

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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PEOPLE OF THE STATE OF NEW YORK by
ERIC T. SCHNEIDERMAN, Attorney General of the
State of New York,

Petitioner,

VERIFIED PETITION

-against-

THE COLLEGE NETWORK, INC.; AMERICAN
CREDIT EXCHANGE, INC.; GARY EYLER,
Individually and as an Officer of THE COLLEGE
NETWORK, INC. and AMERICAN CREDIT
EXCHANGE, INC.; and SOUTHEAST FINANCIAL
CREDIT UNION,

Respondents.

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The People of the State of New York, by its attorney Eric T. Schneiderman,
Attorney General of the State of New York, allege the following upon information and
belief:

INTRODUCTION

1. The College Network is an Indianapolis-based company that sells study guides that are ostensibly designed to prepare students to pass various college-level subject matter competency examinations through which they can earn credit towards various degree programs, including nursing programs. Among other offerings, The College Network markets study guides that it claims are tailored to nursing degree programs offered by Excelsior College. Excelsior College is an accredited institution through which consumers can earn a nursing degree through non-traditional means, primarily through independent exam-based coursework.

2. The College Network is neither an educational institution nor affiliated with Excelsior College. Nevertheless, its advertising and promotional material, which are targeted primarily to licensed practical nurses (“licensed practical nurses” or “LPNs”) and paramedics, make repeated reference to Excelsior College, create the false impression that The College Network offers an Associate’s Degree in Nursing or Baccalaureate in Nursing “program” and is either the same as, or affiliated with, Excelsior College. Indeed, many consumers who contact The College Network in response to its ads are under the false impression that they have contacted Excelsior College.

3. When consumers respond to the ads, The College Network sends a representative to the consumer’s home, who then engages in a misleading one-on-one, high pressure sales pitch in an attempt to “enroll” the consumer in The College Network’s “program.” The “program” consists of little more than a series of study guides, which The College Network refers to as “Comprehensive Learning Modules” (“CLMs”).

4. During the presentation, representatives, who are paid strictly on commission, reinforce the false impressions created by The College Network’s solicitations. They also make numerous additional material representations about the “program,” including misrepresentations as to the sufficiency of the CLMs to prepare consumers for exams, the availability of staff and tutors to help consumers with their studies, and the length of time within which consumers can earn their nursing degree through The College Network’s “program.”

5. Further, even though The College Network typically only provides consumers with one CLM at a time, The College Network requires consumers to purchase upfront, at approximately \$500 apiece, all the CLMs they purportedly need to satisfy Excelsior College's degree requirements, typically between 7 and 17 CLMs. Thus, consumers who agree to "enroll" in the "program" are forced to sign agreements obligating them for thousands of dollars without having an opportunity to meaningfully assess the value and effectiveness of the study materials. The representatives also create the false impression that these amounts include all the fees consumers must pay to obtain their nursing degree from Excelsior College. Further, The College Network has a strict five-day cancellation policy.

6. In almost every case, The College Network's sales representatives induce consumers, most of whom are of modest means, to finance the cost of The College Network's "program." The sales representatives often create the impression that the financing is offered by The College Network. In fact, the loans are provided by one of several credit unions with which The College Network partners. Until recently, Respondent Southeast Financial Credit Union ("Southeast Financial" or "Southeast") provided the bulk of those loans.

7. Further, the sales representatives typically pad the loans by as much as \$3,000 or more by convincing consumers to also finance the testing fees that consumers would be required to pay to third party test administrators and create the false impression that consumers will be able to readily obtain a check for the fee from The College Network when they are ready to take an exam.

8. Consumers typically do not discover until well beyond the five-day cancellation period that they have been misled about virtually every aspect of The College Network's alleged "program."

9. When consumers subsequently seek to cancel their contracts, The College Network refuses and informs them that they are responsible for the full contract amount, and must continue to make the payments on their loans, even though, in many cases, consumers have only received one or two CLMs. The College Network even refuses consumers' requests to refund the third party testing fees. Similarly, when consumers call Southeast to complain that they have been misled and request that the automatic payments be discontinued, Southeast advises them that they must continue to make payments.

10. Thus, many consumers continue to make monthly payments for fear of damaging their credit, even though they do not use and indeed have not even received most of the CLMs that they have purchased.

11. As a result of Respondents' illegal and deceptive business practices, countless consumers are saddled with thousands of dollars in debt for which they have received nothing of value in exchange. Indeed, often, a significant portion of the "debt" relates to the thousands of dollars of the consumers' testing fee money that The College Network holds in trust for consumers.

12. If consumers discontinue making payments, the loan is bought by The College Network pursuant to the terms of its agreements with the credit unions who finance the transactions. Consumers are then subjected to collection activity from

American Credit Exchange, a collection agency, which unbeknownst to consumers, is owned by The College Network's Chief Executive Officer, Respondent Gary Eyer.

PARTIES AND JURISDICTION

13. Petitioner is the People of the State of New York, by its attorney, Eric T. Schneiderman, Attorney General of the State of New York. The Court has jurisdiction pursuant to (a) Executive Law § 63(12), which empowers the State to seek injunctive relief, restitution, damages and costs against any person or business that engages in persistent fraud or illegality in the conduct of business, and (b) General Business Law ("GBL") Article 22-A, which empowers the Attorney General to seek injunctive relief, restitution, disgorgement, civil penalties and costs against any person or business that engages in deceptive acts and false advertising in the conduct of business.

14. Respondent The College Network, Inc. is headquartered at 3815 River Crossing Parkway, Suite 260, Indianapolis, Indiana, and is also registered as a foreign business corporation with the New York State Department of State. It also has offices at 5920 S. Rainbow Boulevard, Suite 7, Las Vegas, Nevada.

15. Respondent American Credit Exchange, Inc. is headquartered at 5920 S. Rainbow Boulevard, Suite 7, Las Vegas, Nevada and is also registered as a foreign business corporation with the New York State Department of State.

16. Respondent Gary L. Eyer wholly owns The College Network and is its sole director, Chairman, President and Chief Executive Officer. Mr. Eyer is also the owner of American Credit Exchange, Inc.

17. Southeast Financial Credit Union is a federally insured credit union headquartered at 220 South Oakes Boulevard, Franklin, Tennessee.

18. The Attorney General has provided Respondents with pre-litigation notice pursuant to GBL §§ 349(c) and 350-c.

FACTS

19. Although The College Network claims to offer a variety of “programs” and widely disseminates advertisements offering consumers the opportunity to “Earn Your Degree or Certificate Online!,” The College Network is not an educational institution and has no degree granting authority.

20. In fact, The College Network merely sells study guides, which it refers to as “Comprehensive Learning Modules” (“CLMs”), that are purportedly designed to help consumers pass certain examinations to enable them to earn credit toward degrees offered by various degree-granting institutions.

21. Further, although The College Network has no affiliation with Excelsior College, it extensively promotes and sells a “program” that it refers to as an Associate’s Degree in Nursing through Excelsior College.¹

Background--Excelsior College’s Nursing Program

22. Students who enroll in Excelsior College’s nursing programs obtain course credit primarily by studying independently and then passing various standardized examinations administered at third party testing centers, such as Pearson VUE.

23. The bulk of consumers who enroll in an Excelsior College nursing program pursue an Associate’s Degree in Nursing.²

¹ The College Network also markets study guides for programs offered by other degree granting institutions. The instant proceeding only concerns The College Network’s marketing of its study guides related to Excelsior College nursing programs.

² Although the vast majority of consumers who contact The College Network are interested in pursuing an Associate’s Degree in Nursing (“ADN”), there are a small percentage of consumers who already have an ADN and contact The College Network about obtaining a Baccalaureate in Nursing (“BSN”). These latter consumers are subjected to the same misleading practices as consumers who inquire about an ADN. For

24. To satisfy the degree requirements for the Associate's Degree in Nursing program, consumers must, among other things, fulfill certain general education requirements that may include disciplines such as American History and American Literature. They must also take two pre-requisite courses, Anatomy and Physiology and Microbiology. Consumers can fulfill these course requirements through a variety of means, including, obtaining course credit at a community college, or by studying independently and passing certain proficiency examinations administered by a third party testing organization, such as Pearson VUE. Many of these proficiency examinations are developed by the College Board, which has operated its College-Level Examination Program (CLEP) for more than 40 years. Excelsior College also offers its own proficiency exams on a variety of subjects.

25. To obtain an Associate's Degree in Nursing through Excelsior College, consumers must also take and complete Excelsior College's eight core nursing courses. For each nursing course, Excelsior College provides students with a content guide, a test "blue print" that identifies the topics covered by the exam and the recommended textbooks and readings where students can study those topics. The exams for the nursing courses are created by Excelsior College and administered by Pearson VUE.

26. Excelsior College does not automatically apply credits consumers may have already earned toward Excelsior College's degree requirements. Rather, Excelsior only accepts such credits after conducting a review of the course, examining, for example, the breadth and depth of its content to determine whether the course meets its standards for awarding credit.

the sake of simplicity, the pleadings reference the degree sought by consumers as an ADN, but the deceptive and illegal practices detailed herein apply equally to those consumers who contacted The College Network about a BSN.

27. Many consumers who seek to obtain a nursing degree through Excelsior College's nursing program already work in the health care field in positions such as a licensed practical nurse or paramedic and hope to advance themselves professionally and increase their earning potential to support themselves and their families. Many are attracted to Excelsior College's program because they work full time and cannot afford to quit their jobs to enroll in a traditional classroom-based nursing program.

The College Network's Deceptive Marketing and Advertising Materials

28. The College Network engages in targeted internet marketing to consumers who are interested in obtaining a nursing degree from Excelsior College. The College Network's advertisements repeatedly exploit the Excelsior College name and create the false impression that The College Network is an educational institution that offers nursing programs and is one and the same as, or affiliated with, Excelsior College.

29. For example, during the last few years, if one conducted a Google search for "Excelsior College," the first result appearing at the top of the page was, in fact, an advertisement sponsored by The College Network. Until sometime in the latter part of 2013, the text read: "Excelsior Nursing Program," followed by a toll free phone number. Directly below was the following web address: "www.collegenetwork.com/Excelsior." Below the web address, the advertisement stated "Excelsior Nursing LPN to RN Program Save up to 50%":

Ad related to excelsior college

Excelsior Nursing Program 1 (877) 725 9375

www.collegenetwork.com/Excelsior

Excelsior Nursing LPN to RN Program Save up to 50%. Request Info Now!

LPN to ADN Program - LPN to BS in Nursing

30. Thus, this paid advertisement created the false impression that consumers who called the advertised number or clicked the link were either contacting Excelsior College, or at the very least, an organization affiliated with Excelsior College, through which consumers could obtain an Excelsior College RN³ degree.

31. In fact, many consumers who responded to the advertisement by contacting The College Network were under false the impression that they were contacting Excelsior College.

32. On or about August 2013, The College Network removed any reference to “Excelsior” from its Google advertisement and changed the web address to “www.collegenetwork.com/LPN2RN.” In some ads, the text above the address now reads “LPN to RN in 18 months.” Below the web address, some advertisements state: “NLN Accredited LPN to RN Program Save up to 50%. Request Info Now!”

33. The revised advertisements are also misleading. The College Network does not offer a nursing program and the NLN, National League for Nursing, is a trade organization that does not accredit nursing programs.

34. It is also not true that The College Network offers savings of “up to 50%” or a means for consumers to obtain a nursing degree in 18 months.

35. The College Network makes similar false and misleading claims in other advertisements that appear in print and online media. For example, one ad that appeared online as recently as November 20, 2014, touts, among other things, “RN Program in 18 Months” and “LPNs get an RN/ADN Degree Online. Accredited, ½ the Cost...”

³ The term RN, registered nurse, encompasses both an Associate’s Degree (ADN) and a Baccalaureate in Nursing (BSN).

36. Consumers who click the link embedded in The College Network's online ads are redirected to The College Network's website, which further reinforces the false impression that The College Network offers a nursing degree program and is one and the same as, or affiliated with Excelsior College.

37. The landing page, which prominently features the heading: "LPN to RN Program, Advance your Nursing Career" lists nine reasons to "Get Started Now," a number of which foster and reinforce the false impression that The College Network is an institution of high learning that offers a nursing degree program. For example, the list includes: "No Waiting List;" "NLNAC⁴ Accredited;" and "Fully Accredited Universities." Other listed benefits include the availability of "Academic Support" and "Financing Options."

38. In fact, The College Network does not offer a nursing program. Thus, it is neither NLNAC accredited, nor even eligible for accreditation.

39. The landing page provides a toll-free number for consumers to call to obtain additional information. Alternatively, consumers can use drop-down menus to identify the program in which they are interested, as well as their current certification, and then click a "Learn More" link to be redirected to another page, where they are asked to provide their contact information so that The College Network can contact them. If consumers submit their contact information, The College Network redirects them to a page thanking them for requesting more information and advising them, among other things, that "The College Network is an educational services and eLearning provider that **enables you to obtain a college degree or professional certificate from our**

⁴ NLNAC, the National League for Nursing Accrediting Commission, Inc., now known as the Accrediting Commission for Education in Nursing, Inc. ("ACEN"), is an accrediting organization that is a wholly owned subsidiary of the National League for Nursing.

established partner universities while balancing your personal and professional life.”

(emphasis added)

40. Throughout its website, The College Network reinforces the false impression that consumers can obtain a nursing degree through The College Network, and that The College Network is affiliated with Excelsior College. For example, one page bears the heading “Online Nursing Degrees” and states: “**The College Network partners with leading universities to offer associate’s, bachelor’s and master’s degree programs** designed for busy nurses like you.”⁵ (emphasis added).

41. Another webpage that describes The College Network’s alleged “Associate’s Degree in Nursing (ADN)” program includes a description of Excelsior College’s nursing program under the heading of “Associate’s Degree in Nursing Overview”:

Excelsior College School of Nursing, an NLN⁶ Center of Excellence in Nursing Education, is the largest nursing school in the United States. Excelsior College offers an associate’s degree in nursing program that prepares nurses to deliver quality care and be effective members of the healthcare team in collaboration with other healthcare professionals. The program, which is accredited by the National League for Nursing Accrediting Commission, requires the successful completion of 67 semester credits, including 31 in general education and 36 in nursing...

42. Although The College Network added an inconspicuous disclaimer to the bottom of the page sometime after July 2013, stating that “The College Network has no affiliation, formally or informally, with Excelsior College” this disclaimer is insufficient to dispel the overall impression created by The College Network’s web advertisements

⁵ The College Network has marketing agreements with a number of institutions of higher learning, such as Indiana University, that simply permit The College Network to use the institution’s name for marketing purposes. Contrary to the impression created by The College Network’s marketing materials, it does not “partner” with those institutions to offer degree programs.

⁶ The NLN, National League for Nursing, is a membership organization for nurse faculty and leaders in nursing education, which, among other things, recognizes schools of nursing and health care organizations that have achieved a demonstrated level of excellence.

and website that it is affiliated with Excelsior College and offers nursing degree programs.

43. The College Network's homepage, www.collegenetwork.com, also falsely claims that The College Network offers degree programs and uses terminology typically associated with institutions of higher learning, stating:

- We offer LPNs, RNs and nurse leaders specialized degree programs.
- The College Network partners with leading universities to offer associate's, bachelor's and master's degree programs designed for busy nurses.
- Our team is standing by to answer your questions regarding **programs, transfer credits, the application process, and financing your education.** (emphasis added)

44. The College Network representatives who field phone calls from consumers who inquire about The College Network's "program" reinforce many of these false impressions. For example, representatives repeatedly falsely advise consumers that The College Network "offers an online program... through Excelsior College" and if they sign up with The College Network they are automatically enrolled in Excelsior College.

The College Network's Misleading Sales Presentations

45. In addition to the misleading advertising set forth above, sales representatives for The College Network – which The College Network misleadingly refers to as "Program Advisors" – make group presentations at LPN schools or healthcare facilities that employ LPNs and other healthcare professionals who may be interested in obtaining a nursing degree. These presentations foster and/or reinforce many of the same false impressions that are created by The College Network's written marketing materials and advertisements, including, that The College Network offers a

nursing degree program and is either one and the same as, or affiliated with Excelsior College.

46. The College Network offers consumers who attend the group presentations the opportunity to make arrangements to meet one-on-one with a “Program Advisor.” Indeed, even the title The College Network uses for its sales associates, “Program Advisor,” fosters the false impression that The College Network is an academic institution.

47. Thus, by the time consumers meet with a “Program Advisor,” they are typically laboring under a number of false impressions created by The College Network’s written marketing materials and/or group presentations, including that The College Network is affiliated with Excelsior College.

48. Program Advisors then reinforce these impressions during the sales pitch. For example, Program Advisors discuss the course requirements consumers must fulfill to obtain a nursing degree from Excelsior College, review consumers’ college transcripts and advise them as to which courses can be applied toward Excelsior College’s Associate’s Degree in Nursing program.

49. While dispensing this information and advice, the Program Advisor utilizes and goes over a “Program Outline,” which explicitly identifies the “program” at the top right-hand corner of the page as an “**Associate of Science in Nursing...Through EXCELSIOR COLLEGE.**” (emphasis in original).

50. The Program Outline lists the course requirements for Excelsior College’s Associate of Science in Nursing⁷ degree, contains multiple references to Excelsior

⁷ The terms Associate of Science in Nursing and Associate’s Degree in Nursing both refer to the same degree, an Associate’s Degree in Nursing.

College and even lists various Excelsior College fees, such as an enrollment, application and clinical fee. The form also lists the various general education and pre-requisite courses the consumers may need to take to fulfill the degree requirements, as well as the core nursing courses that are an essential component of the Excelsior College ADN program. For each course, the form also lists the testing fee that consumers must pay to the third party testing center in order to sit for the exam. The testing fee for each course ranges from \$95 to \$325.

51. The College Network sells a CLM for each of the courses listed on the Program Outline. Program Advisors describe the CLMs as condensed versions of all the information they will need to pass the examinations, in essence, the equivalent of the "Cliff's Notes" for the examination subject matter.

52. One of the major selling points emphasized by The College Network's Program Advisors is that consumers who enroll in The College Network's "program" will be able to earn their degree more quickly than they would through a traditional nursing program, stating, for example, that consumers will be able to earn their degree in as little as twelve to eighteen months.

53. After reviewing the consumers' transcripts, the Program Advisors then "recommend" the CLMs that the consumer would need to fulfill Excelsior College's degree requirements and check off the courses on the Program Outline.

54. The number of CLMs recommended by the Program Advisor varies from one consumer to the next (depending on the Program Advisor's assessment of which courses that the consumer may have already taken can be applied toward the degree requirements) but typically ranges from 7 to 17.

55. Although it is The College Network's policy only to provide one CLM at a time to its customers, The College Network requires consumers to purchase upfront all of the CLMs for all of the course requirements the consumer must meet to get a degree from Excelsior College.

56. If a consumer asks during the sales presentation about purchasing only one CLM in order to give the "program" a try before making a significant investment, its Program Advisors advise consumers that The College Network does not sell the CLMs one at a time and are trained to suggest that anyone wishing to purchase only one is not dedicated to achieving their degree.

57. The College Network charges approximately \$500 per CLM. Thus, the total fees for the recommended CLMs can range from approximately \$3,500 to more than \$8,000.

58. Program Advisors also reassure consumers, many of whom are insecure about their ability to earn a degree through self-study, that The College Network provides "Academic Advisors" who are readily available by phone to assist consumers with substantive questions regarding the CLM subject matter. This is a major selling point for many consumers, who are comforted by the notion that they will be able to get assistance from The College Network staff if they encounter any difficulty during their studies.

59. Program Advisors also offer financing for The College Network's "program" and repeatedly falsely state or create the false impression that the loans are "student" loans, when in fact they are ordinary consumer loans carrying interest rates of 12% and terms that typically range from two to five years.

60. In many cases, Program Advisors create the false impression that The College Network is offering the financing and do not disclose that, in fact, the financing is provided by one of several out-of-state credit unions with whom The College Network has contractual relationships, the terms of which require The College Network to fully guarantee the loans.

61. The vast majority of consumers who fall prey to The College Network's misleading sales pitch are of very modest means and agree to finance their purchase because they do not have thousands of dollars to pay for the "program."

62. In many cases, Program Advisors also convince consumers to finance the third-party examination fees consumers would otherwise only be required to pay when they are ready to sit for an examination. They advise them that, if they do so, they won't have to worry about having the money to pay the fee when they are ready to sit for the exam, and instead, can simply contact The College Network to request a check. These examination fees can add as much as \$3,000 or more to the total amount of the loan.

63. The Program Advisors repeatedly fail to disclose, however, that The College Network places significant conditions and restrictions on consumers before it will provide them with a check for an exam fee.

64. For example, The College Network requires consumer to take all the end of chapter quizzes and practice exams for the CLM, which are available on its website, and achieve a specified grade on each, most recently, 90%, before it will give them a check.

65. Further, even when consumers manage to satisfy all of its undisclosed conditions, The College Network fails to promptly provide consumers with a check.

66. Indeed, consumers have endured waits of as long as nine months to receive a check after satisfying The College Network's preconditions.

67. Although many consumers are hesitant to make such a significant financial commitment on the spot, Program Advisors often place additional pressure on consumers to do so by advising them that if consumers sign up that day, they will be eligible for a "grant" that will reduce the cost of the program by as much as 30%.

68. Once consumers agree to "enroll" in The College Network's "program" and to finance their purchase, Program Advisors require them to sign a number of documents. The Program Advisors, acting as agents of the credit unions, most notably, Respondent Southeast Financial Credit Union, complete the loan documents and then have consumers execute the loan application and promissory note, as well the Purchase Agreement.

69. Program Advisors typically also require consumers to execute, among other things, an "Agreement for Preauthorized Payments," authorizing the credit union to automatically debit monthly payments from consumers' bank accounts.

70. Many consumers feel rushed during the sales presentation and either do not read or merely skim the documents.

71. In many cases, consumers simply rely on the Program Advisor's explanation of what they are signing.

72. In some cases, Program Advisors actively discourage consumers from reading the paperwork or make it difficult for them to do so. For example, in some cases, Program Advisors have advised consumers that they can read the paperwork at a later

time because they will have a chance to cancel, or ask them to sign electronic versions of the documents on a laptop computer without giving them a paper copy of the forms.

73. Respondents insert numerous disclaimers in the paperwork they provide consumers that contradict the false impressions that The College Network repeatedly fosters through its advertising and sales pitches. These disclosures are typically hidden in densely worded documents. As a result, few, if any consumers discover the disclaimers.

74. For example, the reverse side of the purchase agreement, which includes numerous densely worded paragraphs, includes a disclaimer that “The College Network is not part of any college or university; therefore, it cannot grant credit, award a degree or certification.”

75. Similar disclaimers are also contained in two other densely worded documents that consumers are required to sign, one innocuously entitled “Customer Courtesy Checklist,” and the other vaguely entitled “Statement of Understanding, Associate of Science in Nursing.”

76. As a result of The College Network’s fraudulent and deceptive advertising and sales presentations, many consumers who agree to “enroll” in its “program” are under the mistaken impression that The College Network offers a nursing degree and is either affiliated with, or one and the same as, Excelsior College. Many consumers are also left with the false impressions that they will automatically be enrolled in Excelsior College and that their purchase includes all the fees required to obtain their degree from Excelsior College.

