March 14, 2016

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- The informal resolution resulting from the dismissed class-action suit filed by five current and former students against Globe University Inc.
- The status of the probationary period placed on Globe University and the Minnesota school of Business by the Department of Defense, for offering a Criminal Justice program without disclosing its relationship to state licensing requirements.
- The lawsuit against Globe University by the Attorney General of Minnesota, regarding recruiting and marketing practices, including accusations of violations of state law by offering unlicensed college loans and charging "usurious interest rates."

Please provide the Council with an update regarding these issues by **March 25, 2016.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT
Case Type: Civil Other/Misc.

Court File No. 27-CV-14-12558
Judge James A. Moore

State of Minnesota,

Plaintiff,

vs.

Minnesota School of Business, Inc. d/b/a
Minnesota School of Business, and
Globe University, Inc. d/b/a Globe University,

Defendant.

ORDER GRANTING IN PART AND DENYING IN PART THE PARTIES' SUMMARY JUDGMENT MOTIONS

The above-entitled matter came on for a hearing before the undersigned Judge of District Court on the parties' cross-motions for summary judgment at the Hennepin County Government Center on September 30, 2015. Solicitor General Alan I. Gilbert and Assistant Attorney Generals Kirsi L. Poupore and Adam H. Welle appeared for and on behalf of Plaintiff. Attorneys Brooke D. Anthony, Joseph W. Anthony and Amelia R. Selvig appeared for and on behalf of Defendants. The Court took this matter under advisement at the conclusion of the hearing.

Based upon the file, record, and proceedings herein, the Court, being fully advised in the premises, makes the following:

ORDER

1. Plaintiff's Motion for Summary Judgment is **DENIED, in its entirety.**
2. Defendants' Motion for Summary Judgment is **GRANTED, in part, and DENIED, in part, as follows:**
    a. Defendant's motion for summary judgment as to Counts III and IV of the Amended Complaint is GRANTED.

b. Defendant's motion to dismiss Counts I (CFA) and II (DTPA) of the Amended Complaint is DENIED.

3. Defendants' request to depose Elizabeth Fishbein[1] is GRANTED.

4. The attached Memorandum is incorporated herein.

Dated: December 29, 2015

BY THE COURT:

_____
James A. Moore
Judge of District Court

MEMORANDUM

I. Facts

Defendants Minnesota School of Business (hereafter "MSB") and Globe University (hereafter "Globe") (collectively the "Schools") are career training schools, also known as career colleges, that are currently in operation and have been in operation for the past 130 years. (Am. Compl. ¶ 6; Am. Answer to Am. Compl. ¶ 6; Affidavit of Kenneth McCarthy "McCarthy Aff." ¶ 2.) MSB and Globe are accredited by a national organization, the Accrediting Council for Independent Colleges and Schools ("ACICS"). (Am. Compl. ¶ 37; Answer to Am. Compl. ¶ 37.) Together, the Schools operate nineteen campuses in Minnesota, Wisconsin, and South Dakota with more than 13,000 enrolled students and over 900 employees. (McCarthy Aff. ¶ 2.) Since 2009, MSB and Globe have enrolled approximately 28,000 students. (McCarthy Aff. ¶ 4.) Jointly, MSB and Globe offer more than thirty college degrees and certificate programs in business and accounting,

[1] In footnote 5 of the Defendants' Memorandum of Law in Opposition to the State's Motion for Summary Judgment, Defendants challenge the timeliness of the disclosure of a Ms. Fishbein as a witness in the case. The Court has determined that the timing of the disclosure is not unduly prejudicial to this motion and denies Defendants' request to disregard the witness' affidavit. However, the Court agrees that Defendants should be afforded the opportunity to depose Ms. Fishbein prior to trial.

technology, medical and health sciences, paralegal and criminal justice, and creative media. (McCarthy Aff. ¶ 3.)

MSB and Globe are "for-profit" colleges that solicit prospective students through oral and written advertisements. (Am. Compl. ¶ 12.) Many of these students are non-traditional. (McCarthy Aff. ¶ 8.) Prior to and during enrollment, MSB and Globe offer prospective students placement testing, admissions and enrollment advising, financial aid advising, tutoring, and career advising. (Affidavit of Seth Tesdall "Tesdall Aff." Ex. B.) As part of MSB and Globe's solicitation they mail and email prospective students asking them to call the Schools for "career planning meeting[s]," "career consultation[s]", and "one-on-one career planning session[s]." (*See* Affidavit of Kirsi L. Poupore "Poupore Aff." Ex. 3-5.) MSB and Globe employ individuals as admissions representatives to meet with prospective students and to act as career counselors.[2] (*See* Poupore Aff. Ex. 13.)

The enrollment process at MSB and Globe begins when a prospective student contacts the Schools online or over the phone. (Tesdall Aff. ¶ 4-5.) An admissions representative then schedules an appointment with the prospective student and emails the prospective student a confirmation email with a link to an admissions presentation that the prospective student is able to view prior to the appointment. (Tesdall Aff. ¶ 6-7.) The email communication tells prospective students that the appointment will "answer[] questions about a career path in [the student's] chosen field," help with "designing a career path that's right for [the student]," that the Schools will assist students to "learn about career options in [the student's] field of interest," provide information about what degree will lead to the career [the] student wants, and help the student with finding "the career that is right for [them]." (Poupore Aff. Ex. 5-8 (email solicitations).) The telephone script used by the Schools'

[2] The State refers to Defendants' admissions representatives as "salespeople," or "recruiters." For the purposes of this motion, the Court refers to these individuals by the job title, admissions representatives, given to them by MSB and Globe.

admissions representatives contain similar statements regarding what services are offered to prospective students. (*see* Poupore Aff. Ex. 10-12.)

The Schools' admissions representatives receive extensive training prior to working with prospective students. (Tesdall Aff. ¶ 15.) Prior experience in sales is preferred for admissions representatives. (Dep. Roger Kuhl "Kuhl Dep.", 25-27, 69-70; *see also* Poupore Aff. Ex. 13.) The Schools' 2009 Admissions Training Manual trains admissions representatives and career counselors not to "discuss the cost, length, or other information about the school programs over the phone."[3] (Poupore Aff. Ex. 13.) Admissions representatives receive training that: "[c]omplete disclosure, honesty and integrity must be at the forefront of all that we do." (*See* Declaration of Seth Tesdall In Opposition To The State's Motion For Summary Judgment dated September 21, 2015 ("Tesdall 9/21/15 Decl."), Ex. B at 17354.) Admissions representatives are instructed to be "diligent in their observations and trainings to provide an environment that fosters ethical and effective communication between our employees and prospective students." (Tesdall 9/21/15 Decl., Ex. B at 17320.) Admissions representatives and career counselors are trained to arrange an in-person, on-campus meeting with prospective students. (Tesdall Aff. ¶ 5-6; *see e.g.* Affidavit of Heather Von Bank "H. Von Bank Aff." ¶ 4.)

Admissions representatives pursue prospective students, often inundating them with multiple calls and emails regarding potential enrollment. (*See e.g.* H. Von Bank Aff. ¶ 4.) The 2009 Admissions Training Manual instructed MSB and Globe staff members to "master the art of selling," stating that "selling education is different from any other type of selling." (Poupore Aff. Ex. 13.) Training materials for admissions representative state that "[y]ou are there to enroll that

[3] The current admissions training manual is not the same admissions training manual that is referenced in the State's Amended Complaint. (Tesdall Aff. ¶ 17.) For example, Defendants' 2009 Admissions Training Manual was reduced from 217 pages down to 28 pages for the 2010 Admissions Training Manual. (*See e.g.* Poupore Aff. Ex. 13, 20; Tesdall Aff. ¶ 17.) Defendants' current enrollment process is similar to the enrollment process that has been in place at the schools for some time; however, there have been some modifications. (Tesdall Aff. ¶ 18.)

student, not to PR [public relations] him and leave without a commitment" and that "[t]he sale begins when the prospect says 'No.'" (Poupore Aff. Ex. 13.) Admissions representatives were trained in basic sales techniques, including not talking after asking a prospective student if they are ready to enroll (i.e. "[w]hen you ask the question at the final close, remain silent. The next one who speaks loses."). (Poupore Aff. Ex. 13.)

Admissions representatives were trained to recommend specific careers to prospective students:

> We attempt to get 5 or 6 good solid reasons why this person should go into a career field. We build the person's confidence when we share with him all the reasons this is the right choice for him...If he trusts you and you tell him in a convincing way this is the best career option for him, you will have a sale.

(Poupore Aff. Ex. 13.) Admissions representatives were further provided training that:

> The recommendation tells the prospect why they should enter the career field you are recommending...Almost everyone comes in to meet with us a little unsure if they are making the right decision on which career is best for them. The recommendation takes away the doubt.

(Poupore Aff. Ex. 13.) In the September 2014[4] Admissions Training Manual, admissions representatives were trained and required to read the following script to prospective students:

> The … goal is to identify if the career field you are interested in, is the best field for you. We will be able to help you in choosing the right career path by asking you questions about your interests and skills. At the end of our meeting today, I will recommend that your application be submitted for acceptance, but only if both you and I believe that you can benefit from career training and that it would put your career in the direction you would like to see it go.

(Poupore Aff. Ex. 15, 20.) The 2010 Admissions Training Manual trained admissions representatives to present "challenges to the potential students and an attitude that they must prove

[4] Both the State and Defendants redact reference to the month and year of the 2013 and 2014 Admissions Training Manuals in their briefs. Pursuant to its Order, filed July 22, 2015, the Court finds that the month and year references to the Admissions Training Manuals are not protected by the Stipulated Protective Order in this matter. As such, the Court does not redact the month and year notations from this Order.

their worthiness of being accepted." (Poupore Aff. Ex. 20.) Similarly, the 2009 and 2013[5] Admissions Training Manuals instructed admissions representatives to "[c]hallenge the prospect's grades, attendance, ambitions, desires, and [support system], if applicable." (Poupore Aff. Ex. 13, 21.) The 2009 Admissions Training Manual also trained admissions representatives to tell prospective students that the Schools were only accepting a "small number of students" and to:

> [l]et the prospect sell you on all the reasons he should be accepted for training. Cast yourself into the role of deciding if he should be considered for acceptance. You will be on your way to great heights in the educational selling business.

(Poupore Aff. Ex. 13.) Admissions representatives were instructed that they were "selling a feeling, an attitude" that included "painting the dream" of a better future and finding "pain points" in students' lives such as poverty, underemployment, or being a single parent. (*See* Poupore Aff. Ex. 13.; H. Von Bank Aff. ¶ 6; Affidavit of E. Fishbein "Fishbein Aff." ¶ 4-5; Affidavit of J. Jenson "Jenson Aff." ¶ 10.) However, the 2009 Admissions Training Manual also contains the following statements:

> You cannot make promises or guarantees that a prospect will accomplish or succeed in what you offer.
>
> …
>
> You cannot fully assure a prospect will be accepted for your training.
>
> …
>
> You cannot guarantee that the applicant will show up for training, continue with the training, or graduate.
>
> …
>
> You cannot be emphatic about a graduate being placed in a job upon graduation or if they will be successful in his or her chosen career. In fact, you may want to remove the word promise or guarantee when you describe any benefit of attending our school.
>
> …

[5] *See* footnote 3, *supra*.

> We…cannot make promises and guarantees.
>
> …
>
> … You are restricted from making promises or guarantees.
>
> …
>
> Let the prospect come to you, cut down on your talking time, do not make guarantees and promises you are unable to keep and you will achieve many solid enrollments.
>
> …
>
> If you are genuinely sincere in what you do and you truly want to help the prospect solve his/her problems, and you are deeply concerned about his/her thinking, welfare, and future, regardless of whether he enters your training, you will be successful…The ultimate goal of our successful representatives is to help the prospects.
>
> …
>
> The customer's needs and problems come first and you must be concerned and respectful of their problems and needs at all times.
>
> …
>
> Failure to answer the prospect's questions or not answering questions correctly and truthfully borders on misrepresentation and will not be tolerated by the company. If a representative were to deliberately follow this course, it would mean immediate dismissal.

(Tesdall 9/21/15 Decl., Ex. A at 15277, 15278, 15279, 15284, 15289, 15324, 15392.)

Admissions representatives were highly competitive. MSB and Globe published weekly sales numbers to foster competition among admissions representatives. (Poupore Aff. Ex. 14 pg. 126, [redacted][6].) Admissions representatives were required to make approximately 250-400 recruitment calls and scheduled an average of 9-10 appointments with prospective students per week. (Poupore Aff. Ex. 28-29.) Admissions representatives continued to contact prospective

[6] At certain points in its Order, the Court notes that it has redacted references to certain confidential documents in the record. Accordingly, the Court has filed an unredacted, confidential copy of its Order and a redacted, confidential copy of its Order to comply with the parties' Stipulated Protective Order, as approved by the Court.

students even after a prospective student indicated that they were not interested in the Schools. (Poupore Aff. Ex. 31-32.)

Once a prospective student enrolls with MSB or Globe, that student enters into an enrollment agreement. (Tesdall Aff. ¶ 10.) That enrollment agreement contains a number of statements that the student acknowledges by completing the agreement including:

> The institution offers employment assistance to its students and graduates, however, the schools does [sic] not guarantee employment.
>
> …
>
> I have reviewed the transfer of credit policy and transfer of credit to other institutions statement located in the GU/MSB catalog. I understand that credits earned at Globe University and Minnesota School of Business are not universally transferable and the receiving institution determines which credits may be accepted.
>
> …
>
> [For criminal justice students] I have discussed and fully understand that the criminal justice program offered through Globe University/Minnesota School of Business is not POST certified. I realize this prevents me from being eligible to participate in skills training required to be a sworn police officer in the State of Minnesota.

(Tesdall Aff. Ex. A.) Prior to 2010, Defendants' enrollment agreement and disclosures had no language with respect to its criminal justice program. (*See* Poupore Aff. Ex. 72.) However, in 2010, Defendants' modified their enrollment agreement to include language that the criminal justice program was not POST certified. (*See* Poupore Aff. Ex. 73.) With regard to credit transfers, a disclosure appears in the Defendants' annual catalog that states:

> While it is unlikely that credits will transfer to a state college or university, some institutions will accept GU/MSB credits. Credit transfer is always determined at the sole discretion of the receiving institution. GU/MSB cannot provide information on whether outside institutions will accept GU/MSB credits . . . It is not the mission of GU/MSB to act as a transfer institution.

(Tesdall Aff. Ex. B.) Admissions representatives were trained to tell prospective students that ACICS "accreditation is an important consideration for smooth transfer of courses and programs between colleges and universities." (Poupore Aff. Ex. 96.) During training admissions

representatives were told that it is not true that "regionals won't accept credits from nationally accredited institutions" and neither national nor regional accreditation is better than the other. (Poupore Aff. Ex. 94-95.)

During the recruitment process or after enrollment, the admissions representative schedules an appointment for the prospective student to meet with Defendants' financial aid department. (Tesdall Aff. ¶ 12.) Admissions representatives received training to tell prospective students that MSB and Globe offer "an excellent financial aid program . . .that strives to make this program affordable." (Poupore Aff. Ex. 142.) MSB and Globe are tuition-funded. (McCarthy Aff. ¶ 6.) The cost of one credit is currently $390 for full-time students and $460 for part-time undergraduate students in all programs other than nursing. (McCarthy Aff. ¶ 7.) MSB and Globe provide information to students regarding funding sources including grants, scholarships, federal student loans and alternative private student loans. (Samstad Dep. 73:1-12.) From January 1, 2009 to the present, MSB and Globe utilized two institutional loan programs for students who could not qualify for private student loans: (1) the Educational Opportunities ("EdOp") program; and (2) the Student Access ("StA") program. (McCarthy Aff. ¶ 10.) Under both programs, MSB and Globe extend credit to students to allow them to attend school at either MSB or Globe. (Samstad Dep. 107:5-7.) Under both programs, students submit one application covering the entire academic year. (McCarthy Aff. ¶ 10.) Money paid out pursuant to the EdOp and StA programs cannot be used to pay for anything other than direct educational expenses at MSB or Globe. (McCarthy Aff. ¶ 10.)

Unlike a traditional student loan, money is not disbursed to the student under the EdOp and StA programs, but rather is credited to student's account in the specific amount needed to cover outstanding educational expenses such as tuition. (Samstad Dep. 107:13-17; Krinke Dep. 174:22-175:5.) Under each program, students could obtain up to a specific dollar amount to cover tuition.

(McCarthy Aff. ¶ 10.)[7] Money paid out to students is credited to a student's account midway through the first school quarter to cover any remaining tuition costs. (Krinke Dep. 237:21-239:4.) The following school quarter, additional amounts, up to the maximum amount allowed, are paid to the student's account if necessary. (Krinke Dep. 237:21-239:4.) MSB and Globe impose a finance charge under both the EdOp and StA lending programs by charging interest on the balance of the loan. (Krinke Dep. 240:1-8.) EdOp loans accrue interest at 18%. (*See* Poupore Aff. Ex. 145-147.) StA loans accrue interest at either 8% or 12%. (Poupore Aff. Ex. 145-147.) Defendants are not licensed by the Minnesota Department of Commerce to provide loans in the State of Minnesota. (Am. Ans. to Am. Compl. ¶ 171.) Defendants are not banks, savings associations, trust companies, licensed pawnbrokers, or credit unions. (*See* Poupore Aff. Ex. 138, pp. 182-83.)

Defendants' criminal justice program offered courses of study for an associate's degree from January of 2009 through December of 2014 and for a bachelor's degree from October of 2009 through December of 2014.[8] (Am. Compl. ¶ 71; Ans. to Am. Compl. ¶ 71; Poupore Aff. Ex. 46.) The criminal justice program offered through MSB and Globe was not POST certified such that a graduate of the Schools' programs would be eligible to participate in the skills training required of licensed peace officers in the State of Minnesota. (Am. Compl. ¶ 74; Am. Ans. to Am. Compl. ¶ 74; Tesdall Aff. Ex. A; Poupore Aff. Ex. 56.) Despite this, Defendants' blog listed "police officer" under the heading for "Best Careers for People with a Criminal Justice Degree," and describes a student enrolled in the criminal justice program as someone hoping to become a local sheriff or state trooper. (Poupore Aff. Ex. 64, 65.) Other published online advertising shows the image of a police officer used in marketing Defendants' criminal justice program. (Poupore Aff. Ex. 67-69.) Multiple students submitted unrebutted affidavits stating that Defendants' admissions

[7] Students could borrow up to $7,500 per year pursuant to the EdOp program and up to $7,500 per year pursuant to the StA program until 2014 when the maximum borrowable amount dropped to $1,000. (Krinke Dep. 237:21-23, 239:8-10.)
[8] Defendants ceased enrolling new students into the criminal justice program in December of 2014. (Tesdall Aff. ¶ 19; Poupore Aff. Ex. 48.)

representatives directed them towards the criminal justice program when the students indicated they were interested in becoming a police officer. [redacted]

Multiple students who expressed interest in becoming probation agents also submitted unrebutted affidavits stating that Defendants' admissions representatives directed them to Defendants' two-year degree in criminal justice when probation officers need a four-year degree. [redacted]

The State commenced this action by Summons and Complaint filed on July 24, 2014. On March 20, 2015, the State filed an Amended Complaint alleging claims under the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69 (Count I); the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44 (Count II); the Minnesota Regulated Loan Act, Minn. Stat. § 56.01 (Count III); and Minnesota's usury statute, Minn. Stat. § 334.01 (Count IV). The counts in the State's Amended Complaint are logically separated into two categories - claims of lending and fraud. In Counts I and II, the State alleges that MSB and Globe engaged in deceptive practices and made deceptive statements in violation of the Consumer Fraud Act (Minn.

