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VIA FIRST-CLASS AND CERTIFIED MAIL

September 1, 2016

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

Education Management Corporation
210 Sixth Avenue
Pittsburgh, PA 15222

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

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

To Whom It May Concern:

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

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

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

The loans arranged for by NEIA can only be described as structurally unfair.[4] The cost of attending and completing NEIA is so high[5] that, historically, close to 90 percent of students and their families have gone into debt in order to finance the cost of education.[6] Despite claiming that its industry connections[7] led to near-universal placement of NEIA graduates in well-paying jobs in their fields of study,[8] NEIA knew that actual outcomes for its students were far worse.

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

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[2] G. L. c. 93A § 9 (incorporating by reference § 2).
[3] *See Commonwealth v. Fremont Inv. & Loan*, No. 07-43737-BLS1, 2008 WL 517279, at *10 (Mass Super. Feb. 26, 2008), *aff'd*, 452 Mass. 733 (2008) (finding mortgage loans that lender reasonably knew or should have known were "doomed to foreclosure" presumptively unfair).
[4] "Unfair" acts and practices proscribed by the Act are those that are "immoral, unethical, oppressive, or unscrupulous," and which cause "substantial injury to consumers[.]"*Datacomm Interface, Inc. v. Computerworld, Inc.*, 396 Mass. 760, 778 (1986) (quoting *PMP Assocs. Inc. v. Globe Newspaper Co.*, 366 Mass. 595, 596 (1975)) (internal quotation marks and brackets omitted) .
[5] According to data reported to the Integrated Postsecondary Education Data System ("IPEDS"), a data collection program of the United States Department of Education ("Department")'s National Center for Education Statistics, the cost of attending NEIA in 2014 to 2015 was $59,798, while the cost of attending the Massachusetts College of Art and Design ("MassArt"), a nearby art school, was $27,725.
[6] Data reported to IPEDS. This figure has typically been at or below 50 percent for MassArt.
[7] NEIA adopts the AI mantra that the school's work is "[t]urning creativity into a career." *See, e.g.*, NEIA promotional handout, "Inspiring students. And employers." [hereinafter "'Inspiring Students' Handout"]. To that end, NEIA consistently claims to prospective and current students that it will "turn our students into graduates who are equipped with the hands-on learning, real-world skills, industry contacts, and self-marketing tools to compete and succeed" for creative jobs. *Id.* NEIA, like other AI schools, boasts that it has "strong relationships" with employers who "seek out" AI graduates because of "the specific skills we teach." *Id.*
[8] *See, e.g.*, Educ. Mgmt. Corp, Prospectus (Form 424B4) [hereinafter "EDMC 2009 Prospectus"] 3 (Oct. 10, 2009) ("Approximately 87% of undergraduate students who graduated from our institutions during the calendar year ended December 31, 2008 and were available for employment obtained a position in their field of study or a related field within six months of graduation."); "Inspiring Students" Handout (claiming that "[o]f all 2007 graduates of [NEIA] available for employment, 90.8% were working in a field related to their program of study within six months of graduation").
[9] *See College Navigator: New England Institute of Art*, U.S. DEP'T OF EDUC., INST. OF EDUC. SCIS., NAT'L CTR. FOR EDUC. STATISTICS, http://nces.ed.gov/collegenavigator/?q=new+england+institute+of+art&s=all&id=167321 (36 percent of full-time students beginning their studies at NEIA returned to school the following fall and 37 percent of full-time students who began their studies at NEIA graduated within 150 percent of the "normal time" allotted for completion of the program).
[10] *See* U.S. Dep't of Educ., Fact Sheet: Focusing Higher Education on Student Success, https://www.ed.gov/news/press-releases/fact-sheet-focusing-higher-education-student-success.

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

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

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

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

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

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

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

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

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

which the school purported to launch graduates.[18]

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

I. *Unfulfilled Promises and Unmanageable Debt*

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

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

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

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

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

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

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

[24] *Id.* 31.04(1).

[25] *Id.* 31.04(5).

[26] *Id.* 31.04(14).