Failure to Afford Consumers Notice and Opportunity to Cancel

77. Program Advisors do not always provide consumers with a completed Notice of Cancellation form or orally advise consumers of their statutory right to cancel the contract within three business days, as required by New York's Door-to-Door Sales Protection Act.

78. Additionally, its Purchase Agreements do not include a conspicuous notice advising consumers that if they cancel the contract, The College Network may only keep five percent of the purchase price plus a pro rata share of the services used by the consumer, as required by Personal Property Law § 412-a.

79. Further, although in many cases the Program Advisor gives the consumer a "courtesy copy" of a CLM the day they "enroll," in some cases consumers do not even receive their first CLM until after the five-day cancellation period has expired.

80. Although The College Network also has its CLM materials available on its website, and more recently, has advised some consumers that they must use electronic versions of the CLMs, it does not provide consumers with a password to access the website until after the five-day cancellation period has expired.

81. Thus, consumers have little or no opportunity during the cancellation period to review and evaluate the CLMs, and more importantly, to determine whether the CLMs live up to The College Network's claim that they contain all the information covered in the examinations to which they are allegedly geared.

Consumers Subsequently Discover That They Were Misled About Virtually Every Aspect of The College Network's "Program"

82. It is only well beyond the five-day cancellation period when consumers discover that many, if not all, of the features and benefits of The College Network's program are illusory.

83. The CLMs are, at best, nothing more than general study guides that provide a general overview of the subject matter. The substantive material is divided into chapters, with each chapter followed by a limited number of review questions. Many of the CLMs include a "Practice Examination" at the end of the CLM. The online versions of the CLMs include quizzes at the end of each chapter, as well as one or two "practice" exams.

84. After beginning to study their first CLM, many consumers find that they have difficulty understanding the material or have questions about it.

85. However, when consumers attempt to call The College Network to get help from an Academic Advisor – one of the major selling points touted by its Program Advisors – they are sometimes unable to get through to a live person and find that their messages are not returned.

86. On those occasions where consumers do get through to an Academic Advisor, the Advisors have no substantive expertise on the subject matter and are not able to answer consumers' questions. Instead, Academic Advisors typically offer only general study tips or simply refer consumers back to the same material in the CLM that they are having trouble understanding.

87. Further, in many cases, when consumers who study a CLM decide they are ready to take the examination and call The College Network to request a check for the

exam fee so that they can schedule the test, they learn for the first time of the significant obstacles that The College Network places in their way. For example, The College Network tells consumers that it will not send them a check unless and until they take all the end of chapter quizzes and practice tests available online and achieve a specified score, which has increased over time from 70% to its current 90%.

88. However, many consumers who take the chapter quizzes and practice tests are unable to achieve scores of 90%, and in many cases, fail the tests and quizzes altogether. These consumers find that some of the material covered by the quizzes and practice tests is not covered by the CLM.

89. Unable to satisfy The College Network's undisclosed conditions, these consumers are unable to obtain a check for the testing fee, and thus, are unable to sit for an exam or earn credit towards their degree.

90. If consumers contact The College Network to request a CLM on a different subject, hoping that perhaps they will fare better on it, in some cases, The College Network refuses to provide one, advising them that it will only provide them with one CLM at a time.

91. Even after consumers manage to comply with its conditions for obtaining a testing fee check, The College Network fails to timely send them a check. Indeed, more recently, consumers have waited for as long as nine months to receive the check. These delays significantly impede consumers' progress toward their degree.

92. Indeed, rather than providing consumers with a means to earn a degree in as little as 12 to 18 months, as it repeatedly touts, The College Network's egregious delays in providing consumers with their testing fee money ensures that it will take

consumers many years—much longer than it would take in a traditional nursing program—to earn their Associate’s Degree in Nursing.

93. Moreover, and more significantly, even when consumers diligently study a CLM and achieve at least a 90% on the quizzes and tests, many consumers who subsequently sit for the examination are stunned to discover that the CLM did not adequately prepare them for it. Specifically, consumers find the CLM did not cover all the substantive material covered by examination, or covered it only superficially. As a result, many consumers fail their examinations.

94. At some point, often after they fail their first examination, consumers also discover that The College Network is not an educational institution, does not offer nursing degrees and has no affiliation with Excelsior College.

95. In some cases, these discoveries are made when consumers, under the impression either that they have been dealing with Excelsior College all along, or that they were automatically enrolled in Excelsior College when they signed up for The College Network’s program, call Excelsior College to complain about the inadequacy of the CLMs. Consumers are then shocked when they are told by Excelsior College that, in fact, they are not enrolled in the Excelsior College nursing program, that they purchased the CLMs from The College Network, not Excelsior College, and that The College Network is simply in the business of selling study guides and is not affiliated with Excelsior College.

96. Other consumers discover this information when they search online for information about The College Network, after finding that the “program” and materials do not measure up to how they were represented by The College Network. Consumers

then find numerous postings from other consumers, which reveal that The College Network is not affiliated with Excelsior College and offers nothing more than study guides. Many consumers then call Excelsior College to confirm that the college is not affiliated with The College Network.

97. Often, consumers also learn from Excelsior College that the general education credits that they may earn by using The College Network's study materials and passing competency exams do not automatically transfer to Excelsior College and that they must apply separately, and pay additional fees, to Excelsior College.

The College Network Refuses to Cancel Consumers' Contracts

98. When consumers contact The College Network to complain about the various ways that it has misled them about the "program," and ask to cancel their contracts, representatives advise them that it is too late because it is beyond the five-day cancellation period.

99. The representatives further represent that consumers are obligated for the entire purchase amount, even though consumers have typically only received one or two, or at most, a few of the CLMs that they purchased.

Southeast Financial

100. Until the fall of 2014, Southeast Financial provided the bulk of the loans to The College Network's customers. Once the loans were executed, The College Network forwarded to Southeast all of the loan documents, as well as a copy of the executed Purchase Agreement.

101. As late as 2013, Southeast Financial had more than 1,500 active accounts from New York consumers alone. Thus, even though Southeast has discontinued

providing the financing to The College Network's customers, Southeast continues to collect payments from consumers whose underlying Purchase Agreements were procured through The College Network's fraudulent conduct.

102. Further, Southeast Financial also continues to collect payments from consumers for CLMs the consumers do not use and for which they are not liable in violation of New York's correspondence school statute, Personal Property Law § 412-a.

103. In addition, the consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan.

104. Thus, to the extent that Southeast holds any of such consumer Promissory Notes, it is subject to all claims and defenses that could be asserted against The College Network.

105. Southeast is also liable for the acts and practices alleged herein based on its own knowledge of those practices and its direct misrepresentations to consumers.

106. Southeast is well aware that The College Network has defrauded many consumers. Indeed, after failing to obtain recourse from The College Network, many consumers advise Southeast Financial that they were misled by The College Network and ask to cancel their financing agreement and for Southeast to stop the automatic monthly payment deductions.

107. Southeast Financial falsely advises consumers that they are obligated to pay the full amount of the loan, even where consumers have not received the services or products they purchased.

108. Additionally, the Attorney General has also advised Southeast of the evidence uncovered in the Office of the Attorney General's investigation, including evidence that The College Network induces consumers to enroll in its program through numerous misrepresentations, including its relationship with Excelsior College.

109. Despite its knowledge of The College Network's fraudulent and deceptive practices, Southeast continued until the fall of 2014 to provide the financing for The College Network's customers, without which consumers would be unable to "enroll" in The College Network's "program," and to make automatic deductions from consumers' accounts.

110. After consumers fail to obtain recourse from either Southeast Financial or The College Network, many simply continue to allow Southeast to deduct the monthly payments because they do not want to harm their credit rating.

Respondents' Collection Activity

111. If consumers discontinue making payments on their loans, they are then subjected to collection activity. Unbeknownst to consumers, pursuant to its contractual agreement with Southeast, The College Network is required to purchase all loans that become more than 90 days delinquent. After buying consumers' delinquent loans, The College Network then sells the loans to American Credit Exchange, a collection agency owned by Respondent Gary Eyler, The College Network's Chief Executive Office, which operates out of office space in Las Vegas, Nevada shared with The College Network.

112. Because the consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan, American Credit Exchange is

also subject to all claims and defenses that consumers may have against The College Network on any of the promissory notes it holds.

113. American Credit Exchange then begins collection activity. Thus, within a few months of discontinuing payments on the loan, consumers begin receiving collection notices and calls from American Credit Exchange but are unaware of the close connection between The College Network and American Credit Exchange.

114. Further, in many cases, these consumers typically have not received the bulk of The College Network's study materials and have already paid more than they are legally required to pay under New York's correspondence school statute. Yet, American Credit Exchange represents to consumers that they are legally responsible for the debt and attempts to collect the full outstanding amount, including the hundreds of dollars in third party testing fees that were included in the loan.

115. Upon information and belief, despite the fact that the testing fee money is held by The College Network in trust for the benefit of consumers, The College Network never returns those amounts to consumers.

116. Some consumers, desperate to get out from under the burdensome and unjustified debt, file complaints with either the Better Business Bureau or a Federal or State enforcement agency, including the Office of the Attorney General.

117. In some cases, only after consumers file such complaints, The College Network agrees to make some concession to the consumer. Typically, The College Network offers only to cease collecting further payments, but refuses to refund any of the amounts already paid by consumers, which in some cases, totals thousands of dollars.

The amounts retained by The College Network often exceed the amounts it is authorized to retain under New York law.

118. In addition, The College Network requires consumer to execute a “Release and Settlement” agreement that, among other things, requires consumers to keep the settlement confidential and prohibits them from disparaging The College Network.

Gary Eyer is Personally Liable for The College Network’s Fraudulent Conduct

119. Gary Eyer, The College Network’s President and Chief Executive Officer, plays an active role in the company, including reviewing the company website, approving its marketing decisions and receiving information from his employees about complaints that raise “serious issues.”

120. Eyer is also well aware that The College Network’s advertising is misleading, and that as a result, many consumers who “enroll” in its “program” are under the mistaken impression that The College Network is one and the same as, or affiliated with, Excelsior College.

121. For example, dating back to at least 2003, officials from Excelsior College, who receive a constant stream of inquiries and complaints from The College Network’s customers, have repeatedly advised Eyer that The College Network’s advertising materials, which repeatedly use the “Excelsior” name, are misleading and create the misleading impression that The College Network is affiliated with Excelsior College.

122. Further, by letter dated May 16, 2003 to The College Network’s “Chief Executive Officer,” Excelsior College’s intellectual property counsel formally requested

that The College Network cease and desist from the unauthorized use of Excelsior College's name.

123. In addition, Excelsior College's General Counsel has met with Eyler on a number of occasions and advised him of the numerous complaints Excelsior College receives from consumers concerning the inadequacy of the CLMs and the confusion as to the relationship between The College Network and Excelsior College.

124. Eyler also acknowledged in deposition testimony that he is aware of a 2007 Settlement entered into between The College Network and the Arkansas Attorney General's Office, which concerned many of the same practices that are at issue in this proceeding. For example, Arkansas' Assurance of Voluntary Compliance ("AVC") found that The College Network violated Arkansas' Deceptive Trade Practice Act by, among other things, disseminating advertisements that created the impression that The College Network offered nursing degrees; and falsely representing affiliations with accredited education institutions.

125. Yet, Eyler has failed to take meaningful steps to reform The College Network's business practices and has continued to use the Excelsior College name in its marketing materials, creating the false impression that The College Network is affiliated with Excelsior College.

FIRST CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
FRAUD
(as to all Respondents)

126. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

127. Executive Law § 63(12) defines fraud and fraudulent conduct broadly to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

128. Respondents The College Network’s and Gary Eyler’s repeated fraudulent business practices include, but are not limited to, the following:

- (a) misrepresenting, directly and by implication, that The College Network is affiliated with Excelsior College;
- (b) misrepresenting, directly and by implication, that The College Network is an “accredited” institution that offers nursing degrees;
- (c) misrepresenting, directly and by implication, that The College Network has “Academic Advisors” who can assist consumers with the substantive nursing content of CLMs;
- (d) misrepresenting, directly and by implication, the nature and quality of the goods and services The College Network provides, including the nature and quality of its CLMs;
- (e) misrepresenting, directly and by implication, consumers’ legal obligation to pay for unused study materials when consumers request to cancel their contracts;
- (f) failing to disclose consumers’ right to cancel their contracts and to receive refunds for unused study material;
- (g) misrepresenting, directly and by implication, The College Network’s cancellation policy;

- (h) failing to disclose the conditions consumers must meet before The College Network will provide them with an exam check and failing to timely provide consumers with checks for exam fees;
- (i) misrepresenting, directly and by implication, the length of time to complete a nursing degree using The College Network's "program";
- (j) misrepresenting the nature and features of the offered financing; and
- (k) failing to provide consumers with time and/or means to review contract documents before signing them.

129. The consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan.

130. Thus, to the extent they hold Promissory Notes related to consumers' purchase of The College Network's nursing "programs," Respondents Southeast and American Credit Exchange are liable for The College Network's repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)

FRAUD
(as to Southeast Financial Credit Union)

131. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

132. Respondent Southeast Financial's direct fraudulent business practices include, but are not limited to, the following:

- (a) misrepresenting to consumers who were defrauded by The College Network that they are legally obligated to pay the full amount of the

alleged debts stemming from their Purchase Agreement with The College Network;

- (b) misrepresenting to consumers who request to cancel their contract with The College Network that they are obligated to pay the full amount of the loan, even where consumers have not received the CLMs that they purchased; and
- (c) aiding and abetting The College Network's fraudulent conduct by continuing to provide financing to consumers who enroll in The College Network's "program" despite its knowledge that The College Network induces consumers by misrepresenting its products, services and relationship to Excelsior College.

133. By reason of the acts and practices alleged herein, Respondent Southeast Financial has engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
FRAUD
(as to Respondent American Credit Exchange)

134. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

135. Respondent American Credit Exchange's fraudulent business practices include, but are not limited to, falsely advising consumers that debts were owed or misrepresenting the amounts that were owed.

136. By reason of the acts and practices alleged herein, Respondent American Credit Exchange has engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

FOURTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) ILLEGALITY
VIOLATIONS OF GBL § 349
(as to all Respondents)

137. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

138. Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other equitable relief when any person or entity has engaged in repeated or persistent illegal conduct.

139. GBL Article 22-A, § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade, or commerce in this State.

140. As set forth more fully above, Respondents The College Network and Gary Eyler have repeatedly and persistently engaged in deceptive business practices in violation of General Business Law § 349.

141. Respondents' deceptive business practices in violation of GBL § 349 include, but are not limited to, the following:

- (a) misrepresenting, directly and by implication, that The College Network is affiliated with Excelsior College;
- (b) misrepresenting, directly and by implication, that The College Network is an "accredited" institution that offers nursing degrees;

- (c) misrepresenting, directly and by implication, that The College Network has “Academic Advisors” who can assist consumers with the substantive nursing content of CLMs;
- (d) misrepresenting, directly and by implication, the nature and quality of the goods and services The College Network provides, including the nature and quality of its CLMs;
- (e) misrepresenting, directly and by implication, consumers’ legal obligation to pay for unused study materials when consumers request to cancel their contracts;
- (f) failing to disclose consumers’ right to cancel their contracts and to receive refunds for unused study material;
- (g) misrepresenting, directly and by implication, The College Network’s cancellation policy;
- (h) failing to disclose the conditions consumers must meet before The College Network will provide them with an exam check and failing to timely provide consumers with checks for exam fees;
- (i) misrepresenting, directly and by implication, the length of time to complete a nursing degree using The College Network’s “program”;
- (j) misrepresenting, directly and by implication, the nature and features of the offered financing; and
- (k) failing to provide consumers with the time and/or means to review contract documents before signing them.

142. By their actions in violation of GBL § 349, Respondents The College Network and Gary Eyler have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

143. The consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan.

144. Thus, to the extent they hold Promissory Notes related to consumers' purchase of The College Network's nursing "programs," Respondents Southeast and American Credit Exchange are liable for The College Network's repeated and persistent violations of GBL § 349.

FIFTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) ILLEGALITY
VIOLATIONS OF GBL § 349
(as to Respondent Southeast Financial Credit Union)

145. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

146. GBL Article 22-A, § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade, or commerce in this State.

147. As set forth more fully above, Respondent Southeast Financial Credit Union repeatedly and persistently engaged in deceptive business practices in violation of General Business Law § 349.

148. Respondent's direct deceptive business practices in violation of GBL § 349 include, but are not limited to, the following:

- (a) misrepresenting to consumers who were defrauded by The College Network that they are legally obligated to pay the full amount of the

alleged debts stemming from their Purchase Agreement with The College Network;

- (b) misrepresenting to consumers who request to cancel their contract with The College Network that they are obligated to pay the full amount of the loan, even where the consumer has not received the CLMs that they purchased; and
- (c) aiding and abetting The College Network's fraudulent conduct by continuing to provide financing to consumers who enroll in The College Network's "program" despite its knowledge that The College Network induces consumers by misrepresenting its products, services and relationship to Excelsior College.

149. By its actions in violation of GBL § 349 Respondent Southeast Financial has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) ILLEGALITY
VIOLATIONS OF GBL § 349
(as to American Credit Exchange)

150. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

151. GBL Article 22-A, § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade, or commerce in this State.

152. As set forth more fully above, Respondent American Credit Exchange repeatedly and persistently engaged in deceptive business practices in violation of General Business Law § 349.

153. Respondent's deceptive business practices in violation of GBL § 349 include, but are not limited to, falsely advising consumers that debts were owed or misrepresenting the amounts that were owed.

154. By its actions in violation of GBL § 349 Respondent American Credit Exchange has engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SEVENTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) ILLEGALITY
VIOLATIONS OF GBL § 350
(as to all Respondents)

155. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

156. GBL Article 22-A, § 350 declares unlawful any false advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in this State.

157. As set forth more fully above, The College Network and Gary Eyler have repeatedly and persistently engaged in false advertising in violation of General Business Law § 350.

158. Respondents' false advertising practices in violation of GBL § 350, include, but are not limited to, the following:

- (a) misrepresenting, directly and by implication, that The College Network is either one and the same as, or affiliated with, Excelsior College;
- (b) misrepresenting, directly and by implication, that The College Network offers a nursing degree program;

- (c) misrepresenting, directly and by implication, that consumers who enroll in its “program” can obtain a nursing degree in 12 to 18 months; and
- (d) misrepresenting, directly and by implication, that The College Network offers an accredited program.

159. By their actions in violation of GBL § 350, Respondents The College Network and Gary Eyer have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

160. The consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan.

161. Thus, to the extent they hold Promissory Notes related to consumers’ purchase of The College Network’s nursing “programs,” Respondents Southeast and American Credit Exchange are liable for The College Network’s repeated and persistent violations of GBL § 350.

EIGHTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) ILLEGALITY
VIOLATIONS OF PERSONAL PROPERTY LAW ARTICLE 10, § 412-a
(as to all Respondents)

162. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

163. Personal Property Law (“PPL”) Article 10, § 412-a pertains to the cancellation of contracts for “future consumer services” offered by “correspondence schools.” The statute defines “contract for future consumer services” as “any contract entered into for consumer services to be performed in the future on a lesson-by-lesson or class-by-class basis and offered, sold or provided by correspondence schools,” which

means “any plan or method used by any persons, firm, corporation or other organization for giving instruction in any form or manner by correspondence under contract.”

164. The College Network qualifies as a “correspondence school” within the meaning of PPL § 412-a.

165. The College Network’s Purchase Agreements for its so-called Associate Degree in Nursing Program through Excelsior College constitute contracts for “future consumer services” within the meaning of PPL § 412-a.

166. PPL § 412-a provides, among other things, that where a consumer cancels a contract for future services, the business may not contract to receive, or demand, more than five percent of the cash price and a pro rata portion of the total price, representing the proportion of the services used or completed.

167. PPL § 412-a further requires the seller to include a conspicuous notice in its contracts advising consumers of their cancellation rights under the statute.

168. As set forth above, Respondents have repeatedly and persistently violated PPL § 412-a by: failing to include the required statutory notices in their Purchase Agreements; demanding the full contract price from consumers who have not received all the CLMs that they purchased and have cancelled their contracts; and entering into Release and Settlement Agreements that provide for Respondents to retain amounts in excess of those permitted by PPL § 412-a.

169. By their actions in violation of PPL Article 10, § 412-a Respondents The College Network and Gary Eyler have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

170. The consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan.

171. Thus, to the extent they hold Promissory Notes related to consumers' purchase of The College Network's nursing "programs," Respondents Southeast and American Credit Exchange are liable for The College Network's repeated and persistent violation of PPL Article 10, § 412-a.

THIRTEENTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12) ILLEGALITY
VIOLATIONS OF PERSONAL PROPERTY LAW
ARTICLE 10-A, § 428
(as to all Respondents)

172. The State repeats and re-alleges paragraphs 1 through 125 and incorporates them by reference herein.

173. Personal Property Law Article 10-A, § 428 requires, *inter alia*, that when a seller or his or her representative personally solicits a sale, and an agreement to purchase consumer goods or services is made at a place other than the sellers' place of business, the seller must include in the contract statutory notice advising the consumer of his or her right to cancel the contract within three (3) business days of its execution. The seller must also advise the consumer orally of his or her right to cancel the contract and attach to it a completed statutory notice of cancellation form in duplicate, which informs the consumer of the deadline for cancellation, the seller's name and the address of the seller's place of business.

174. As set forth above, by failing to provide consumers with a completed notice of cancellation form and/or orally advising consumers of their three day statutory

right to cancel the contract, Respondents have repeatedly and persistently violated PPL Article 10-A, § 428.

175. By their actions in violation of PPL Article 10-A, § 428, The College Network and Gary Eyer have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

176. The consumer Promissory Notes provide that the holders of such notes are subject to all claims and defenses that can be asserted against the seller of the goods or services obtained with the proceeds of the loan.

177. Thus, to the extent they hold Promissory Notes related to consumers' purchase of The College Network's nursing "programs," Respondents Southeast and American Credit Exchange are liable for The College Network's repeated and persistent violation of PPL Article 10-A, § 428.

PRAYER FOR RELIEF

WHEREFORE, the State requests that the Court grant relief pursuant to Executive Law § 63(12) and GBL Article 22-A by issuing an order and judgment as follows:

1. permanently enjoining Respondents and any other entity through which they may act from engaging in the fraudulent, deceptive and illegal practices alleged herein;
2. directing the rescission of all consumer contracts entered into with Respondents for the purchase or finance of The College Network's nursing "programs;"
3. directing Respondents to provide an accounting to identify those consumers who are entitled to restitution and the amount of such restitution;

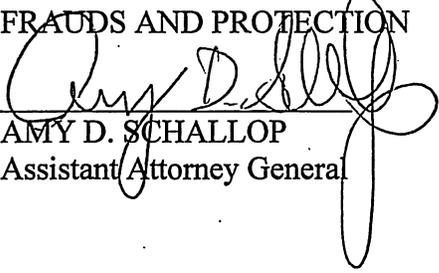
4. permanently enjoining Respondents from selling or marketing their nursing “programs” within the State of New York;
5. prohibiting Respondents from collecting any amounts due from consumers who were defrauded by Respondents;
6. directing Respondents to make full monetary restitution and pay damages to aggrieved consumers, known and unknown;
7. directing Respondents to disgorge all profits resulting from the fraudulent and illegal practices alleged herein;
8. directing Respondents to pay a civil penalty in the sum of \$5,000 to the State of New York for each instance of violation of GBL Article 22-A, pursuant to GBL § 350-d;
9. awarding the State the costs and disbursements of this action, including additional costs in the amount of \$2,000 pursuant to CPLR § 8303(a)(6); and

10. granting the State such other and further relief as this Court deems just and proper.