Stat. § 325F. 69) and the Deceptive Trade Practices Act (Minn. Stat. § 325D.44). In Counts III and IV, the State alleges that Defendants' institutional loan program constitutes unlicensed lending in violation of the Regulated Loan Act (Minn. Stat. § 56.01) and that Defendants' institutional loans violate Minnesota usury laws (Minn. Stat. § 334.01). The State asserts these claims pursuant to its *parens patriae* authority under Minn. Stat. § 8.31.

The State alleges that Defendants' made false and misleading statements to consumers, made false and misleading statements regarding the criminal justice program, made false and misleading statements regarding the transferability of Defendants' credits to other education institutions, misrepresented their sales team and recruiters as counselors and advisors, and made false and misleading statements regarding Defendants' job placement rates. Additionally, the State alleges that Defendants' institutional loans violate Minnesota's lending laws and, thus, should be declared void and cancelled. Defendants' argue that the State failed to plead individual claims of fraud with particularity, has no evidence to support claims on behalf of all students who attending the schools, and has no evidence of deceptive trade practices or consumer fraud. Defendants' also argue that they are not required to be licensed by the State of Minnesota before making loans pursuant to their institutional lending program and have violated none of Minnesota's lending laws.

II. Analysis

A. Legal Standard

Summary judgment is appropriate when there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. No genuine issue of material fact exists '[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). While the moving party initially bears the burden of demonstrating that there is no genuine issue of material fact, *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988), once established, the nonmoving party "may

not rest on the mere allegations or denials," but must produce specific, admissible evidence to create a genuine issue of material fact to be determined at trial. *See* Minn. R. Civ. P. 56.05. If genuine issues of material fact exist, the parties' cross-motions for summary judgment will not obviate the need for a trial on the factual questions. *AAA Striping Services Co. v. Minnesota Dept. of Transp.*, 681 N.W.2d 706, 718 (Minn. App.,2004); *Home Mut. Ins. Co. v. Snyder*, 356 N.W.2d 780, 783 (Minn. App. 1984).

B. The Parties' Cross-motions for Summary Judgment are GRANTED, in part, and DENIED, in part

1. Claims Related to Consumer Fraud Act (Minn. Stat. 325F.69) and Deceptive Trade Practices Act (Minn. Stat. 325D.44)

The Minnesota Consumer Fraud Act ("CFA") prohibits:

> [t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged[.]

Minn. Stat. § 325F.69, subd. 1. To state a claim under CFA, a plaintiff must identify an actionable fraud or misrepresentation and intent to induce reliance on that misrepresentation. *See, e.g. Grp. Health Plan, Inc. v. Philip Morris Inc. et al.*, 621 N.W.2d 2, 12 (Minn. 2001) (consumer fraud described as "misrepresentation made with intent that others rely on it in connection with the sale of any merchandise"). The term "merchandise" includes "services" such as educational training. Minn. Stat. § 325F.68, subd. 2; *Alsides v. Brown Institute, Ltd.*, 592 N.W.2d 468, 475 (Minn. App. 1999) ("classes or course instruction provided by a private, proprietary, for-profit educational institution constitute a "service" or "intangible" under the consumer fraud act."). The Consumer Fraud Act allows for recovery of damages. *Alsides v. Brown Institute, Ltd.*, 592 N.W.2d 468, 475 (Minn. App. 1999). To establish an entitlement to damages, a plaintiff must establish a causal connection between the alleged misrepresentation and harm suffered. *See Grp. Health Plan*, 621 N.W.2d at 4.

The Minnesota Deceptive Trade Practices Act ("DTPA") prohibits a person from engaging in deceptive trade practices in connection with operating a business that:

> …
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> …
>
> (5) represents that goods or services have...approval, characteristics...uses, benefits, or quantities that they do not have...;
>
> …
>
> (7) represents that goods or services are of a particular standard, quality, or grade...if they are of another;
>
> …
>
> (9) advertises goods or services with intent not to sell them as advertised;
>
> …; or
>
> (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Minn. Stat. § 325D.44, subd. 1. Similar to the CFA, liability under the DTPA is based on "the conduct of the defendant that is prohibited," and not on reliance by a consumer. *See Grp. Health Plan*, 621 N.W.2d at 12.

"The sole statutory remedy for deceptive trade practices is injunctive relief." *Alsides*, 592 N.W.2d at 476. Liability for injunctive relief and statutory penalties is established under the CFA and DTPA by showing that Defendants made statements that tend to deceive or mislead a person and Defendants intended for others to rely on the statements in connection with the sale of their services; and monetary relief is available if some sort of causal connection, referred to as a causal nexus, is shown between Defendants' statements and harm to consumers. *See e.g.* Minn. Stat. § 325F.69, subd. 1; *Graphic Comms. Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*,

850 N.W.2d 682, 694-95 (Minn. 2014) (superseded on other grounds); and *Group Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 5, 12 (Minn. 2001). Injunctive relief is required even if a violation is not "continuing," did not actually "deceive" people and there is no "likelihood of future harm." *See, e.g.*, *Group Health*, 621 N.W.2d at 12 (recognizing that the State's "misrepresentation in sales statutes," including the CFA and DTPA, define a violation in terms of "the conduct of the defendant that is prohibited" and therefore "reliance is not an element of a violation when seeking injunctive relief"); *id.* (stating CFA "defines the conduct proscribed essentially as any misrepresentation made with intent that others rely on it in connection with the sale of any [services]"); Minn. Stat. § 325D.44, subd. 2 (stating that under the DTPA proof of "actual confusion or misunderstanding" is unnecessary); Minn. Stat. § 8.31, subd. 3 (providing that Attorney General is "entitled" to injunctive relief upon showing that a violation of the CFA or DTPA has "occurred."). In addition to injunctive relief, the Attorney General is authorized to recover a civil penalty "from any person who is found to have violated" the CFA or DTPA. *Id.*

The CFA and DTPA are generally broadly and liberally construed in favor of protecting consumers. *State v. Philip Morris, Inc.*, 551 N.W.2d 490, 496 (Minn. 1996); *Boubelik v. Liberty State Bank*, 553 N.W.2d 393, 402 (Minn. 1996). However, Minnesota law does not recognize claims for educational malpractice. *Alsides*, 592 N.W.2d at 472-73 ("[t]he majority of courts that have addressed the issue have rejected claims that attack the general quality of education provided to students", *citing Ross v. Creighton Univ.*, 957 F.2d 410, 414(7th Cir. 1992)).Claims related to educational services are not appropriate if they require "inquiry into the nuances of educational processes and theories." *Id.*

a) Pleading Standard Under the CFA and DTPA

Defendants argue that the State has failed to plead its consumer protection claims with sufficient particularity. The Court disagrees. The CFA and DTPA are generally subject to Minn. R.

Civ. P. 9.02 and must be pled with particularity. *See E-Shops Corp., v. U.S. Bank Nat. Ass'n*, 678 F.3d 659, 665 (8th Cir. 2012) (Rule 9 heightened pleading standard apples to CFA and DTPA); *Superior Edge, Inc. v. Monsanto Co.*, 2013 WL 6405362 at *3 (D. Minn. Dec. 6, 2013) (MUDTPA claims subject to heightened pleading standard under Rule 9); *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 183 (Minn. Ct. App. 2012) (dismissing CFA claim that was "not stated with the requisite particularity"). However, a *parens patriae* consumer protection claim, unlike a common law fraud claim, is subject to the plain statement pleading standard referenced in Minn. R. Civ. P. 8.01. *See CVS Caremark Corp.*, 850 N.W.2d. 682, 692 (Minn. 2014) (applying Rule 8.01 standard to CFA claim); *see also FTC v. Freecom Commc'ns, Inc.,* 401 F.3d 1192, 1203 n. 7 (10th Cir. 2005) (FTC's enforcement of the FTC Act are not subject to Fed. R. Civ. P. 9(b): "[a] § 5 claim simply is not a claim of fraud as that term is commonly understood or as contemplated by Rule 9(b). . . . [u]nlike the elements of common law fraud, the FTC need not prove scienter, reliance, or injury to establish a § 5 violation."). The Minnesota Supreme Court has "concluded that to state a claim that the CFA has been violated, "the plaintiff need only plead that the defendant engaged in conduct prohibited by the [CFA] and that the plaintiff was damaged thereby." *CVS Caremark Corp.*, 850 N.W.2d at 693 (*citing Grp. Health Plan, Inc., v. Philip Morris, Inc.*, 621 N.W.2d 2 (Minn. 2001)).

Here, the Amended Complaint's allegations of deceptive trade practices in the areas of enrollment, career services, the Defendants' criminal justice program, job placement and accreditation are sufficiently pled.[9] Defendants first assert that they are entitled to summary judgment because the State's Amended Complaint does not plead individual claims of fraud with particularity. However, the Amended Complaint contains statements that Defendants engaged in

[9] In a prior order regarding discovery, the Court found that "the State has detailed a case that includes claims that students or prospective students are misled as to the role of recruiters, the employability of MSB's criminal justice graduates, MSB's job placement assistance, MSB's job placement rates, the nature of the certification of MSB's programs and the resulting impact on the transferability of MSB's credits." (*See* Order Denying Defendant MSB's Motion to Compel Discovery, July 24, 2015.)

conduct prohibited by the CFA and that their students, by and through the State, were damaged thereby. The State is seeking restitution on behalf of all students affected by the alleged deceptive practices and misrepresentations made by Defendants, as it is entitled to do so under Minn. Stat. § 8.31. Defendants are not entitled to summary judgment on this basis.

(1) The Amended Complaint States a Claim for Fraudulent Omissions

"An omission-based consumer fraud claim is actionable under the CFA when special circumstances exist that trigger a legal or equitable duty to disclose the omitted facts." *CVS Caremark*, 850 N.W.2d at 695. "Under the common law, one party to a transaction has no duty to disclose material facts to the other party." *CVS Caremark Corp.*, 850 N.W.2d at 695, 697-98. A party has a duty to disclose only under "special circumstances." *Boubelik v. Liberty State Bank*, 553 N.W.2d 393, 397 (Minn. 1996). The Minnesota Supreme Court has identified three "special circumstances" giving rise to a duty to disclose:

> First, a person who has a confidential or fiduciary relationship with the other party to the transaction must disclose material facts. Second, one who has special knowledge of material facts to which the other party does not have access may have a duty to disclose those facts to the other party. Third, a person who speaks must say enough to prevent the words communicated from misleading the other party.

CVS Caremark, 850 N.W.2d at 695 (citations omitted). *See also Boubelik*, 553 N.W.2d at 397-98; *Klein v. First Edina Nat'l Bank*, 196 N.W.2d 619, 622 (Minn. 1972).

Defendants argue that they have no special duty giving rise to liability to their students for allegedly fraudulent omissions. The Court finds that there is sufficient evidence to raise a question of fact as to whether a special circumstance exists. The record reflects numerous instances of students allegedly being told by admissions representatives that credits would transfer or that the criminal justice program would allow them to become police officers without also being told of the limitations inherent in those statements, such as that transferability depends upon the receiving institution and that regionally and nationally accredited institutions do not easily transfer credits to

each other. There is evidence that Defendants' admissions representatives knew that Defendants' criminal justice program was not POST certified and that they knew that transfer of credits to regionally accredited schools that were POST certified was unlikely. If unrebutted, this evidence would support a conclusion that Defendants owed a duty to their students and prospective students to explain the full ramifications of a decision to pursue a criminal justice degree with Defendants and/or to explain that credits obtained at Defendants' schools were not likely to be transferable. On the other hand, Defendants have challenged the State's evidence and have presented evidence that disclosures were made and its admissions representatives were trained to be open and honest with students. Thus, a material fact issue remains as to any omission-based consumer fraud claims in the Amended Complaint. Defendants are not entitled to summary judgment on this basis.

b) The State has Shown a Causal Nexus Between Defendants' Statements and Harm to Defendants' Prospective and Current Students

To recover damages under the Private AG Statute for a violation of the CFA, a "causal nexus" is necessary to establish an entitlement to individual relief, which does not "require a strict showing of direct causation, as would be required at common law." *Grp. Health*, 621 N.W.2d at 14. "There must only be some 'legal nexus' between the injury and defendants' wrongful conduct." *Id.* *Group Health* leaves the question of what type of proof is necessary to prove a causal nexus open. *Id*. However, "direct evidence of reliance by individual consumers" need not be shown. *Id.* When a large number of consumers are subject to a defendant's deceptive practices over a period of time, the causal nexus can be shown by "consumer testimony," as well as other circumstantial evidence of consumer confusion arising from the unlawful conduct. *Id*. n. 9. The systematic nature of the unlawful conduct is highly relevant to showing a causal nexus. *Id*. n.11.

Federal courts apply similar reasoning under the FTC Act to provide redress to individual consumers:

> [T]he FTC is not required to show reliance and injury by each individual consumer. Not only would such proof be virtually impossible, but such a requirement would thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals of the section. Moreover, there arises a presumption of actual reliance where the FTC has demonstrated that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the defendant's product.

Wilcox, 926 F. Supp. at 1105 (citations and quotation marks omitted); *accord Kitco*, 612 F. Supp. at 1293 (authorizing "consumer redress" process and holding "the FTC need only prove that the alleged fraudulent practices were the type of misrepresentation on which a reasonably prudent person would rely, that they were widely disseminated, and that the injured consumers actually purchased the product").

Minnesota's consumer fraud statutes, similar to the FTC Act, were "intended to make it easier to sue for consumer fraud than it had been to sue for fraud at common law," *Grp. Health*, 621 N.W.2d at 12 (quoting *Alpine Air*, 500 N.W.2d at 790), and the Attorney General to has "broader" authority to enforce the legislation than private parties. *Curtis v. Altria Group, Inc.*, 813 N.W.2d 891, 899 (Minn. 2012). Unlike a private litigant, the Attorney General's "duties are to protect *public* rights in the interest of the State." *Id.* (emphasis in original); *see also, e.g., Std. Oil,* 568 Supp. at 565 ("[W]hen a state acts in its quasi-sovereign capacity in a *parens patriae* action, the state becomes, in effect, the embodiment of its citizens. A harm to the individual citizens becomes an injury to the state, and the state in turn becomes the plaintiff.") As the Minnesota Supreme Court stated in *Curtis*:

> …the State AG acts as the attorney for the citizens of Minnesota and has the authority to bring claims and settle claims under section 8.31 on behalf of the citizens of Minnesota. Thus the State AG represents the citizens of the State in a section 8.31 lawsuit. In doing so, the State AG acts "representatively" and "derivatively" for the citizens of Minnesota.

813 N.W.2d at 900 (citations omitted).

Here, the State has alleged misrepresentation and deceptive practices in the manner in which Defendants conducted their enrollment, career services, criminal justice program, job placement rates and accreditation. Defendants assert that the State must present admissible evidence that the entire population of students, or at least some statistically significant portion thereof, was deceived in order to survive summary judgment and that, in this case, the State is unable to do so based upon the 137 students affidavits and nine former employee affidavits. Defendant argues that the State cannot prove causation for to its population of students without expert testimony or consumer survey evidence. The Minnesota Supreme Court has recognized that expert evidence and consumer survey evidence could be used to prove the elements of a DFA or DTPA claim for a larger population. *See Grp. Health Plan, Inc.*, 621 N.W.2d at 14-15 n. 9. However, relevant evidence of causal nexus is not limited to consumer reaction tests, but can be shown by other evidence of the type upon which the State relies here. *Grp. Health,* 621 N.W.2d at 15 n.11; *see also Brown & Williamson*, 778 F.2d at 40-42 (holding that "consumer survey evidence" not necessary to establish confusing or misleading statement under FTC Act). The Minnesota Supreme Court has held that:

> …in cases such as this, where the plaintiffs' damages are alleged to be caused by a lengthy course of prohibited conduct that affected a large number of consumers, the showing of reliance that must be made to prove a causal nexus need not include direct evidence of reliance by individual consumers of defendants' products. Rather, the causal nexus and its reliance component may be established by other direct or circumstantial evidence that the district court determines is relevant and probative as to the relationship between the claimed damages and the alleged prohibited conduct.

Grp. Health, 621 N.W.2d at 14.

In support of its allegations, the State submits the affidavits of 137 students and former students and the affidavits of nine former employees. Through these affidavits the State has asserted a viable causal nexus that Defendants' admissions representatives are trained to intentionally misrepresent certain information to prospective students to induce them into attending the Schools, and that such a systematic practice caused confusion and harm when students and prospective

students relied upon it in their decision to attend the Schools. Defendants are correct that at trial individual students will only be able to testify as to their individual experience; however, Defendants fail to acknowledge that the State has also offered the affidavits and testimony of nine former employees who may be able to testify as to a broad range of Defendants' business practices. The affidavits of Defendants' former employees further support the State's allegations that admissions representatives were trained to aggressively pursue students and to enroll them with the Schools regardless of whether a particular program would allow the student to follow his/her chosen career path. Although Defendants point to their training materials in support of their contention that they train employees to be honest with students and to put the student first, the State points to those same training materials for the opposite proposition.

Based on a thorough review of the record, the Court finds that the State's evidence, if believed, could constitute a causal nexus. The Defendants' motion for summary judgment on this basis is denied.

c) Genuine Issues of Material Fact Exists With Regards to Claims in the Amended Compliant Under the CFA and DTPA

As an initial matter, the Court notes that the record before the Court on this motion is vast. In support of its motion, the State relies heavily upon the affidavits of 179 students and nine former employees that detail a pattern of misrepresentation, both direct and by omission. In opposition to the State's motion for summary judgment, Defendants rely upon thirteen employee declarations and 61 declarations of current and graduated students that rebut the State's allegations under both the CFA and DTPA. (*See* Anthony Decl. ¶ 2.) These conflicting statements alone are sufficient to create genuine issues of material fact with regard to the both the claims asserted pursuant to the CFA and pursuant to the DTPA. Both the State and Defendants also rely upon Defendants' written advertising materials, training materials and internal communications, each citing to sections that support their respective positions. The documents speak for themselves to a certain extent; however,

interpreting the conflicting sections is a question of fact most appropriate for trial. In an abundance of caution, the Court considers the parties' specific arguments in turn.