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

A. *Mr. Del Rose*

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

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

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[27] *Id.* 31.07(1).
[28] *Id.* 31.04(7).
[29] Massachusetts law prohibits the fraudulent "misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or refrain from action in reliance thereon in a business transaction." *Graphic Arts Finishers, Inc. v. Boston Redevelopment Auth.*, 357 Mass. 40, 44 (1970); *see also Int'l Totalizing Sys., Inc. v. PepsiCo, Inc.*, 29 Mass. App. Ct. 424, 431 (1990) ("One who fraudulently makes a representation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.") (citing RESTATEMENT (SECOND) OF TORTS § 525 (1977)).
[30] Under Massachusetts law, unconscionability is "determined on a case by case basis, giving particular attention to whether, at the time of the execution of the agreement, the contract provision could result in unfair surprise and was oppressive to the allegedly disadvantaged party." *Zapatha v. Dairy Mart, Inc.*, 381 Mass. 284, 292-93 (1980) (internal citation omitted).
[31] The covenant of good faith and fair dealing is a "pervasive requirement," *Fortune v. Nat'l Cash Register Co.*, 373 Mass. 96, 102 (1977), of Massachusetts contracts that "requires that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to the fruits of the contract." *T.W. Nickerson, Inc. v. Fleet Nat'l Bank*, 456 Mass. 562, 570 (2010) (internal citations and quotations omitted).

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

B. *Ms. Martin*

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

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

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

C. *Ms. Bauer*

Ms. Bauer is 25 years old. She learned about NEIA while researching art schools online. Ms. Bauer was interested in NEIA's Digital Film and Video Production program, and attended a tour during which an NEIA representative showed her around a high-end studio facility and promised her access to top-of-the-line equipment. Ms. Bauer felt a rapport with her admissions representative, who mentioned that he had previously worked at the restaurant where Ms. Bauer was employed. Ms. Bauer was also considering MassArt, but her admissions representative assured her that NEIA was superior. Her admissions representative urged her to sign up for classes before they reached capacity, so Ms. Bauer scheduled a meeting with a financial aid representative, which she attended with her mother. At the meeting, the financial aid representative encouraged Ms. Bauer's mother to take out a Parent PLUS loan; Ms. Bauer's mother refused because she wanted Ms. Bauer to attend a community college. Ms. Bauer returned on her own, and ultimately took out approximately $35,917 in student loans.

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

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

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

II. *Structurally Unfair Loans*

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

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

[32] *See supra* note 9.
[33] *See supra* note 11.
[34] *Id.*
[35] NEIA Graduate Employment Statistics.

$29,010.[36] Contrary to NEIA's promises, graduates do not in fact realize increased earnings or obtain viable careers from having attended NEIA.[37]

Contrast these modest earnings with the substantial debt load of NEIA graduates. Data reported by the school indicate that the average federal student loan debt of an NEIA graduate—counting *only* federal student loan debt and *not* private student loans or Parent PLUS loans borrowed by students' families—was $29,444.[38] Even using this data, which dramatically undercounts debt attributable to attendance at NEIA, and ignores students who drop out of NEIA, an average NEIA graduate on a standard repayment plan would have to pay $4,068 annually to service her loan debt.[39] This amounts to approximately14 percent of average annual income going toward loan repayment, which is unsustainable as determined by the Department of Education.[40]

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

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

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

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

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

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

[41] NEIA Graduate Employment Statistics.

[42] *Id.*

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

Ms. Martin's experience further illustrates the structural unfairness of NEIA's practices. Ms. Martin borrowed approximately $85,510 to complete the Graphic Design program. According to NEIA, she could expect only a 45 percent chance of obtaining a job in this field.[44] The average earnings of graduates for the Graphic Design program, according to NEIA, were $27,426.[45] In actuality Ms. Martin earns approximately $20,000, but even using the average earnings data, under a standard repayment plan, she would have to pay $11,808 annually towards her loan debt, or approximately 43 percent of her annual income. In actuality, her debt burden is much higher, as approximately $28,000 of the $85,510 that she borrowed is in private loans, which carry interest rates up to almost eight points higher than the standard 6.8 percent interest rate charged for federal loans. Like Mr. Del Rose, Ms. Martin has seen her unmanageable debt result in negative amortization. Today, she owes approximately $114,000 as a result of attending NEIA, a figure that is likely to grow.