Dated: Albany, New York
June 1, 2015

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Petitioner
The Capitol
Albany, New York 12224

BUREAU OF CONSUMER
FRAUDS AND PROTECTION


AMY D. SCHALLOP
Assistant Attorney General

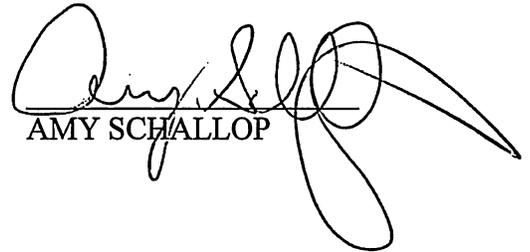
STATE OF NEW YORK)
) s.s.:
COUNTY OF ALBANY)

AMY SCHALLOP, being duly sworn, deposes and says that:

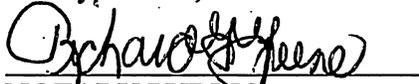
I am an Assistant Attorney General in the Office of Eric T. Schneiderman, Attorney General of the State of New York, and am authorized to make this verification.

I have read the foregoing Verified Petition and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to all matters stated upon information and belief are set forth in the attached affirmation and include investigatory materials and information contained in the files of the Bureau of Consumer Frauds and Protection.

That the reason this verification is made by your deponent and not by the State of New York is that the State of New York is a body politic and sovereign acting through its officials and agents.


AMY SCHALLOP

Sworn to before me this
1st day of June, 2015


NOTARY PUBLIC

RICHARD G. GREENE
Notary Public, State of New York
Qualified in Schenectady County
Reg. No. 4831655
Commission Expires Jan. 31, 2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

PEOPLE OF THE STATE OF NEW YORK by
ERIC T. SCHNEIDERMAN, Attorney General of the
State of New York,

Petitioner,

AFFIRMATION

-against-

THE COLLEGE NETWORK, INC.; AMERICAN
CREDIT EXCHANGE, INC.; GARY EYLER, Individually
and as an Officer of THE COLLEGE NETWORK, INC.
and AMERICAN CREDIT EXCHANGE, INC.; and
SOUTHEAST FINANCIAL CREDIT UNION,

Respondents.

-----X

AMY D. SCHALLOP, an attorney duly admitted to practice in the courts of the
State of New York, affirms the following statements to be true under the penalties of
perjury.

1. I am an Assistant Attorney General in the office of Eric T. Schneiderman,
Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds
and Protection.
2. I am familiar with the facts and circumstances of this proceeding and submit
this affirmation in support of the Verified Petition and the relief sought therein.
3. The facts set forth in this affirmation are based upon information contained
in the files of the Bureau of Consumer Frauds and Protection and are believed to be true
and correct.

INTRODUCTION

4. The College Network (“The College Network” or “TCN”) is an Indianapolis-based company that sells study guides that are ostensibly designed to prepare students to pass various college-level subject matter competency examinations through which they can earn credit towards various degree programs, including nursing programs. Among other offerings, The College Network markets study guides that it claims are tailored to nursing degree programs offered by Excelsior College, an accredited institution through which consumers can earn a nursing degree through non-traditional means, primarily through independent exam-based coursework.¹

5. Although The College Network is neither an educational institution nor affiliated with Excelsior College, its advertising and promotional material, which is targeted primarily to Licensed Practical Nurses (“LPNs”) and paramedics, often makes repeated reference to Excelsior College and creates the false impression, either directly or by implication, that The College Network offers an Associate’s Degree in Nursing (also referred to herein as “ADN”) “program” and is either one and the same as, or affiliated with, Excelsior College. In fact, many consumers who contact The College Network in response to its ads are under the false impression that they have contacted Excelsior College.

6. When consumers respond to the ads seeking information about The College Network’s “program,” The College Network typically sends a representative to the

¹ The College Network also markets study guides for programs offered by other degree granting institutions. The vast majority of the complaints of which the NYAG is aware come from consumers who enrolled in a “program” that was advertised as offering a nursing degree through Excelsior College. Thus, the instant proceeding concerns TCN’s marketing of its study guides related to Excelsior College nursing programs.

consumer's home, who then engages in a misleading one-on-one, high pressure sales pitch in an attempt to "enroll" the consumer in The College Network's "program." In essence, the "program" consists of little more than a series of study guides, which The College Network refers to as "Comprehensive Learning Modules" ("CLMs").

7. During the presentation, representatives repeatedly create or reinforce the false impression that The College Network is an educational institution offering a degree program with, or affiliated with, Excelsior College, and that the fees charged by The College Network include all the fees consumers must pay to obtain their Associate's Degree in Nursing² from Excelsior College. The representatives, who are paid exclusively on commission, make many other material misrepresentations about The College Network's "program," concerning, among other things, the sufficiency of the CLMs to prepare consumers for exams, the availability of staff and tutors to assist consumers with the study material, and the comparative costs and speed with which consumers can obtain a degree by using The College Network's "program."

8. Further, even though The College Network will typically only provide consumers with one CLM at a time, it requires consumers to purchase all the CLMs they will need to satisfy Excelsior College's degree requirements upfront. Thus, consumers who agree to "enroll" are forced to sign agreements obligating them for thousands of dollars without having an opportunity to meaningfully assess the value and effectiveness

² The vast majority of consumers who contact TCN are interested in pursuing an ADN. There are a small percentage of consumers, however, who already have an ADN and contact TCN about obtaining a Baccalaureate in Nursing ("BSN"). These latter consumers are subjected to the same misleading practices as consumers who inquire about an ADN. For the sake of simplicity, the pleadings reference the degree sought by consumers as an ADN, but the deceptive and illegal practices detailed herein apply equally to those consumers who contact TCN about a BSN.

of the study materials. Further, The College Network has a strictly enforced five-day cancellation policy.³

9. In almost every case, its sales representatives, referred to as “Program Advisors,” also induce consumers, most of whom are of modest means, to finance the cost of The College Network’s “program.” The sales representatives often create the impression that the financing is offered by The College Network, when in fact, the loans are provided by one of several credit unions with which The College Network partners. Until recently, Respondent Southeast Financial Credit Union (“Southeast Financial” or “Southeast”) provided the bulk of those loans.

10. Further, the Program Advisors typically pad the loans by as much as \$3,000 or more by convincing consumers to also finance the testing fees that consumers otherwise would pay directly to third-party test administrators only when they are ready to sit for an examination.

11. Consumers typically do not discover until well beyond The College Network’s five-day cancellation period that they have been misled about virtually every aspect of the alleged “program.” When consumers subsequently complain to The College Network and seek to cancel their contracts, The College Network refuses and advises them they must continue to make the payments on their loans, even though, in many cases, consumers have only received one or two CLMs. The College Network even refuses consumers’ requests to refund the third party testing fee money that it holds in trust for consumers.

³ Prior to approximately 2012, The College Network had a 3-day cancellation policy. See Affidavit of former Academic Advisor Megan Kirsch, attached to Exhibit V, par. 14.

12. Similarly, when consumers call Southeast because they no longer want to make payments on the loan, Southeast advises them that they must continue to pay and/or simply refers them back to The College Network. Thus, many consumers continue to make monthly payments for fear of damaging their credit, even though they do not use, and indeed have not even received most of, the CLMs that they have purchased.

13. As a result of Respondents' illegal and deceptive business practices, consumers are saddled with thousands of dollars in debt for which they have received nothing of value in exchange. Often, a significant portion of the "debt" relates to the thousands of dollars of the consumers' testing fee money that The College Network is holding in trust for consumers.

14. If consumers discontinue making payments to the credit union, the loan is bought by The College Network pursuant to the terms of its agreements with the credit unions. Consumers are then subjected to collection activity from either The College Network or American Credit Exchange, a collection agency, which unbeknownst to consumers, is owned by The College Network's Chief Executive Officer, Respondent Gary Eyler, and shares office space with The College Network. Some consumers have also had their credit ratings damaged after American Credit Exchange or a third party debt collector placed a negative mark on their credit report.

15. The College Network has an "F" rating from the Better Business Bureau ("BBB") and has been the subject of 351 complaints within the last three years. A copy of The College Network's BBB report is attached hereto as Exhibit A.

THE ATTORNEY GENERAL'S INVESTIGATION

16. The Attorney General ("NYAG") initiated an investigation into The College Network's business practices in 2012 after receiving numerous consumer complaints. The NYAG served a subpoena *duces tecum* on The College Network. Although The College Network produced, among other things, copies of various CLMs, contracts with credit unions and certain marketing and training material, it did not fully comply with the subpoena. Among other things, it failed to produce the bulk of the contracts executed with New York consumers during the relevant period.

17. After The College Network failed to produce the consumer contracts and even refused to simply provide, as a compromise, the names and contact information for New York consumers who had enrolled in its programs since 2007, the Attorney General issued subpoena *duces tecum* to several credit unions that provided financing to The College Network's customers, including Southeast. In response to its subpoena, Southeast provided, among other things, the loan files of 1,721 New York consumers whose accounts were current as well as a spreadsheet identifying all New York consumers whose loans were current or were purchased by The College Network after the consumer defaulted. See October 23, 2013 letter from Elizabeth Foss, Southeast's then-General Counsel, which accompanied Southeast's production, attached hereto as Exhibit F.

18. As part of the investigation, the NYAG also conducted an undercover operation. On February 3, 2012, an NYAG employee who has an Associate's Degree in Nursing met with a Program Advisor from The College Network at a diner in New Paltz, New York, posing as a consumer interested in pursuing her bachelor's degree. The

NYAG employee surreptitiously recorded the meeting with The College Network's Program Advisor.

19. The recording corroborates many of the allegations made by consumers concerning the false and misleading claims made during sales presentations, including that: The College Network offers nursing degrees; The College Network is affiliated with Excelsior College; the CLMs include all the information consumers need to know to pass the exams; and that the practice exams provided by The College Network are representative of the actual exams consumers would take to get credit for the course. Attached hereto as Exhibit B is an affidavit of Cindy Rivas-Eggleston, the NYAG employee who conducted the operation and a CD recording of the meeting. Attached hereto as Exhibit C is a transcript of the recording transcribed by the NYAG.

20. Further, an NYAG investigator posing as a consumer interested in The College Network's Associate Degree in Nursing Program through Excelsior College also called The College Network on a number of occasions to pose questions about the program, including The College Network's relationship with Excelsior College. The investigator recorded those phone calls. Attached hereto as Exhibit D is an affidavit from the investigator, as well as a CD containing two recorded calls, as well as transcripts of those calls transcribed by the NYAG. Similarly, these undercover recordings corroborate many of the claims made by consumers concerning The College Network's misrepresentations about its program and its alleged relationship with Excelsior College.

21. The NYAG also spoke to numerous consumers who "enrolled" in The College Network's "program," many of whom provided the NYAG with sworn

statements describing their experiences. Thirty-six consumer affidavits, arranged alphabetically are annexed to Exhibit E.

22. The NYAG also took sworn testimony from Excelsior College officials and spoke with numerous former employees of The College Network, including Program Advisors and Academic Advisors, a number of whom have provided the NYAG with sworn statements. See Exhibits H, J and V.

23. During the course of the NYAG's investigation, the NYAG and The College Network executed two six-month tolling agreements tolling any statutes of limitations related to any claims the NYAG may assert against The College Network. Copies of the tolling agreements are attached hereto as Exhibit G.

FACTS

24. Although The College Network claims to offer a variety of "programs" and widely disseminates advertisements offering consumers the opportunity to "Earn Your Degree or Certificate Online!" The College Network is not an educational institution and has no degree granting authority. In essence, The College Network simply sells study guides, which it refers to as "Comprehensive Learning Modules," that are purportedly designed to help consumers pass certain examinations to enable them to earn credit toward degrees offered by various degree-granting institutions.

25. Further, although The College Network has no affiliation with Excelsior College, The College Network extensively promotes and sells a "program" that it refers to as an Associate's Degree in Nursing through Excelsior College.

Background--Excelsior College's Nursing Programs

26. Students who enroll in Excelsior College's nursing programs obtain course credit primarily by studying independently and passing various standardized examinations administered at third-party testing centers, such as Pearson VUE. See Hearing Testimony of Dr. Mary Lee Pollard, Dean of Excelsior College's School of Nursing ("Pollard Tr."), attached hereto as Exhibit H, at 6, 20-23.

27. The bulk of consumers who enroll in an Excelsior College nursing program pursue an Associate's Degree in Nursing. Id. at 10. To satisfy the degree requirements for the program, consumers must, among other things, fulfill certain general education requirements that may include disciplines such as American History and American Literature. Id. at 11. Consumers must also take two pre-requisite courses, Anatomy and Physiology and Microbiology. Id. at 30.

28. Consumers can fulfill these course requirements through a variety of means, including enrolling in a course at a community college, or studying independently and passing certain proficiency examinations administered by a third party testing organization, such as Pearson VUE. Id. at 19-22. Many of these proficiency examinations are developed by the College Board, which has operated its College-Level Examination Program (CLEP) for more than 40 years. Id. at 21; see, College Board website, attached hereto as Exhibit I. Excelsior College also offers its own proficiency exams on a variety of subjects. Pollard Tr., Exh. H, at 22-23.

29. Consumers must also take and complete Excelsior College's eight core nursing courses. Id. at 11. For each nursing course, Excelsior College provides students with a content guide, a test "blue print" that identifies the topics covered by the exam and

the recommended textbooks and reading sources where students can study those topics. Id. at 7-8. The exams for the nursing courses are created by Excelsior College and administered by Pearson VUE.

30. For a fee of approximately \$75, students can take a practice test online at Excelsior's website to prepare for an exam. These tests give students the opportunity to get a sense of the actual exam and the content that will be covered. The exams consist of retired questions from actual Excelsior College exams. Hearing Transcript of Joseph Porter, Excelsior College's General Counsel, attached hereto as Exh. J, at 95-96. Only students who are eligible to take an exam can register for the practice exam, which can be accessed only through a secure login process. Pollard Tr., Exh. H, at 23-24.

31. Many consumers who seek to obtain a nursing degree through Excelsior College already work in the health care field in positions such as a licensed practical nurse or paramedic and hope to advance themselves professionally and increase their earning potential to support themselves and their families. Many are attracted to Excelsior College's program because they work full time and can't afford to quit their jobs to enroll in a traditional classroom-based nursing program. Id. at 8.

32. Some have taken courses elsewhere. Excelsior College does not automatically apply credits consumers may have earned elsewhere toward Excelsior College's degree requirements. Rather, Excelsior only accepts such credits after conducting a review of the course content to determine whether the course meets Excelsior's standards for awarding credit. Id. at 13-15.

33. Excelsior College has no affiliation, partnership or contractual relationship with The College Network whatsoever. Porter Tr., Exh. J, at 10-11, 14, 23, 82-83.

The College Network's Deceptive Marketing and Advertising Materials

34. The College Network engages in targeted internet marketing to consumers who are interested in obtaining a nursing degree from Excelsior College. Its advertisements, which often exploit Excelsior College's name, repeatedly create the false impression that The College Network is affiliated with Excelsior College and is an educational institution that offers a nursing degree program.

35. For example, over much of the last few years, the first result appearing at the top of the page as a result of a Google search for "Excelsior College," was an advertisement sponsored by The College Network. Until sometime in the latter part of 2013, the text read: "Excelsior Nursing Program," followed by a toll free phone number. Directly below was the following web address: "www.collegenetwork.com/Excelsior." Below the web address, the advertisement stated "Excelsior Nursing LPN to RN Program Save up to 50%":

Ad related to excelsior college

Excelsior Nursing Program 1 (877) 725 9375

www.collegenetwork.com/Excelsior

Excelsior Nursing LPN to RN Program Save up to 50%. Request Info Now!

LPN to ADN Program - LPN to BS in Nursing

A copy of search results conducted on June 11, 2013 and July 3, 2013 are attached hereto as Exhibit K.

36. This paid advertisement created the false impression that consumers who called the advertised number or clicked the link were either contacting Excelsior College,

or at the very least, an organization affiliated with Excelsior College, through which consumers could obtain an Excelsior College RN⁴ degree:

In January 2011, I searched online for programs offering an Associate's Degree in Nursing... I specifically searched for Excelsior College's nursing program because I knew other nurses who were using the program and knew that the Excelsior's program was not a traditional classroom-based program...After the search results appeared, I clicked on a link that I thought was a link to Excelsior College and reached a webpage, where I was requested to provide my contact information to learn more about the program. I don't specifically remember what the link said, but I had the impression from it that I was contacting Excelsior College.
Affidavit of Laura Brody, attached to Exh. E,⁵ ¶¶ 2-3.

...I conducted an online search for Excelsior College. The search results produced a link for TCN, which reinforced the impression that I had from the presentation given by the TCN representative at the Hart School that TCN and Excelsior College were one and the same.
Affidavit of Kaila Casiano, attached to Exh. E, ¶ 4.

37. Beginning in approximately August 2013, more than a year after the NYAG commenced its investigation, The College Network removed any reference to "Excelsior" from its Google advertisement and web address. Nonetheless, revised versions of the advertisements continue to be misleading in a number of respects.

38. The text above the web address in many of the advertisements now states: "LPN to RN in 18 months." Below the web address, many advertisements state: "NLN Accredited LPN to RN Program" or "LPNs get an RN/ADN Degree Online. Accredited. ½ the Cost. Get info!"

LPN to RN in 18 Months - CollegeNetwork.com
Ad www.collegenetwork.com/LPN2RN ▾
LPNs get an RN/ADN Degree Online. Accredited, 1/2 the Cost. Get Info!

⁴ RN, which stands for registered nurse, encompasses both an Associate's Degree (ADN) and a Baccalaureate in Nursing (BSN).

⁵ All consumer affidavits are attached to Exhibit E, arranged in alphabetical order.

39. In fact, as set forth more fully below, the College Network does not offer a nursing degree program, consumers cannot get their degree in 18 months using The College Network's "program," and the cost of using The College Network's "program" is much greater than the cost of getting an Associate's Degree in Nursing by enrolling directly in Excelsior College.

40. Further, The College Network is not NLN accredited, as the ad implies. The NLN, which stands for National League for Nursing, is a trade organization that does not accredit nursing programs. Moreover, The College Network does not offer a nursing program. See Affidavit of Linda Christensen, Chief Administrative Officer for the National League for Nursing (NLN), attached hereto as Exhibit L. Representative advertisements from Google searches conducted since August 2013 are attached hereto as Exhibit M.

41. The false and misleading claims made in these advertisements are similar to ones made in other The College Network advertisements that appear in other forms of print and online media. For example, one ad that appeared online as recently as November 20, 2014, touts, among other things, "RN Program in 18 Months" and "LPNs get an RN/ADN Degree Online. Accredited, ½ the Cost..." Representative ads are attached hereto as Exhibit N.

42. Consumers who click the link embedded in The College Network's online ads are redirected to The College Network website, which reinforces the false impression that The College Network offers a nursing degree program and either is Excelsior College or is affiliated with it.

43. The landing page, which prominently features the heading: “LPN to RN Program, Advance your Nursing Career” and lists nine reasons to “Get Started Now,” reinforces the false impression that The College Network is an institution of high learning that offers a nursing degree program. For example, the list includes: “No Waiting List;” “NLNAC⁶ Accredited;” and “Fully Accredited Universities.” Other listed benefits include the availability of “Academic Support” and “Financing Options.”

44. In fact, The College Network is neither NLNAC accredited, nor even eligible for accreditation because it does not offer a nursing program. See Affidavit of Sharon Tanner, Chief Executive Officer of the Accreditation Commission for Education in Nursing (“ACEN,” formerly known as NLNAC), attached hereto as Exhibit O.

45. The landing page provides a toll free number for consumers to call to obtain additional information. Alternatively, consumers can use drop down menus to identify the program in which they are interested, as well as their current certification and then click a “Learn More” link to be redirected to another page, where they are asked to provide their contact information so that The College Network can contact them. A copy of these two webpages is attached hereto as Exhibit P.

46. If consumers submit their contact information, they are redirected to a page where they are thanked for requesting more information and advised, among other things, that “The College Network is an educational services and eLearning provider that **enables you to obtain a college degree or professional certificate from our established partner universities** while balancing your personal and professional life.” (emphasis added). Along the right hand side of the page is a heading labeled “Degree

⁶ NLNAC, the National League for Nursing Accrediting Commission, Inc., now known as the Accrediting Commission for Education in Nursing, Inc. (“ACEN”), is an accrediting organization that is a wholly owned subsidiary of the National League for Nursing.

Programs,” below which are links labeled with various degrees programs allegedly offered by The College Network, including one labeled “Nursing Degrees.” A copy of the webpage is attached hereto as Exhibit Q.

47. Throughout its website, The College Network reinforces the false impression that consumers can obtain a nursing degree through The College Network, and that The College Network is affiliated with Excelsior College.

48. For example, a page bearing the heading “Online Nursing Degrees,” states: **“The College Network partners with leading universities to offer associate’s, bachelor’s and master’s degree programs designed for busy nurses like you.”**⁷

(emphasis added)

49. Another page that describes The College Network’s Associate’s Degree in Nursing “program” includes the following information below a heading entitled “Associate’s Degree in Nursing Overview.”⁸

Excelsior College School of Nursing, an NLN Center of Excellence in Nursing Education, is the largest nursing school in the United States. Excelsior College offers an associate’s degree in nursing program that prepares nurses to deliver quality care and become effective members of the healthcare team in collaboration with other healthcare professional. The program, which is accredited by the National League for Nursing Accrediting Commission, requires the successful completion of 67 semester credits, including 31 in general education and 36 in nursing...

A copy of these two webpages is attached hereto as Exhibit R.

⁷ Although The College Network has no affiliation or contractual relationship with Excelsior College, it does have agreements with a number of institutions of higher learning, such as Indiana University, that typically permit it to use the institution’s name for marketing purposes. Contrary to the impression created by its marketing materials, The College Network does not “partner” with those institutions to offer degree programs.

⁸ At some point after July 2013, The College Network added an inconspicuous disclaimer to the bottom of the page stating: “Note: The College Network has no affiliation, formally or informally, with Excelsior College.” This statement is insufficient to dispel the overall impression created by its web advertisements and website that The College Network is affiliated with Excelsior College and offers nursing degree programs.