(1) Factual Disputes Exist Regarding Whether Defendants' Made False and Misleading Statements and Omissions to Students

(a) Alleged Misleading Advertising, Statements and Omissions Regarding Criminal Justice Program

The State alleges that Defendants represented their criminal justice program as preparing students for careers in the criminal justice field, including, but not limited to, police officer, crime scene investigator, probation officer, FBI agent, and Customs/Border Patrol agent. (Am. Compl. ¶ 71.) The Amended Complaint alleges further that Defendants misrepresented and misled students into believing they could become a Minnesota licensed police officer with Defendants' criminal justice degrees through their websites, advertising, and sales presentations. (Am. Compl. ¶ 71.) In support of its summary judgment motion, the State offers evidence that Defendants made false and misleading statements to students and prospective students regarding whether Defendants' criminal justice degrees would qualify them to become Minnesota police officers. The State relies upon evidence of Defendants' websites and promotional advertising depicting the images of police officers and evidence that Defendants' admissions representatives were trained to direct prospective students that they should enroll in the criminal justice program if they wanted to become a police officer.

Pursuant to Peace Office Training and Licensing rules, Minn. R. 6700.0100, subp. 20, a "school" means a postsecondary institution which is accredited by one of the six *regional* accrediting associations (emphasis added). In order to become a police officer in Minnesota, an individual must graduate from an accredited school and complete POST certification. Defendants' program was nationally accredited, not regionally accredited, and thus a degree from Defendants' law enforcement program did not qualify students for post-graduation law enforcement skills

training. Multiple students submitted unrebutted affidavits stating that Defendants' admissions representatives directed them towards the criminal justice program when the students indicated they were interested in becoming police officers. Additionally, multiple students who expressed interest in becoming probation agents submitted unrebutted affidavits stating that Defendants' admissions representatives directed them to Defendants' two-year degree in criminal justice program despite the fact that probation officers need a four-year degree. Many of these affiants include claims that the students were injured by their reliance on Defendants' misrepresentations or omissions. The State further offers eleven job postings for probation or corrections officers in Minnesota to support its claim that a bachelor's degree is required for such positions. (Poupore Aff. 78-88.)

In contrast, Defendants submit a declaration from one student stating that the student enrolled in the criminal justice program and was informed that the program was not POST certified. [redacted] Defendants other student declarations refer to other programs and courses of study offered by Defendants. Defendants submit evidence that they informed students that the criminal justice program was not POST certified in both their enrollment agreement and in the annual course catalog.

In *Wiegand v. Walser,* 683 N.W.2d 807, 813 (Minn. 2004), the Minnesota Supreme Court held that a written disclaimer in a contract does not negate liability for misrepresentations that violate the CFA. *See also Group Health*, 621 N.W.2d at 12 (recognizing that Minnesota's "misrepresentation in sales statutes," including the CFA and DTPA, define violations based on the defendant's prohibited conduct). The parties submit competing affidavits from Defendants' employees and former employees on the question of what they told students regarding whether or not the criminal justice program was POST certified and whether additional training would be required. (*See* Pullin Decl., Pollitt Decl., Martinson Decl., Moncur Decl.) Defendants describe its former employees as "disgruntled" and aver that the statements of the former employees are

inconsistent with the statements of students in the criminal justice program who confirm they were given that information. (*See e.g.* Brimmer Decl.; Ruckheim Decl.; Swanson Decl.)

Factual disputes and credibility determinations are not appropriate in a motion for summary judgment. In short, based upon the facts of the record, a genuine issue of material fact exists with respect to Defendants' business practices regarding the allegedly misleading statements about the criminal justice program. As such, summary judgment is not appropriate.

(b) Alleged Misleading Statements Regarding Transferability of Credits

An educational institution is liable under the CFA when it misleads students about the effect of accreditation and resulting transferability of credits. *See Alsides*, 592 N.W.2d at 473 (recognizing actionable consumer fraud claim for student alleging misrepresentation about certification and accreditation of degree) (citing *Malone v. Acad. of Ct. Reporting*, 582 N.E.2d 54, 56-59 (Ohio App. 1990)); *Till v. Delta Sch. of Commerce*, 487 So. 2d 180, 182-83 (La. Ct. App. 1986) (affirming verdict that school misrepresented that program credits were transferable); *Kerr v. Vatterott Educ. Ctrs, Inc.*, 439 S.W.3d 802, 807-08, 818 (Mo. App. 2014) (affirming jury award and punitive damages based on misrepresentation regarding transferability of credits); *Behrend v. Ohio*, 379 N.E.2d 617, 620-21 (Ohio App. 1977) (denying summary judgment in breach-of-contract action based on lack of accreditation and transferability of credit); *Daghlian v. DeVry Univ.*, 461 F. Supp. 2d 1121, 1156 (C.D. Cal. 2006) (denying motion to dismiss claim regarding credit-transferability misrepresentations); *Guzman v. Bridgepoint Educ.*, No. 11cv69, 2012 WL 1944822, at *5-7 (S.D. Cal. May 30, 2012) (recognizing cause of action for misrepresenting, *inter alia*, accreditation and credit transferability). As noted above, the DTPA also specifically proscribes misrepresentations regarding the quality, certification, approval, benefits, and grade of services, or any similar conduct that creates a likelihood of confusion or misunderstanding, as deceptive. Minn. Stat. § 325D.44, subd. 1(2), (3), (5), (7), (13).

The State offers evidence that Defendants trained recruiters to tell prospective students that there was no difference between regional and national accreditation. (E. Fishbein Aff. ¶ 8.) Former admissions representative LeGrande states: "I often overheard admissions representatives telling prospective students that because MSB was accredited, students would have no problem transferring their credits to another school" and "MSB instructed us never to tell students that its credits would not transfer to other schools." (A. LeGrande Aff. ¶ 8, 16.) Former admissions representative Jensen states "[a]t MSB's instruction, I did not disclose to prospective students the fact that most public and non-profit colleges would not accept most MSB credits." (J. Jenson Aff. ¶ 17.) Former admissions representative Von Bank states: "MSB advised us not to tell prospective students that regionally accredited schools would not likely accept MSB's credits…." (H. Von Bank Aff. ¶ 9.) However, admissions representatives Jensen and Fishbein also provided contradictory testimony that they were provided with instructions from Defendants to not advise prospective students whether another institution would accept the Defendants' credits. (J. Jenson Aff. ¶ 17; E. Fishbein Aff. ¶ 9.)

Defendants challenge the State's factual assertion that Defendants trained their admissions representatives to deceive prospective students into enrolling. Current and former employees explain that their training was consistent with both the Admissions Training Manuals and the Defendants' overall expectation that admissions representatives will be honest and forthright in all dealings with students and applicants. Employees describe training that is extensive and focused on ensuring that students have access to accurate and complete information. (Shay Decl. ¶ 3; Miller Decl. ¶ 3; Moncur Decl. ¶ 7; Pullin Decl. ¶ 4; Martinson Decl. ¶ 2.) Overall, the State's factual assertions are contradictory to the Defendants – creating material factual disputes that cannot properly be resolved with summary judgment.

Defendants argue that the State's claims with regard to transferability of credits ultimately relate to the education and curriculum decisions made by Defendants and, thus, must be dismissed as an improper claim for educational malpractice. *See Alsides*, 592 N.W.2d at 473. Claims based on a school's decision about curriculum and how to structure courses are not permitted because such claims involve the "nuances of educational processes and theories." *See id.* at 476. Defendants argue that the State is trying to hold them responsible under a fraud theory for decisions that resulted in the rejection of credits when students sought to transfer schools. However, the State's claim with regard to transferability of credits deals with the allegation that Defendants misrepresented that their credits would transfer to other schools when they actually would not and systematically train their employees to perpetuate that misrepresentation. Properly pleaded causes of action sounding in fraud and other intentional torts may be viable. *Alsides*, N.W.2d at 472 (*citing Helbig v. City of New York*, 212 A.D.2d 506 (N.Y. App. Div. 1995)). The State's claims in this action, with respect to transferability of credits, are not based upon educational malpractice, but, instead, sound in fraud.

Based upon the facts of the record, a genuine issue of material fact exists with respect to Defendants' business practices regarding information provided to students about the transferability of credits. As such, summary judgment is not appropriate for this claim.

(2) Factual Disputes Exist Regarding Defendants' Graduate Job Placement Rates

Consumer fraud claims based on false job placement rates have been recognized as actionable. *See e.g. Bobbitt v. Acad. of Ct. Reporting, Inc.*, 252 F.R.D. 327, 332-33, 345 (E.D. Mich. 2008) (certifying class based on claim of false job-placement rates); *Guzman*, 2012 WL 1944822, at *5-7 (S.D. Cal. May 30, 2012) (denying motion to dismiss claims for misrepresenting, *inter alia*, employability of graduates); *Beckett v. Comp. Career Inst., Inc.*, 852 P.2d 840, 843-44 (Or. App. 1993) (affirming jury verdict concluding that school misrepresented job placement rates under

Oregon Unlawful Trade Practices Act); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 142, 151-61 (E.D. Penn. 2000) (approving class settlement of fraud claims based on, *inter alia*, false job placement rates). The FTC has also entered several enforcement decrees with educational institutions that similarly misrepresented employment opportunities. *Bell & Howell*, 1980 WL 339008, at *1 (consent order preventing defendant from misrepresenting, *inter alia*, "employment opportunities" and "the need or demand for their graduates").

The State argues that Defendants manufactured their job placement rates by : (1) counting placements where Defendants altered forms in which students reported they were not using their training, (2) excluding large numbers of unemployed students arbitrarily deemed "unavailable" by Defendants, (3) counting students as "placed" who had their jobs before enrolling, and (4) counting students as "placed" whose jobs did not require a college degree or in which students were not using their education. The State maintains that Defendants failed to disclose these material facts to prospective students. In support of its argument, the State offers numerous student affidavits detailing allegedly altered job placement forms. Defendants counter that they "meticulously" follow the job placement guidelines required by their accreditor, ACICS, and that they calculate and report job placement rates in accordance with ACICS and gainful employment regulations. Jodi Boisjolie-Rosen, the Schools' Corporate Director of Career Services, testified in her deposition that she does not "encourage representatives to falsify placement rates" and that she has "… never encouraged career services professionals to falsify placement rates. Quite the opposite." (Boisjolie-Rosen Decl. ¶ 1-4.) There is a fact issue surrounding the Schools' actual business practices with regard to calculating its graduate placement rate and whether the forms were modified. Summary judgment on this claim is denied.

(3) The State's Request that the Court Establish a Method or Procedure for Restitution is premature.

The Court has found that genuine issues of material fact preclude summary judgment with regards to the State's claims in Count I (CFA) and Count II (DTPA) of the Amended Complaint. Thus, at this point in the litigation, the Court reserves its ruling on any potential system of restitution until after a determination of liability has been made.

2. Claims Related to Unlicensed Lending (Minn. Stat. 56.01) and Usury (Minn. Stat. 334.01)

a) Defendants' Institutional Loans did not violate Minnesota's Usury Laws (Minn. Stat. § 334.01)

"Usury" is the "taking or receiving of more interest or profit on a loan or forbearance than the law allows." *St. Paul Bank for Coops. v. Ohman*, 402 N.W.2d 235, 237 (Minn. App. 1987). Minn. Stat. § 334.01 provides, in relevant part:

> The interest for any legal indebtedness shall be at the rate of $6 upon $100 for a year, unless a different rate is contracted for in writing. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than $8 on $100 for one year.

The following four elements must be satisfied for the Court to conclude that a transaction is usurious under this definition: (1) a loan of money or forbearance of a debt; (2) an agreement between the parties that the principal shall be repayable absolutely; (3) the exaction of a greater amount of interest or profit than is allowed by law; and (4) the presence of an intention to evade the law at the inception of the transaction. *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974).

Defendants' argue that they did not violate Minnesota's usury laws because the Schools' student loans were, in actuality, extensions of credit that were open end credit plans made in connection with consumer credit sales. A finance charge of up to eighteen percent per year is allowed for consumer credit sales pursuant to an open end credit plan. Minn. Stat. § 334.16, subd. 1.

An "open end credit plan" is one which (1) the seller may permit the buyer to make purchases from time to time from the seller or other sellers, (2) the buyer has the privilege of paying the balance in full or in installments, and (3) a finance charge may be computed by the seller from time to time on an outstanding unpaid balance. Minn. Stat. § 334.16, subd. 1(a). Characteristics of an open end credit plan include that "no fixed amount of debt is incurred" at the time the account is opened; that purchases can be made by the consumer from "time-to-time"; the contemplation of "repeated transactions" by the consumer; and a provision allowing the carrying forward of account balances. *John David Contracting, Inc. v. Brozek*, 535 N.W.2d 397, 398 (Minn. App. 1995); *Peterson v. Gustafson*, 584 N.W.2d 660, 662-63 (Minn. App. 1998).

The State argues that Defendants' institutional loans are closed end credit transactions that are subject to Minn. Stat. § 334.01. The State is correct that the EdOp and StA loans both provide a maximum amount that students can borrow at the time the loan is issued. However, in practice, the EdOp and StA loans are used to cover the remainder of any tuition expenses after all other funding sources have been exhausted, so the amount borrowed in the first quarter may be substantially less than the maximum amount approved for students to borrow. If a student has not taken the maximum amount of the loan allowed in the first quarter, Defendants allow that student to draw on the same loan for additional funds in subsequent quarters within the same year, up to maximum amount allowed, without an additional loan application. While "there is no agreement between the school and the student to continuously provide . . . credit," from academic year-to-year, the loans do contemplate repeated transactions within the same academic year. (*See* Poupore Supp. Aff. Ex. 24 (Corp. Dep.) at 256--57.) With regard to carrying forward the balance, while it is true that Defendants' loans are not carried forward to a student's subsequent academic year(s), the loans do allow for a balance to be carried forward in the event that the maximum amount of the loan is not used for the student's first quarter. (*See* Poupore Supp. Aff. Ex. 24 (Corp. Dep.) at 162-63.)

That these loans have a maximum amount available to be borrowed is similar to a maximum amount of credit extended by a credit card. Here, Defendants permit students to borrow money through the EdOp and StA loan programs to be used for purchasing educational services up to a set maximum amount in an academic year. Students may use none, some, or all, of the loan at multiple points in the academic year. Students may pay the balance in part or in installments and Defendants compute a finance charge on the balance of the loan. (*See* Anthony Decl. Ex. 11; Poupore Aff. Ex. 147-149.) The EdOp and StA loans are open end credit plans.

The Court concludes that Defendants' EdOp and StA loans are open end credit plans made in connection with a consumer credit sale that allows for an interest rate of up to 18%. In order for Defendants to extend students loans under the EdOp or StA program, Defendants required students to sign an agreement to the interest rate for each respective program. The State has provided no evidence that students were extended loans under the EdOp or StA programs without first agreeing in writing to a higher rate of interest on the indebtedness. As the Court has determined that Defendants' institutional loans are not usurious, it follows that Defendants' institutional loans should not be declared void on this basis.

b). Defendants have not Engaged in Unlicensed Lending Pursuant to Minn. Stat. § 56.01

The State also argues that Defendants have violated Minn. Stat. Ch. 56 by failing to obtain a license for their loan programs. Chapter 56 only applies where the loans in question charge an interest rate that is otherwise unpermitted. Given the Court's finding that Defendants' institutional loan programs are not usurious, the State's Ch. 56 argument lacks foundation. The State's claims under Minn. Stat. Ch. 56 are dismissed.

III. Conclusion

Based upon the foregoing, the Court hereby denies the State's Motion for Summary Judgment in its entirety. Defendants' Motion for Summary Judgment is granted with respect to

Count III and Count IV of the Amended Complaint and denied with respect to Count I and Count II of the Amended Complaint.

J.A.M.

GLOBE UNIVERSITY

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November 25, 2015

Accrediting Council for Independent Colleges and Schools
Attn: Anthony S. Bieda, Vice President for External Affairs
750 First Street NE, Suite 980
Washington, DC 20002-4223

RE: Globe University [ID 00015232]

BY ELECTRONIC MAIL ONLY

Dear Mr. Bieda,

Globe University (Globe) has received your letter dated November 16, 2015 requesting an update regarding certain issues involving Globe and hereby submits this written response as requested by the Council.

In July 2014 our attorneys agreed to accept service of an amended class action complaint initiated by five students. As of the date of this letter, we have participated in 3 separate mediation sessions with no resolution. The amended complaint has not been filed in court.

Globe continues to be in a probationary status with the Department of Defense (DoD). Since the last update provided by Globe to the Council, we still have yet to receive a response from the DoD.

Regarding the Minnesota Attorney General (AG) amended complaint, both sides filed motions for summary judgment. Oral arguments were heard by the judge on September 30, 2015. The judge is expected to rule on those motions on or before December 30, 2015. The scheduling order requires a second settlement conference in January 2016. A trial date has been set for April 2016.

If you have further questions or concerns regarding any legal matters, please contact me directly.

Sincerely,

(b)(6)

Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Mitchell Peterson, Director of Institutional Quality and Effectiveness

November 16, 2015

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- The informal resolution resulting from the dismissed class-action suit filed by five current and former students against Globe University Inc.
- The status of the probationary period placed on Globe University and the Minnesota school of Business by the Department of Defense, for offering a Criminal Justice program without disclosing its relationship to state licensing requirements.
- The lawsuit against Globe University by the Attorney General of Minnesota, regarding recruiting and marketing practices, including accusations of violations of state law by offering unlicensed college loans and charging "usurious interest rates."

Please provide the Council with an update regarding these issues by **November 27, 2015.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

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ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS

November 16, 2015 ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
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West Lakeland, MN 55082

Mr. Mitchell Peterson
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Anthony S. Bieda
Vice President of External Affairs

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Globe University (Globe) has received your letter dated June 30, 2015 requesting an update regarding certain issues involving Globe and hereby submits this written response as requested by the Council.

In July 2014 our attorneys agreed to accept service of an amended class action complaint initiated by five students. On June 25, 2015, the parties participated in mediation with no success. A second mediation has been scheduled for July 15, 2015.

Globe continues to be in a probationary status with the Department of Defense (DoD). Since the last update provide by Globe to the Council, we still have yet to receive a response from the DoD.

On March 20, 2015, the Minnesota Attorney General (AG) amended her complaint against Globe adding allegations regarding placement statistics and our institutional loan program. We are past the discovery phase of the litigation and participated in mediation on May 12, 2015 without success. Both sides intend to file motions for summary judgment, and the judge has scheduled the hearing for summary judgment arguments on September 1, 2015, with a decision from the judge due December 1, 2015. A trial date has been set for April 2016.

