similar online forms to solicit consumers at other ws9ffo591 hnss9ffo4.1



45. An individual who has been prompted to press or click “Next”, “see results!”, “Submit Info” or similar prompts on the forms in Paragraphs 41, 42, 43, and 44, or similar forms used by Defendants and lead generators from which Defendants have purchased leads, has not signed a written agreement that clearly evidences the person’s authorization that calls made by or on behalf of GCU may be placed to a telephone number included in the writing.

46. In public guidance available throughout the relevant time period, the FTC has advised that, to obtain valid express authorization to call a consumer, a seller must obtain the consumer’s affirmative assent to a written authorization that is not hidden; printed in small, pale, or contrasting type; or buried in unrelated information where a person would not expect to find such a request. GCE and GCU had actual notice of the FTC guidance

and were warned by professional telemarketing compliance services that, to

furnish telemarketers with telephone numbers provided on forms that do not authorize GCU calls, and encouraging GCU telemarketers to call telephone numbers obtained through such forms by using the CRM to furnish these numbers to telemarketers with symbols indicating that GCE deems telemarketing calls to these numbers to be exempt from Do-Not-Call restrictions

Defendants' Marketing of GCU's Doctoral Programs

49. Defendants market educational services for doctoral studies in the fields of psychology, education, health, and 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 prescribed courses and produce a dissertation of academic quality research in their chosen field Doctor of Philosophy (PhD), Doctor of Education (EdD), Doctor of Health Administration (DHA) or Doctor of Business Administration (DBA).

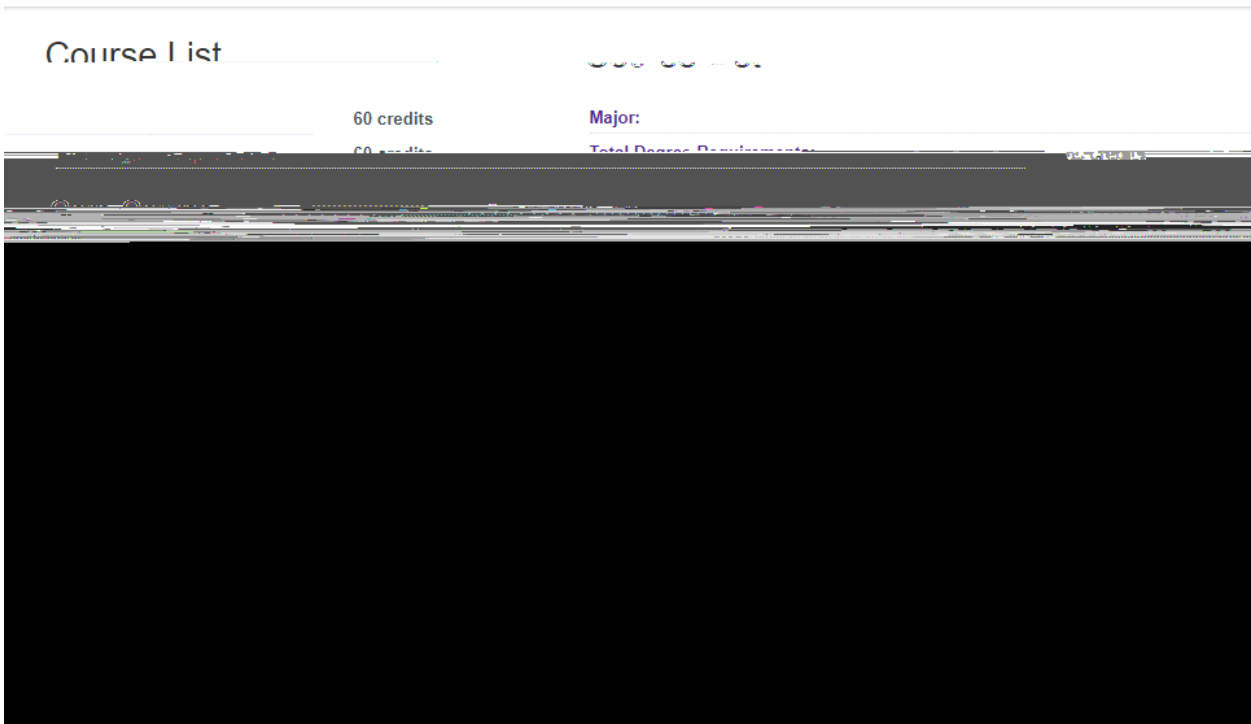
50. Since at least 2018, in marketing GCU's doctoral programs, Defendants have described these programs as "accelerated" programs that enable students to quickly complete their degree, including quickly completing a dissertation. Among other statements, Defendants' marketing for these programs has included the 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.