50. The College Network's homepage, www.collegenetwork.com, also falsely claims that The College Network offers degree programs and uses terminology typically associated with institutions of higher learning, stating:

- We offer LPNs, RNs and nurse leaders specialized degree programs.
- The College Network partners with leading universities to offer associate's, bachelor's and master's degree programs designed for busy nurses.
- Our team is standing by to answer your questions regarding **programs, transfer credits, the application process, and financing your education.** (emphasis added).

A copy of its homepage is attached hereto as Exhibit S.

51. The College Network also disseminates advertisements in print media that create many of the same misleading impressions. For example, one advertisement placed in a publication for LPNs proclaimed "Become an RN at your place Your Pace." The ad also includes additional information in bullet points, including one that states "Earn your degree on your terms." A copy of this ad is attached hereto as Exhibit T.

52. The College Network's advertisements have misled consumers. See Affidavit of Kelly Eck, attached to Exhibit E (got the impression that The College Network offered an online nursing program); Brody Aff., Exh. E (thought she was contacting Excelsior College when she clicked the advertising link); Ciraco Aff., Exh. E (got the impression from The College Network's website that it was an accredited school); Edrehi Aff., Exh. E (got the impression from The College Network's ad that The College Network offered a nursing program); Goodwin Pope Aff., Exh. E (got the impression from The College Network's ad that The College Network offered an online nursing program); Affidavit of Carol Smith, Exh. E (got the impression from The College Network's print ad that The College Network was offering a nursing degree program).

53. The College Network representatives who field phone calls from consumers who inquire about its "programs" reinforce these false impressions. As noted above, an NYAG investigator posing as a consumer called The College Network's toll free number to ask about obtaining an Associate's Degree in Nursing through The College Network. During one call, in response to the undercover's question about how the program works, The College Network's representative ("April") made the following representations:

...the program we offer is an online program...offered through Excelsior College, this is the college that is actually going to be granting your degree at the ...end of the program.

Exh. D.

54. The College Network representative also falsely advised the undercover that, if she passed a test, she would automatically get credit toward an Excelsior College nursing degree:

Undercover: ...if I buy The College Network's ...Comprehensive Learning Modules and then I pass the test, do I automatically get credit towards a nursing degree from Excelsior College?

The College Network representative: Yes.

Exh. D.

55. On another occasion, the undercover spoke with representative "Jessica" who repeatedly falsely advised the undercover that she would be automatically enrolled in Excelsior College if she signed up for The College Network's program and also falsely stated that the credits would be applied automatically toward an Excelsior College nursing degree:

Undercover: ... so basically The College Network, you guys provide me with like study guides, does that also enroll me in your, the Excelsior College program?

The College Network representative: Yeah, uh huh.

Undercover: Oh, it does, okay. Do I have to go through any separate ... acceptance process to get into Excelsior College?

The College Network representative: No.

Undercover: Ok so just done direct. All I have to do is buy these study guides and then I should be set to go to be, I guess, admitted into Excelsior College?

The College Network representative: Right.

* * *

Undercover: Okay, so these pre-requisite classes though, if I take these classes with you guys that automatically gives me credit, towards... my degree with Excelsior College?

The College Network representative: Right, uh huh.

Exh. D.

The College Network's Misleading Sales Presentations

(i) Misrepresenting its Status and Affiliation with Excelsior College

56. In addition to its print and internet advertising, The College Network also has its sales representatives make group presentations at licensed practical nursing schools or healthcare facilities that employ LPNs and other healthcare professionals who may be interested in obtaining a nursing degree. These presentations foster and/or reinforce many of the same false impressions that are created by The College Network's written marketing materials, including, among other things, that The College Network offers a nursing degree program and is either one and the same as, or affiliated with Excelsior College:

I first heard about The College Network ("TCN") in 2010 while completing my LPN at Onondaga BOCES. A representative came and gave a presentation to my class about getting an Associate's Degree in Nursing ("ADN") at your own pace through TCN's self-study program.

The representative also mentioned that the degree would come from Excelsior College, which made me believe that TCN and Excelsior College were partners.

Affidavit of Fred Scott, attached hereto as Exhibit E, ¶ 2.

I first heard of The College Network ("TCN") toward the end of my LPN program, when two TCN representatives came to the Hart School and made a presentation about TCN's program. The representatives described the program as an online program that was affiliated with Excelsior College.

Affidavit of LaTonya White, attached to Exhibit E, ¶ 3.

I first heard about Excelsior College... and The College Network... in 2012, when a representative from TCN made a presentation about its Associate's Degree in Nursing Program... at the Isabella Graham Hart School of Practical Nursing..., where I was studying for my LPN. The representative explained that the program was self-paced and that we would get our degree from Excelsior College. She described the program as being easier than a traditional, classroom-based ADN program because we could study at our own pace... From her presentation, I had the impression that TCN and Excelsior College were one and the same.

Affidavit of Kaila Casiano, attached to Exhibit E. ¶¶ 2-3.

See also, Affidavit of Amiee Lessard, attached to Exhibit E.

57. Consumers who attend a group presentation are then offered the opportunity to make an appointment to meet one-on-one with a "Program Advisor." Indeed, even the title The College Network uses for its sales associates, "Program Advisor," fosters the false impression that The College Network is an academic institution.

58. Thus, by the time many consumers meet with a "Program Advisor," they are typically laboring under a number of false impressions created by The College Network's written marketing materials and/or group presentations. Program Advisors then reinforce these impressions during the sales pitch.

59. For example, Program Advisors reinforce the impression that The College Network is an academic institution and/or is affiliated with Excelsior College by asking consumers about any college courses they may have taken, reviewing any transcripts that

consumers have available, and advising consumers as to which courses may be applied towards Excelsior College's nursing degree program requirements. Program Advisors then "recommend" the CLMs that the consumer would need to obtain an Associate's Degree in Nursing from Excelsior College.

We also discussed my previous course work. I had earned an associate's degree from Broome Community College ("BCC") in 2002. But, by the time I met with TCN's Program Advisor, I had been told by three other programs—two traditional nursing schools and a program to become a Physician's Assistant—that the credits I had earned at BCC were too old to be accepted. I showed a copy of my transcript to the Program Advisor. He assured me that I would be able to use the BCC credits toward an ADN and gave me the impression that TCN had the authority to accept my credits and transfer them to Excelsior College.

Affidavit of Geoffrey Westby, attached to Exhibit E, ¶ 7.

I had taken some courses at Oswego Community College and had my transcript with me... The Program Advisor went over the transcript and advised me about which courses I could use to fulfill the general studies and prerequisite requirements for the program. Because she was advising me about my courses and whether they could be applied towards the Excelsior College degree requirements and also talked about how TCN had a very good relationship with Excelsior College, I had the impression that TCN was an accredited school.

Affidavit of Duane Crapser, attached to Exhibit E, ¶ 10.

The Program Advisor reviewed my transcript from Finger Lakes Community College. We discussed which courses I had already taken and which courses I would need to take through TCN. The Program Advisor suggested that I purchase 14 CLMs...

Affidavit of Virginia Bennett, attached to Exhibit E, ¶ 5.

The Program Advisor asked whether I had taken any college courses. I listed a few that I had taken at Suffolk Community College. He then went over the requirements to get an ADN and recommended the courses I would need to take from TCN to meet those requirements. The Program Advisor recommended that I purchase 13 CLMs...

Edrehi Aff., Exh. E, ¶ 6.

See also Exhibit E: Affidavit of Susan Carroll; Affidavit of Michael Bennett; Affidavit of Misty Gillespie; Eck Aff.; Casiano Aff.; Ciraco Aff.; Affidavit of Simone Lyken; Affidavit of Robin Goodwin Pope; Morgan

Aff.; Scott Aff.; White Aff.; Carroll Aff.; Affidavit of Susan Saladino; Lessard Aff.

60. While dispensing this information and advice, the Program Advisor utilizes and goes over a “Program Outline” document, which reinforces the impression that The College Network is Excelsior College or at least affiliated with it. The form explicitly identifies the “program” at the top of the page as an “Associate in Science in Nursing...Through EXCELSIOR COLLEGE.” (emphasis in original).

The Program Advisor went over a form that listed various courses and he checked the ones he said I would need. Based on what I told him, he recommended ten CLMs at \$495 apiece.

Affidavit of Micherlange Bellony, attached hereto as Exhibit E, ¶ 5.

[The Program Advisor] also went over a form with me that had the names of the courses required by Excelsior and listed several Excelsior College fees and checked off a number of courses he said I would need to get my ADN through Excelsior College.

Affidavit of Denise Morgan, attached to Exhibit E, ¶ 7.

See also Exh. E, Lyken Aff.; Lessard Aff.; Affidavit of Shantunnalla Williams; Affidavit of Nicholas Czerenda.

61. Although The College Network has modified this document a number of times over the last several years, the essential misleading features remain unchanged. Representative copies of The College Network’s “Program Outline” document, arranged from oldest to most recent are attached hereto as Exhibit U.⁹

62. The Program Outline document lists the course requirements for Excelsior College’s Associate of Science in Nursing (“ASN”)¹⁰ degree, the various general education and pre-requisite courses the consumers may need to take to fulfill the degree requirements, as well as the core nursing courses that are an essential component of the

⁹ Each version of the form contains a date in the lower right-hand corner, which presumably reflects the date when The College Network created the form or began using it.

¹⁰ The terms ASN and ADN both refer to the same degree, an Associate’s Degree in Nursing.

Excelsior College ADN program. For each course, the form also lists the testing fee that consumers must pay to the third-party testing center to sit for the exam. The testing fee for each course ranges from \$95 to \$325.

63. Further, for versions of the form used from 2008 through approximately February 2012, the bottom half of the form includes a heading entitled “ESTIMATED COST OF THE PROGRAM.” Below the heading, the form identifies two phases of the program, “Phase I” and “Phase II.” The fees listed under Phase I include, among other things, the fees charged by The College Network for the CLMs, as well as testing fees charged by the third-party test administrators. The form includes spaces for the program advisor to fill in the number of CLMs and the total cost of the CLMs, as well as the total cost of the exam fees.

64. Under “Phase II,” the form identifies various Excelsior College fees, including: “Excelsior College Application fee,” “Excelsior College enrollment fee,” “Excelsior College clinical fee,” and “Excelsior College graduation fee.” The amount of those fees is pre-printed on the form:¹¹

¹¹ This example is from the Program Outline document attached to the Affidavit of Margaret Aponte, who enrolled in TCN’s ASN “program” on January 3, 2012. See Aponte Affidavit, Exh. E.

ESTIMATED COST OF DEGREE:

5-460

The College Network	
Phase I	
Number of Comprehensive Learning Modules <u>13</u> X \$525.00	= <u>6825</u>
Program and Technology Fee (one time fee)	= <u>200.00</u>
Rx for NCLEX® Success @ \$525.00	= _____
ePatient - Student @ \$525.00	= _____
Exam Fees	= <u>575</u>
<input type="checkbox"/> I will pay the exam fees separately or <input type="checkbox"/> Please include exam fees in my purchase. (\$400.00 down \$ _____ per month for <u>60</u> months) (Preapproved financing for items above.)	
ALL FEES LISTED BELOW ARE PAID DIRECTLY TO EXCELSIOR COLLEGE	
Phase II (After most exams have been completed)	
Excelsior College application fee:	= <u>80.00</u>
Excelsior College enrollment fee:	= <u>975.00</u>
Online Information Literacy course (1 SH):	= <u>355.00</u>
3 Focused Clinical Competencies Assessment exams (4 SH) (\$150 per exam)	= <u>450.00</u>
Excelsior College clinical fee (8 SH)	= <u>2035.00</u>
Excelsior College graduation fee:	= <u>485.00</u>
(Fees for 2011-2012 academic year)	

65. Although the layout of more recent versions of the Program Outline has changed, the newer versions still include the same misleading elements, describing a two phase program, with the second phase identified as the Excelsior College phase and detailing various Excelsior College fees. See Exhibit U. Indeed, regardless of the version, the form gives the impression that The College Network is either one and the same as, or affiliated with, Excelsior College.

66. Although some versions of the form contain a fine print disclosure, inconspicuously inserted near the bottom of the page, that states that The College Network is not affiliated with Excelsior College, these disclaimers are wholly insufficient to dispel the impression created by the form and sales presentation that The College Network is either the same as, or affiliated with, Excelsior College. Notwithstanding the insufficiency of these disclaimers, The College Network removed the disclaimer

contained in its 2008 forms only to insert a similarly insufficient disclaimer in 2013, more than a year after the NYAG served The College Network with a subpoena.

(ii) Misrepresenting the Features, Benefits and Efficacy of its Study Guides

67. The College Network sells a CLM for each of the courses listed on the Program Outline. Program Advisors describe the CLMs as condensed versions of all the information that consumers will need to pass the examinations; in essence, the equivalent of the “Cliff’s Notes” for the examination subject matter:

Transcript of undercover recording of sales presentation, Exhibit C, pg. 5: These modules are actually written by the college professors that teach these classes in a traditional setting. They all hold doctorate and PhD degrees. What they do is they take the four months of information that you would learn in that traditional setting, they take out what you don’t need to know and they write a module... So, everything you need to know to pass that end-of-year course exam is right here.

See also consumer affidavits, Exh. E:

[The Program Advisor] explained that the CLMs contained a condensed version of all the material we would need to pass the examinations needed to get course credit...

Crapser Aff., ¶ 4.

The Program Advisor explained that TCN would provide me with a Comprehensive Learning Module (“CLM”) for each exam. She said that the CLMs were condensed versions of the course materials. She also explained that the materials were comprehensive enough to cover everything that would be tested and that I would not need to use outside sources.

Affidavit of Jeanne Dall, ¶ 4.

The Program Advisor claimed that TCN had developed the CLMs by reviewing all the information needed to pass these examinations, which were designed for Excelsior College students. The Program Advisor claimed that the CLMs summarized the information and would adequately prepare students to pass the examinations.

Affidavit of Samantha Edrehi, ¶ 4.

[The Program Advisor] explained that TCN would provide me with a Comprehensive Learning Module (“CLM”) for each course and that the

CLMs would contain all the content I would need to pass the examinations.

Affidavit of Yarden Burke, ¶ 7.

68. The College Network's Program Advisors also represent, directly and by implication, that The College Network has special knowledge of, and access to, the types of questions asked on Excelsior College's tests and that its practice exams are representative of the exams they will take to get credit for the course. For example, during the sales presentation to the NYAG's undercover employee, the Program Advisor represented that the practice exams are "almost equivalent to" the actual exam and that as long as the undercover could "ace" the practice exam, she would be prepared for the actual exam:

Now, at the end of every course, you have a practice exam. This exam is almost equivalent to the one that you're going to be sitting for...As long as you ace the practice exam—and there are additional practice exams online through our resource center—then you know you're ready to schedule an exam date to test out of the class.

Undercover recording transcript, Exh. C, at 5.

69. Similarly, former Program Advisor Peter Smith has acknowledged that he would advise consumers that the CLMs were geared toward the actual examinations and that The College Network had knowledge of the actual test questions:

...I would also emphasize how easy the CLMs were and how they were geared toward the actual examinations that students would take to get credit because TCN had knowledge of the questions that were asked on the examinations. I made these representations because that was what I was told by TCN managers during trainings and what I observed my regional sales manager say on occasions when he accompanied me on sales calls.

Affidavit of Peter Smith, former TCN Program Advisor, attached to V, ¶ 11.¹²

¹² The affidavits of former employees of The College Network are attached to Exhibit V, arranged alphabetically.

See also Exh. S: Affidavit of Nathalie Baldomer; Westby Aff.; V. Bennett Aff.; Crapser Aff.; Edrehi Aff.; Burke Aff.

70. Another major selling point emphasized by the Program Advisors is that consumers who enroll will be able to earn their degree more quickly than they would through a traditional nursing program, stating, for example, that consumers will be able to earn their degree in as little as twelve to eighteen months, or in some cases, even less than that.

...I gave the Program Advisor my transcripts from LaGuardia Community College and the College of Staten Island, where I had previously taken a number of courses. The Program Advisor commented that, since I had already earned so many credits, I would "definitely" be able to earn my RN in six to twelve months. He also stated that most people who signed up with TCN become RNs in less than a year...Additionally, he told me that his wife had completed TCN's RN program in nine months while pregnant, and that he, too, had finished the program. I informed him that that I wanted to earn my RN degree in six months. The Program Advisor said that he applauded my enthusiasm and that I would be able to complete the program at my own pace and take the exams as soon as I was ready.

Affidavit of Merdella Bartley, attached hereto as Exhibit E, ¶ 7.

The Program Advisor informed me that I could complete the program at my own pace. He said that it was possible to finish the program in as short as six months' time. He said that he knew people who had prepared for and taken one examination per month.

Affidavit of Monique Prince, attached to Exhibit E, ¶ 9.

[The Program Advisor] explained to us that I could take courses through TCN, take examinations for credit in those courses, and then easily transfer the credits to Excelsior College, where I could complete my degree, all within seven months.

Baldomer Aff., Exh. E, ¶ 3.

We went over the courses I had already taken and discussed the classes I would need to take through TCN. [The Program Advisor] advised me to purchase thirteen CLMs. I asked her if I would be able to complete that many courses and earn my ASN from Excelsior College in twelve months. [The Program Advisor] responded that I definitely could.

Ciraco Aff., Exh. E, ¶ 6.

See also Exh. E, Affidavits of: Carroll; Bellony.

71. The number of CLMs recommended by the Program Advisor varies from one consumer to the next, depending on the Program Advisor's assessment of which courses that the consumer may have already taken can be applied toward the degree requirements. Typically, the Program Advisor recommends between 7 and 17 CLMs. See, Exh. E: Bartley Aff. (10 CLMs); Beers Aff. (16 CLMs); Bellony Aff. (10 CLMs); V. Bennett Aff. (14 CLMs); Brody Aff. (16 CLMs); Crapser Aff. (14 CLMs); Ciraco Aff. (13 CLMs); Saladino Aff. (7 CLMs); Baldomer Aff. (17 CLMs); Affidavit of Joshua Brazeal (13 CLMs).

72. The College Network requires consumers to purchase upfront all of the study guides they would need to satisfy Excelsior College's degree requirements. If a consumer asks during the sales presentation about purchasing only one CLM in order to give the "program" a try before making a significant investment, The College Network's Program Advisors advise consumers that The College Network does not sell the CLMs one at a time and are trained to tell anyone wishing to purchase only one that they are not dedicated to achieving their degree. See The College Network Program Advisor training document that provides proposed answers to frequently asked questions, attached hereto as Exhibit W:

I only want one want one Comprehensive learning module. Will you sell me just one?

TCN's policy is that a total program be purchased. We do not recommend that you buy "one module at a time" since this implies that you are not working toward a specific degree...

See also:

Affidavit of former Program Advisor Peter Smith, Exh. V, ¶ 7:

For the Excelsior College program, I would sell consumers the CLMs needed to fulfill the general education and prerequisite course requirements specified by Excelsior College, as well as CLMs that were allegedly designed to prepare consumers for Excelsior College's core nursing courses. TCN did not permit its Program Advisors to sell consumers only one or two CLMs. Rather, we were required to sell consumers the CLMs for all the courses consumers would need in order to fulfill the nursing degree requirements, which typically amounted to at least seven or eight CLMs.

Brody Aff., Exh. E, ¶ 15:

I asked [the Program Advisor] whether I could just sign up for one class to see whether I would be able to succeed, but he told me no, that I was required to sign up for the whole program.

73. The College Network charges approximately \$500 per CLM.¹³ Thus, the total fees for the recommended CLMs can range from approximately \$4,000 to more than \$8,000. See generally, Purchase Agreements attached to consumer affidavits, Exh. E.

(iii) Misrepresenting its “Academic Advisors” and Support

74. Program Advisors also emphasize that The College Network provides “Academic Advisors” who are readily available by phone to assist consumers with substantive questions regarding the CLM subject matter. See generally, consumer affidavits, Exh. E. Program Advisors repeatedly represent that these Academic Advisors include nurses and other trained “experts:”

The College Network FAQ, Exh. W:

I have been out of school for years, and I don't work well on my own. Do I need an instructor?

Part of the services provided by TCN includes comprehensive academic support. The department is available to assist you with questions, suggestions for study techniques, and test taking strategies...

Affidavit of Peter Smith, former The College Network Program Advisor, Exhibit V:

¹³ Since at least 2011, TCN has charged \$525 for each CLM. Prior to 2011, TCN charged \$495 for each CLM. These prices do not reflect the “grants” that TCN gave to some consumers, which were essentially discounts ranging from 10% to 30% off the total purchase amount of the CLMs.

I was also trained to tell consumers that TCN provided educational support, specifically, that TCN had registered nurses and other employees with substantive expertise on staff who were available to help consumers if they were struggling with any of the material. Because TCN managers trained sales associates to make those representations, I assumed that TCN did, in fact, provide such services.

Undercover recording transcript of The College Network sales presentation, Exh. C, at 7:

We offer academic support 15 hours a day. If you were going through one of your classes, and you got stuck on something that you didn't understand, you will be assigned a group of six academic advisors that you will go to throughout the entire program. We also guarantee your success on every one of your classes. If you did not pass after the second attempt, we would hire you a tutor and pay for any subsequent testing fees.

See also, Exh. E: Giannuzzi Aff. (told TCN had "trained representatives who were nurses"); Eck (told she "would reach someone trained in the subject"); Bartley (told "most of TCN's academic support staff members were nurses, physicians, nurse practitioners, or other individuals with master's degrees"); Brody (told "TCN guaranteed educational help in each course from a nurse or educator"); Dall (told that Academic Advisors were "the best in their fields").

75. Program Advisors also often promise that The College Network will provide consumers with a tutor if they fail an exam. See Exh. E, Affidavits of: Bellony; Brody; Edrehi; Scott; Brandolino.

76. This academic support is a major selling point for many consumers who are insecure about embarking on a self-study program and are comforted by the notion that they will be able to get assistance from trained experts if they encounter any difficulty during their studies:

[The Program Advisor] also stated that academic tutors were a phone call away if I had any issues with the substance of the material...She really gave me the impression that the academic support was of superior quality, which was a big comfort to me because I was unsure about a self-study program since I had never done anything like it before.
Scott Aff., Exh. E, ¶ 5.

The Program Advisor also told me that TCN offered academic support, as well as tutoring services for students who failed examinations on the first try. The promise of strong academic support was a major factor in my decision to enroll in TCN.

Brandolino Aff., Exh. E, ¶ 5.

[The Program Advisor] also told me that...I would be able to call TCN any time that I needed help. He suggested that TCN had a whole team of people on board to support me. This feature of the program was very appealing to me because I thought it would be important to be able to speak with someone about the study materials, given that I would not be attending classes and would not have the benefit of being able to discuss the material with classmates.

Lyken Aff., Exh. E, ¶ 4.

I decided to go ahead with this major purchase because I believed what the TCN representative told me and relied on his words. The Academic Advisors were a major selling point to me because I was told I could call...on the phone and get help with the nursing subject matter when I was studying.

Morgan Aff., Exh. E, ¶ 14.

See also Exh. E, Affidavits of: Eck; Jimenez; Brody; Crapser; Dall; Goodwin Pope.