If you have further questions or concerns regarding any legal matters, please contact me directly.

Sincerely,

(b)(6)

Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Mitchell Peterson, Director of Institutional Quality and Effectiveness

June 30, 2015

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- The informal resolution resulting from the dismissed class-action suit filed by five current and former students against Globe University Inc.
- The status of the probationary period placed on Globe University and the Minnesota school of Business by the Department of Defense, for offering a Criminal Justice program without disclosing its relationship to state licensing requirements.
- The lawsuit against Globe University by the Attorney General of Minnesota, regarding recruiting and marketing practices, including accusations of violations of state law by offering unlicensed college loans and charging "usurious interest rates."

Please provide the Council with an update regarding these issues by **July 10, 2015.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

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ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS

Minnesota School of Business, Inc. and Subsidiaries

Consolidated Financial Statements and Independent Auditor's Report

December 31, 2014 and 2013

Bomberg Roach & Hanson PLLC
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

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Bomberg Roach & Hanson PLLC
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

INDEPENDENT AUDITOR'S REPORT

Board of Directors and Shareholders
Minnesota School of Business, Inc.

We have audited the accompanying consolidated financial statements of Minnesota School of Business, Inc. and subsidiaries (the "Institution") which comprise the consolidated balance sheets as of December 31, 2014 and 2013, and the related consolidated statements of income and retained earnings, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Minnesota School of Business, Inc. and subsidiaries as of December 31, 2014 and 2013, and the consolidated results of their operations and their consolidated cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

9800 Shelard Parkway, Suite 208 • Minneapolis, MN 55441 • Main 763-277-0303 • Fax 763-277-0323
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Other Matters

In accordance *Government Auditing Standards*, we have also issued our report dated April 30, 2015 on our consideration of the Institution's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Institution's internal control over financial reporting and compliance.

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The information included in Note 8 on the Institution's calculation of its Title IV 90/10 revenue test and related party transactions is required by the U.S. Department of Education. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

Bomberg, Roach & Hanson, PLLC

Woodbury, Minnesota
April 30, 2015

Minnesota School of Business, Inc. and Subsidiaries
CONSOLIDATED BALANCE SHEETS
December 31, 2014 and 2013

	2014	2013
ASSETS		
Current Assets		
Cash and equivalents	$ 1,368,200	$ 5,914,363
Restricted cash	3,889,719	70,333
Student receivables, net	384,799	890,365
Tenant receivables, net	15,209	58,170
Inventory	145,320	239,558
Prepaid expenses	1,232,739	1,206,391
Other current assets	68,221	46,459
Due from affiliates	267,331	3,094,727
Current portion of long-term receivables from students, net	479,355	533,994
Notes receivable from shareholders	8,575,507	16,574,310
Total current assets	16,426,400	28,628,670
Property and Equipment		
Equipment	8,018,812	7,956,416
Furniture and fixtures	2,071,265	2,005,680
Buildings and improvements	60,422,777	60,088,710
	70,512,854	70,050,806
Accumulated depreciation and amortization	(21,168,997)	(18,158,482)
	49,343,857	51,892,324
Land	16,368,388	16,368,388
Property and equipment, net	65,712,245	68,260,712
Other Assets		
Long-term receivables from students, net	3,918,399	4,365,028
Loan origination fees, net	54,620	50,606
Total other assets	3,973,019	4,415,634
TOTAL ASSETS	$ 86,111,664	$ 101,305,016

The accompanying notes are an integral part of these consolidated financial statements.

	2014	2013
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities		
Current portion of long-term debt	$ 464,562	$ 1,812,219
Accounts payable	3,719,775	7,908,453
Due to affiliates	104,697	-
Accrued liabilities	1,740,299	1,592,318
Student credit balances	721,016	253,989
Total current liabilities	6,750,349	11,566,979
Long-term Debt		
Notes payable to banks	13,189,011	23,665,365
Contracts for deed	-	18,497
Total liabilities	19,939,360	35,250,841
SHAREHOLDERS' EQUITY		
Common stock	30,360	30,360
Additional paid-in capital	3,622,773	3,622,773
Retained earnings	62,519,171	62,401,042
Total shareholders' equity	66,172,304	66,054,175
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 86,111,664	$ 101,305,016

ED00010792

Minnesota School of Business, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS
Years ended December 31, 2014 and 2013

	2014	2013
Revenue		
Tuition, books and fees	$ 46,593,322	$ 60,927,247
Rental and other miscellaneous income	2,850,255	2,854,854
Total revenue	49,443,577	63,782,101
Operating expenses	49,094,381	61,463,272
Income from operations	349,196	2,318,829
Other income (expense)		
Interest income	575,830	773,579
Interest expense	(1,127,593)	(893,658)
Loss on building sale	-	(20,544)
Management fees	320,696	407,868
Total other income (expense)	(231,067)	267,245
NET INCOME	118,129	2,586,074
Retained earnings, beginning of year	62,401,042	59,814,968
Retained earnings, end of year	$ 62,519,171	$ 62,401,042

The accompanying notes are an integral part of these consolidated financial statements.

ED00010793

Minnesota School of Business, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years ended December 31, 2014 and 2013

	2014	2013
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$ 118,129	$ 2,586,074
Adjustments to reconcile net income to net cash provided by (used in) operating activities		
Depreciation and amortization	3,060,401	3,260,083
Loss on building sale	-	20,544
Changes in operating assets and liabilities		
Restricted cash	(3,819,386)	218,654
Student and tenant receivables	548,527	(64,678)
Inventory	94,238	(80,226)
Prepaid expenses	(26,348)	(34,735)
Other current assets	(21,762)	169,492
Long-term receivables from students	501,268	1,521,660
Accounts payable	(4,188,678)	6,310,410
Accrued liabilities	147,981	(863,646)
Student credit balances	467,027	(396,067)
Net cash provided by (used in) operating activities	(3,118,603)	12,647,565
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(462,048)	(4,108,247)
Proceeds from building sale	-	1,751,468
Payment of loan origination fees	(53,900)	(52,531)
Net change in due from affiliates	2,827,396	1,145,622
Net change in notes receivable from shareholders	7,998,803	(14,657,907)
Net cash provided by (used in) investing activities	10,310,251	(15,921,595)
CASH FLOWS FROM FINANCING ACTIVITIES		
Payments on long-term debt	(15,925,220)	(1,890,158)
Proceeds from long-term debt	4,082,712	2,191,994
Net change in due to affiliates	104,697	-
Net change in line of credit	-	(1,000,000)
Net cash used in financing activities	(11,737,811)	(698,164)
Net change in cash and equivalents	(4,546,163)	(3,972,194)
Cash and equivalents at beginning of year	5,914,363	9,886,557
Cash and equivalents at end of year	$ 1,368,200	$ 5,914,363
Supplementary information		
Cash paid for interest during the year	$ 1,080,438	$ 909,269

The accompanying notes are an integral part of these consolidated financial statements.

ED00010794

1. Nature of Business

Minnesota School of Business, Inc. ("MSB"), a Minnesota corporation, and subsidiaries (collectively, the "Institution") offers career training in a variety of business, medical and technology programs. The Institution operates nine campuses located in Minnesota, as well as offering fully online programs. The Institution is accredited to award certificates, diplomas, Associate in Applied Science, Bachelor of Science, Masters and Doctoral degrees by the Accrediting Council for Independent Colleges and Schools ("ACICS").

2. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Minnesota School of Business, Inc. and its wholly-owned subsidiaries:

- MSB Holdings – Blaine, LLC
- MSB Holdings – Bloomington, LLC
- MSB Holdings – Brooklyn Center, LLC
- MSB Holdings – Edina, LLC
- MSB Holdings – Elk River, LLC
- MSB Holdings – Lakeville, LLC
- MSB Holdings – Moorhead, LLC
- MSB Holdings – Plymouth, LLC
- MSB Holdings – Richfield, LLC
- MSB Holdings – Rochester, LLC
- MSB Holdings – Shakopee, LLC
- MSB Holdings – Waite Park, LLC
- MSB Holdings – Woodbury, LLC

All subsidiaries are single-member Minnesota limited liability companies ("LLC") with MSB as the sole member. These subsidiaries hold title to real property used for the operations of MSB. The LLC's are pass-through entities for income tax reporting purposes and have no effect on the ownership of MSB. All intercompany accounts have been eliminated.

Cash and Equivalents

For purposes of the statements of cash flows, the Institution considers all investments with an original maturity of three months or less to be cash equivalents. The Institution maintains its cash balances at various financial institutions located in the United States. At times, such balances may be in excess of Federal Deposit Insurance Corporation limits.

ED00010795

2. Summary of Significant Accounting Policies (continued)

Restricted Cash

Restricted cash consists of deposits from student financial aid sources that have not been earned. Such balances are offset by a corresponding liability. As of December 31, 2014, restricted cash also includes certain pledged deposits at various banks. See Note 9 for further details.

Student Receivables

Student receivables represent amounts due from students for unpaid tuition and other charges. The Institution grants credit to students in the normal course of business, but generally does not require collateral or any other security to support amounts due. Receivables are typically due from students within 90 days and are stated net of an allowance for doubtful accounts. Amounts outstanding past the completion of the academic term in which they were billed are considered past due. Management performs ongoing credit evaluations and the Institution maintains allowances for potential credit losses which, when realized, have generally been within management expectations. The allowance for doubtful accounts was $1,344,706 and $1,681,231 at December 31, 2014 and 2013. Bad debt expense related to student receivables, net of related recoveries, was $180,133 and $318,277 for the years then ended.

Inventory

Inventory primarily consists of student materials, including digital learning devices, for resale, and is stated at the lower of cost (first-in, first-out) or market.

Property and Equipment

Property and equipment are stated at cost. Improvements that extend the useful lives of the assets are capitalized and expenditures for maintenance and repairs are expensed as incurred.

When assets are sold, retired, or otherwise disposed of, the cost and related allowance for depreciation or amortization are eliminated from the accounts, and any resulting gain or loss is included in other income or expense.

Depreciation and amortization are provided in amounts sufficient to relate the cost of depreciable property to operations over their estimated useful lives. Straight-line and accelerated methods of depreciation and amortization are used for both financial and income tax purposes. The estimated useful lives are as follows:

Building and improvements	39 years
Leasehold improvements	20 years
Furniture and fixtures	7 years
Equipment	5 years

2. Summary of Significant Accounting Policies (continued)

Long-term Receivables from Students

Long-term receivables from students include unsecured notes and contracts that bear interest at various rates at December 31, 2014 and 2013. Interest accrues on these notes and contracts from their effective date. While actively enrolled, students are required to make monthly payments of interest accrued or $25 per month, whichever is greater, but not to exceed $100 per month. Otherwise no principal payments are required until either a student drops below half-time enrollment or graduates. Students may qualify for reductions to their interest rates for certain notes and contracts by securing a co-borrower, remaining current on monthly payments or upon graduation. The repayment period ranges from 5 to 15 years and, for certain receivables, is determined by the cumulative balance outstanding. Failure to comply with certain terms stated in the notes or contracts may result in the student being in default and cause any outstanding principal and interest balances to be due immediately.

The Institution monitors the credit quality of these receivables by considering such factors as payment delinquency and borrower credit scores, among others. Long-term receivables from students are deemed to be impaired when, based on current information and events, it is probable that the Institution will be unable to collect all amounts due according to the contractual terms of the notes or contracts. The Institution maintains allowances for uncollectable amounts due under these receivables. Generally, individual notes or contracts are considered for impairment when a student is 180 days delinquent on required monthly payments. Such receivables are individually reviewed for collectability, and if deemed uncollectible, are charged against the Institution's allowances and sent to a collection agency. Any recoveries of principal or interest by the collection agency are recognized by the Institution when received.

Revenue Recognition

Billings for tuition and lab fees are recorded as deferred revenue and are recognized as earned over the course of the related period of instruction. There was no deferred revenue at December 31, 2014 or 2013. Registration and resource fees, book sales, and other miscellaneous income are recognized when charged to the students. Commissions from student textbook purchases are recognized as revenue when earned. Rental income from tenants is recognized in the month it is billed and earned in accordance with the terms of the leases.

Advertising and Marketing

The Institution expenses advertising and marketing costs when incurred. Such costs were $7,754,831 and $8,870,819 for the years ended December 31, 2014 and 2013.

ED00010797

2. Summary of Significant Accounting Policies (continued)

Income Tax

MSB's shareholders have elected to be taxed under Subchapter S of the Internal Revenue Code and similar state statutes. As a result, all income and loss flows through directly to the shareholders and no provision for income taxes has been made in the accompanying consolidated financial statements. No liability was recorded for interest or penalties related to uncertain tax positions at December 31, 2014 or 2013. For both federal and state purposes, tax years 2011-2013 remain open to examination. The Institution does not anticipate any significant increases or decreases in unrecognized tax benefits within the next twelve months.

Fair Value of Financial Instruments

Due to their short-term nature, the carrying value of the Institution's current financial assets and liabilities approximates their fair values. The fair value of the Institution's borrowings, if recalculated based on current interest rates, would not significantly differ from the recorded amounts.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect reported amounts of assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

3. Long-term Receivables from Students

Long-term receivables from students consists of the following as of December 31:

	2014	2013
Long-term receivables from students, gross	$ 5,847,754	$ 6,424,022
Less reserve for uncollectable balances	(1,450,000)	(1,525,000)
Long-term receivables from students, net	$ 4,397,754	$ 4,899,022

The Institution recognized $575,830 and $750,494 of interest income from long-term student receivables during the years ended December 31, 2014 and 2013. Bad debt expense related to these receivables was $1,250,303 and $2,978,036, net of recoveries of $260,381 and $261,706, for the years ended December 31, 2014 and 2013.

ED00010798

3. Long-term Receivables from Students (continued)

The following table sets forth the repayment status of gross long-term receivables from students as of December 31, 2014:

30-79 Days	80-129 Days	130-179 Days	180 Days or Greater	Total Delinquent	Current	Total Balance
$ 785,071	$ 400,679	$ 163,713	$ 715,068	$ 2,064,531	$ 3,783,223	$ 5,847,754

4. Long-Term Debt

Long-term debt consists of the following at December 31:

	2014	2013
Note payable to bank (a)	$ 4,323,072	$ 4,450,000
Note payable to bank (b)	3,845,858	3,956,250
Note payable to bank (c)	1,957,463	2,029,753
Note payable to bank (d)	3,527,180	-
Senior credit facility (e)	-	14,829,494
Contracts for deed, interest at 7.5% and 9.0%, payable in monthly installments of principal and interest through December 2014	-	230,584
	13,653,573	25,496,081
Less current portion	(464,562)	(1,812,219)
	$ 13,189,011	$ 23,683,862

(a) On December 30, 2013, MSB Holdings – Richfield, LLC entered into a promissory note with a bank for $4,450,000. The note has a stated interest rate of 4.50%, is payable in monthly installments of principal and interest totaling $28,315, and matures January 2019. The note is secured by a mortgage on a building in Richfield, Minnesota, which is the location of a MSB campus. The note is guaranteed by MSB and Globe University, Inc. ("Globe"), a party related through common ownership, as well as personally guaranteed by the President and largest shareholder of MSB and Globe. The note contains certain financial covenants that the borrower was in compliance with, or had obtained waivers for, at December 31, 2014. These covenants were not effective at December 31, 2013.

ED00010799

4. Long-Term Debt (continued)

(b) On December 30, 2013, MSB, MSB Holdings – Rochester, LLC, and Globe, as co-borrowers, entered into a promissory note with a bank for $3,956,250. The note has a stated interest rate of 4.69%, is payable in monthly installments of principal and interest totaling $25,588, and matures December 2018. The note is secured by a mortgage on a building in Rochester, Minnesota, which is the location of a MSB campus. The Institution is liable for the entire amount of the debt on a joint and several basis, and the entire proceeds are allocated to the Institution. The note is personally guaranteed by the President and largest shareholder of MSB and Globe, and contains certain financial covenants, which the co-borrowers were in compliance with at December 31, 2014 and 2013.

(c) On February 1, 2013, the Institution purchased a building in Brooklyn Center, Minnesota for $2,800,000. The building had previously been leased by the Institution and is the location of a MSB campus. MSB Holdings – Brooklyn Center, LLC entered into a promissory note with a bank for $2,100,000. The note has a stated interest rate of 3.95%, is payable in monthly installments of principal and interest totaling $12,670, and matures January 2018. The note is secured by a mortgage on the building, and is personally guaranteed by the President and largest shareholder of MSB and Globe.

(d) On January 2, 2014, MSB and MSB Holdings – Lakeville, LLC, as co-borrowers, entered into a promissory note with a bank for $3,630,000. The note has a stated interest rate of 4.64%, is payable in monthly installments of principal and interest totaling $23,372, and matures January 2019. The note is secured by a mortgage on a building in Lakeville, Minnesota, which is the location of a MSB campus. The note is personally guaranteed by the President and largest shareholder of MSB and Globe, and contains certain financial covenants that the co-borrowers were in compliance with, or had obtained waivers for, at December 31, 2014.

On January 2, 2014, MSB, MSB Holdings – Woodbury, LLC and Globe, as co-borrowers, entered into a note payable with a bank for $6,300,000. The note payable had a stated interest rate of 4.66%, was payable in monthly installments of principal and interest totaling $40,632, and had a scheduled maturity date of December 2018. On November 21, 2014, MSB paid the remaining principal balance of $6,152,910.

On January 23, 2014, MSB, MSB Holdings – Blaine, LLC and Globe, as co-borrowers, entered into a promissory note with a bank for $4,000,000. The note had a stated interest rate of 4.58%, was payable in monthly installments of principal and interest totaling $25,622, and had a scheduled maturity date of January 2019. On November 10, 2014, MSB paid the remaining principal balance of $3,915,836.

ED00010800

4. Long-Term Debt (continued)

(e) MSB and Globe were parties to an agreement with certain banks to provide a senior secured credit facility (the "Senior Credit Facility") that included two term notes payable and a revolving credit facility. The Senior Credit Facility allowed for various floating interest rate options, as defined in the agreement. The effective rates ranged from 3.17% to 3.25% at December 31, 2013. The term notes were payable in quarterly installments of principal and interest, and were secured by substantially all the assets of the Institution and Globe, the assignment of certain life insurance proceeds, all the stock of the Institution and 50% of the stock of Globe. MSB's subsidiaries were guarantors for the Senior Credit Facility.

As of December 31, 2013, all outstanding borrowings under the Senior Credit Facility were allocated to MSB. On December 31, 2013, proceeds totaling $8,314,256 from the notes payable identified in (a) and (b) above were directly applied against the term notes of the Senior Credit Facility. On January 2, 2014, proceeds totaling $9,847,288 from the notes payable identified in (d) above were also directly applied against the term notes under the Senior Credit Facility. For cash flow purposes, the Institution classified both of these transactions as non-cash financing activities. MSB then paid the remaining $4,982,206 balance due under the Senior Credit Facility term notes payable on this date, which was the maturity date for the Senior Credit Facility.