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

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

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[43] This and all debt-to-income ratios in this section were calculated using the approximate debt, including any private loans, owed by the individual (and, in Mr. Del Rose's case, the approximate debt owed by his father), as an unsubsidized federal loan, at the standard interest rate of 6.8 percent.
[44] NEIA Graduate Employment Statistics.
[45] *Id.*
[46] The federal student loan program limits the aggregate amount borrowed by a dependent student to $31,000, and no more than $23,000 may be in subsidized loans. *See Subsidized and Unsubsidized Loans: How much can I borrow?*, U.S. DEP'T OF EDUC., FED. STUDENT AID, https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much.
[47] *See* U.S. Dep't of Educ., Fact Sheet: Focusing Higher Education on Student Success, *supra* note 10.
[48] Ms. Bauer currently makes approximately $26,000 annually waitressing.

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

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

AI and EDMC both actively facilitated and participated in the deceptive acts and practices of NEIA described herein. NEIA operates under the pervasive control of its corporate grandparent, EDMC, and parent, AI. NEIA is a wholly-owned subsidiary of AI, which acquired it in 2000. AI, in turn, is a wholly-owned subsidiary of EDMC, and is the company's central brand. EDMC was first publicly traded in 1996, before being purchased for $3.4 billion in 2006 by two private equity firms, Providence Equity Partners and Leeds Equity Partners, together with Goldman Sachs.[49] EDMC incurred significant indebtedness through the transaction,[50] and planned to repay a portion of that indebtedness with proceeds received from an initial public offering ("IPO") in 2009.[51] EDMC's indebtedness led the company to pursue an aggressive growth strategy that involved consistently increasing enrollment, and thereby revenue.[52]

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

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

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

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

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

expanding from 38,047 students to 158,300 students.[53] More than half (64 percent) of this growth took place after EDMC was bought by Goldman Sachs and private equity interests.[54] This trend was observed at NEIA as well. Enrollment at this EDMC/AI branch more than doubled between 2001 and 2008, growing from 1,149 students to a peak enrollment of 2,495.[55] Revenues increased accordingly at NEIA, growing from $13.29 million in 2001 to $45.3 million in 2009.[56] This increase in revenue is not solely accounted for by the growth in enrollment. In fact, over this period of growth, tuition and fees increased substantially at NEIA, from an annual cost of $14,500 in 2001 to $23,100 in 2009.[57]

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

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[53] SENATE COMM. ON HEALTH, EDUC., LABOR & PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS [hereinafter "HELP Report"] 451(2012) (calculating enrollment using Securities and Exchange Commission filings).
[54] *Id.*
[55] Data reported to IPEDS.
[56] *Id.*
[57] *Id.*
[58] For example, in 2009, EDMC allocated 21.6 percent of its revenue, or $435 million, to marketing and recruiting, and 16 percent, or $319 million, to profit. HELP Report 456. In its 2009 Prospectus, EDMC explained to investors that, since being bought by Goldman Sachs and private equity, EDMC had experienced a 180 percent increase in the number of admissions representatives it employed. EDMC 2009 Prospectus 78.
[59] *See* HELP Report 462-63; Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana ¶¶ 105-19, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011).
[60] The 2009 Prospectus explains to investors that EDMC "pursue[s] additional efficiencies through our centralized and standardized infrastructure, systems and processes." EDMC 2009 Prospectus 7.
[61] In January 2013, NEIA's then-President explained in a letter to students that NEIA "is the only Art Institutes school in a system of more than 50 campuses that is on semesters. . . . We have spent the past year working with faculty and staff here at NEiA as well as at our corporate offices in Pittsburgh to facilitate a smooth transition." Letter from David G. Warren, President, New England Inst. of Art, to NEIA students.
[62] *See College Navigator: New England Institute of Art*, U.S. DEP'T OF EDUC., INST. OF EDUC. SCIS., NAT'L CTR. FOR EDUC. STATISTICS, http://nces.ed.gov/collegenavigator/?q=new+england+institute+of+art&s=all&id=167321 ("This institution has an open admission policy."); 940 MASS. CODE REGS. 31.06(6) (prohibiting enrollment of unqualified students).

structurally unfair student loans.

IV. *Demand for Relief*

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

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

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

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

Sincerely,

/s/
Project on Predatory Student Lending
Legal Services Center of Harvard Law School
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Carlos E. Santiago, *Commissioner of Higher Education for Massachusetts*, Massachusetts Department of Higher Education
Attorney General Maura Healey
Senator Elizabeth Warren

Appendix A

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

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

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

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

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

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

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

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