(iv) Misrepresenting the Features and Benefits of Financing The College Network's "Program"

77. Program Advisors also offer consumers financing for The College Network's "program" (see generally, consumer affidavits, Exh. E) and repeatedly fail to disclose that the financing is provided by one of several out-of-state credit unions with whom The College Network has contractual relationships. The Program Advisors also complete all the loan paperwork, reinforcing the impression that The College Network is providing the financing. They also repeatedly falsely represent or create the false impression that the loans are "student" loans.

Undercover recording transcript of sales presentation, Exh. C, at 12:

UC: Oh, you do have financing? Financial Aid?

PA: We do-- No, financing for Phase 1. Okay. The reason why there is no financial aid for Phase 1 is because there are no start and ending dates to any of the classes and that's why the government will not give you a loan.¹⁴ But that's why we give you a loan and we do the guaranteed financing.

See also consumer affidavits, Exh. E:

The Program Advisor did not tell me whether the loan would come from TCN or a financial institution, but he did tell me that the loan was a student loan and, therefore, came with tax benefits, a favorable interest rate, and the possibility of forbearance, if necessary.

Bartley Aff., ¶ 9.

The Program Advisor told me that the cost of TCN's program, including all of these fees, would be approximately \$10,000. I said that I would not be able to afford that amount and the Program Advisor assured me that I could take a loan out to pay for the program. She gave me the impression that I was getting a student loan directly from TCN and did not mention anything about a credit union.

Dall Aff., ¶ 6.

[The Program Advisor] presented me with a number of documents to sign and I signed them without reading them carefully. She did not disclose that the loan was being provided by a credit union, so I thought the loan was coming from TCN.

Beers Aff., ¶ 10.

I did not have the money to pay for the program or the exam fees, but [the Program Advisor] advised me that TCN would be able to provide me with financing... [The Program Advisor] did not tell me where the loan was coming from. Since I believed that TCN was an accredited school, I thought that TCN was offering me a student loan.

Ciraco Aff., ¶ 8.

The sales representative also talked to me about financing my purchase. Although I don't recall his exact words, he gave me the impression that TCN was offering the financing and never mentioned anything about a credit union.

Morgan Aff., Exh. E, ¶ 10.

See also Exh. E: Bellony Aff.; Scott Aff.; Carroll Aff.; Brazeal Aff.; Jimenez Aff.; Bekoe Aff.; Brandolino Aff.; M. Bennett Aff.; Edrehi Aff.; Gillespie Aff.; Aponte Aff.; Smith Aff.; Williams Aff.; Burke Aff.; Czerenda Aff.

¹⁴ The Program Advisor's explanation as to why financial aid is not available is false. In fact, financial aid is not available for TCN's program because TCN simply publishes study guides and is not a school.

78. In fact the loans are ordinary consumer loans carrying interest rates of 12% and terms that typically range from two to five years. See generally, consumer affidavits, Exh. E.

79. The vast majority of consumers who fall prey to The College Network's misleading sales pitch are of very modest means and agree to finance their purchase because they do not have thousands of dollars to pay for the "program." See Peter Smith Aff., Exh. V ("Many of the consumers with whom I met were of very modest means. Many were immigrants and/or single parents who were working full time."); Affidavit of former Program Advisor Leonard J. Desrochers, attached to Exhibit V ("Many of these consumers were immigrants, typically from Africa or Haiti, who were working as Licensed Practical Nurses or Paramedics. Many were young, single mothers.") See also generally, consumer affidavits attached to Exhibit E.

80. In most cases, Program Advisors also convince consumers to finance the third-party test administration fees, *i.e.*, the fees charged by Pearson VUE for administering an exam. Consumers would otherwise only be required to pay such fees if and when they are ready to sit for an examination. Program Advisors advise consumers that, if they finance the testing fees, they won't have to worry about having the money to pay the fee when they are ready to sit for the exam, and instead, can simply contact The College Network to request a check.

The sales representative also explained that TCN offered financing for the cost of the program through a credit union and that I also had the option to finance the testing fees that I would have to pay to sit for the examinations. He told me that if I financed the testing fees, I wouldn't have to worry about having the money to pay the exam fee when I was ready to take the test.

Giannuzzi Aff., Exh. E, ¶ 7.

According to [the Program Advisor], if I included the cost of the exam fees in the loan, all I would have to do is contact TCN each time I wanted to take an exam and they would send me a check for the exam fee.
Ciraco Aff., Exh. E, ¶ 8.

[The Program Advisor] also talked to me about financing the fees I would need to pay when I was ready to take each test. He explained that, when I was ready to take a test, I should contact TCN and TCN would send me a check to cover the exam fees.
Bellony Aff., Exh. E, ¶ 6.

[The Program Advisor] also explained that I could also finance the testing fees for all the courses I was signing up for. That way, when I was ready to take an exam, I would simply call the testing center and sign up for the test and then TCN would pay the testing fee.
Lessard Aff., Exh. E, ¶ 10.

See also Exh. E, Affidavit of: Baldomer; Gillespie; Westby; Brody; V. Bennett.

81. These examination fees can add as much as \$3,000 or more to the total amount of the loan. See, e.g., Exh. E: Baldomer Aff. (financed \$3,840 in exam fees); Bartley Aff. (financed \$2,230 in exam fees); Beers Aff. (financed \$3,580 in exam fees); V. Bennett Aff. (financed \$3,350 in exam fees); Brazeal Aff. (financed \$3,445 in exam fees); Lessard Aff. (financed \$3,410 in exam fees).

82. In some cases, Program Advisors automatically include the exam fees in the cost of the program and do not advise consumers that financing the testing fees is optional.

Undercover recording transcript of sales presentation, Exh. C, pgs. 11-12:

Phase one consists of your seven prerequisites and your first three nursing. Okay? Each one of your classes is \$525.00... So that total would be \$5,250 for all ten classes... You then have your exam fees... I'm gonna add them up for you... Okay your exam fees total \$2,200 and that's for all ten classes... So \$7,450... We're then giving you 20% off your classes for the month of February so that's going to save you \$1,050... So that drops your loan down to \$6,400 and that's what we finance for you.

See also consumer affidavits, Exh. E:

The representative recommended 16 CLMs at \$525 each, for a charge of \$8,400. He also told me that the package would include the exam fees, which added another \$3,410 to the cost of the program.

Brody Aff., ¶ 18.

[The Program Advisor] also explained that the total cost of the program included the testing fees that I would have to pay to sit for the exams at the testing center. She did not give me the option not to include the testing fees in the cost of the program.

Goodwin Pope Aff., ¶ 9.

The [Program Advisor] told me that TCN would be able to offer me financing for my purchase. She said that the financing would cover not only the cost of the CLMs, but also, the testing fees that I would have to pay each time I sat for an examination. She told me that when I was ready to sit for an exam, all I would need to do was call and then TCN would issue me a check for the exam fee. The [Program Advisor] did not advise me that I had the option to simply pay the third party testing fees when I was ready to take the exam, rather than financing them and having TCN hold the funds for me. Burke Aff., ¶ 9.

See also Saladino Aff.; ; White Aff.

(v) Failure to Disclose Material Conditions and Restrictions on Releasing Funds to Pay Exam Fees

83. In many cases, Program Advisors do not disclose that The College Network places significant conditions and restrictions on consumers before it will provide them with a check for an exam fee. For example, as set forth more fully below, The College Network requires consumers to take all the end of chapter quizzes and “practice” tests for the CLM, which are available on The College Network website, and achieve a specified grade on each, most recently, 90%, before it will give them a check. See, e.g., Exh. E, Affidavit of: Brazeal; Casiano; Gillespie.

84. Further, as set forth more fully below, even when consumers satisfy all of its undisclosed conditions, in many cases, The College Network fails to promptly provide

consumers with a check. Indeed, consumers have endured waits of as long as nine months to receive a check after satisfying all of The College Network's preconditions.

See, e.g., Exh. E, V. Bennett Aff.

(vi) High Pressure Sales Tactics to Close the Deal

85. Many consumers are hesitant to make such a significant financial commitment on the spot. Program Advisors, however, often pressure consumers by advising them that if they sign up that day, they will be eligible for a "grant" that will reduce the cost of the program by as much as 30%.

Undercover recording transcript of sales presentation, Exh. C, at 12:

PA: We're, then giving you 20% off your classes for the month of February. So, that's going to save you \$1,050.00

* * *

UC2¹⁵: That's just for the month of February?

PA: Yes. So that drops your loan down to \$6400 and that's what we finance for you.

See also consumer affidavits, Exhibit E:

The Program Advisor informed me that I qualified for something that she called a "DLA Grant." She did not explain why I qualified for such a grant, other than to say that TCN awards various grants to people "from time to time." Due to the grant, TCN gave me a 30 percent discount... V. Bennett Aff., ¶ 5.

The representative also stated that if I signed up that day I would be able to receive a discount on the price of the program, which she referred to as a "grant," and told me that grant might not be available if I waited until the following week to sign up.

Scott Aff., ¶ 9.

[The Program Advisor] also told me that if I didn't sign up that day, I would not be eligible for a discount and the price would increase by 20%.

Brody Aff., ¶ 15.

¹⁵ The NYAG who posed as a consumer brought another NYAG employee with her to the meeting with The College Network's Program Advisor. The transcript refers to this second NYAG employee as "UC2".

See also: Ciraco Aff.; Affidavit of Geoffrey Westby; Casiano Aff.; Aponte Aff.

86. Once consumers agree to “enroll” in The College Network’s “program” and to finance their purchase, Program Advisors require them to sign several documents. The Program Advisors, acting as agents of the credit unions, complete the loan documents and then have consumers execute the loan application and promissory note, as well as the Purchase Agreement. See Affidavit of Peter Smith, former The College Network Program Advisor, Exh. V (“I would fill out the loan paperwork and have consumers sign it during the meeting.”). See also Exh. E, Affidavits of: Jimenez, ¶ 5; Saladino, ¶ 9; Brody, ¶ 19; Crapser, ¶ 12.

87. Program Advisors typically also require consumers to execute an “Agreement for Preauthorized Payments,” authorizing the credit union to automatically debit monthly payments from consumers’ bank accounts. Consumers are also asked to sign, among other things, a densely worded document entitled “Customer Courtesy Checklist,” and in some cases, a “Statement of Understanding.”¹⁶

88. Many consumers feel rushed during the sales presentation and do not read or merely skim the documents. In many cases, consumers simply rely on the Program Advisor’s explanation of what they are signing.

89. In some cases, Program Advisors actively discourage consumers from reading the paperwork or make it difficult for them to do so. For example, in some cases,

¹⁶ Most consumers who provided affidavits to the NYAG either no longer had, or could not readily locate, the paperwork that they received from The College Network. For many of those consumers, the NYAG had some of the consumers’ paperwork, provided by Southeast in response to the NYAG’s subpoena. The loan files provided by Southeast typically consisted of the “Purchase Agreement” with The College Network, the promissory note, loan application, “Membership/Signature Card” and “Agreement for Preauthorized Payments.” In most cases, the documents attached to consumers’ affidavits consist of the loan file provided by Southeast. However, Southeast’s files did not include copies of either the “Customer Courtesy Checklist” or the “Statement of Understanding.” Accordingly, in most cases, the attachments to the consumers’ affidavits do not include the latter two documents.

Program Advisors advise consumers that they can read the paperwork at a later time because they will have a chance to cancel. In other cases, Program Advisors ask consumers to sign electronic versions of the documents on a laptop computer without giving them a paper copy of the forms to read:

The Program Advisor showed me several documents on his computer, some of which I signed on an electronic signature pad. I did not read them carefully before signing them. In fact, there was no opportunity for me to review them carefully because the Program Advisor pulled each document up on his computer very quickly and summarized each one for me...
Affidavit of Natalie Baldomer, attached to Exhibit E, ¶ 9.

When [the Program Advisor] finished telling me about the program and the financing, I told her that I wanted to take some time to think it over. I felt like I needed to thoroughly review the program and read all the documents in detail before signing up since the program is so expensive. She responded that if I did not immediately sign up, I would have to wait since she was going to be out of the office for a week or so.
Ciraco Aff., Exh. E, ¶ 9.

[The Program Advisor] gave me a contract and financing agreement to sign and I began reading the documents, but she asked me to just sign them and read them later because she was on a tight schedule.
Carroll Aff., Exh. E, ¶ 16.

I didn't closely review the loan or other documents I signed, I just listened to what the Program Advisor was telling me. I trusted her and when she said to sign in various places, I just signed my name. Plus, I felt rushed during the presentation and did not have a chance to read over the documents.
Souko Aff., Exh. E, ¶ 8.

The sales person then pulled up the contract forms on her laptop and asked me to sign them. She briefly explained the documents to me and I signed them without reading them. She did not provide me with a copy of the documents I had signed.
White Aff., Exh. E, ¶ 17.

See also Exh. E, Affidavits of: Giannuzzi; Scott; Goodwin Pope; Edrehi; Dall; Crapser; Brody; V. Bennett; Bellony; Beers; Westby; M. Bennett; Gillespie; Brazeal; Eck; Prince; Morgan; Burke.

90. As a result, few, if any, consumers discover the inadequately-disclosed disclaimers in the paperwork that utterly contradict the false impressions and representations that The College Network repeatedly fosters and makes through its advertising and sales pitches. For example, the reverse side of the purchase agreement, which includes numerous densely worded paragraphs, includes a disclaimer that “The College Network is not part of any college or university; therefore, it cannot grant credit, award a degree or certification.” See Purchase Agreements¹⁷ attached to consumer affidavits, Exhibit E.

91. Similar disclaimers are also contained in two other densely worded documents that consumers are required to sign, one innocuously entitled “Customer Courtesy Checklist,” and the other, vaguely entitled “Statement of Understanding, Associate of Science in Nursing.” Representative copies of the Customer Courtesy Checklist and Statement of Understanding, Associate of Science in Nursing are attached hereto as Exhibit X.

92. In some cases, the Statement of Understanding form used after mid-2012 includes a disclaimer, either in small print at the very bottom or in the middle of a paragraph towards the top of the document stating that The College Network “has no affiliation or partnership with Excelsior College.” These disclaimers do not dispel the false impression created through its marketing materials and sales presentations that The College Network is affiliated with Excelsior College.

93. When signing the loan documents, consumers are also unlikely to discover that the loan is being offered by a credit union because the lender’s name and address is

¹⁷ Although the original Purchase Agreements signed by consumers have text on the reverse side, the copies attached to the affidavits are not printed on both sides. Thus, the reverse side of the purchase agreement appears as a separate page, typically immediately after the Purchase Agreement.

only disclosed inconspicuously in the upper left-hand corner of the promissory note. See generally, consumer promissory notes attached to consumer affidavits, Exh. E.

94. In fact, in many cases, consumers do not discover that the loan is from a credit union until long after they sign the loan documents.

[The Program Advisor] presented me with a number of documents to sign and I signed them without reading them carefully. She did not disclose that the loan was being provided by a credit union, so I thought that the loan was coming from TCN. It was only when I subsequently began receiving statements from a credit union that I discovered that the loan had not come from TCN.

Beers Aff., Exh. E, ¶ 10.

I thought TCN was providing the financing; the Program Advisor did not tell me that the financing was being provided by a credit union... When I checked my credit score, I learned that those payments were being made to—and my loan came from—Community Wide Federal Credit Union, not TCN.

Bellony Aff., Exh. E, ¶¶ 7, 11.

The sales representative also talked to me about financing my purchase. Although I don't recall his exact words, he gave me the impression that TCN was offering the financing and never mentioned anything about a credit union... it was only when I subsequently began receiving loan statements from Southeast Financial Credit Union that I discovered that the loan had come from a credit union...

Morgan Aff., Exh. E, ¶¶ 10, 21.

[The Program Advisor] then mentioned that TCN offered financing for the program. She did not mention that the financing was through a third party so I was under the impression that the financing was through TCN... When I stopped paying, I started receiving phone calls and letters from a collection agency, American Credit Exchange... trying to collect on the loan... It was only after speaking to [American Credit Exchange] that I learned that the financing that I had been offered from TCN was through a credit union... Scott Aff., Exh. E, ¶¶ 8, 17.

See also Exh. E, affidavits of: M. Bennett; Brandolino.

(vii) Failure to Provide Required Notices of Cancellation and Other Disclosures

95. Further, in some cases, Program Advisors do not provide consumers with a completed Notice of Cancellation form and/or orally advise consumers of their statutory right to cancel the contract within three business days, as required by New York Personal Property Law (“PPL”) Article 10-A, § 428. See Exh. E, Affidavits of: Baldomer (Program Advisor pulled up documents on a computer and only emailed copies of the forms a few days later); White (Program Advisor did not provide consumer with a form explaining her right to cancel or orally advise her of her right to cancel); M. Bennett (Program Advisor did not tell him about The College Network’s cancellation policy); Gillespie (same); Westby (same); Brazeal (same); Prince (same); Czerenda (same).

96. Additionally, The College Network’s Purchase Agreement does not comply with New York’s correspondence school statute, PPL § 412-a, which, among other things, requires a seller that enters into a “contract for future consumer services” to include in its contract forms a conspicuous notice advising consumers that if they cancel the contract, the seller may only keep five percent of the purchase price plus a pro rata share of the services used by the consumer. See generally, Purchase Agreements attached to consumer affidavits, Exh. E.

(viii) False and Misleading Inducements to Enroll in The College Network

97. As a result of The College Network’s fraudulent and deceptive advertising and sales presentations, many consumers are induced to “enroll” in The College Network’s “program” based on false and misleading impressions about The College Network, its status, and its so-called “program,” as well as their right to cancel their contracts and obtain refunds.

98. Specifically, consumers are often under the false impressions that The College Network: (a) is a school (see Exh. E, Affidavits of Baldomer; Giannuzzi; Crapser; Carroll; Westby; Brazeal; Eck; Aponte; Burke); (b) can award credits to consumers (see, Exh. E, Affidavits of Giannuzzi; Beers; Carroll; Brazeal); and/or (c) is one and the same as or affiliated with Excelsior College (see, Exh. E, Affidavits of Baldomer; Bellony; Brody; Dall; Goodwin Pope; Scott; Souko; Carroll; Casiano; Westby; Brazeal; Eck; Prince; Lessard; Aponte; Burke; Czerenda).

99. Many consumers are also under the false impression that they will be enrolled automatically in Excelsior College if they enroll in The College Network's program (see, Exh. E, Affidavits of Bellony; Brody; Ciraco; Dall; Goodwin Pope; Morgan; Scott; Souko; Westby; Eck; Prince; Lessard; Smith; Aponte; Burke); and that any general education credits they earn by taking and passing exams will automatically apply towards their nursing degree from Excelsior College (see Exh. E, Affidavits of Westby; Eck; Prince; Aponte; Czerenda).

100. Many consumers also "enroll" in The College Network's program under the false impression that the fees that they agree to pay The College Network cover the entire cost of obtaining an Associate's Degree in Nursing. These consumers do not understand that they will have to pay additional fees to Excelsior College.

The sales representative recommended the courses I would need to purchase from TCN to obtain my degree and told me the total amount that the program would cost...She gave me the impression that this amount was all-inclusive, covering all the fees I would need to get my degree. She did not mention that I would have to pay additional fees to Excelsior College.

Carroll Aff., Exh. E, ¶ 12.

In approximately June 2014, I called Excelsior College and found out that Excelsior College has an entirely separate enrollment process for its

program. TCN's Program Advisor led me to believe that the fees I paid to TCN would cover all the fees I would need to pay to get my degree, but now I've discovered that that is not, in fact, the case.
Casiano Aff., Exh. E, ¶ 25.

See also Exh. E, Affidavits of: Giannuzzi; Dall; Edrehi; Scott; White; Burke.

Consumers Subsequently Discover That They Were Misled About Virtually Every Aspect of The College Network's "Program"

101. Although The College Network requires consumers to purchase all the CLMs they claim consumers would need to meet Excelsior College's degree requirements, The College Network does not provide consumers with the CLMs they have purchased. Rather, at best, The College Network typically leaves a single CLM with consumers the day they enroll in the program and then subsequently provides the CLMs to consumers one at a time, typically only after they have passed the test for the CLM they have been studying. Students are thus unable to evaluate The College Network's materials during the cancellation period.

[The Program Advisor] explained that TCN would provide me with a CLM and that once I passed the actual exam, I could contact TCN to have another CLM mailed to me.

Burke Aff., Exh. E, ¶ 7.

See also Exh. E, Affidavits of: Saladino; Westby; Bellony; Crapser; Scott; Aponte

102. In some cases, consumers do not even receive their first CLM until after the five-day cancellation period has expired.

The Program Advisor did not leave me with a CLM that day because he said that he had just given his sample out to someone else. Several days later, I received my first CLM in the mail—Ethics. I was shocked when I saw the CLM. I had expected a professionally bound textbook but instead the CLM was just a three-ring binder with photocopied information.
Brandolino Aff., Exh. E ¶ 10.

See also Exh. E, Affidavits of: Crapser (received first CLM a couple of weeks after signing up); Morgan (received first CLM by mail at least a week after enrolling).

103. Further, although The College Network has its CLM materials available on its website, and more recently, has advised some consumers that they must use the electronic versions of the CLMs (see, e.g., Exh. E, Affidavits of: Giannuzzi (requested another CLM and was told that The College Network was no longer providing paper copies and that she would have to access the CLMs online); Carroll (told study materials would be made available online)), many consumers do not have access to the website, which requires a password, until after the five-day cancellation period has expired. See, The College Network information sheet entitled “The College Network Resource Center,” attached hereto as Exhibit Y (“You will receive your user name and password in an email and a letter 7-10 days after your enrollment papers are received by The College Network”).

104. Thus, consumers have little opportunity during the cancellation period to review the study guides, and more importantly, no opportunity to determine whether the CLMs live up to The College Network’s claims that they contain all the information that will be covered by the examinations to which they are allegedly geared. As a result, it is only well beyond the five-day cancellation period when consumers discover that many, if not all, of the features and benefits of The College Network’s program are illusory.

(i) The Study Guides Do Not Prepare Consumers for Exams

105. The CLMs are, at best, nothing more than general study guides that provide a general overview of the subject matter. They are not professionally published, but rather, consist of photocopied materials, assembled in cheap three-ring binders.

106. Further, the CLMs do not include any color illustrations or photographs, even in those cases where such features are essential to a full understanding of the subject matter. See Affidavit of David F. Moffett, Professor Emeritus at Washington State University and author of the Anatomy and Physiology CLM for The College Network, attached hereto as Exhibit Z:

In approximately 1998, I authored a study guide for The College Network...on the subject of Anatomy and Physiology...Consistent with the instructions I was given by TCN, I produced a study guide of approximately a few hundred pages, which contained a limited number of black and white illustrations...I envisioned the study guide as a good review aid for a student who was taking or had previously taken a course or courses in the subject. Certainly, I did not conceive it as a product that would, by itself, take the place of, or be equivalent to, an in depth study of the subject using textbooks and other materials. The CLM, in my view, was not adequate, by itself, to permit a student to successfully master a college-level course on anatomy and physiology. It did not cover the material in the depth necessary to do so and also did not include color illustrations throughout, which are essential to provide students with an adequate understanding of the subject.
Moffett Aff., ¶¶ 2, 5-7.