Borrowings under the revolving credit facility were limited to $7,500,000 at the beginning of 2013, of which approximately $6,300,000 were reserved for a letter of credit in favor of the United States Department of Education ("USDE"). During 2013, the letter of credit expired and the available borrowings under the revolving credit facility were reduced to $1,200,000 for the remaining duration of the Senior Credit Facility term. There was no balance outstanding under the revolving credit facility at December 31, 2013.

Scheduled maturities of long-term debt are as follows for the years ended December 31:

2015	$ 464,562
2016	484,499
2017	508,769
2018	5,471,639
2019	6,724,104
	$ 13,653,573

5. Loan Origination Fees

Loan origination fees are amortized over the term of the related credit facility. Such fees totaled $70,681 and $52,531 at December 31, 2014 and 2013, with accumulated amortization of $16,061 and $1,925.

6. Shareholders' Equity

MSB has authorized 100,000 shares of common stock with no par value, of which 10,000 shares are voting and 90,000 shares are nonvoting. As of December 31, 2014 and 2013, 1,000 voting shares and 9,000 nonvoting shares were issued and outstanding.

7. Employee Benefit Plan

The Institution has a defined contribution 401(k) plan covering all employees who meet service requirements as defined in the Plan. Plan participants may make salary deferral contributions to the Plan, subject to IRS limitations. The Institution may also make contributions to the Plan in the form of discretionary matching and profit sharing contributions. The Institution's total contributions to the Plan were $121,321 and $250,269 in 2014 and 2013.

8. Compliance

Composite Score

In order to participate in Student Financial Aid ("SFA") programs, a school must demonstrate that it is financially responsible, as defined by U.S. Department of Education ("USDE"). One measure used by the USDE to determine the financial health of a participating school is the composite score calculation, which can range from -1.0 to 3.0. A school is deemed to be financially responsible by the USDE if the composite score for the institution is between 1.5 and 3.0. For the year ended December 31, 2014, the Institution's composite score was 2.1. This information is required by the ACICS, is presented for purposes of additional analysis and is not a required part of the basic financial statements.

90/10 Rule

The Institution derives a substantial portion of its revenues from SFA received by its students under the Title IV programs administered by the USDE pursuant to the HEA. To continue to participate in the SFA programs, the Institution must comply with the regulations promulgated under the HEA. The regulations restrict the proportion of cash receipts for tuition and fees from eligible programs to not more than 90% from the Title IV programs ("90/10 Rule"). Failure to meet the 90% limitation would result in the loss of the Institution's ability to participate in SFA programs.

For the year ended December 31, 2014 the Institution received $29,075,356 of Title IV funds and $44,065,963 of total eligible cash receipts, resulting in a percentage of 66%. This information is required by the USDE, is presented for purposes of additional analysis and is not a required part of the basic financial statements.

ED00010802

8. Compliance (continued)

The components of the 90/10 Rule calculation are as follows:

	Amount Disbursed	Adjusted Amount
Adjusted Student Title IV Revenue		
Subsidized loan	$ 8,972,772	$ 8,972,772
Unsubsidized loan	13,324,212	13,324,212
Federal Pell Grant	6,522,954	6,522,954
FSEOG	255,418	255,418
Student credit balances	6,189	6,189
Student Title IV revenue		29,081,545
Revenue adjustment		(6,189)
Adjusted Student Title IV Revenue		$ 29,075,356
Student Non-Title IV Revenue		
Grant funds from non-Federal public agencies or private sources independent from the Institution	$ 3,056,509	
Student payments	11,245,060	
Student credit balances	103,967	
Student Non-Title IV Revenue	$ 14,405,536	
Revenue from Other Sources		
Repayments of institutional loans	$ 585,071	

Related Party Transactions

Regulations under the Higher Education Act of 1965, as amended and reauthorized ("HEA"), require that all related party transactions be disclosed, regardless of their materiality to the financial statements. See Note 10 for detail of all related party transactions.

9. Commitments and Contingencies

Guarantees

The Institution has guaranteed Globe's lease agreements for its Eau Claire, Wisconsin and Sioux Falls, South Dakota campuses. Total minimum rent payments under these leases through 2018 are $1,714,440 and $1,930,500 at December 31, 2014. Management has evaluated the likelihood of performance under the guarantees and did not record a liability at December 31, 2014 or 2013. In the event the Institution is required to make payments under this guarantee, the Institution could seek to recover those amounts from Globe; however, the Institution does not hold specific recourse or collateral rights in connection with the guarantee.

Litigation

On July 22, 2014, State of Minnesota by its Attorney General (b)(6) ("AG") filed a complaint against the Institution and Globe University, Inc. alleging (1) Prevention of Consumer Fraud Act; and (2) Violations of the Uniform Deceptive Trade Practices Act.

On March 20, 2015, the AG amended the complaint, alleging (1) Unlicensed Lending; and (2) Usury. Management believes the Institution has valid defenses against these allegations. The complaint requests relief including civil penalties, restitution for injured persons, voiding certain institutional loans, judgment for interest and principal payments made under certain institutional loans, judgment for usurious interest, and awarding costs and fees to plaintiff. The matter in currently in the discovery stage.

Court-ordered mediation has been scheduled for May 2015. The Institution's management has defended, and intends to continue defense, of the Institution against the allegations made in the AG's complaint. As of the issuance date of these consolidated financial statements, the AG has not provided a settlement demand, and the likely outcome of the matter is not certain. As such, there can be no assurance that the ultimate outcome will not have a material adverse effect on the Institution's consolidated financial condition, results of operations or cash flows.

On August 14, 2013, a Washington County, Minnesota jury found MSB liable for a whistleblower complaint filed by a former employee. On February 11, 2014, the district court denied MSB's post-trial motions for a new trial and remittitur, upheld the damages awarded by the jury, and awarded the plaintiff legal fees. On December 14, 2014, the Minnesota Court of Appeals upheld the district court ruling. On March 17, 2015, the Minnesota Supreme Court denied MSB's petition to appeal the appellate court decision. In April 2015, the plaintiff and MSB reached a settlement agreement allowing the plaintiff to recover a total of $1,175,352, which includes $394,977 in back pay, front pay and emotional distress damages, $509,985 in trial court attorneys' fees and costs, prejudgment interest of $78,554, post-judgment interest of $28,836, and appellate attorney's fees and costs of $163,000.

9. Commitments and Contingencies (continued)

The total liability for this matter was properly recognized in the financial statements as of December 31, 2014. As of December 31, 2013, MSB had posted a $1,100,000 letter of credit in favor of the plaintiff and counsel. The letter of credit was secured by a cash collateral account which was included with restricted cash on the balance sheet. As of the date of this report, the total award amount has been paid to the plaintiff, the judgment against MSB has been satisfied, the letter of credit is no longer outstanding, and the proceeds from the collateral account were utilized to satisfy the judgment.

In the ordinary course of business, the Institution is subject to various other legal proceedings and claims. In the opinion of management, the amount of ultimate liability with respect to these actions will not materially affect the financial position of the Institution.

Pledged Collateral

The Institution agreed to provide additional collateral on certain loan agreements between an entity related through common ownership and a bank. The lender required $2,000,000 pledged to the bank as collateral for outstanding loans. On November 3, 2014, the Institution deposited $2,000,000 into an interest bearing account with the bank, and the balance at December 31, 2014 of $2,000,647 was classified by the Institution as restricted cash. On April 15, 2015, the funds from the collateral account were used to retire the bank loans and the $2,000,000 was due from the affiliate as of the date of issuance for the Institution's consolidated financial statements.

Debt Payment Reserve

On December 30, 2014, the Institution, upon the request of a lender, deposited $155,213 into an interest bearing account with the lender. The balance of $155,214 at December 31, 2014 has been classified by the Institution as restricted cash.

Building Leases

The Institution has two operating leases for building space at December 31, 2014. One of these leases matures in June 2015 and requires monthly base rent payments totaling $87,147 for the year ended December 31, 2015. The other lease is with a real estate entity owned by certain shareholders of MSB. This lease requires monthly base rent payments of $12,000 and matures October 2019, with two 5-year renewal options. Total rent expense for building operating leases was $389,186 and $417,582 for the years ended December 31, 2014 and 2013.

ED00010805

9. Commitments and Contingencies (continued)

Future minimum lease payments required under the operating leases are as follows for the years ending:

2015	$ 231,147
2016	144,000
2017	144,000
2018	144,000
2019	120,000
	$ 783,147

10. Related Party Transactions

Notes receivable from shareholders represent unsecured notes receivable from the shareholders of MSB. The amount due under the notes was $8,575,507 and $16,574,310 at December 31, 2014 and 2013. The notes bear interest at the applicable short-term annual federal rate (0.34% and 0.25% at December 31, 2014 and 2013) and are due on demand. Interest income from the notes was $42,683 and $23,085 and in 2014 and 2013.

The Institution leases space in Woodbury, Minnesota to Globe. Total rent payments received from Globe were $772,800 in both 2014 and 2013. Future minimum rents to be received from Globe under the lease are $772,800 for both years ending December 31, 2015 and December 31, 2016, and $386,400 for the year ending December 31, 2017.

The Institution charges management fees to certain related entities controlled by, or affiliated with, the shareholders of MSB for executive, administrative, accounting, instruction and consulting services. Management fee income recognized by the Institution was as follows for the years ended December 31:

	2014	2013
Broadview University	$ 292,860	$ 300,000
Duluth Business University	27,836	30,868
Benchmark Learning	-	77,000
	$ 320,696	$ 407,868

ED00010806

10. Related Party Transactions (continued)

The Institution and certain related entities engage in transactions with, or on behalf of, each other in the normal course of business. The Institution will periodically reimburse, or be reimbursed by, these entities for transactions that include, but are not limited to:

- payment of employee benefit claims and associated costs;
- payment of shared marketing expenditures;
- purchases of student materials;
- reimbursement for shared instructor salary costs;
- collection of textbook sales commission, and;
- other miscellaneous transactions.

Due to and due from affiliate balances represent unsecured, non-interest bearing amounts due to or from related entities and are due on demand. The Institution's amount due to affiliates of $104,697 at December 31, 2014 was due to Globe University. The amounts due from affiliates were as follows at December 31:

	2014	2013
Broadview University	$ 192,814	$ 220,693
Institute of Production & Recording	46,380	15,805
Minnesota School of Cosmetology	28,137	86,412
Globe University	-	2,747,890
Myhre Holdings, Inc.	-	23,927
	$ 267,331	$ 3,094,727

See also Note 4 and Note 9 for disclosure of additional related party transactions.

11. Subsequent Events

Subsequent events through April 30, 2015, the date the consolidated financial statements were available for issuance, have been considered for recording or disclosure in these consolidated financial statements.

Except as disclosed in Note 9, there were no other material subsequent events requiring recognition or disclosure in these consolidated financial statements.

ED00010807

Bomberg
Roach &
Hanson PLLC
CERTIFIED PUBLIC ACCOUNTANTS
& BUSINESS ADVISORS

INDEPENDENT AUDITOR'S REPORT ON SUPPLEMENTARY INFORMATION

Board of Directors and Shareholders
Minnesota School of Business, Inc.

We have audited the consolidated financial statements of Minnesota School of Business, Inc. and subsidiaries as of and for the years ended December 31, 2014 and 2013. Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidated statements of operating expenses on page 20 are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

Bomberg, Roach & Hanson, PLLC

Woodbury, Minnesota
April 30, 2015

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731 Bielenberg Drive, Suite 202 • St. Paul, MN 55125 • Main 651-319-5540 • Fax 651-714-7179

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Minnesota School of Business, Inc. and Subsidiaries
CONSOLIDATED OPERATING EXPENSES
Years ended December 31, 2014 and 2013

	2014	2013
Salaries and wages	$ 19,300,313	$ 23,263,934
Advertising and marketing	7,754,831	8,870,819
Facilities expense	3,690,364	4,141,327
Depreciation and amortization	3,060,401	3,260,083
Student materials	3,046,019	3,962,738
Scholarships	2,570,959	3,067,387
Payroll taxes	1,704,626	2,107,490
Health insurance	1,637,686	1,736,059
Bad debts	1,461,789	3,322,313
Software	858,970	1,196,522
Telephone	666,099	646,810
Legal and accounting	570,635	2,336,369
Rent	389,186	417,582
Corporate expenses	340,634	369,882
Dues, subscriptions and licenses	267,319	467,430
Collection expense	261,467	248,975
Library materials	157,801	232,916
Travel	156,966	193,609
Equipment lease	156,043	207,869
Office supplies	135,169	227,163
Bank service charges	124,475	131,096
401(k) employer match	121,321	250,269
Insurance	120,166	137,704
Credit card processing	74,698	80,518
Postage	73,758	130,293
Payroll processing	69,756	82,293
Faculty and staff appreciation	55,534	55,460
Miscellaneous administrative	55,776	53,817
Orientation and graduation	46,953	71,835
Student appreciation	40,739	49,262
Sales and use tax	36,422	8,222
Charitable contributions	34,337	49,600
Employee education	27,463	40,754
Promotion	25,706	44,872
	$ 49,094,381	$ 61,463,272

ED00010809

Globe University, Inc.

Financial Statements and Independent Auditor's Report

December 31, 2014 and 2013

Bomberg Roach & Hanson PLLC
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

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Bomberg Roach & Hanson PLLC
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

INDEPENDENT AUDITOR'S REPORT

Board of Directors and Shareholders
Globe University, Inc.

We have audited the accompanying financial statements of Globe University, Inc. (the "Institution") which comprise the balance sheets as of December 31, 2014 and 2013, and the related statements of operations and retained earnings, and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Globe University, Inc. as of December 31, 2014 and 2013, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

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Other Matters

In accordance *Government Auditing Standards*, we have also issued our report dated April 30, 2015 on our consideration of the Institution's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Institution's internal control over financial reporting and compliance.

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The information included in Note 9 on the Institution's calculation of its Title IV 90/10 revenue test and related party transactions is required by the U.S. Department of Education. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Bomberg, Roach & Hanson, PLLC

Woodbury, Minnesota
April 30, 2015

Globe University, Inc.
BALANCE SHEETS
December 31, 2014 and 2013

	2014	2013
ASSETS		
Current Assets		
Cash and equivalents	$ 3,080,177	$ 9,163,433
Restricted cash	155,073	22,338
Student receivables, net	456,120	694,215
Inventory	45,704	188,889
Prepaid expenses	10,685	37,799
Due from affiliates	104,697	-
Current portion of long-term receivables from students, net	574,055	507,187
Total current assets	4,426,511	10,613,861
Property and Equipment		
Equipment	4,917,015	4,826,701
Leasehold improvements	1,182,289	1,169,001
Furniture and fixtures	2,145,527	2,201,690
	8,244,831	8,197,392
Accumulated depreciation and amortization	(6,211,443)	(5,172,230)
Property and equipment, net	2,033,388	3,025,162
Other Assets		
Long-term receivables from students, net	4,999,293	4,416,958
Finite-lived intangible assets, net	125,000	187,500
Total other assets	5,124,293	4,604,458
TOTAL ASSETS	$ 11,584,192	$ 18,243,481

The accompanying notes are an intergral part of these financial statements.

	2014	2013
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities		
Current portion of long-term debt	$ 17,326	$ -
Accounts payable	437,610	348,552
Accrued liabilities	189,449	240,820
Student credit balances	299,015	211,079
Due to affiliates	-	2,747,890
Total current liabilities	943,400	3,548,341
Long-term Debt		
Capital lease	25,678	-
Total liabilities	969,078	3,548,341
SHAREHOLDERS' EQUITY		
Common stock	30,360	30,360
Additional paid-in capital	100,840	100,840
Retained earnings	10,483,914	14,563,940
Total shareholders' equity	10,615,114	14,695,140
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 11,584,192	$ 18,243,481

ED00010815

Globe University, Inc.
STATEMENTS OF OPERATIONS AND RETAINED EARNINGS
Years ended December 31, 2014 and 2013

	2014	2013
Revenue		
Tuition, books and fees	$ 47,089,878	$ 58,233,320
Miscellaneous income	125,639	401,586
Total revenue	47,215,517	58,634,906
Operating expenses	52,194,947	61,052,840
Loss from operations	(4,979,430)	(2,417,934)
Other income (expense)		
Interest income	564,450	847,155
Interest expense	(915)	(6,618)
Management fees	335,869	407,053
Total other income	899,404	1,247,590
NET LOSS	(4,080,026)	(1,170,344)
Retained earnings, beginning of year	14,563,940	15,734,284
Retained earnings, end of year	$ 10,483,914	$ 14,563,940

The accompanying notes are an intergral part of these financial statements.

ED00010816

Globe University, Inc.
STATEMENTS OF CASH FLOWS
Years ended December 31, 2014 and 2013

	2014	2013
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (4,080,026)	$ (1,170,344)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities		
Depreciation and amortization	1,157,876	1,338,043
Changes in operating assets and liabilities		
Restricted cash	(132,735)	52,369
Student receivables	238,095	129,838
Inventory	143,185	(188,889)
Prepaid expenses	27,114	19,974
Other current assets	-	157,134
Long-term receivables from students	(649,203)	1,661,146
Accounts payable	89,058	63,187
Accrued liabilities	(51,371)	(11,847)
Student credit balances	87,936	(393,047)
Net cash provided by (used in) operating activities	(3,170,071)	1,657,564
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(50,741)	(131,707)
Redemptions of certificates of deposit	-	6,387,257
Net change in due from affiliates	(104,697)	-
Net cash provided by (used in) investing activities	(155,438)	6,255,550
CASH FLOWS FROM FINANCING ACTIVITIES		
Payments on long-term debt	(9,857)	-
Net change in due to affiliates	(2,747,890)	(1,172,749)
Net cash used in financing activities	(2,757,747)	(1,172,749)
Net change in cash and equivalents	(6,083,256)	6,740,365
Cash and equivalents at beginning of year	9,163,433	2,423,068
Cash and equivalents at end of year	$ 3,080,177	$ 9,163,433
Supplementary information		
Cash paid for interest during the year	$ 915	$ 6,618
Equipment purchased under capital lease	$ 52,861	$ -

The accompanying notes are an intergral part of these financial statements.

ED00010817

Globe University, Inc.
Notes to Financial Statements
December 31, 2014 and 2013

1. Nature of Business

Globe University, Inc. (the "Institution"), a Minnesota corporation, offers career training in a variety of business, medical and technology programs. The Institution operates ten campuses located in Wisconsin (seven), Minnesota (two) and South Dakota (one), as well as offering fully online programs. The Institution is accredited to award certificates, diplomas, Associate in Applied Science, Bachelor of Science, Masters and Doctoral degrees by the Accrediting Council for Independent Colleges and Schools ("ACICS").