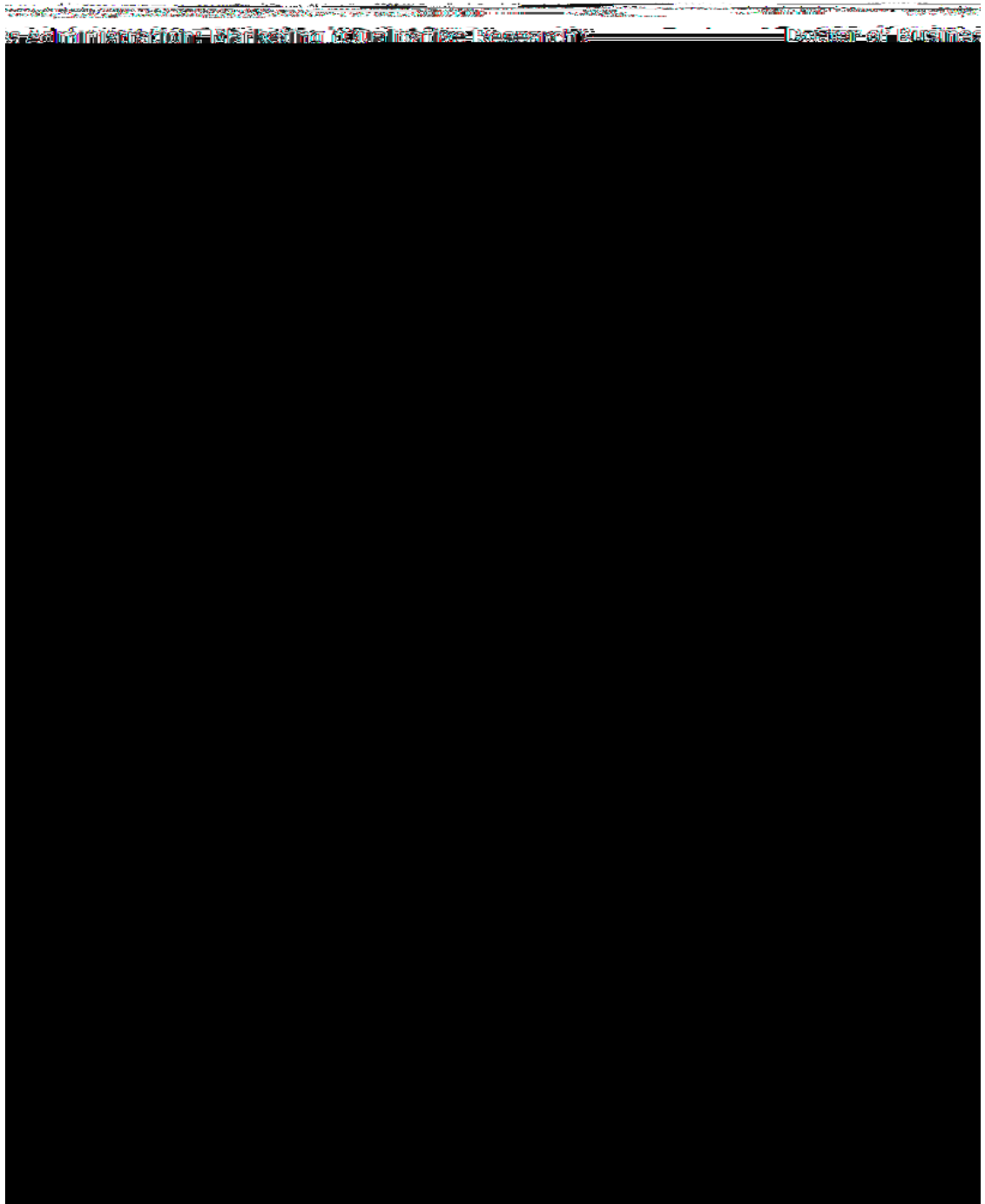
At Grand Canyon University, the doctoral journey is truly unique. From day one, you are placed on an accelerated path that will prepare you to succeed in your academic journey and career.

51. Defendants have distributed descriptions of the doctoral programs to prospective students in online publications, catalogs, and charts. These materials describe the GCU programs as twenty course programs that require a total of 60 credits. For example, the description of requirements for an online Doctor of Education (EdD) on GCU's main website (<https://www.gcu.edu/degree-programs/eddr-organizational-leadership-development-qualitative>), includes the following list of courses:



52. Defendants have distributed enrollment agreements to prospective doctoral students for doctoral degrees like the enrollment agreement below. Many of these enrollment agreements

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



53. Defendants also distribute estimates of tuition costs for doctoral programs to prospective doctoral students that describe the cost of the degree based on the cost for 60 credits, representing twenty courses.