107. Not surprisingly, consistent with the assessment of Professor Moffett, many consumers who attempt to study the CLMs find that the material is difficult to understand or not covered in sufficient depth to permit them to master the subject.

The Program Advisor left me with a sample CLM for Anatomy and Physiology...I began studying the CLM for Anatomy and Physiology. I read the materials, highlighted what I thought was important and tried to learn the content, but I found the CLM confusing...the CLM had very few visual aids and the few they had were all in black and white. Moreover, the diagrams were too basic to be instructional.
Aponte Aff., Exh. E, ¶¶ 13-14.

So far I have studied TCN's CLMs for Anatomy and Physiology ("A & P"), Microbiology and Sociology. The way the material is written and presented in each of the CLMs makes it difficult to understand. As I was reading each of the CLMs, I felt as though I was not learning and comprehending the subject matter. As a result, I have had to purchase additional books for all three of these courses. To date, I have purchased

three additional books for A & P, one book for Microbiology and another book for Sociology. These additional books present the material much more clearly and comprehensively than TCN presents the material in the CLMs.

Ciraco Aff., Exh. E, ¶¶ 10-11.

I began studying the CLM ["Lifespan Development," a Psychology course] immediately, but soon after I began, I started having problems understanding the material and was having trouble passing the end of chapter quizzes. I would have to go online and use YouTube videos and informational websites to supplement my studies in order to try to gain an understanding of some of the material in the CLM. I would also take the CLM to work with me so that I could study during breaks. I work with many nurses who have either an ADN or a Bachelor's degree in nursing and I would often talk to them about the material and seek their help. Many of the nurses looked at the material in the CLM and agreed that it was not explained well.

Crapser Aff., Exh. E, ¶¶ 14-15.

When I began to read the CLM [Essentials of Nursing Care: Health & Safety], it seemed apparent to me that the CLM was inadequate to prepare me for a nursing examination. The content was not well written and lacked specificity that I had seen in other nursing textbooks. Moreover, the CLM contained very few graphics, diagrams, and pictures.

Prince Aff., Exh. E, ¶ 14.

See also Exhibit E, Affidavits of: Bellony; Dall; Bekoe; Souko.

108. The substantive material is divided into chapters, with each chapter followed by a limited number of review questions. Many of the CLMs include a "Practice Examination" at the end. The online versions of the CLMs include quizzes at the end of each chapter. The College Network also has one or two "practice" exams for each CLM that are available on its website. See, e.g., Exh. E, Affidavits of: Smith; Crapser; Edrehi;

White; Westby. A copy of The College Network's Anatomy and Physiology CLM¹⁸, submitted herewith as Exhibit AA.¹⁹

(ii) Respondents Fail to Provide the Promised Academic Support

109. As noted, many consumers have difficulty understanding the material in the CLM. However, when they call The College Network's Academic Support department to get help from an Academic Advisor, one of the major selling points touted by the Program Advisors, the promised assistance proves illusory.

110. In some cases, consumers are unable to get through to a live person and find that their messages are not returned:

I also called TCN for academic support on a number of occasions. On some occasions, I would be placed on hold and would be made to wait as long as a half an hour to speak with an Academic Advisor...In some cases the phone would just ring and no one would answer.
Crapser Aff., Exh. E, ¶ 16.

I also tried calling the academic support phone number several times but I never reached an advisor, despite the Program Advisor's promise that TCN had academic advisors available 24 hours a day, 7 days per week. When I called and nobody answered, I left messages, requesting that an advisor call me back. I never heard back from an academic advisor.
Aponte Aff., Exh. E, ¶ 15.

See also Carroll Aff., Exh. E (TCN repeatedly failed to return consumers' phone calls requesting assistance because the website was malfunctioning).

111. Indeed, contrary to Program Advisors' repeated representations that Academic Support is available "24/7" (see Exh. E, Affidavits of: Brazeal; Gillespie; Bekoe; Bartley; V. Bennett; Crapser; Ciraco; Dall; White; Aponte), the Academic

¹⁸ Although The College Network discontinued paying royalties to Professor Moffett in approximately 2010, Moffett Aff., Exh. Z, ¶ 8, the Anatomy and Physiology CLM, which has a 2010 copyright and was provided to consumer Simone Lyken on May 31, 2011 (Lyken Aff., Exh. E, ¶¶ 3, 11) attributes authorship of the CLM to Professor Moffett. See Exh. Y., at vii: "About the Author."

¹⁹ The State is providing the court with the original CLM in its binder. Respondents have been provided with a copy of the CLM without the binder.

Support Department is not open 24 hours a day. In fact, until sometime in 2012, the Academic Support department was not open at all on Saturdays and Sundays and was open only from 8:00 a.m. to 9:00 p.m. EST on weekdays. In 2012, The College Network added weekend hours and extended weekday hours from 8:00 a.m. to 11:00 p.m. EST. Kirsch Aff., Exh. V, ¶¶ 5-6. Even these expanded hours fall far short of the 24/7 academic support repeatedly promised to consumers.

112. Further, even when consumers do get through to an Academic Advisor, they repeatedly find that the Academic Advisors have no substantive expertise on the subject matter consumers are calling about, and do not assist them with the CLM material. Instead, Academic Advisors typically offer only general study tips, or simply refer consumers back to the same material in the CLM that they are having trouble understanding:

By this point, I had grown dissatisfied with TCN because so little of what the Program Advisor sold me on seemed to be true. For example, when I called for academic assistance, the phone representatives either told me that I should look in the CLM for the answer or that the “Academic Advisor” assigned to me was unavailable. Sometimes, an Academic Advisor would call the following day, but by then, I had usually figured out the answer to the question or become unavailable to talk. Bartley Aff., Exh. E, ¶ 14.

While studying the CLM, I had questions on the material and I contacted TCN for help. I spoke to an Academic Advisor who merely advised me to “keep reading” the CLM. When I explained that the CLM was unclear, the Academic Advisor suggested that I look at outside materials...Bellony Aff., Exh. E, ¶ 9.

Throughout this process, I called TCN’s academic support line about three or four times. Each time, I explained that I was having difficulty understanding the materials enough to pass the quizzes and tests, and the Academic Advisors always told me to stick with the program, to keep reading the CLM repeatedly until I understood it, and to do more practice exams until my scores improved. I never got any specific academic guidance from the advisors. Baldomer Aff., Exh. E, ¶ 12.

I subsequently contacted TCN's Academic Support Center because [the Program Advisor] gave me the impression that TCN had tutors who could help me if I was having difficulty with my studies. I spoke with a representative and advised her that I needed help because I was having difficulty passing the exams but she was not able to offer me any help. Instead, she encouraged me to go online and said that I would be able to access academic advisors there. Although I went on the website, I did not find any evidence that there were tutors available...
Beers Aff., Exh. E, ¶ 17.

See also Exh. E, Affidavit of: Brody; Crapser; White; Casiano.

113. These consumer experiences are corroborated by former Academic Advisors. Contrary to the impression created by Program Advisors during the sales pitch, The College Network's Academic Advisors are neither professionals nor "experts." In fact, Academic Advisors are neither required to have any substantive expertise to qualify for a position as an Academic Advisor, nor trained in any of the substantive areas that consumers are studying once they are hired. See Affidavits of former Academic Advisors:

Although it was my understanding that one of the qualifications for the position was that I needed to have a college degree, I was not questioned during the interview process about any substantive expertise I may have had, nor was I advised that any such expertise was an essential qualification for the job...I did not receive any instruction or training from TCN on any of the academic subjects that the students who were enrolled in TCN's programs were studying. Payton Aff., Exh. V, ¶¶ 2, 4.

The only qualification I remember needing for the [Academic Advisor] position was a bachelor's degree...I did not receive any instruction or training from TCN in any of the academic subjects that the students who were enrolled in TCN's programs were studying. Kirch Aff., Exh. V, ¶¶ 2-3.

114. Former Program Advisor Leonard Desrochers further states:

When I made a sale, I would usually give consumers who agreed to enroll in [TCN's ADN program through Excelsior College] my personal phone number so that they could contact me with any questions or concerns they

had...[B]y 2009, I was receiving as many as one or two complaints a day... [C]onsumers complained that when they called TCN for assistance with their studies, TCN representatives offered no help whatsoever... I personally spoke with managers at TCN's corporate office to inform them of the complaints. When I asked if the Academic Advisors had any educational or nursing credentials, I was told that they did not have any formal credentials, but were familiar with the CLMs. I was also told that although there was one nurse who worked for the company, she was not an Academic Advisor.

Desrochers Aff., Exh. V, ¶¶ 15-17.

115. In fact, Academic Advisors are simply trained to pull up the CLM on the computer and search for the answer:

If consumers were having trouble understanding material in a CLM, I was trained to attempt to answer consumers' questions by pulling up the relevant CLM and searching for the answer. I was not required to read the CLMs beforehand and did not have specialized knowledge in any of the CLM subjects, except English, which I studied in college and later taught.

Kirsch Aff., Exh. V, ¶ 9

See also, Payton Aff., Exh. V, ¶ 9.

116. Although in approximately 2010/2011, former Academic Advisor Kirsch took the initiative to develop a list of so-called "experts" to whom Academic Advisors could direct questions that they were unable to answer, the "experts" were not expert at all. Rather, Academic Advisors were simply asked to identify subjects in which they had confidence and were then designated as "experts" in those subjects.

117. For example, even though Kirsch had majored in Secondary Education, she designated herself as an "expert" in certain Nursing CLMs simply because her mother was a nurse:

I graduated from Butler University in 2006 with a Bachelor's Degree in Secondary Education... On September 24, 2009, I began working as an Academic Advisor for The College Network... In July 2012,... TCN management appointed me to be the "Team Lead" for Tier 3, which was the most experienced group of Academic Advisors... [W]ith the approval of my supervisor, I compiled a list of subject matter "experts." To do so, I emailed all of the Advisors and asked them to tell me the subjects in which

they felt most confident, either because they had majored in these subjects, or just felt that they were well versed in them. Once I matched each Academic Advisor with one or more subjects, I circulated a list of subject-matter “experts” to the Academic Advisors... I designated myself as an “expert” in select nursing CLMs. Although I have no formal training as a nurse, when I was growing up, my mother was a practicing nurse and I became familiar with nursing terms and concepts. Kirsch Aff., Exh., V ¶¶ 1, 16, 19, 21.

118. Similarly, former Academic Advisor Aimee Payton became an “expert” in history and sociology merely because she had majored in those subjects in college.

However, few students had questions about those subjects:

During training, I was also asked to think about subjects that I would be comfortable assisting consumers on if they called with questions about their study materials...I subsequently advised TCN that I was comfortable with history and sociology because those were the subjects in which I majored in college...Few, if any, consumers with whom I spoke were calling with questions about history or sociology.
Payton Aff., Exh. V, ¶¶ 4-5, 10.

119. Indeed, for the bulk of the four-year period that Kirsch worked for The College Network (September 2009 through October 2013), there was no one with a nursing degree on staff to answer consumers’ questions:

When I started at TCN in 2009, there was one nurse on staff, but she was only available to field consumers’ questions for a few hours per week. She stopped working for TCN shortly thereafter. After that, there was no one designated as a nursing “expert.” There were, however, two or three other Advisors who, like me, were considered “experts,” in select nursing CLMs, although none of them had nursing degrees. Kirsch Aff., Exh. V, ¶ 21.

120. Further, even though the bulk of the questions posed by consumers concerned math or science topics, (Payton Aff., Exh. V, ¶ 10; Kirsch Aff., Exh. V, ¶ 22), during Kirsch’s tenure, The College Network had only two math “experts,” which Kirsch acknowledges was insufficient, and no chemistry “expert.” Kirsch Aff., Exh. V, ¶ 22.

121. The College Network's procedure for handling calls where the Academic Advisor is unable to answer the consumer's question involves referring the question to a designated "expert" who may not be available, or even able to answer the question, which then requires the "expert" to refer the question to the Product Development Department, who, in turn, is supposed to reach out to the CLM author. This convoluted process means that, in many cases, consumers do not get assistance when they need it, if at all:

According to the procedure I implemented, if an "expert" to whom an Academic Advisor wished to transfer a call was not available, the Academic Advisor was supposed to send the expert an email message and ask the expert to get back to the consumer within 24 hours. The "experts" were also supposed to look in the CLM first; if they could not find the answer there, they could also search the internet for additional sources. If they still could not find the answer, they were instructed to send an e-mail to TCN's Product Development Department, which was supposed to reach out to the CLM author to get the answer to the question, and then contact the Academic Advisor, who would, in turn, reach back out to the consumer who asked the question.
Kirsch Aff., Exh. V, ¶ 20.

Generally, the bulk of the questions that related to the content of the CLMs concerned math or science topics. Because I had no expertise in those areas, I would typically refer those calls to other "experts." In such cases, in accordance with TCN's procedures, I would tell consumers that another academic advisor would get back to them within 48 hours. I would then e-mail the question to one of the "experts" on TCN's list, along with the consumer's contact information and ask the "expert" to respond. I do not know how many consumers did, in fact, receive calls back within 48 hours, as promised, although I recall receiving complaints from consumers who had not received calls back within 48 hours.
Payton Aff., Exh. V, ¶¶ 10-11.

(iii) Respondents Fail to Provide Consumers with, or Prevent Consumers From Obtaining, Their Exam Fee Money

122. Notwithstanding The College Network's failure to provide promised academic assistance, some consumers manage to master the material in a CLM. However, when they then call The College Network to request a check for the exam fee

so that they can schedule the test, in many cases, they learn for the first time of the significant obstacles that The College Network places in their way.

123. For example, consumers are told that The College Network will not send them a check unless and until they take all the end of chapter quizzes and practice tests online and achieve a specified score, which has steadily increased over time from 70% to 85% to, more recently, 90%:

I...called TCN to request an exam check so that I could schedule the examination. The representative with whom I spoke advised me that I could not request a check unless and until I took all the online quizzes and achieved at least 90% on each of them. I was surprised to hear of this requirement because the sales representative had not mentioned it. The sales representative made it sound as though the quizzes were for my benefit to test my knowledge, but didn't tell me I was required to take them in order to get a check for the exam fee. I told the representative that I was unaware that I needed to take the exams and score at least 90% and asked her if TCN would process my request for the check and in the meantime, I would take the practice exams. She said "no."
White Aff., Exh. E, ¶ 19.

[The Program Advisor] told me that...once I was enrolled I could request the check to pay for the test at a testing center while I was doing the coursework...I had another friend who had also signed up for TCN's program and she told me she had been having difficulty getting TCN to provide her with a check for the testing fee...So, in approximately April of 2014, after completing about half of the Anatomy & Physiology CLM, I called to request the check. However, the TCN representative with whom I spoke told me that TCN would not provide me with a check until I completed the course and received at least a 90% on each of the end of chapter quizzes...
Casiano Aff., Exh. E, ¶¶ 11,18.

See also: Brazeal (consumer told he could not get a check until he achieved a score of at least 85% on quizzes and tests); Bartley (consumer told that she had to wait until she had been enrolled in the program for three months before she could take an exam for credit).

124. Further, some consumers encounter problems when they try to use The College Network's website to take practice quizzes and exams and find The College

Network unresponsive or unhelpful. When consumers contact The College Network for assistance, they get little or no help:

...I read a few chapters and completed the questions after each chapter. However, the "submit" button didn't work. After reading the entire CLM, I attempted to take the examination that was available on the website, which I thought was the actual examination that would entitle me to credit for the course if I received a passing grade. However, I was unable to access the exam and received a message advising me that I did not have permission to do so. At that point, I had been using a computer at work to access the website. I then called TCN again to report the problem, and again, got a message machine. I left a message saying that I was having difficulty with the website and requested that someone call me. I did not receive a return call. A couple of days later, I received an automated welcome call from TCN saying that they hoped everything was ok and gave me a few phone options to choose from, one of which was to speak to a representative. I chose that option but only received a voicemail message, so I left another message saying I was having difficulty with their website. Yet again, I did not receive a return call. I subsequently tried to use TCN's website from my home computer, thinking that perhaps the problem was with my work computer. However, when I punched in my username and password I got a message saying that they were unable to log me on. I tried a second time and got the same response. I called TCN to report the problem, and again, got a machine. I left a message saying that I was unable to access their website and suggested that perhaps the problem was on their end. Again, I did not receive any return call. Approximately two weeks later I again tried again to access TCN's website, and this time, I was able to do so. I spent some time studying the two CLMs I had started previously and tried answering the questions at the end of each chapter. However, again, I was unable to submit my answers. When I tried a second time, I found that all my answers were erased.

Carroll Aff., Exh. E, ¶¶ 22-27.

I started studying the Sociology CLM shortly after I met with the Program Advisor. After spending approximately four weeks studying the CLM, I called TCN to find out about accessing the online practice tests. The representative with whom I spoke confirmed that tests were available online and told me how to access them using my password. However, when I tried to access them, I found that my password did not work. When I called again, a representative promised that they would reset my password. However, again, it did not work.

Westby Aff., Exh. E, ¶ 15.

The Program Advisor left me with the Sociology CLM... I spent a good deal of time preparing for and taking the online practice test. When I finished, I tried to submit my answers to learn my score, but the program was not working... I called TCN... about getting my score because I wanted to know whether I had learned the material before sitting for the examination. The phone representative I spoke to was unprofessional and I felt that he was mocking me. He did not provide me with any advice about how to fix the problem, but informed me that I could not sit for the for-credit examination until I finished that practice test. I subsequently tried again to get my score on the TCN website but was still unsuccessful. Smith Aff., Exh. E., ¶¶ 12-13.

125. Even when consumers are able to access The College Network's website without problem, many consumers who take the chapter quizzes and practice tests are unable to achieve the mandated score, and in many cases, fail the tests and quizzes altogether. These consumers find that some of the material tested on the quizzes and practice tests was not covered in the CLM.

I began TCN's program by studying the Introduction to Psychology CLM, which the Program Advisor left with me on the day I enrolled. After each chapter, I took the end-of-chapter quizzes online. For several chapters, I had to take the quizzes repeatedly before I scored above an 85%. I ultimately took the practice tests, too, and I had the same frustrating experience. The questions on the quizzes and tests asked about material that had not been covered by the CLM. I was only able to pass these practice tests by repeating them and memorizing the correct answers, which were shown at the end of each attempt. Baldomer Aff., Exh. E, ¶ 11.

Over the course of about four months, I read approximately three or four chapters in the CLM and, after each chapter, I went online to TCN's website and took the practice quizzes. I failed every quiz I took. The quiz questions were vague, difficult to understand, and did not closely reflect the content of the CLM. Prince Aff., Exh. E, ¶ 14.

Over the course of approximately one month, I started studying the CLM. At the end of each chapter was a practice quiz. I took one of the chapter quizzes and was surprised to find that the CLM had not covered all the material on the quiz. After completing the quiz, I hit the "submit" button and got my results instantly. I only got approximately 50% to 60% on the

quiz even though I had studied the chapter and felt that I knew the material well.

Lessard Aff., Exh. E, ¶ 15.

The Program Advisor left me with the first CLM, a course called Transition to the Registered Nurse Role...Eventually I was able to log onto the website and I took the end-of-chapter quiz for the first chapter. I only achieved a score in the 60's. I was frustrated that the CLM seemed so inadequate.

Dall Aff., Exh. E, ¶¶ 8, 10.

See also Exhibit E, Affidavits of: Edrehi; Brazeal; Crapser; Aponte; Scott.

126. The fact that, in some cases, the CLMs do not cover material that is tested on quizzes or practice exams is confirmed by former Academic Advisor Kirsch:

I also received calls from consumers who complained that the CLMs did not include all the information covered by the practice quizzes and practice tests. I tried to verify these claims by reviewing the CLMs. And indeed, I noticed some situations where it appeared that the CLMs did not contain the information needed to successfully answer the practice questions. I also observed typographical errors that made the CLM text confusing and/or incorrect. Kirsch Aff., Exh. V, ¶ 11.

127. Further, Kirsch forwarded the deficiencies she discovered in the CLMs to The College Network's Product Development team, which was responsible for producing the CLMs, but found that the problems were generally not resolved:

I documented and forwarded complaints from consumers and other Advisors about the CLMs to TCN's Product Development team, which was in charge of producing the CLMs but to my knowledge, TCN did not take any action to address most of these issues. Likewise, I forwarded to Product Development instances where a consumer or an Academic Advisor pointed out a mistake in the CLM; for instance, a step missing in a math equation or an incorrect medication dosage listed in a nursing text. These issues, while acknowledged, were generally not resolved. Kirsch Aff., Exh. V, ¶ 12.

128. Stymied by the flaws in the CLMs and unable to satisfy The College Network's pre-conditions, which in many cases were not disclosed by the Program

Advisors when consumers agreed to finance the testing fees, many consumers are prevented from obtaining the funds to sit for an exam.

129. If consumers who are having difficulty understanding the subject matter or passing the quizzes and tests in a CLM contact The College Network to request a CLM on a different subject matter, hoping that perhaps they will fare better in it, in some cases, The College Network refuses to provide one, advising consumers that it will only provide them with one CLM at a time or that consumers can access the CLMs online:

I became very frustrated because I was unable to make headway with the study materials and TCN was not providing me with any help. At one point, I decided that I would try to study a different CLM. However, when I called TCN to request a different CLM, I was told that I could not receive an additional CLM until I passed the exam for the first one. Crapser Aff., Exh. E, ¶ 17.

Although I felt that I was reading the material thoroughly, I found that I was failing the quizzes miserably. I figured that maybe this was a difficult subject to start on for my first self-study assignment. So, I decided to contact TCN to request all of the CLMs so that I could plan out the order in which I would study them. However, when I contacted TCN to request them, I was told that TCN would not send me all of the CLMs even though I had paid for them...I was advised that I would have to study one subject at a time and take and pass the test before TCN would send me the next CLM. Scott Aff., Exh. E, ¶ 15.

After approximately six months of studying Anatomy & Physiology but not really learning much, I called TCN to see if I could get a Math CLM instead. The TCN phone representative told me that they had changed their policy and they no longer printed CLMs...Instead, the phone representative suggested that I go online and print out the CLM myself. I thought this new policy was unfair since I had paid for the printed CLMs. Aponte Aff., Exh. E, ¶ 17.

130. Even after consumers manage to comply with The College Network's conditions for obtaining a testing fee check, The College Network has repeatedly failed to timely send them a check.

131. When consumers call to find out why they haven't received their check, The College Network representatives give them false assurances as to when they will receive the check, or false excuses, blaming the delay on a "backlog." Further, representatives have suggested to consumers that they lay out the money and wait to get reimbursed by The College Network later, even though the ostensible purpose of financing the fees in the first place is so that consumers will not have to worry about having the money available when they want to sit for an exam:

[In 2013], I was advised to tell consumers that there was a significant "backlog" and that consumers could either keep waiting or pay for the examinations out of pocket and get reimbursed by TCN later. Consumers were dismayed to hear these options.
Kirsch Aff., Exh. V, ¶ 23.