2. Summary of Significant Accounting Policies

Cash and Equivalents

For purposes of the statements of cash flows, the Institution considers all investments with an original maturity of three months or less to be cash equivalents. The Institution maintains its cash balances at various financial institutions located in the United States. At times, such balances may be in excess of Federal Deposit Insurance Corporation limits.

Restricted Cash

Restricted cash consists of deposits from student financial aid sources that have not been earned. Such balances are offset by a corresponding liability.

Student Receivables

Student receivables represent amounts due from students for unpaid tuition and other charges. The Institution grants credit to students in the normal course of business, but generally does not require collateral or any other security to support amounts due. Receivables are typically due from students within 90 days and are stated net of an allowance for doubtful accounts. Amounts outstanding past the completion of the academic term in which they were billed are considered past due. Management performs ongoing credit evaluations and the Institution maintains allowances for potential credit losses which, when realized, have generally been within management expectations. The allowance for doubtful accounts was $1,437,752 and $1,586,851 at December 31, 2014 and 2013. Bad debt expense related to student receivables, net of related recoveries, was $303,453 and $416,343 for the years then ended.

ED00010818

2. Summary of Significant Accounting Policies (continued)

Inventory

Inventory primarily consists of student materials, including digital learning devices, for resale, and is stated at the lower of cost (first-in, first-out) or market.

Property and Equipment

Equipment and leasehold improvements are stated at cost. Improvements that extend the useful lives of the assets are capitalized and expenditures for maintenance and repairs are expensed as incurred.

When assets are sold, retired, or otherwise disposed of, the cost and related allowance for depreciation and amortization are eliminated from the accounts, and any resulting gain or loss is included in other income or expense.

Depreciation and amortization are provided in amounts sufficient to relate the cost of depreciable assets to operations over their estimated useful lives. Straight-line and accelerated methods of depreciation and amortization are used for both financial and income tax reporting purposes. The estimated useful lives are as follows:

Leasehold improvements	20 years
Furniture and fixtures	7 years
Equipment	5 years

Long-term Receivables from Students

Long-term receivables from students include unsecured notes and contracts that bear interest at various rates at December 31, 2014 and 2013. Interest accrues on these notes and contracts from their effective date. While actively enrolled, students are required to make monthly payments of interest accrued or $25 per month, whichever is greater, but not to exceed $100 per month. Otherwise no principal payments are required until either a student drops below half-time enrollment or graduates. Students may qualify for reductions to their interest rates for certain notes and contracts by securing a co-borrower, remaining current on monthly payments or upon graduation. The repayment period ranges from 5 to 15 years and, for certain receivables, is determined by the cumulative balance outstanding. Failure to comply with certain terms stated in the notes or contracts may result in the student being in default and cause any outstanding principal and interest balances to be due immediately.

ED00010819

2. Summary of Significant Accounting Policies (continued)

The Institution monitors the credit quality of these receivables by considering such factors as payment delinquency and borrower credit scores, among others. Long-term receivables from students are deemed to be impaired when, based on current information and events, it is probable that the Institution will be unable to collect all amounts due according to the contractual terms of the notes or contracts. The Institution maintains allowances for uncollectable amounts due under these receivables. Generally, individual notes or contracts are considered for impairment when a student is 180 days delinquent on required monthly payments. Such receivables are individually reviewed for collectability, and if deemed uncollectible, are charged against the Institution's allowances and sent to a collection agency. Any recoveries of principal or interest by the collection agency are recognized by the Institution when received.

Intangible Assets

Intangible assets consist primarily of a trade name and customer relationships and are amortized using the straight-line method, as appropriate, over their estimated useful lives, ranging from 3 to 5 years. The Institution reviews these intangible assets for impairment as changes in circumstance or the occurrence of triggering events suggest the remaining value may not be recoverable. No impairment loss was recognized during the years ended December 31, 2014 or 2013.

Revenue Recognition

Billings for tuition and lab fees are recorded as deferred revenue and are recognized as earned over the course of the related period of instruction. There was no deferred revenue at December 31, 2014 or 2013. Registration and resource fees, book sales, and other miscellaneous income are recognized when charged to the students. Commissions from student textbook purchases are recognized as revenue when earned.

Advertising and Marketing

The Institution expenses advertising and marketing costs when incurred. Such costs were $8,119,428 and $8,844,994 for the years ended December 31, 2014 and 2013.

2. Summary of Significant Accounting Policies (continued)

Income Tax

The Institution's shareholders have elected to be taxed under Subchapter S of the Internal Revenue Code and similar state statutes. As a result, all income and loss flows through directly to the shareholders and no provision for income taxes has been made in the accompanying financial statements. No liability was recorded for interest or penalties related to uncertain tax positions at December 31, 2014 or 2013. For both federal and state purposes, tax years 2011-2013 remain open to examination. The Institution does not anticipate any significant increases or decreases in unrecognized tax benefits within the next twelve months.

Fair Value of Financial Instruments

Due to their short-term nature, the carrying value of the Institution's current financial assets and liabilities approximates their fair values. The fair value of the Institution's borrowings, if recalculated based on current interest rates, would not significantly differ from the recorded amounts.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect reported amounts of assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

3. Long-term Receivables from Students

Long-term receivables from students consists of the following as of December 31:

	2014	2013
Long-term receivables from students, gross	$ 7,573,348	$ 7,279,145
Less reserve for uncollectable balances	(2,000,000)	(2,355,000)
Long-term receivables from students, net	$ 5,573,348	$ 4,924,145

ED00010821

3. Long-term Receivables from Students (continued)

The Institution recognized $564,450 and $825,506 of interest income from long-term student receivables during the years ended December 31, 2014 and 2013. Bad debt expense related to these receivables was $1,556,466 and $4,514,404, net of recoveries of $206,910 and $174,343, for the years ended December 31, 2014 and 2013.

The following table sets forth the repayment status of gross long-term receivables from students as of December 31, 2014:

30-79 Days	80-129 Days	130-179 Days	180 Days or Greater	Total Delinquent	Current	Total Balance
$ 1,201,337	$ 544,608	$ 274,260	$ 823,228	$ 2,843,433	$ 4,729,915	$ 7,573,348

4. Intangible Assets

Intangible assets consists of finite-lived trade name assets acquired in the acquisition of a business during 2012. There was no impairment recognized for the years ended December 31, 2014 or 2013. The expected amortization of the remaining finite-lived intangible assets is as follows for the years ended December 31:

2015	$ 62,500
2016	62,500
	$ 125,000

5. Long-Term Debt

Long-term debt consists of a capital lease for equipment at December 31, 2014. The capital lease is secured by the related equipment, is payable in monthly installments of principal and interest totaling $1,539, has a fixed interest rate of 3.25% and matures on March 31, 2017.

On December 30, 2013, MSB Holdings – Richfield, LLC, a wholly-owned subsidiary of Minnesota School of Business, Inc. ("MSB"), a party related through common ownership, entered into a note payable with a bank for $4,450,000. The note payable has a stated interest rate of 4.50%, is payable in monthly installments of principal and interest totaling $28,315, and matures January 2019. The note is secured by a building in Richfield, Minnesota, which is the location of a MSB campus. The entire proceeds of the note payable are allocated to MSB, and the outstanding balance was $4,323,072 at December 31, 2014.

5. Long-Term Debt (continued)

The note payable is guaranteed by the Institution, MSB, and also personally guaranteed by the President and largest shareholder of the Institution and MSB. In the event the Institution is required to make payments under this guarantee, the Institution could seek to recover those amounts from MSB; however, the Institution does not hold specific recourse or collateral rights in connection with the guarantee. The note contains certain financial covenants that the borrower was in compliance with, or had obtained waivers for, at December 31, 2014. These covenants were not effective at December 31, 2013.

On December 30, 2013, the Institution, MSB, and MSB Holdings – Rochester, LLC, a wholly -owned subsidiary of MSB, as co-borrowers, entered into a note payable with a bank for $3,956,250. The note payable has a stated interest rate of 4.69%, is payable in monthly installments of principal and interest totaling $25,588, and matures December 2018. The note is secured by a mortgage on a building in Rochester, Minnesota, which is the location of a MSB campus. The entire proceeds of the note payable are allocated to MSB, and the outstanding balance was $3,845,858 at December 31, 2014. The Institution is liable for the entire amount of the debt on a joint and several basis. In the event the Institution is required to make payments on the debt, the Institution could seek to recover those amounts from the affiliated borrowers; however, the Institution does not hold specific recourse or collateral rights in connection with the Rochester note payable. The note is personally guaranteed by the President and largest shareholder of the Institution and MSB, and contains certain financial covenants that the co-borrowers were in compliance with at December 31, 2014 and 2013.

6. Shareholders' Equity

The Institution has authorized 5,000 shares of common stock with par value of $10 per share, of which 3,036 shares were issued and outstanding at December 31, 2014 and 2013.

7. Employee Benefit Plan

The Institution has a defined contribution 401(k) plan covering all employees who meet service requirements as defined in the plan. Plan participants may make salary deferral contributions to the plan, subject to IRS limitations. The Institution may also make contributions to the plan in the form of discretionary matching and profit sharing contributions. The Institution's total contributions to the plan were $107,332 and $216,113 in 2014 and 2013.

ED00010823

8. Commitments and Contingencies

Building Leases

The Institution has operating leases for its campus and office space at each location. The leases require base rent payments on a monthly basis, and the Institution is responsible for real estate taxes and common area maintenance on the properties. The leases mature on various dates through December 2035, and each lease provides two 5-year renewal options. Total rent expense for building operating leases was $4,824,955 and $4,949,283 in 2014 and 2013. Future minimum lease payments required under the building operating leases are as follows for the years ending:

2015	$ 4,711,716
2016	4,711,716
2017	4,325,316
2018	3,565,296
2019	2,501,700
Thereafter	14,647,875
	$ 34,463,619

Litigation

On July 22, 2014, State of Minnesota by its Attorney General (b)(6) ("AG") filed a complaint against the Institution and Minnesota School of Business, Inc. alleging (1) Prevention of Consumer Fraud Act; and (2) Violations of the Uniform Deceptive Trade Practices Act. On March 20, 2015, the AG amended the complaint, alleging (1) Unlicensed Lending; and (2) Usury. Management believes the Institution has valid defenses against these allegations. The complaint requests relief including civil penalties, restitution for injured persons, voiding certain institutional loans, judgment for interest and principal payments made under certain institutional loans, judgment for usurious interest, and awarding costs and fees to plaintiff. The matter in currently in the discovery stage.

Court-ordered mediation has been scheduled for May 2015. The Institution's management has defended, and intends to continue defense, of the Institution against the allegations made in the AG's complaint. As of the issuance date of these consolidated financial statements, the AG has not provided a settlement demand, and the likely outcome of the matter is not certain. As such, there can be no assurance that the ultimate outcome will not have a material adverse effect on the Institution's consolidated financial condition, results of operations or cash flows.

In the ordinary course of business, the Institution is subject to other legal proceedings and claims. In the opinion of management, the amount of ultimate liability with respect to these actions will not materially affect the financial position of the Institution.

9. Compliance

Composite Score

In order to participate in the SFA programs, a school must demonstrate that it is financially responsible, as defined by the USDE. One measure used by the USDE to determine the financial health of a participating school is the composite score calculation, which can range from -1.0 to 3.0. A school is deemed to be financially responsible by the USDE if the composite score for the institution is between 1.5 and 3.0. For the year ended December 31, 2014, the Institution's composite score was 1.8. This information is required by the ACICS, is presented for purposes of additional analysis and is not a required part of the basic financial statements.

Related Party Transactions

HEA regulations require that all related party transactions be disclosed, regardless of their materiality to the financial statements. See Note 10 for a detail of all related party transactions.

90/10 Rule

The Institution derives a substantial portion of its revenues from Student Financial Aid ("SFA") received by its students under the Title IV programs administered by the U.S. Department of Education ("USDE") pursuant to the Higher Education Act of 1965, as amended and reauthorized ("HEA"). To continue to participate in the SFA programs the Institution must comply with the regulations promulgated under the HEA. The regulations restrict the proportion of cash receipts for tuition and fees from eligible programs to not more than 90% from the Title IV programs ("90/10 Rule"). Failure to meet the 90% limitation would result in the loss of the Institution's ability to participate in SFA programs.

For the year ended December 31, 2014, the Institution received $30,573,561 of Title IV funds and total eligible cash receipts of $42,606,624 resulting in a percentage of 72%. This information is required by the USDE, is presented for purposes of additional analysis and is not a required part of the basic financial statements.

ED00010825

9. Compliance (continued)

The components of the 90/10 Rule calculation are as follows:

	Amount Disbursed	Adjusted Amount
Adjusted Student Title IV Revenue		
Subsidized loan	$ 8,956,979	$ 8,956,979
Unsubsidized loan	14,008,425	14,008,425
Federal Pell Grant	7,347,454	7,347,454
FSEOG	329,717	260,703
Student credit balances	8,463	8,463
Student Title IV revenue		30,582,024
Revenue adjustment		(8,463)
Adjusted Student Title IV Revenue		$ 30,573,561
Student Non-Title IV Revenue		
Grant funds from non-Federal public agencies or private sources independent from the Institution	$ 808,861	
Student payments	10,690,156	
Student credit balances	105,327	
Student Non-Title IV Revenue	$ 11,604,344	
Revenue from Other Sources		
Repayments of institutional loans	$ 428,719	

10. Related Party Transactions

The Institution charges management fees to certain related entities controlled by, or affiliated with, the shareholders of the Institution for executive, administrative, accounting, instruction and consulting services. Management fee income recognized by the Institution was as follows for the years ended December 31:

	2014	2013
Broadview University	$ 307,140	$ 300,000
Duluth Business University	28,729	30,053
Benchmark Learning	-	77,000
	$ 335,869	$ 407,053

10. Related Party Transactions (continued)

The Institution leases its location in Woodbury, Minnesota from MSB, and eight of its other locations are leased from real estate entities owned by certain shareholders of the Institution.

Total rent payments made under these leases were as follows:

	Rent Payments	
Campus Location	2014	2013
Woodbury, MN	$ 772,800	$ 772,800
Sioux Falls, SD	514,800	514,800
La Crosse, WI	468,000	468,000
Middleton, WI	468,000	468,000
Eau Claire, WI	489,840	474,260
Madison, WI	454,657	455,418
Green Bay, WI	421,200	421,200
Appleton, WI	421,200	421,200
Wausau, WI	387,900	387,900
	$ 4,398,397	$ 4,383,578

The Institution and certain related entities engage in transactions with, or on behalf of, each other in the normal course of business. The Institution will periodically reimburse, or be reimbursed by, these entities for transactions that include, but are not limited to:

- payment of employee benefit claims and associated costs;
- payment of shared marketing expenditures;
- purchases of student materials;
- reimbursement for shared instructor salary costs;
- collection of textbook sales commission, and;
- other miscellaneous transactions.

Due to and due from affiliate balances represent unsecured, non-interest bearing amounts due to or from related entities and are due on demand. The Institution's amount due from affiliates of $104,697 at December 31, 2014 was due from MSB. The Institution's amount due to affiliates of $2,747,890 at December 31, 2013 was due to MSB. See also Note 5 for disclosure of additional related party transactions.

11. Subsequent Events

Subsequent events through April 30, 2015, the date the financial statements were available for issuance, have been considered for recording or disclosure in these financial statements.

Except as disclosed in Note 8, there were no other material subsequent events requiring recognition or disclosure in these financial statements.

ED00010828

Bomberg
Roach &
Hanson PLLC
CERTIFIED PUBLIC ACCOUNTANTS
& BUSINESS ADVISORS

INDEPENDENT AUDITOR'S REPORT ON SUPPLEMENTARY INFORMATION

Board of Directors and Shareholders
Globe University, Inc.

We have audited the financial statements of Globe University, Inc. as of and for the years ended December 31, 2014 and 2013. Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The statements of operating expenses on page 18 are presented for purposes of additional analysis and are not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Bomberg, Roach & Hanson, PLLC

Woodbury, Minnesota
April 30, 2015

9800 Shelard Parkway, Suite 208 • Minneapolis, MN 55441 • Main 763-277-0303 • Fax 763-277-0323
731 Bielenberg Drive, Suite 202 • St. Paul, MN 55125 • Main 651-319-5540 • Fax 651-714-7179

www.brhllc.com

Globe University, Inc.
OPERATING EXPENSES
Years ended December 31, 2014 and 2013

	2014	2013
Salaries and wages	$ 19,436,121	$ 22,144,458
Advertising and marketing	8,119,428	8,844,994
Rent	4,824,955	4,949,283
Student materials	3,321,720	3,939,492
Scholarships	3,082,568	3,468,344
Facilities expense	2,496,402	2,623,987
Bad debts	1,859,919	4,930,747
Health insurance	1,714,941	1,731,144
Payroll taxes	1,695,931	1,984,514
Depreciation and amortization	1,157,876	1,338,043
Software	896,807	1,204,304
Telephone	698,377	645,736
Legal and accounting	363,658	290,384
Corporate expenses	355,352	369,112
Collection expense	293,956	310,783
Dues, subscriptions and licenses	275,314	460,136
Travel	195,500	197,844
Library materials	169,438	241,756
Sales and use tax	160,056	73,673
Equipment lease	157,664	211,040
Office supplies	129,836	166,981
401(k) employer match	107,332	216,113
Insurance	106,606	116,786
Postage	79,388	130,485
Credit card processing fees	74,616	64,609
Contract labor	72,000	2,699
Payroll processing	55,233	54,885
Orientation and graduation	43,780	52,778
Bank charges	40,662	47,064
Promotion	38,800	22,631
Employee education	37,464	37,857
Faculty and staff appreciation	36,531	40,898
Charitable contributions	34,716	49,500
Student appreciation	32,066	32,336
Miscellaneous administrative	29,934	57,444
	$ 52,194,947	$ 61,052,840

ED00010830

June 30, 2015

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- The informal resolution resulting from the dismissed class-action suit filed by five current and former students against Globe University Inc.
- The status of the probationary period placed on Globe University and the Minnesota school of Business by the Department of Defense, for offering a Criminal Justice program without disclosing its relationship to state licensing requirements.
- The lawsuit against Globe University by the Attorney General of Minnesota, regarding recruiting and marketing practices, including accusations of violations of state law by offering unlicensed college loans and charging "usurious interest rates."