54. Defendants train telemarketers for GCU doctoral degree marketing campaigns with materials that describe the GCU doctoral programs as requiring twenty courses, which include only three dissertation courses. Defendants' telemarketers solicit doctoral candidates with statements like the following:

The doctorate goes for 20 courses, which is 60 credits. And what you're doing a little differently is you're working towards your dissertation at the same time you're doing your courses. So rather than a typical seven year doctorate, it could be completed a lot faster than that. . . The ultimate goal is that you finish your coursework in about three years and then pretty soon after you have the opportunity to finish your dissertation and therefore graduate. So it's a very unique system.

55. Defendants' telemarketers also direct prospective students to, or provide prospective students with, enrollment agreements, catalogues, online

multi-level review process, GCU requires students to produce multiple drafts with extensive revisions. After a student has completed two years of coursework, GCU appoints one or more faculty members to supervise satisfaction of the requirements. GCU often imposes these dissertation requirements in courses after the three dissertation courses listed in the agreement and requires any students satisfying these requirements to enroll in, and pay additional tuition for,

60. 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

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.

63. 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 2011 and early 2017, and did not reflect the experience of recent graduates. Defendants, however, distributed materials referencing the 5.2 average to prospective students in 2019, 2020, 2021, and 2022. In fact, GCU has required recent graduates to complete substantially more than 5.2 continuation courses. For example, the average number of continuation courses GCU required of the students who graduated in 2019 was 10.6 – more than twice the number stated in this disclaimer. The average number of continuation courses for students who graduated in 2022 was more than 12.

64. 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 5, 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.

65.

- b. Defendants acted 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. Defendants continued their deceptive marketing of doctoral practices despite investigations by the Department of Education and the FTC;
 - d. Defendants have continued to characterize GCU as a non-profit
 - e. Defendants GCU and GCE engaged in their unlawful acts and practices willfully, and knowing that their representations were misleading and their
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b. transitioned back to its prior manner of operating as a nonprofit institution.

69. The representations set forth in Paragraph 68 are false or misleading or were not substantiated at the time the representations were made

70. Therefore, Defendants' representations set forth in Paragraph 68 constituted deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Deceptive Representation of Doctoral Programs

71. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of GCU educational services, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. GCU doctoral degrees that include a dissertation are typically completed in twenty courses or 60 credits; and
- b. GCU's total charges for doctoral degrees that include a dissertation are the tuition and fees for twenty courses

72. The representations set forth in Paragraph 71 are false or misleading, or were not substantiated at the time the representations were made.

78. Under the TSR, a “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor¹⁶ C.F.R. § 310.2(ff) A “seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. § 301.2(dd).

79. It is a deceptive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to misrepresent, directly or by implication, in the sale of goods or services, any of the following material information:

- a. The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;
- b. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.

16 C.F.R. § 310.3(a)(2)(i), (iii)

80. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.⁶ C.F.R. § 310.2(x).

81. The TSR prohibits sellers and telemarketers from initiating outbound telephone calls to any consumer who has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered, or made by or

on behalf of the charitable organization for which a charitable contribution is being solicited (an Entity-Specific Do Not Call request) 16 C.F.R.

§ 310.4(b)(1)(iii)(A).

82. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry unless the seller (1) has

use of one or more telephones and which involves more than one interstate telephone call.

87. Defendants initiated outbound telephone calls to consumers in the United States to induce the purchase of educational services.

Count III

Deceptive Telemarketing Acts or Practices

88. In numerous instances, in connection with the telemarketing of educational services, Defendants have misrepresented, directly or indirectly, expressly or by implication, material information regarding GCU and its services, including, but not limited to representations that:

- a. GCU is a nonprofit institution;
- b. GCU transitioned back to its prior manner of operation as a non-profit educational institution;
- c. GCU doctoral degrees that include a dissertation are typically completed in twenty courses or 60 credits; and
- d. GCU's total charges for doctoral degrees that include a dissertation are the tuition and fees for twenty courses.

89. Therefore, Defendants' acts or practices as set forth in Paragraph 88 violate Section 3103(a)(2)(i)(iii) of the TSR. 16 C.F.R. § 310.3(a)(2)(i), (iii).

Count IV

Calls to Persons Who Have Requested GCU Not Contact Them Through Telemarketing

90. In numerous instances, in connection with telemarketing, Defendants have initiated 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 TSR. 16 C.F.R. § 310.4(b)(1)(iii)(A).

Count V

Calls to Persons Registered on the National Do Not Call Registry

91. 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).

CONSUMER INJURY

92. Consumers are suffering, have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

WHEREFORE, the FTC requests that the Court grant its relief as set forth in its Complaint.

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 determines to be just and proper.

Dated this 27th day of December 2023

Respectfully submitted,

/S/

Michael E. Tankersley
Naomi Takagi
Brian Berggren

Attorneys for Plaintiff Federal Trade
Commission