When I felt I had mastered the material and was ready to take the test, I called up TCN and requested that they send me a check for the testing fee. The representative with whom I spoke advised me that there would be a delay before TCN would send me the check and suggested that I pay the fee out of pocket and then TCN would reimburse me. I didn't think I should have to lay out the money because TCN was supposed to provide me with the funds, but I didn't want to waste time waiting for the check from TCN, so I laid out the fee for the exam.
Burke Aff., Exh. E, ¶ 14.

132. Indeed, consumers have waited for as long as nine months to receive the check. These delays significantly impede consumers' progress toward their degree:

I called TCN again in late May 2014 to request a check for the testing fee, after taking the end of chapter quizzes and passing with a 90%. The representative advised me that TCN would send me a check and would notify me by email when the check was sent out. About three or four weeks later, after I still had not received a check or email about the check, I called TCN to inquire about the check and was told that TCN was "experiencing longer than normal processing delays" and that I would have to wait six to eight weeks to receive my testing check. I responded that if it was going to be longer than expected, I wanted to request the check for my Microbiology exam in advance. The representative advised me that I could only request one check per class at a time... I finally received the check for the [Anatomy and Physiology] exam on or about

the first week of October, approximately five months after I first requested it.

Casiano Aff., Exh. E, ¶¶ 20-21, 30.

After studying the CLM for about three months, I finally scored above 85% on all of the practice quizzes and tests. I called TCN to request that they send me a check for the exam fees. When I first called, the phone representative said that she would get back to me about it. After I did not hear back, I called again at least twice more over the next several weeks, and I was told that TCN would send the check...I never received the check from TCN.

Baldomer Aff., Exh. E, ¶¶ 13-14.

The representative told me I should expect the check in two to three weeks...After a few weeks went by with me receiving the exam fee check for Developmental Psychology, I began calling TCN on a weekly basis to inquire about the check. My inquiries were met with excuses. I was told that the financial department was overwhelmed with requests for exam fees and that they were experiencing a high volume of requests. Further, the time frame estimates for receipt of the check grew longer as time went on. The initial estimate of two to three weeks subsequently became four to six weeks, then six to eight weeks, and then eight to ten weeks...Ultimately, it took TCN four months to send me the check for the exam fee.

White Aff., Exh. E, ¶¶ 20, 22, 25.

[A]fter I reviewed the CLM for Transition to the Registered Nurse Role, in February 2014, I requested an exam-fee check that I did not receive until October 2014, approximately nine months later. While I was waiting for the check, I called TCN about the delay and a representative informed me that TCN is "backlogged."

V. Bennett Aff., Exh. E, ¶ 13

For each exam,... I did contact TCN to request a check for the testing fee because I had financed the testing fees through TCN. On each occasion, I had great difficulty getting TCN to provide me with a check. Most recently, on June 3, 2014, when I contacted TCN to obtain a check for the testing fee for the course entitled Health Differences Across the Life Span 3, I was told by the representative that it would take TCN three months to send me a check. Although I ultimately got the check a couple of weeks later, it was only after I advised the OAG about the situation and the OAG intervened on my behalf. Burke Aff., Exh. E, ¶¶ 37-38.

See also Exh. E, Ciraco Aff.

133. Further, The College Network's failure to timely provide consumers with their testing fee money forces consumers to waste their time repeatedly studying the same material and increases the likelihood that consumers will forget the material and fail the exam by the time they are able to sit for it:

After about a month and a half following my first request, I still had not received the check. I was very frustrated about the delay with the check and I realized that I was not going to become an RN in seven months by using TCN's Program. During the month and a half when I was waiting for TCN to send the check, I kept reviewing the CLM so that I would not forget the material I had learned before the examination. After about six weeks, I decided that I was wasting too much time going over the material again and again, and I had lost confidence in TCN.

Baldomer Aff., Exh. E, ¶ 13.

134. The College Network's delays in providing consumers with their testing fee money are widespread. Indeed, the BBB has issued an "alert" concerning The College Network's failure to promptly provide consumers with their testing fee money based on numerous consumer complaints it has received on the issue. A copy of the BBB's alert is attached hereto as Exhibit BB.

135. Former Program Advisor Kirsch has confirmed that the delays are widespread and that The College Network's claim that the delays are the result of an administrative "backlog" is simply a ruse. In fact, it appears that The College Network has failed to segregate consumers' testing fee money and has used it for other purposes:

Consumers commonly complained that they had requested testing fee money from TCN, but still had not gotten the money after several months. This money was the consumers' own; TCN was supposedly holding it for them until they were ready to sit for exams. Academic Advisors would forward consumers' requests for testing fee money to TCN's Accounting Department, which was in charge of mailing checks to consumers. When consumers complained about delays, I would follow up with the Accounting Department, which would provide me with an estimated time frame for when the consumer could expect a check. Although the Accounting Department blamed the delays on a "backlog," in 2013,

TCN's Academic Support management informed me that TCN could not send out any testing fee money until they took in additional money by enrolling new consumers.
Kirsch Aff., Exh. V, ¶ 23.

136. Thus, rather than providing consumers with a means to earn a degree in as little as 12 to 18 months, or even less time, as The College Network repeatedly touts, its egregious delays in providing consumers with their testing fee money and imposition of additional obstacles before consumers can even request the check, ensure that it will take consumers many years—much longer than it would take in a traditional nursing program—to earn their Associate's Degree in Nursing:

TCN's website talks about TCN's interest in helping to keep students motivated, but TCN's lengthy delay in issuing me the check for my exam made it difficult for me to progress in my efforts to obtain my degree. The sales representative had told me that I would be able to get a degree within a year, which was one of the features of the program that motivated me to sign up. But it would take several years, at least, to get a degree given all the obstacles that TCN was placing in my way: the lengthy delays in issuing checks; the policy that I could only request one check at a time; and the requirement that I complete all quizzes and achieve grades of 90% before I could even request a check. White Aff., Exh. E, ¶ 26.

One of the major reasons I signed up with TCN was because [the Program Advisor] told me that I could definitely earn my ASN in twelve months using the program. This purpose has been completely frustrated by TCN's considerable delays in issuing my exam fee checks. I requested the fee for Sociology on November 12, 2013 and still have not received it. I have called TCN about the delay multiple times and was told that it is caused by a large number of people requesting exam fee checks. Ciraco Aff., Exh. E, ¶ 13. [affidavit signed May 5, 2014].

137. Indeed, even without The College Network's delays in providing consumers with their testing fee money, The College Network's claims that consumers can obtain their degree using The College Network's program in as little as 12 to 18 months, or even less, are false and misleading. As stated by Joseph Porter, Excelsior College's General Counsel, even under the best of circumstances, it would typically take consumers much

longer—three to four years on average—to obtain an Associate’s Degree in Nursing through Excelsior College:

[J]ust putting this in proper context, our students are most typically working adults with a full-time job who are studying at Excelsior College part-time, and they are independently studying to take a series of examinations culminating in a very difficult clinical examination that occurs in a live hospital. It is typically the case that a student under those circumstances would take between three and four years to complete the program and it would be unusual for someone to be able to complete the program in a faster time period than that...

See, Exh. J, Porter Tr., pgs. 58-59.

138. Even when consumers diligently study a CLM and achieve at least a 90% on the quizzes and tests, many consumers are stunned to discover when they subsequently sit for the for-credit examination that the CLM did not adequately prepare them for it. Specifically, consumers find the CLM did not cover all the substantive material covered by examination, or covered it only superficially, and that the questions on the test were not at all similar to the questions contained in The College Network’s “practice” exams. As a result, many consumers fail their examinations:

I subsequently began studying the Health Safety CLM. After I felt that I knew the material well, I went on the TCN website and took two practice tests. I did really well on both tests, so I felt that I was ready to take the actual exam...When I sat for the exam, I was surprised to find that the test included questions on material that wasn’t covered by the CLM. I failed the test. I was disappointed and upset and the failure made me doubt myself. I then decided that I would try studying Anatomy and Physiology. I had studied Anatomy and Physiology to get my Paramedic license, so I thought I would do well in the subject. I got the CLM from TCN and began studying, but found that the material was not described or presented in a clear fashion. Nonetheless, I made a serious effort to study the material and even made index cards to help me learn it. As I studied the CLM, I went online and did the chapter reviews...to ensure that I had mastered the material. When I finished the CLM, I took and passed both practice tests available on the TCN website, which consisted of numerous multiple choice questions. I then signed up for the examination and made

arrangements to take it at home from my laptop...I failed the exam, which left me very upset.

Beers Aff., Exh. E, ¶¶ 13-16.

When the test started, I began reading the questions, which were multiple choice. The questions differed significantly from the practice-exam questions and seemed unrelated to the content of the CLM. For the first ten minutes, I thought that the proctor had given me the exam for the wrong college. I finally realized that it was the correct exam but the questions were nothing like the practice tests and much of the material covered by the exam had either not been covered at all, or had not been covered in sufficient detail, in the CLM.

Eck Aff., Exh. E, ¶ 13. (consumer failed the exam)

In approximately March 2010, I took the [Anatomy and Physiology] examination and failed... [A]gain, I felt that the CLM had not adequately prepared me for the exam. For example, the CLM did not contain any pictures, which was a significant shortcoming, given the subject matter. Also, I found that the practice questions that were available on the TCN website were not at all representative of the questions on the actual exam. The questions on the TCN website were generally too basic, and seemed more appropriate for a high school course than a college-level course.

Czerenda Aff., ¶ 22.

Again, I studied the material and didn't schedule the exam until I felt I had mastered the material. I had similar results on my second exam—I barely passed. On many topics, the CLM had only scratched the surface and didn't cover the topic in the level of detail needed to master the exam questions. There were some topics covered on the test that weren't covered at all in the CLM...

Burke Aff., Exh. E, ¶ 21.

See also Exh. E, Affidavits of Bennett; Edrehi; Gillespie; Bartley.

139. Indeed, the above-described experiences regarding the failure of The College Network's CLMs to adequately prepare consumers for exams is consistent with the experience of countless other consumers, both in New York and throughout the country:

See:

Consumer affidavits, Exh. E:

When I met with the testing site administrator to have my exam scored, he told me that I failed. He asked me which college I was attending and I

told him TCN...He told me that many people at the testing site who were enrolled with TCN had failed exams...I decided to read about TCN on the Better Business Bureau's website. I saw over 200 complaints, many of which echoed my own experience. Specifically, I came across a number of consumers who complained that they failed tests because the material had been so inadequate. Eck Aff., ¶¶ 14, 18.

In approximately May 2013, I finally sat for the exam at a Pearson VUE testing center. I was surprised to find that much of the material that was on the exam had not been covered by the CLM or practice tests. I failed the exam. When I told the woman who graded the exams that I had studied using TCN's study materials, she told me that TCN students "always" fail the exams. Bartley Aff., ¶ 13.

Affidavit of Daniel Mitchell, former debt collector for TCN, attached to Exhibit V, ¶ 6:

When I called consumers to ask them to make a payment on their loan, a significant percentage of them explained that they were refusing to pay because they were dissatisfied with TCN's products and services. Specifically, consumers complained that TCN's materials had not prepared them for examinations and the academic advisors had not sufficiently assisted them.

Kirsch Aff., Exh. V, ¶ 13:

I also handled numerous calls from consumers who had failed examinations, even after carefully studying the relevant CLM. Generally, those consumers complained that the material tested on the examination had not been covered by the CLM in sufficient depth—or, sometimes, at all.

See also correspondence between The College Network and Rhonda Cain containing a detailed description of Cain's attempts to use the CLMs, attached hereto as Exhibit CC.²⁰

140. It is not surprising that consumers find that the CLMs do not adequately prepare them for the exams. It is beyond dispute that The College Network has no affiliation with Excelsior College and has no special access to, or knowledge of Excelsior

²⁰ As discussed below, in the rare instances where The College Network agrees to cancel a consumer contract beyond the five-day cancellation period, it requires the consumer to enter into a Release and Settlement Agreement that typically includes a confidentiality and non-disparagement clause. A representative Release and Settlement Agreement is attached hereto as Exhibit PP. See ¶ 7. Some consumers who had signed such agreements, including Cain, were unwilling to talk with the NYAG about their experience with The College Network.

College's test questions. Nor does it appear that the CLMs sold by The College Network to meet Excelsior College's general education and pre-requisite requirements are geared toward any particular exam.

141. As stated by Professor David Moffett, author of an Anatomy and Physiology CLM, the CLM he authored was not geared toward any particular examination, and the practice questions he drafted were not designed to be representative of those that consumers would face on the actual exam:

I did not have any discussions with TCN about gearing the study guide toward a particular examination...TCN also paid me to produce a bank of approximately 1,000 multiple choice questions...I produced the questions, but again, there was no discussion with TCN about drafting questions that were similar in content and style to questions that students would face on a particular examination. Nor did TCN provide me with a copy of an examination to enable me to produce questions that may have been similar in style and content...The questions were certainly not intended to be representative of the type of questions students would face on a particular exam.

Moffett Aff., Exh. Z, ¶¶ 6, 9-10.

142. The College Network is well aware of the deficiencies in their CLMs but has done little, if anything, to address them. In addition to the countless complaints that The College Network receives directly by phone and through complaints filed with the BBB and various law enforcement entities, including the NYAG, these deficiencies have been brought to management's attention by The College Network's own employees. See Kirsch Aff., Exh. V, ¶ 13 (Kirsch advised The College Network's Product Development Department that consumers who had failed exams were complaining that exams tested material that either had not been covered at all, or in sufficient depth, in the CLM); Desrochers Aff., Exh. V, ¶¶ 16-18 (Desrochers spoke to Regional Sales Management

about consumer complaints that the CLMs did not cover certain material that was tested on the examination; management did not take any action to address the complaints).

143. Many students who have difficulty understanding the CLMs or who fail exams after studying from them stop using the CLMs altogether, and either enroll in traditional nursing programs or courses, or study for Excelsior College exams using the materials recommended by Excelsior College.

144. When these students subsequently enroll directly in Excelsior College, or take classes through traditional institutions to earn credit towards their degree, they have no trouble passing the for-credit exams, and indeed, often achieve grades of As and Bs:

After discontinuing TCN's program, I decided to enroll in Columbia Greene Community College to pursue a Bachelor's Degree in Nursing... I took three classes this semester, Introduction to Human Services, Psychology and a Math class. I ended up with a 4.0 grade point average for the semester...

Beers Aff. Exh. E, ¶ 23.

Throughout the program at Excelsior College, I got "As" and "Bs" and passed my clinical examinations. I found the course materials recommended by Excelsior College, which include actual nursing textbooks—to be significantly more comprehensive than TCN's materials. Edrehi, Exh. E, ¶ 19

See also Exh. E, Affidavits of: Jimenez; Bellony; Saladino; Prince.

145. Further, contrary to the representations made by The College Network in its advertising, it costs consumers far less to get an Associate's Degree in Nursing by enrolling directly in Excelsior College, than it does by purchasing The College Network's expensive and ineffective study materials:

I am now actually enrolled in Excelsior College pursuing an RN degree. I spoke to my counselor and told her about my experience with TCN and she confirmed that I shouldn't have signed up with them because I was paying for something that was not necessary because I could enroll directly with Excelsior College. It costs me about \$180 to register to take

each test. To prepare for the tests, I buy and study individual books that Excelsior recommends. The books generally cost between \$20 and \$60 each, depending on whether I buy them used or new. I have taken four nursing courses and have taken and passed all four of the examinations. Jimenez Aff., Exh. E, ¶¶ 20-21.

146. Some consumers who abandon The College Network's "program" are unable to pursue their nursing degree, because they cannot afford to pay additional fees while they continue to pay off their loan:

I am a single mother and I was counting on the increased pay I would receive after earning my ASN to pay for the cost of the program. Furthermore, this debt burden is now preventing me from enrolling in a suitable ASN program. Ciraco Aff., Exh. E, ¶ 18.

I still want to earn my Associate's Degree, and would like to enroll in Excelsior College or a comparable institution, but I can't afford to do so because I still owe a large amount of money on the loan I took out with TCN to buy the CLMs. Souko, Exh. E, ¶ 20.

See also Exh. E, Affidavits of: V. Bennett; Brody; Gillespie; Bekoe; Brazeal.

147. Others abandon their dream of obtaining a nursing degree because their experience with The College Network has left them demoralized and/or shaken their confidence in their ability to succeed:

My experience with TCN has turned me off to the nursing profession and has made me doubt myself. Crapser Aff., Exh. E, ¶ 22.

I have not pursued any other educational opportunities because my experience with TCN caused me to lose confidence in my ability to successfully return to school. Eck Aff., Exh. E, ¶ 19.

I cannot afford to pursue an ASN degree now, and am so frustrated by my experience with TCN that, even if I could afford another program, I would not choose to enroll. Dall Aff., Exh. E, ¶ 16.

(iv) Consumers Belatedly Discover that TCN Misrepresented its Status and Affiliation with Excelsior College

148. At some point, often after they fail their first examination, consumers discover that The College Network is not an educational institution, does not offer nursing degrees and/or has no affiliation with Excelsior College. In some cases, these discoveries are made when consumers, under the impression either that they have been dealing with Excelsior College all along, or that they were automatically enrolled in Excelsior College when they signed up for The College Network's program, call Excelsior College to complain about the inadequacy of the CLMs. Consumers are then shocked when they are told by Excelsior College that, in fact, they are not enrolled in the Excelsior College nursing program, that they purchased the CLMs from The College Network, and that The College Network is simply in the business of selling study guides and is not affiliated with Excelsior College.

Subsequently [after failing an exam], I called Excelsior College to ask about their relationship to TCN. Excelsior College's phone representative told me that there was no relationship between TCN and Excelsior College, and that TCN was just using Excelsior College's name to try to lure students to their program.
Bartley Aff., Exh. E, ¶ 16.

Eventually, I called Excelsior College to learn more information about the nursing programs there. I spoke to a representative from Excelsior College and I informed her that I had been working with TCN. The representative told me that Excelsior College had no relationship with TCN and that I would need to apply separately to Excelsior to take nursing courses there. I was shocked and upset to learn that TCN had no relationship with Excelsior. I called TCN and spoke to a representative who tried to convince me that TCN did, in fact, have a relationship with Excelsior College. I never would have signed up for TCN had I known that TCN had no relationship with Excelsior College...
Bellony Aff., Exh. E, ¶ 14.

See also Exh. E, Eck Aff.

149. Indeed, Excelsior College officials receive numerous phone calls from The College Network customers who are under the false impression that they contracted with Excelsior College. Many consumers call and express dissatisfaction with The College Network's program and materials. See Pollard Tr., Exh. H, at 30-34 (Excelsior College receives "[m]ultiple calls a day" from The College Network customers who are under the mistaken impression that they have contracted with Excelsior College and are looking to obtain exam checks or have failed an exam and are looking for the tutoring promised by The College Network). See also Porter Tr., Exh. J, at 75-80.

150. Other consumers discover this information when they search online for information about The College Network, after finding that the "program" and materials do not measure up to how they were represented by The College Network. Consumers then find numerous complaints from other consumers, which reveal that The College Network is not affiliated with Excelsior College and offers nothing more than study guides. These complaints corroborate consumers' experiences regarding the inadequacy of the CLMs. Many consumers then call Excelsior College to confirm that the college is not affiliated with The College Network. See Exh. E, Affidavits of: Dall; Goodwin Pope; Souko; White; Giannuzzi; Jimenez; Brandolino; Lessard.

151. Often, consumers also learn from Excelsior College that, contrary to the impression created by The College Network's Program Advisors, the general education credits that they may earn by using The College Network's study materials and passing competency exams do not automatically transfer to Excelsior College and that they must apply separately, and pay additional fees, to Excelsior College.

...I called Excelsior College, thinking that they might somehow make me feel better about TCN. When I explained the situation to the phone

representative at Excelsior College, she told me that Excelsior College is not affiliated with TCN and that TCN is not a school. She explained that, even if I passed the exams through TCN, I would have to apply separately to Excelsior College, and that Excelsior College would review the credits I had earned and decide whether or not to accept them. I was shocked and felt that I had been completely misled by the Program Advisor from TCN. Eck Aff., Exh. E, ¶ 17.

See also Exh. E, Affidavit of: Casiano; Bellony; Goodwin Pope.

152. Many consumers did not discover that The College Network is not a school and/or is not affiliated with Excelsior College until they spoke with a representative of the NYAG.

Several months ago, I spoke to a representative from the New York State Office of the Attorney General... about TCN. I learned that TCN is not actually a school and is not affiliated with Excelsior College. Had I known that TCN was not affiliated with Excelsior College... I would not have signed up for the program. Brazeal Aff., Exh. E, ¶¶ 12-13.

See also Exh. E, Affidavits of: Prince; M. Bennett; Brazeal; Bekoe; Gillespie; Westby; Baldomer; Brody.

The College Network Refuses to Cancel Consumers' Contracts

153. After discovering how The College Network misled them about its status, products and services, and relationship with Excelsior College, many consumers call The College Network and advise representatives that they want to cancel their contracts. The College Network representatives advise them that it is "too late" because it is beyond its own five-day cancellation period and refuse to refund any money.

154. Respondents often further advise consumers that they are obligated to make the payments on their loans even though they have typically only received one or two, or at most, a few of the CLMs that they purchased. As stated by former The College Network Academic Advisors:

Additionally, I was trained in handling cancellation calls. When I first began at TCN, they had a three-day cancellation policy but, around 2012, TCN increased the cancellation window to five days. TCN strictly enforced this cancellation policy. Thus, if consumers called after the cancellation period had expired, I was trained to tell them that they could not cancel because they had signed a contract and missed the cancellation window. This was the response I was trained to give to every consumer, even those who claimed that the CLMs were inadequate to prepare them for examinations or who could not afford the monthly payment. Kirsch Aff., Exh. V, ¶ 14.

A number of consumers would call after they failed exams and ask to cancel the program...TCN management instructed me to remind these consumers that they had signed binding contracts and to encourage them to stick with the program or to give it another try. Payton Aff., Exh. V, ¶ 8.

See also Exhibit E, Affidavits of: Baldomer; M. Bennett; Gillespie; Westby; Bekoe; Bartley; Bellony; Brody; Crapser; Pope; Morgan; Souko; White; Aponte.

155. Even though The College Network refuses to refund any of the money consumers have paid for the “program,” The College Network also refuses to provide consumers with the CLMs that they have purchased:

Since TCN refused to allow me to cancel my contract, I asked them to send me the five remaining CLMs that I had purchased. The phone representative refused to send them, advising me that TCN would not send out a third CLM until they saw that I was advancing in the program by passing at least one exam...I reminded the representative that I had paid for all seven CLMs and I was entitled to receive what I purchased. The representative still refused to send me additional CLMs. Prince Aff., Exh. E, ¶ 15.

156. The College Network has also repeatedly refused to return the third party testing fee money that it holds in trust for consumers:

On October 25, 2013, I called TCN and asked to speak with someone about getting a refund of the \$3,410 of the loan that related to the testing fees that were supposed to be set aside for me when I signed up to take a test at a testing center. Being that I had no intention of using the program, I didn't think TCN should be able to keep the all the money that TCN was holding for my benefit so that I wouldn't have to pay testing fees out of

pocket. The representative looked up account information and told me that I hadn't finished paying for the CLMs yet. I explained to him that I wanted TCN to credit the testing fees toward the outstanding balance on the loan. He kept repeating that I had not yet paid off the loan for the CLMs and that the money for the testing fees would be waiting for me whenever I wanted to take the tests. I explained that TCN had misrepresented its program and that I was not going to take the tests. I then asked the representative whether TCN would refund the testing fees if I paid off pay off the entire loan. At first, he wouldn't answer me, but then put me on hold to check with someone else. When he came back on the phone, he told me the contract and loan was a package deal for both the CLMs and testing fees and that TCN would not refund the testing fees even if I paid off the entire loan.