Please provide the Council with an update regarding these issues by **July 10, 2015.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

GLOBE EDUCATION NETWORK

8147 Globe Drive
Woodbury, MN 55125
Phone: (651) 332-8000
Fax: (651) 332-8001
globeuniversity.edu/about-us

Accrediting Council for Independent Colleges and Schools
Attn: Anthony S. Bieda, Vice President for External Affairs
750 First Street NE, Suite 980
Washington, DC 20002-4223

RE: Globe University [ID 00015232]

BY ELECTRONIC MAIL ONLY

Dear Mr. Bieda,

Globe University (Globe) has received your letter dated March 11, 2015 requesting an update regarding certain issues involving Globe and hereby submits this written response as requested by the Council.

On December 15, 2014, the Minnesota Court of Appeals affirmed the district court ruling in favor of former employee (b)(6). Globe petitioned the Minnesota Supreme Court to review the case but unfortunately on March 17, 2015 the Minnesota Supreme Court denied our petition. There are no further appeals in this matter, so the judgment in favor of (b)(6) will stand. Final calculations regarding attorney fees and interest on the judgment are in process and payment will be made promptly when these amounts have been finalized.

In July 2014 our attorneys agreed to accept service of an amended class action complaint initiated by five students, and this matter has been relatively inactive since our last update to the Council provided in November 2014. As of the date of this letter, no mediation or arbitrations have been scheduled.

Globe continues to be in a probationary status with the Department of Defense (DoD). On February 17, 2015, Globe sent a follow up letter to the DoD asking for reconsideration of its decision given the allegations in the lawsuit referenced as a basis for the decision have not been proven. Further, if the DoD is not willing to remove the probationary status, we have asked for an explanation why Globe has been placed in this status while similar schools with similar or worse allegations have not. As of the date of this letter, we have not received a response.

On March 20, 2015, the Minnesota Attorney General (AG) amended her complaint against Globe adding allegations regarding placement statistics and our institutional loan program. We intend to work with our attorneys to motion the court to dismiss the most recent allegations. Globe's legal team continues to push for cooperation from the AG; however, she remains steadfast on using this lawsuit to publicly attack our colleges and the sector to push her political agenda. We are in the discovery phase of the litigation and have mediation scheduled for May 12, 2015. Globe remains willing to work with the AG to find an amicable resolution, but we do not take her accusations lightly and will continue to fiercely defend our colleges, students and graduates.

If you have further questions or concerns regarding any legal matters, please contact me directly.

Sincerely,

(b)(6)

Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Mitchell Peterson, Director of Institutional Quality and Effectiveness

March 11, 2015

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- Globe's planned appeal of the lawsuit by Ms. Heidi Weber in the Washington County Court which resulted in a judgment against your institution in February 2014.
- The informal resolution resulting from the dismissed class-action suit filed by five current and former students against Globe University Inc.
- The status of the probationary period placed on Globe University and the Minnesota school of Business by the Department of Defense, for offering a Criminal Justice program without disclosing its relationship to state licensing requirements.
- The lawsuit against Globe University by the Attorney General of Minnesota, regarding recruiting and marketing practices.

Please provide the Council with an update regarding these issues by **March 24, 2015.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

GLOBE EDUCATION NETWORK

8147 Globe Drive
Woodbury, MN 55125
Phone: (651) 332-8000
Fax: (651) 332-8001
globeuniversity.edu/about-us

November 21, 2014

Accrediting Council for Independent Colleges and Schools
Attn: Anthony S. Bieda, Vice President for External Affairs
750 First Street NE, Suite 980
Washington, DC 20002-4223

RE: Globe University [ID 00015232]

BY ELECTRONIC MAIL ONLY

Dear Mr. Bieda,

Globe University (Globe) has received your letter dated November 10, 2014 requesting an update regarding certain issues involving Globe and hereby submits this written response as requested by the Council.

On August 14, 2013, a Washington County jury found Globe liable for a whistleblower complaint filed by former employee (b)(6) On February 11, 2014, the court denied Globe's post-trial motions for a new trial and remittitur, upheld the damages awarded in the jury's verdict totaling approximately $395,000, and awarded the plaintiff approximately $510,000 for legal fees resulting in a total judgment of approximately $905,000. Globe appealed, and oral arguments were heard by the Minnesota Court of Appeals on October 15, 2014. The court has until January 15, 2015 to rule on Globe's appeal.

On October 2, 2013, a Class Action Complaint and Jury Demand was filed against Globe University, Inc., on behalf of five former and current students alleging: 1) violation of the Minnesota Prevention of Consumer Fraud Act; 2) violation of the Minnesota Unlawful Trade Practices Act; 3) violation of the Minnesota Deceptive Trade Practices Act; 4) false advertising; and 5) unjust enrichment. On May 9, 2014, Plaintiffs voluntarily dismissed the Class Complaint pursuant to Rule 41 of the Minnesota Rules of Civil Procedure. In July 2014, our attorneys agreed to accept service of an amended complaint regarding this matter to avoid the complaint being filed in court. In an effort to avoid the cost, expense, and uncertainty of litigation, the parties are exploring informal resolution of the claims asserted in the Class Complaint. As of the date of this letter, no mediation or arbitrations have been scheduled.

On September 4, 2014, the Department of Defense (DoD) sent a notice to Globe and Minnesota School of Business (MSB) indicating, as a result of the allegations in the lawsuit filed by the Minnesota State Attorney General, the DoD was considering suspending and/or terminating our Voluntary Education

Partnership Memorandum of Understanding (MOU) and no longer allowing Globe and MSB to participate in the DoD Federal Tuition Assistance Program. Globe and MSB responded on September 12, 2014. On November 4, 2014 the DoD sent a letter indicating our MOU will remain in a probationary status with the DoD for the next six months.

On July 22, 2014, State of Minnesota by its Attorney General Lori Swanson (hereafter referred to as AG), filed a complaint against Minnesota School of Business, Inc. d/b/a Minnesota School of Business and Globe University, Inc. d/b/a Globe University (hereafter collectively referred to as Globe), alleging: 1) Prevention of Consumer Fraud Act; and 2) Violations of the Uniform Deceptive Trade Practices Act. Globe intends to vigorously defend the reputation of its schools, students and graduates. In July 2013, Globe received a Civil Investigative Demand from the AG and had been cooperating fully with the AG in providing the requested information. Globe did not receive any notice from the AG prior to the lawsuit being filed, a press release issued and a news conference held. Globe filed its answer to the complaint on August 27, 2014. The discovery process has commenced.

If you have any further questions or concerns regarding any of these legal matters, please contact me directly.

Sincerely,

(b)(6)

Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Mitchell Peterson, Director of Institutional Quality and Effectiveness

November 10, 2014

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- Globe's planned appeal of the lawsuit by Ms. Heidi Weber in the Washington County Court which resulted in a judgment against your institution in February 2014.
- The class-action suit filed by five current and former students against Globe University Inc.
- The probation placed on Globe University and the Minnesota school of Business by the Department of Defense, alleging the institutions are offering a Criminal Justice program without disclosing its relationship to state licensing requirements.
- The lawsuit against Globe University by the Attorney General of Minnesota.

Please provide the Council with an update regarding these issues by **November 21, 2014.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

750 First Street, NE, Suite 980 ●Washington, DC 20002-4223 ● t - 202.336.6780 ● f - 202.842.2593 ●www.acics.org

November 10, 2014 ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the following issues:

- Globe's planned appeal of the lawsuit by Ms. Heidi Weber in the Washington County Court which resulted in a judgment against your institution in February 2014.
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- The probation placed on Globe University and the Minnesota school of Business by the Department of Defense.
- The lawsuit against Globe University by the Attorney General of Minnesota.

Please provide the Council with an update regarding these issues by **November 21, 2014.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

StarTribune

Pentagon puts Globe U., Minn. School of Business on probation

Attorney General Lori Swanson at a July news conference. Standing to her side is Crystal Steffens, 26, of Coon Rapids, who said she was misled by the Minnesota School of Business when she enrolled in its criminal justice program.

Maura Lerner, Star Tribune

Article by: Mark Brunswick
Star Tribune
October 17, 2014 - 10:55 PM

The Department of Defense has placed Globe University and its sister, the Minnesota School of Business, on probation, meaning the schools can no longer accept some federal military educational benefits.

Current students can remain at the schools, but the restriction, made public this week, is the latest bad news to hit the two Minnesota-based for-profit schools. Attorney General Lori Swanson is suing them for deceptive marketing practices and fraud.

Lt. Cmdr. Nate Christensen, a Defense Department spokesman, said the Pentagon does not disclose information regarding any pending enforcement action for specific schools participating in its Voluntary Education Partnership Memorandum of Understanding.

But the program's website lists both Globe and Minnesota School of Business as being on probationary status, meaning the schools are not in compliance with the program, either because of a loss of accreditation, or because the Pentagon is investigating a complaint about the school.

Of 96 schools in Minnesota participating in the Department of Defense program, Globe and MSB are the only schools on probation, according to the website. The program monitors compliance of federal military tuition assistance programs.

The Pentagon spokesman would not talk about specifics, but the schools claim the restrictions don't affect the G.I. Bill. New active duty service students and drilling members of the National Guard and Reserve cannot receive tuition assistance while the Pentagon probe continues, the schools said.

The schools said the Pentagon's move was a direct reaction to the Minnesota attorney general's lawsuit, which it called "an unnecessary enforcement action," although the move may have come from additional complaints as well.

"While there should be an assumption of innocence until any wrongdoing is proven, unfortunately the Department of Defense has chosen to respond to the Attorney General's lawsuit in this way," the schools said in a statement.

While in a probation status, a school is not authorized to sign new students using various federal military tuition assistance programs, Christensen said.

"While in a probationary status and with a view to minimizing harm to students, an institution will be permitted to 'teach-out.' This means that current students receiving Department of Defense tuition assistance will be permitted to complete courses already in progress and enroll in new courses deemed to be part of that student's established academic program," Christensen said.

Suit claims deception

The action comes following Swanson's lawsuit, which accuses the two schools of misleading criminal-justice students about their job prospects after graduation and deceiving them about the ability to transfer credits to other colleges or universities. The attorney general also accused the schools of using high-pressure sales tactics to lure students to its programs.

Many of the students in Swanson's lawsuit are using the G.I. Bill and other federal military assistance programs to finance their education. The schools rely heavily on military tuition assistance programs. As much as 20 percent of their students have military connections, the schools have said in the past.

The Star Tribune recently documented cases of vets nearly exhausting their G.I. Bill benefits on the schools' criminal justice programs only to discover the schools did not meet the accreditation standards for state licensing.

The accusations in the lawsuit place the schools in apparent violation of several provisions of the agreement they signed with the Defense Department.

The schools said they have notified students, prospective students, and employees of the sanctions. The schools said they have offered a tuition adjustment to affected students.

"We value the hard work of our students and employees and will do whatever we can to protect their degrees, reputations and jobs," the schools said in a statement. "If the Attorney General continues to deny our requests to work with her to address the allegations she's made regarding our colleges, she will be hurting not only veterans, but thousands of Minnesota citizens who are students in our degree programs, employees of our colleges and graduates thriving in our state's workforce."

A spokesman for the attorney general said the office is continuing to review new information to determine the full scope of the possible transgressions and pointed out the schools have been accused of similar practices since the 1980s.

"If the school is telling you it's hamstrung from ending its deceptive practices without the help of a regulatory agency, that's troubling," said Swanson spokesman Ben Wogsland.

Mark Brunswick • 612-673-4434

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From: Anthony Bieda
To: Quentin Dean
Subject: Adverse: Globe University - Military benefits
Date: Tuesday, October 21, 2014 1:54:32 PM
Attachments: image001.png
image002.png

This issue – offering a CJ program without disclosing its relationship to state licensing requirements – needs to be added to the active adverse against Globe.
Thanks.

Anthony S. Bieda
Vice President for External Affairs
Accrediting Council for Independent Colleges and Schools
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From: Katie Morrison
Sent: Monday, October 20, 2014 9:39 AM
To: Anthony Bieda
Subject: FYI: Globe University - Military benefits

Hi Tony,

My attention was directed to this article by an international student who was concerned about his status in the U.S. Embassy because he is attending Globe University and somehow believed this article was about accreditation (when it is really about students using military benefits).

Thought I would forward the article to you for your information.

http://www.startribune.com/local/279621232.html

Thanks,
Katie

Katie Morrison
Communications Assistant
Accrediting Council for Independent Colleges and Schools
750 First Street, NE | Suite 980 | Washington, DC 20002
www.acics.org | 202.336.6780 - p | 202.842.2593 - f

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The ACICS Annual Conference and Business Meeting
November 3-5, 2014
New Orleans, Louisiana
Click here to Register TODAY

GLOBE UNIVERSITY

8147 Globe Drive
Woodbury, MN 55125
Phone: (651) 332-8000
Fax: (651) 332-8002
www.globeuniversity.edu

July 23, 2014

Accrediting Council for Independent Colleges and Schools
Attn: Anthony S. Bieda, Vice President for External Affairs
750 First Street NE, Suite 980
Washington, DC 20002-4223

RE: Globe University [ID 00015232]

BY ELECTRONIC MAIL ONLY

Dear Mr. Bieda,

Globe University (Globe) has received your letter dated July 15, 2014 requesting an update regarding two adverse inquiries related to legal matters involving Globe and hereby submits this written response as requested by the Council.

On October 2, 2013, a Class Action Complaint and Jury Demand was filed against Globe University, Inc., on behalf of five former and current students alleging: 1) violation of the Minnesota Prevention of Consumer Fraud Act; 2) violation of the Minnesota Unlawful Trade Practices Act; 3) violation of the Minnesota Deceptive Trade Practices Act; 4) false advertising; and 5) unjust enrichment. On May 9, 2014, Plaintiffs voluntarily dismissed the Class Complaint pursuant to Rule 41 of the Minnesota Rules of Civil Procedure. In an effort to avoid the cost, expense, and uncertainty of litigation, the parties are exploring informal resolution of the claims asserted in the Class Complaint.

On August 14, 2013, a Washington County jury found Globe liable for a whistleblower complaint filed by former employee Ms. Heidi Weber. On February 11, 2014, the court denied Globe's post-trial motions for a new trial and remittitur, upheld the damages awarded in the jury's verdict totaling approximately $395,000, and awarded the plaintiff approximately $510,000 for legal fees resulting in a total judgment of approximately $905,000. On June 17, 2014, Globe filed with the Minnesota Court of Appeals our Brief and Addendum of Appellant, and on July 17, 2014 a Respondent's Brief was filed by the plaintiff. As of the date of this update, our attorneys are drafting our reply which is due July 28, 2014. A hearing date has not been set by the Minnesota Court of Appeals.

On July 22, 2014, Dr. Mitchell Peterson informed the Council of a lawsuit filed against Globe by the Minnesota Attorney General. Per a request from Dr. Al Gray, we also provided a copy of the Attorney's General's filing for review. We are in the process of reviewing the complaint and will provide similar updates upon request from the Council.

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If you have any further questions or concerns regarding any of these legal matters, please contact me directly.

Sincerely,

(b)(6)

Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Mitchell Peterson, Director of Institutional Quality and Effectiveness

July 15, 2014

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Ms. Herrmann and Mr. Peterson:

This letter is a request for updated information regarding the planned appeal of the lawsuit by Ms. Heidi Weber in the Washington County Court which resulted in a judgment against your institution in February 2014.

In addition, please provide the Council with an update regarding the class-action suit filed by five current and former students against Globe University Inc.

Please provide the Council with an update regarding these issues by **July 25, 2014.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

750 First Street, NE, Suite 980 • Washington, DC 20002-4223 • t - 202.336.6780 • f - 202.842.2593 • www.acics.org

ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS

July 15, 2014

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Mr. Mitchell Peterson
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

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In addition, please provide the Council with an update regarding the class-action suit filed by five current and former students against Globe University Inc.

Please provide the Council with an update regarding these issues by **July 25, 2014.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

GLOBE UNIVERSITY

8147 Globe Drive
Woodbury, MN 55125
Phone: (651) 332-8000
Fax: (651) 332-8002
www.globeuniversity.edu

March 20, 2014

Accrediting Council for Independent Colleges and Schools
Attn: Anthony S. Bieda, Vice President for External Affairs
750 First Street NE, Suite 980
Washington, DC 20002-4223

RE: Globe University [ID 00015232]

BY ELECTRONIC MAIL ONLY

Dear Mr. Bieda,

Globe University (Globe) has received your letter dated March 7, 2014 requesting an update regarding two adverse inquiries related to legal matters involving Globe and hereby submits this written response as requested by the Council.

On October 2, 2013, a Class Action Complaint and Jury Demand was filed against Globe University, Inc., on behalf of five former and current students alleging: 1) violation of the Minnesota Prevention of Consumer Fraud Act; 2) violation of the Minnesota Unlawful Trade Practices Act; 3) violation of the Minnesota Deceptive Trade Practices Act; 4) false advertising; and 5) unjust enrichment. Globe believes these claims to be baseless and without merit, and we intend to vigorously defend the reputation of our schools. Please note our enrollment agreement, signed by each of the plaintiffs, requires our students to pursue our internal dispute resolution process, and if unsuccessful, to submit the matter to arbitration. Globe has agreed to participate in mediation in an effort to reduce the legal cost required to defend the complaint in court and/or proceed with arbitration. To date, there has been one mediation session in person and a follow up session via phone. Notably, the mediator has expressed his opinion that the arbitration clause in our enrollment agreement will be upheld by the court. As we continue to participate in mediation, no formal response has been filed with the court. Globe believes if we are not able to resolve the matter through mediation, each of the plaintiffs will be required to pursue arbitration individually and the class action complaint will be dismissed.

On August 14, 2013, a Washington County jury found Globe liable for a whistleblower complaint filed by former employee Ms. Heidi Weber. On February 11, 2014, the court denied Globe's post-trial motions for a new trial and remittitur, upheld the damages awarded in the jury's verdict totaling approximately $395,000, and awarded the plaintiff approximately $510,000 for legal fees resulting in a total judgment of approximately $905,000. As of the date of this correspondence, the judgment has not been entered against Globe. Once the judgment has been formally entered, Globe intends to file a motion with the

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court requesting the judgment be stayed pending the outcome of our appeal. Our attorneys are currently preparing our motion to appeal the verdict; our deadline to file the appeal is 60 days from the date judgment has been entered.

Both of these lawsuits have been filed against Globe by the same law firm. Globe remains confident that our schools are fully compliant with applicable federal and state laws, regulations established by the US Department of Education, and the requirements of our accreditors.

We'd like to also take this opportunity to remind you Mitchell Peterson has assumed the responsibilities previously held by Milissa Becker.

If you have any further questions or concerns regarding either of these legal matters, please contact me directly.

Sincerely,

(b)(6)

Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Mitchell Peterson, Director of Institutional Quality and Effectiveness

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March 7, 2014

ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Ms. Milissa Becker
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Messrs. Herrmann and Becker:

This letter is a request for updated information regarding the lawsuit by Ms. Heidi Weber in the Washington County Court which resulted in a judgment against your institution in February 2014. If the institution is not planning to appeal the decision, please indicate the remedial actions initiated by Globe University Inc. in response to the findings.