Lessard Aff., Exh. E, ¶¶ 23-24.

In approximately October of 2013, I contacted TCN and told the representative that I was no longer interested in using the program, would not be studying the CLMs or going to Pearson VUE to sit for the exams and asked for a refund of the testing fees. I was told I wasn't entitled to a refund, that I could have a friend sign up and use my testing fee money or I could pursue a different course of study through TCN.

Giannuzzi, Aff., Exh. E, ¶ 18.

See also Exhibit E, Affidavits of: Casiano; Gillespie; Westby; Crapser; White; Aponte.

157. Indeed, in some cases, even consumers who seek to cancel within The College Network's five-day cancellation period are discouraged and/or prevented from doing so:

After [the Program Advisor] left, I began reading the documents I had signed. Soon thereafter, my husband came home and I gave him the documents. After looking at the documents and hearing how the representative had rushed me into signing them, my husband told me he didn't have a good feeling about the program and suggested that I call to cancel the contract. He thought that if someone is trying to rush you into signing a contract, there must not be something right about it. I tried calling TCN twice over the next two days, but each time received a recording and was only able to leave a message. Both times I left a message requesting that someone call me. In those messages I specifically stated that I wanted to cancel. Neither call was returned. Regrettably, at that point, I decided I would give the program a try.

Carroll Aff., Exh. E, ¶¶ 17-19.

After the representative left, I looked over the CLM. It contained photocopies of nursing information that just looked like it was taken from a text book. Some of the copied pages in the CLM were even faded and blurry. It was not what I would have expected given that TCN was charging me \$495 for each CLM. Because I didn't have a good feeling once I reviewed the CLM and the fees were a lot for me I decided that I would cancel the contract. On the second day after I signed the contract, I contacted TCN by phone to cancel. The person with whom I spoke just gave me the runaround and told me I should stick with the program because Excelsior is a good school. I told him I still wanted to cancel but he just kept talking about how Excelsior was an excellent school and how he could change my mind...By the fifth day I was still trying to cancel but then, when I called TCN, I was told by the representative that I had signed a contract with a credit union so I had to pay back the loan and that it was too late because I had only three days to cancel. When I told the representative that I had tried to cancel the second day after I signed the contract, I was told again that the three days had now expired. Jimenez Aff., Exh. E, ¶¶ 7-8, 10.

158. These consumer accounts are corroborated by former Academic Advisor Megan Kirsch, who confirms that consumers were discouraged from canceling during the cancellation period and that messages left by consumers expressing their desire to cancel were sometimes not returned:

Additionally, I received some calls from consumers trying to cancel within the cancellation period. I was instructed to ask these people about their reasons for wanting to cancel and to try to address their concerns. For example, if a consumer said that he did not think he could succeed in a self-study program, I would offer to create a study plan for him. But, if I was unable to dissuade the consumer from cancelling, I was required to transfer the calls to TCN's Cancellation Department. From 2009 through June 2012, I had no authority to process a cancellation request. At that time, the Cancellation Department was comprised of only one person. The Academic Support Department received many calls from consumers complaining that they had been transferred to the Cancellation Department, had left a message advising that they wanted to cancel their contract, but had never received a response. I would refer those complaints back to the Cancellation Department. Kirsch Aff., Exh. V, ¶ 15.

159. Many consumers also call Southeast to try to stop the automatic payments, but similarly, obtain no relief from Southeast.

160. After consumers obtain no recourse, many consumers simply continue to allow the credit union to deduct the monthly payments because they do not want to harm their credit rating. See Exh. E, Affidavits of: M. Bennett; Gillespie; Westby; Bekoe; Bellony; V. Bennett; Crapser; Edrehi; Souko; Aponte; Czerenda.

161. Because The College Network fails to provide consumers with the statutory notice pursuant to PPL § 412-a advising them of their right to a refund for materials they did not use, consumers are unaware that they are not, in fact, legally responsible for the entire amount of the loan.

162. Other consumers take steps to prevent the credit unions from withdrawing funds from their bank accounts (see Exh. E, Affidavits of: Jimenez; Beers; Goodwin Pope; Scott) or otherwise default on their loans.

163. Indeed a significant percentage of consumers who finance their purchase of goods and services through The College Network end up defaulting on their loans. As of October 2013, Southeast had 1,721 active loan files pertaining to New York consumers to whom Southeast extended financing since January 2009. As discussed below, during that same period, approximately 415 loans extended by Southeast to New York consumers were purchased by The College Network pursuant to its Agreement with Southeast because the loans had become more than 90 days delinquent. See portion of the spreadsheet produced by Southeast showing the loans that had been bought back by TCN, attached hereto as Exhibit DD.

164. See also Affidavit of former Program Advisor Peter Smith:

My contract with TCN provided that my commission was not considered earned unless and until the consumer had paid in full for the program, or in cases where the consumer had financed the program (which was typically the case), had made 12 monthly payments. However, the

contract provided that TCN would "advance" me my commissions for consumers who I enrolled in a program in three installments. The contract further provided that, if a consumer discontinued making payments within the first year, I would only be entitled to a pro rata share of my commission and that TCN would be able to recoup any amounts that had been advanced to me that were not earned. TCN would recoup those amounts by setting them off against commission amounts I was due to receive in subsequent pay periods. After I had been working for TCN for approximately a year, I found that my commission checks were being reduced as a result of the fact that some consumers who I had enrolled in a TCN program had ceased making payments on their loans. The set offs steadily increased to the point where I would estimate that I was losing a third of my earnings each pay period as a result of set offs from consumers who had ceased making payments on their loans. Smith Aff., Exh. V, ¶¶ 14-15.

Respondents' Collection Activities

165. Consumers are unaware that once their loan becomes more than 90 delinquent, they are purchased by The College Network pursuant to its contractual agreements with the credit unions. A copy of the agreement between The College Network and Southeast Financial Credit Union is attached hereto as Exhibit EE.

166. Further, even before this clause is triggered, the agreement with Southeast provides that The College Network is responsible for servicing the loans. See Exh. EE, ¶ 10. See also Affidavit of former The College Network debt collector Daniel Mitchell, attached hereto as Exhibit V, ¶ 4 ("...TCN did virtually all of the debt collection work for the credit unions...").

167. At some point after The College Network purchases the loans, it sells them to American Credit Exchange pursuant to a contractual agreement. A copy of the agreement between The College Network and American Credit Exchange is attached as Exhibit FF.

168. Thus, after discontinuing payments on the loan, consumers begin getting collection notices and calls from either The College Network or American Credit

Exchange. It appears that, as a practical matter, The College Network and American Credit Exchange are one and the same entity. Both operate from the same office suite, 5920 Rainbow Blvd, Suite 7, Las Vegas, Nevada. See New York State Department of State Entity Information for American Credit Exchange, Inc., which identifies Gary Eyler as the corporation's Chief Executive Officer, attached hereto as Exhibit GG; Nevada Department of State Entity Information for The College Network, attached hereto as Exhibit HH.

169. According to Daniel Mitchell, who worked as a debt collector for The College Network from 2003 through 2011, The College Network's Las Vegas office is staffed with approximately 30 debt collectors who attempt to collect on alleged debts stemming from the loans extended by Southeast and other credit unions to consumers who "enroll" in The College Network's "programs." Mitchell Aff., Exh. V, ¶¶ 1-4.

170. Consumers who are contacted by American Credit Exchange are unaware of its close connection to The College Network. Neither American Credit Exchange nor The College Network divulges to consumers the common ownership of the two entities and, in fact, create the false impression that American Credit Exchange is simply an independent third party collection agency. See, e.g., The College Network's response to the BBB complaint filed by Antonio Jimenez, attached to the Jimenez Affidavit, Exh. E: "The contract that Antonio Jimenez signed on January 30, 2009 was assigned to a third party collection agency, American Credit Exchange on November 3, 2009."

171. American Credit Exchange repeatedly demands payments from consumers, despite the fact that consumers have effectively cancelled their contracts and under New York's correspondence school statute are not, in fact, obligated for the amounts sought by

American Credit Exchange. See Exh. E, Affidavit of: Bartley (consumer had already paid approximately \$2,000 to Southeast but subsequently entered into a settlement with American Credit Exchange for an additional \$2,860 even though she had only used one CLM); Baldomer (consumer was repeatedly contacted by American Credit Exchange, claiming that she owed money, even though she only received one CLM, had attempted to cancel her contract and had already made numerous monthly payments of \$263.99); Jimenez (consumer attempted unsuccessfully to cancel during the three-day cancellation period, never used any of the CLMs, made approximately four payments of \$107.95 and subsequently received collection calls and letters from American Credit Exchange); Scott (consumer received one CLM, never took an exam, stopped using the program and discontinued loan payments; subsequently made payment arrangements with American Credit Exchange after the collection agency threatened to garnish his wages).

172. Further, upon information and belief, American Credit Exchange and/or The College Network attempts to collect the full outstanding amount of the loan, including the hundreds of dollars in third party testing fees that were included in the loan. Despite the fact that those funds are held by The College Network in trust for the benefit of consumers, The College Network does not return those amounts to consumers or credit the outstanding balance on the loan. See Exh. E, Affidavits of: Lessard; Casiano.

173. At least one consumer who refused to make payments has reported receiving a negative mark on his credit as a result. See Exh. E, Jimenez Aff.

174. Some consumers, desperate to get out from under the burdensome and unjustified debt, file complaints with either the BBB or a Federal or State enforcement agency, including the NYAG.

175. Even then, in many cases, The College Network refuses, at least initially, to cancel consumers' contracts or make any concession, typically responding by advising the BBB that the consumer did not cancel within the five day cancellation period and that the consumer is free to continue using The College Network's program. Representative letters in response to BBB complaints, as well as the consumer complaints, are attached hereto as Exhibit II.

176. Even in cases where The College Network agrees to make some concession to the consumer, it typically offers only to cease collecting further payments, but does not refund any of the amounts already paid by consumers, which in some cases, totals thousands of dollars. In many cases, the amounts retained by The College Network exceed the amounts permitted under New York's correspondence school statute, PPL § 412-a.

177. The College Network also requires these consumers to execute a Release and Settlement Agreement that, among other things, requires consumers to keep the settlement confidential and prohibits them from disparaging The College Network. See, e.g., complaints from consumers or their representatives and The College Network's response thereto or the executed Release and Settlement Agreement, attached as Exhibit QQ.

178. More than 2,000 New York consumers alone have been defrauded by the College Network since 2009. See Exh. F, October 23, 2013 cover letter from Southeast's General Counsel (Southeast had 1,721 active loan files); Exhibit DD, portion of the spreadsheet produced by Southeast showing an additional 415 loans that had been bought back by TCN.

179. The College Network has profited handsomely from its fraudulent conduct. In 2011, it enjoyed close to \$5,000,000 in revenue from sales to New York consumers alone. From 2009 through 2011, it enjoyed revenue of approximately \$14,000,000 from sales to New York consumers.²¹ See New York revenue information produced by the College Network in response to subpoena, attached hereto as Exhibit JJ.

Southeast Financial

180. Until recently, Southeast Financial provided, by its own estimation, approximately 75-80% of the loans to The College Network's customers. As recently as late 2013, Southeast Financial had more than 1,500 active accounts from New York consumers alone. See Exh. F. If consumers finance their purchase, both the Purchase Agreement and loan documents executed by The College Network's Program Advisors are forwarded to Southeast.

181. Well before the NYAG's investigation, Southeast was aware that a significant percentage of consumers were defaulting on the loans, yet Southeast continued to extend financing. Southeast also received information directly from consumers and/or their legal counsel concerning The College Network's fraudulent and deceptive conduct, which induced consumers to sign Purchase Agreements and Promissory Notes. After failing to obtain any recourse from The College Network, many consumers contact Southeast Financial either directly or through their legal counsel. These consumers advise Southeast representatives of the deceptive representations made

²¹ Presumably, these figures do not include the third-party testing fee money that The College Network has illegally retained, which stems from the countless consumers who financed their testing fees but do not use The College Network's "program." These amounts likely total hundreds of thousands, if not millions, of dollars.

by The College Network that induced them to sign Purchase Agreements and Promissory Notes and that the CLMs did not prepare them for exams.

182. When consumers ask that Southeast stop the automatic monthly payment deductions, Southeast representatives typically respond by stating or falsely implying that consumers' claims of having been defrauded by The College Network have no bearing on their obligation to make payments on their debt and refuse to stop the automatic payments. Often, representatives also direct consumers to contact The College Network with their complaints:

I called [Southeast] and after I told the woman I spoke to that I had been scammed by TCN, she advised me that I had signed a contract for the loan so I had to repay it. When I called another time to complain to the credit union, they connected me directly to TCN, where I was told more of the same—that I only had three days to cancel the contract.
Jimenez Aff., Exh. E, ¶ 15.

I also called [Southeast] and explained to a representative that I wanted to cancel my contract and stop the automatic deductions for the loan because I thought TCN was a fraudulent business. However, I was similarly told by the credit union that I was obligated to repay the loan and that if I didn't pay I would get a negative mark on my credit.
Goodwin Pope Aff., Exh. E, ¶ 24.

I also called Southeast Financial Credit Union, the institution that had provided the financing, to try and cancel the contract, and they informed me that there was nothing they could do to remedy my situation and that I needed to continue to make payments on my loan.
Souko Aff., Exh. E, ¶ 16.

In approximately July or August of 2014, I contacted Southeast Financial Credit Union, who had provided the loan for the program, and told them that I was no longer using the program and wanted to get out of loan because of my concerns that TCN was fraudulent and was not an accredited school. I asked what I could do to get out of the loan, but the representative said "nothing," that I had to keep paying the loan because I was locked into TCN's program and that if at any time in the future I decided I wanted to use the program, I would be able to do so.
White Aff., Exh. E, ¶ 27.

See also, e.g., February 27, 2013 letter from Attorney Mark Levy to The College Network and Southeast on behalf of consumer Kayla Shoen, as well as the response thereto, written by Foss, attached hereto as Exhibit KK.

183. In addition to information of The College Network's deceptive practices received directly from consumers, the Attorney General alerted Southeast to these practices in November 2013 after serving Southeast with a subpoena.

184. Further, in June 2014, the Attorney General alerted Southeast that The College Network was failing to timely provide consumers with their testing fee money. See June 5, 2014 letter to The College Network's counsel, a copy of which was sent to Southeast, attached hereto as Exhibit RR.

185. Despite this knowledge, Southeast continued until the fall of 2014 to provide financing without which students would not be able to "enroll" in The College Network's "program." In addition, it continues to deduct monthly payments from consumers' accounts.

186. Further, the consumer Promissory notes provide that any holder of the note is subject to all claims and defenses that the debtor could assert against the seller of the goods or services obtained with the proceeds of the loan. Thus, Southeast is subject to all claims that could be asserted against The College Network. See generally, consumer promissory notes attached to consumer affidavits, Exh. E.

Gary Eyler is Personally Liable for The College Network's Fraudulent Conduct

187. Gary Eyler, The College Network's President and Chief Executive Officer, is well aware that The College Network's advertising is misleading, and that as a result, many consumers who "enroll" in The College Network's "program" are under the

mistaken impression that The College Network is one and the same as, or affiliated with, Excelsior College.

188. Dating back to at least 2003, officials from Excelsior College, who receive a constant stream of inquiries and complaints from The College Network's customers, have advised Eyler on numerous occasions that The College Network's advertising materials, which repeatedly use the "Excelsior College" name, are misleading and create the misleading impression that The College Network is affiliated with Excelsior College.

189. For example, by letter dated May 16, 2003 to The College Network's "Chief Executive Officer," Excelsior College's intellectual property counsel formally requested that The College Network cease and desist from the unauthorized use of Excelsior College's name and advised The College Network that The College Network's promotional material created the false impression that there was a relationship between The College Network and Excelsior College. A copy of the May 16, 2003 letter is attached hereto as Exh. LL.

190. Further, by letter dated May 5, 2006, Excelsior College's then-Dean of the School of Nursing wrote a letter to Eyler expressing concern that it had received reports from students that The College Network's representatives were claiming that The College Network was "working with" Excelsior College. A copy of the letter, as well as Eyler's response thereto, is attached hereto as Exhibit MM.

191. In addition, Excelsior College's General Counsel has met with Eyler on a number of occasions and advised him of the numerous complaints Excelsior College receives from consumers concerning the inadequacy of the CLMs and the confusion as to

the relationship between The College Network and Excelsior College. See, Porter Tr., Exh. J, at 16-17.

192. Further, in deposition testimony given in a private lawsuit in 2008, Mr. Eyler acknowledged that he reviews the company website (at 113); approves of marketing decisions (at 113-114); receives information from his employees about BBB complaints that raise “serious issue[s]” (at 125-126); and has an active role in the company (at 114). A copy of Eyler’s deposition testimony is attached hereto as Exhibit NN.

193. Eyler also acknowledged that he is aware of a 2007 settlement entered into between The College Network and the Arkansas Attorney General’s Office, which concerned many of the same practices that are at issue in this proceeding. For example, Arkansas’ Assurance of Voluntary Compliance (“AVC”) found that The College Network violated Arkansas’ Deceptive Trade Practice Act by, among other things, disseminating advertisements that created the impression that The College Network offered nursing degrees and falsely representing affiliations with accredited education institutions. A copy of the AVC is attached hereto as Exhibit OO.

194. Yet, Eyler has failed to take meaningful steps to reform The College Network’s business practices and has continued to use the Excelsior College name in The College Network’s marketing materials, creating the false impression that The College Network is affiliated with Excelsior College.

The Court Should Grant a Temporary Restraining Order

195. As demonstrated above and through the consumer affidavits and other evidence attached to this affirmation, The College Network has repeatedly engaged in

illegal and fraudulent conduct by inducing consumers to purchase and finance thousands of dollars of goods and services by misrepresenting its status, relationship with Excelsior College and the benefits and features of its CLMs and alleged “program.” It also fails to provide consumers with promised services and misrepresents consumers’ obligation to pay for CLMs that they never received or used. Indeed, The College Network’s fraudulent practices extend to virtually every aspect of its so-called “program.”

196. Southeast has aided and abetted The College Network by providing financing, without which consumers would be unable to enroll in The College Network’s “program.”

197. Further, both Southeast and American Credit Exchange have engaged in fraud by misrepresenting consumers’ legal obligation concerning alleged debts stemming from the financing of goods and services from The College Network. They are also both liable for The College Network’s conduct because the Promissory Notes provide that any holder of the note is subject to all claims and defenses that the debtor could assert against the seller of the goods or services obtained with the proceeds of the loan.

198. Respondents’ conduct has resulted in significant harm to consumers. As noted, the vast majority of consumers accept the financing offered by The College Network because they do not have the thousands of dollars to pay for its so-called “program,” and in most cases, also finance as much \$3,000 or more in testing fees. With an interest rate of 12%, the cost of the financing can add \$3,000 or more to the total cost of the loan. Thus, over the term of the loan, many consumers have paid, and will continue to pay, amounts totaling more than \$10,000. See, e.g., Exh. E, promissory notes attached to affidavits of: Brody (\$9,910 loan at a total cost of \$13,226.40); Brazeal

(\$9,055 loan at a total cost of \$12,085); Dall (\$10,610 loan at a total cost of \$14,160.60); Beers (\$10,450 loan at a total cost of \$13,947); Crapser \$8,629 loan at a total cost of \$11,517); White (\$8,965 loan at a total cost of \$11,965.20); M. Bennett (\$9,852.50 loan at a total cost of \$13,149.60); Baldomer (\$11,576.25 loan at a total cost of \$15,450.60); Giannuzzi (\$9,955 loan at a total cost of \$13,236).

199. Given the widespread nature of Respondents' fraudulent and illegal practices, which touch every feature and alleged benefit of its program, the NYAG seeks a Temporary Restraining Order ("TRO") temporarily restraining The College Network from contracting with New York consumers for any goods and services related to its nursing "programs."

200. The NYAG also requests a TRO temporarily restraining Respondents from attempting to collect any payments from New York consumers stemming from the financing of goods and services from The College Network. Without such a TRO, consumers will be forced to continue making payments on debts they do not owe, which in many cases, are a financial hardship and prevent consumers from pursuing their education. See, e.g., Exh. E, Affidavits of: Brody (single mother of four holding down two LPN jobs, pays \$220.24 per month on a five-year loan for \$9,910 and cannot afford to enroll in another nursing program); Gillespie (pays \$146.81 per month on a five-year loan for \$6,600 and cannot afford to pursue her ADN); Bekoe (paying \$130.24 per month on a five year loan for \$5,855, partially completed an ADN program, but put her degree on hold because she cannot afford tuition); Brazeal (pays \$201.42 per month on a five-year loan for \$9,055 and cannot afford to enroll in a nursing program); Ciraco (single mother earns \$31,900 per year, pays \$194.97 per month on a five-year loan for \$8,765

and cannot afford to enroll in an ADN program); Souko (mother of three earns \$24 per hour, pays \$143.48 per month on a five-year loan for \$6,450 and cannot afford to enroll in a nursing program).

201. The NYAG further requests a TRO temporarily restraining Respondents Southeast Financial and American Credit Exchange from selling or otherwise disposing of any Promissory Notes, the proceeds of which were used to finance the purchases of New York consumers from The College Network. This relief is necessary to preserve the status quo and ensure that Respondents remain accountable for any refunds due consumers.

202. The granting of the limited TRO sought by the State is especially important in light of The College Network's apparent financial instability. See Kirsch Aff., Exh. V, ¶ 23 (told by management that The College Network could not send out any testing fee money until it took in additional money by enrolling new consumers).

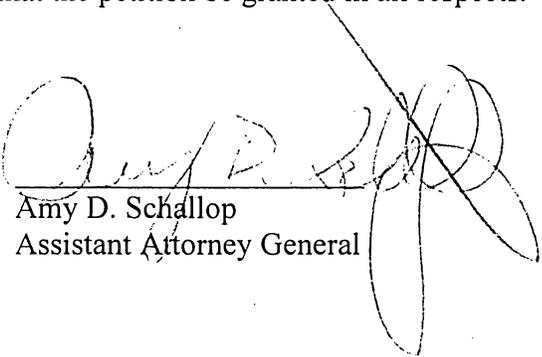
203. In accordance with 22 NYCRR § 202.7(f), the NYAG has made a good faith effort to notify Respondents of the time, date and place of its application for a TRO by emailing them such information on Monday, June 1, 2015 and attaching thereto a copy of the Order to Show Cause, Verified Petition and Affirmation, without exhibits.

204. The State has not made a prior application for the relief requested herein.

WHEREFORE, it is respectfully requested that the petition be granted in all respects.

Dated: Albany, New York
June 1, 2015

by


Amy D. Schallop
Assistant Attorney General