In addition, please provide the Council with an update regarding the class-action suit filed by five current and former students against Globe University Inc.

Please provide the Council with an update regarding these issues by **March 21, 2014.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President for External Affairs

March 7, 2014 ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Ms. Milissa Becker
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Messrs. Herrmann and Becker:

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In addition, please provide the Council with an update regarding the class-action suit filed by five current and former students against Globe University Inc.

Please provide the Council with an update regarding these issues by **March 21, 2014.** Until these matters are resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President for External Affairs

GLOBE UNIVERSITY

8089 Globe Drive
Woodbury, MN 55125
Phone: (651) 730-5100
Fax: (651) 730-5151
globeuniversity.edu

November 8, 2013

Accrediting Council for Independent Colleges and Schools
Attn: Anthony S. Bieda, Vice President for External Affairs
750 First Street NE, Suite 980
Washington, DC 20002-4223

RE: Globe University [ID 00015232]

BY ELECTRONIC MAIL ONLY

Dear Mr. Bieda,

Globe University (Globe) has received your letter dated October 22, 2013 regarding two adverse inquiries related to legal matters involving Globe and hereby submits this written response as requested by the Council.

On October 2, 2013, a Class Action Complaint and Jury Demand was filed against Globe University, Inc., on behalf of five former and current students alleging: 1) violation of the Minnesota Prevention of Consumer Fraud Act; 2) violation of the Minnesota Unlawful Trade Practices Act; 3) violation of the Minnesota Deceptive Trade Practices Act; 4) false advertising; and 5) unjust enrichment. Globe believes these claims to be baseless and without merit, and we intend to vigorously defend the reputation of our schools. We are in the process of determining our legal defense strategy with our external legal counsel and have received an extension of time to respond to this complaint. Our attorneys have been negotiating with the attorney for the plaintiffs, but no formal response has been filed with the court. Please note our enrollment agreement, signed by each of the plaintiffs, requires our students to pursue our internal dispute resolution process, and if unsuccessful, to submit the matter to arbitration. Globe believes if we are not able to resolve the matter amicably without further litigation, each of the plaintiffs will be required to pursue arbitration individually.

On August 14, 2013, a Washington County jury found Globe liable for a whistleblower complaint filed by former employee Ms. Heidi Weber. The judgment against Globe has been stayed pending the outcome of our post-trial motions. Globe has filed Defendant's Memorandum in Support of Motion for New Trial or Remittitur (see attached Exhibit A) and Defendant's Memorandum in Support of Motion for Judgment as a Matter of Law (see attached Exhibit B). A hearing is scheduled to argue these motions on November 15, 2013; the judge will have 90 days after the hearing to rule on those motions. Should the judge deny Globe's motions, it is our intention to appeal the matter in appellate court.

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Both of these lawsuits have been filed against Globe by the same law firm. Globe remains confident that our schools are fully compliant with applicable federal and state laws, regulations established by the US Department of Education, and the requirements of our accreditors.

If you have any further questions or concerns regarding either of these matters, please contact me directly.

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Kenneth J. McCarthy
Chief Financial Officer
Globe University/Minnesota School of Business
Broadview Institute, Inc.
8147 Globe Drive
Woodbury, MN 55125
(651) 332-8010 direct
(651) 332-8002 fax

Cc: Jeanne Herrmann, Chief Operating Officer
Milissa Becker, Director of Operations

Attachments: Exhibit A – Globe Weber – Defendant's Memo in Support of Motion for New Trial or Remittitur 10-18-13
Exhibit B – Globe Weber – Defendant's Memo in Support of Motion for Judgment as a Matter of Law 10-18-13

PRIVILEGED AND CONFIDENTIAL

October 22, 2013 ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Ms. Milissa Becker
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

Dear Mss. Herrmann and Becker:

Thank you for informing the Council about the five current and former students who have filed a class-action suit against Globe University Inc., alleging that the institution "systematically and deliberately" mislead students into enrolling, misrepresented job-placement rates, expected starting salaries of graduates, and the transferability of its credits.

In addition, the Council has been informed that on August 15, 2013, a Washington County jury ordered Globe University in Woodbury to pay $395,000 to Ms. Heidi Weber, a former dean who said she was fired for complaining about unethical practices at the institution.

The Council is required to review any adverse information regarding an institution once such information becomes known. Please provide this office with a written response to this information, including copies of appropriate materials to support your statements. The two adverse inquiries can be fulfilled with a single response. The Council will expect your response on or before **November 8, 2013.**

Your immediate attention to this matter is appreciated. If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President for External Affairs

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October 22, 2013 ID Code 00015232

VIA E-MAIL ONLY

Ms. Jeanne Herrmann
Chief Operating Officer
Globe University/Minnesota School of Business
2008 Paris Alcove North
West Lakeland, MN 55082

Ms. Milissa Becker
Director of Operations
Globe University
8089 Globe Drive
Woodbury, MN 55125

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http://www.startribune.com/local/219803781.html

whistleblower lawsuit against Globe University

- Article by: MAURA LERNER , Star Tribune
- Updated: August 15, 2013 - 11:19 PM

Heidi Weber accused the for-profit school of dismissing her for exposing unethical practices.

A jury has ordered Globe University in Woodbury to pay $395,000 to a former dean who said she was fired for complaining about unethical practices at the for-profit school.

Heidi Weber, 46, had sued the school for violating a state whistleblower law after she was fired in 2011 as dean of the medical assistant program. She had accused the school of using falsified job placement numbers and other questionable tactics to mislead prospective students.

Following a weeklong trial, a Washington County jury ruled Thursday that Globe had fired Weber after she made “good faith reports” of suspected violations of law.

She was awarded $205,000 for lost wages and $190,000 for emotional distress. Her lawyer, Clayton Halunen, said that Weber felt vindicated by the verdict. “Her only interest in bringing the lawsuit was really to expose what she observed was going on at Globe,” he said. “Evidence came out about how they lie about placement rates, lie about salary ranges, lie about its accreditation.”

Globe’s lawyer, Matthew Damon, said the school is considering an appeal. “Globe’s position is that she was terminated for performance and a lack of leadership,” he said. He denied that any fraud occurred, saying that some of the job placement numbers were reported in error. “Every single time one of those discrepancies has been brought to our attention, we’ve addressed it,” he said.

Weber, who lives in Stillwater, became dean of Globe’s medical assistant program in February 2010. She maintained in her lawsuit that she was fired just over a year later for repeatedly raising concerns that students were being deceived.

Among the allegations was that the school published false job-placement rates for its graduates; failed to provide adequate training at medical sites; and paid admissions staff commissions to boost enrollment.

Weber has been unable to get a job since she was fired in April 2011, according to Halunen.

“What Heidi Weber reported was that the school was engaged in fraudulent conduct,” he said. “Their only concern … is to enroll as many students as possible.” He said he hoped the verdict “is going to expose them to more scrutiny.”

Damon said the trial did not prove those allegations to be true. “There’s a big difference between a mistake and a fraud,” he said.

Damon said the jury may have been swayed by “a lot of irrelevant and prejudicial evidence” from two witnesses who testified about what he called unrelated issues. Globe has 30 days to file an appeal.

Another former Globe employee, Jeanne St. Claire, has sued the school for allegedly firing her after she complained that it was “greatly exaggerating” its job-placement rate. St. Claire was the dean of business from 2009 until October 2011. Her lawsuit is pending.

The jury’s award follows several years of mounting pressure for accountability from for-profit schools. A 2012 report by U.S. Sen. Tom Harkin, D-Iowa, criticized almost every aspect of the for-profit college industry, whose schools educate nearly 2 million students nationwide, including tens of thousands in Minnesota.

The U.S. Education Department now requires schools to document whether students can find jobs that allow them to repay federally guaranteed student loans.

Globe and its affiliate, Minnesota School of Business, have 11 campuses in Minnesota, Wisconsin and South Dakota. It’s part of the Globe Education Network, a group of for-profit career schools with more than 11,000 students.

Maura Lerner • 612-673-7384

http://newsle.com/article/0/87650807/

MPR News Intelligence on higher education

Globe-MSB attorney scrutinizes whistleblower's account

Alex FriedrichAugust 8, 2013, 3:34 PMAug 8, 20130

<img src="http://publicradio1.wpengine.netdna-cdn.com/oncampus/files/2013/08/globe-university1_39.jpg" alt="Globe-MSB" title="" width="267" height="197" class="size-full wp-image-27824"
itemprop="image"/>

A different picture of the former dean (MPR Photo / Tim Post)

Today **Globe University / Minnesota School of Business** attorney Matthew Damon continued his cross-examination of Heidi Weber, the former medical-assistant network dean who has filed a whistleblower lawsuit against the school.

Over the past couple of days, Weber has recounted her time at Globe – including the practices she saw that she considers unethical, and her concerns over the quality of the education at the school.

She spent a lot of time describing how Globe had failed to tell students about its plans to switch to a less rigorous accrediting agency — plans she says she opposed. She also said it failed to notify students in a timely manner that felony criminal convictions could prevent them from getting hired. And she says Globe failed to provide students with required externships — yet continued to enroll them — and inflated job-placement data.

She says she warned Globe executives repeatedly about her concerns, but that they ignored her reports. She says they eventually fired her for speaking out.

Attorneys from both sides are under a gag order, so they can't comment on the case.

But Damon, Globe's attorney, seemed to focus his cross-examination on several main areas:

Globe's warnings about the impact of criminal convictions on students. Damon showed excerpts of Globe publications available to students — such as the student handbook — that discussed the potential impact of felony convictions. Weber said students received those only after enrolling. But Damon said the enrollment agreement was nonbinding. He suggested students could have read the materials, and if they'd realized their criminal convictions prevented them from practicing in the field, pulled out of the program and received a refund of their application fee.

"You don't have to go to college," he said. "You can look at the student handbook and decide not to go."

Weber's credibility. Damon questioned her performance in the company. He asked Weber whether she remembered being late to several meetings or conference calls, having an argument in public with a Globe colleague, or missing a class she was supposed to help teach. Weber said she recalled none of those situations, and had no reprimands or reports about those in her file.

Damon presented emails suggesting Globe executives were dissatisfied with how Weber was handling a decision by Allina Health to stop offering externships to Globe medical-assistant students.

At the time of the emails, Globe was attempting to repair its relationship with Allina. Globe Chief Operating Officer Jeanne Herrmann wrote in one email to Weber and Karan Krna, who was chief compliance officer at the time, that the lack of externships represented "a crisis situation. … We have let this go on way too long. Our students are suffering, and this is unacceptable."

Herrmann also wrote in an email to Krna that Weber had not been communicating properly with her colleagues on the matter.

"I'm at the end of my rope with her!" she wrote.

In Damon's questioning and discussion of company emails, he appeared to suggest that Weber was involved in the very actions and decisions that she has been criticizing.

Weber has testified that she opposed the accreditation move and had issues with the quality of Globe's program. But excerpts from several documents and correspondence Damon presented suggest that Weber thought Globe had a high-quality program, that she supported the change to a new accrediting agency, and that she tried to convince others that the change was a good one.

In one piece of correspondence, Weber wrote, "I'm glad that you were able to (convince Allina) that we are a solid school and program." In another, Damon's questioning suggests, Weber appears to be stressing the qualifications of Globe's instructors.

When jurors examine those emails they'll have to consider whether Weber opposed Globe's practices but obeyed orders to stay employed — "I did what I was told" she said at one point — or fully supported Globe and only later complained when she started having problems at work.

At times Damon and Weber differed in how they interpreted documents and comments made in Globe's emails. And they sometimes sparred over whether documents or correspondence showed Weber had a hand in the crisis over externships.

Lack of harm. Although Weber says she received hundreds of calls about various problems, Damon pressed her about what he considered a lack of documentation of deception. She could not give him the names of students who suffered from Globe's practices — such as those who couldn't get jobs or externships. Weber responded that she knew of student problems from company reports and day-to-day conversations. Damon also said that data such as job-placement rates — which Weber says the school distorted — never made it into the school's advertising campaigns, presentations or website.

He also questioned the methodology she used to assess things such as the industry standard regarding when schools should make criminal background checks of its students.

Lack of regulations. Damon pressed Weber on what state and federal laws governed when Globe must conduct criminal background checks of students. He said no such laws existed. He also differed with Weber on how to interpret accrediting agency regulations, and suggested they prevented Globe from informing students that they were switching to the new accreditor.

Attorneys say the trial could extend into Tuesday.

STATE OF MINNESOTA

COUNTY OF WASHINGTON

DISTRICT COURT

TENTH JUDICIAL DISTRICT

CASE TYPE: EMPLOYMENT DISCRIMINATION

Heidi Weber,

Plaintiff,

vs.

Minnesota School of Business, Inc. d/b/a Globe University,

Defendant.

Court File No. 82-CV-12-2797
Hon. Thaddeus V. Jude

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT AS A MATTER OF LAW

INTRODUCTION

Through the seven-day trial in this matter, Plaintiff Heidi Weber ("Weber") rode the sympathy of an understandably confused jury to a liability verdict, using her own job-related policy disagreements as a placebo for the good faith reports of legal violations she was supposed to prove under the Minnesota Whistleblower Act ("MWA"). As Weber testified, she raised several concerns about the Medical Assisting program she was expected to lead. But, when that testimony is examined carefully, it is clear she presented no evidence that she engaged in protected activity under the MWA, or that she was terminated for such activity. In simple terms, she neither tried nor succeeded proving she was a "whistleblower" within the meaning of Minnesota law, and it was erroneous for the jury to find otherwise. The Court should enter judgment as a matter of law in MSB's favor.

MSB recognizes that the jury here had an extraordinarily difficult task: understanding complicated statutory language, itself the subject of multiple appellate decisions, and applying it to Weber's vague, unclear, and at times contradictory testimony. Under these circumstances, the

jury's confusion was understandable. It is not, however, legally defensible. Nor is it unique: in numerous Minnesota whistleblower cases, juries have been unable to discern the legally relevant facts and found in favor of employees, requiring the district court or appellate courts to correct erroneous verdicts. This is precisely the situation in which this Court finds itself now. For better or worse, and while it must give due respect to the jury's findings, it is the Court's responsibility to ensure that the jury's verdict—clearly unsupported by the evidence at trial—be set aside.

FACTUAL AND PROCEDURAL BACKGROUND

Weber was Network Dean of the Globe Education Network's ("GEN") Medical Assisting Program ("MA program"). In that role, Weber was responsible for leading the program across the entire network.[1] (Affidavit of Jeremy D. Robb, Ex. A, excerpts from Trial Transcript (hereinafter the Trial Transcript is referred to as "T."), 143:1-4; Ex. 45.[2]) The position required Weber to support over twenty campuses which, in total, enrolled approximately 1800 MA students at any one time and graduated between 200 and 250 students each quarter. (T. 148:1-2; 162:13-163:6, 169:12-170:7, 533:15-534:2, 540:10-544:3; Ex. 45.) These campuses trained students in the field of medical assisting, which involves the performance of administrative and clinical duties in a health care setting. (Ex. 41 at MSB-Weber002486.)

As discussed in greater detail below, during her tenure as Network Dean, Weber worked on a number of issues affecting the MA program, including the development of background check processes, the revision of felony disclosure statements, development of adequate externship opportunities for students, a change in programmatic accreditors, and audits in preparation for accreditation visits. In working on these issues, Weber regularly collaborated

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[1] MSB is one of several institutions that are part of the GEN.
[2] Ex. 45 is Weber's signed Network Dean job description and policy acknowledgments.

with GEN's leadership, including her supervisor and former Network Director of Program Development Lolita Keck ("Keck"), former Chief Compliance Officer Karan Krna ("Krna"), former Chief Academic Officer Dr. Michele Ernst ("Ernst"), Provost Dr. David Metzen ("Metzen"), Chief Operating Officer Jeanne Herrmann ("Herrmann"), and former Vice President of Operations Jeffrey Myhre ("Myhre"). Occasionally, Weber had disagreements with these individuals and other GEN employees regarding these issues. None of these professional disagreements involved statutorily protected reports or complaints of illegal conduct under any law.

Over Weber's tenure as Network Dean, many of the campus and field personnel she supported lost confidence in her leadership because she provided inaccurate information about program-related issues, failed to provide the expected support to the campuses, and did not respond to communications from campus and field personnel. (T. 974:1-14; 982:1-983:22; 1022:5-1025:1, 1083:10-15, 1084:20-1085:4, 1108:9-21, 1221:9-1231:4; Ex. 298, 302.) Ultimately, MSB executives made the judgment that Weber was not capable of effectively leading the MA Program, and that MSB therefore needed to make a change. (T. 1083:17-1, 1084:20-1085:4, 1108:9-21.) Consequently, Weber's employment was terminated. (*Id.*)

Initially, Weber asserted four claims against MSB: (1) violation of the Minnesota Whistleblower Act ("MWA"), Minn. Stat. § 181.932; (2) wrongful discharge in violation of public policy; (3) wrongful inducement; and (4) defamation. (Am. Compl. ¶¶ 29-53.) MSB moved for summary judgment on all four claims, which this Court denied. (Feb. 27, 2013 Order.) Prior to trial, however, Weber voluntarily dismissed her wrongful inducement and defamation claims. (May 10, 2013 Order.) At trial, and with the Court's approval, Weber abandoned her

public policy discharge claim and proceeded on her MWA claim alone.[3] (*See generally*, Jury Instructions & Special Verdict Form.) MSB's motions for judgment at the close of Plaintiff's case, and at the close of evidence, were both denied by the Court. Despite the lack of evidence to support its findings, the jury determined that MSB had violated the MWA and awarded Weber $394,977.00 in damages.

ARGUMENT

I [redacted]

In considering whether to grant a motion for JMOL,[4] the district court evaluates "whether the verdict is manifestly against the entire evidence or whether despite the jury's findings of fact the moving party is entitled to judgment as a matter of law." *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 864 (Minn. 2003) (quotation omitted). The district court must view the evidence in the light most favorable to the non-moving party. *Id.* JMOL is appropriate when the jury's findings are contrary to the applicable law or when the evidence cannot sustain a special verdict. *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990). Applying these standards, Minnesota appellate courts have reversed jury verdicts in favor of purported whistleblowers, instead granting JMOL in favor of their employers, because the evidence adduced at trial was not sufficient to support the verdict. *See, e.g.*, *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 227, 229-30 (Minn. 2010); *Obst v. Microtron, Inc.*, 614 N.W.2d 196, 202 (Minn. 2000); *Cokley v. City of Otsego*, 623 N.W.2d 625, 630 (Minn. Ct. App. 2001), *review denied* (Minn. May 15, 2001).

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[3] To clarify the record, MSB respectfully requests that the Court enter an order dismissing Weber's public policy discharge claim with prejudice.

[4] In 2006, Minnesota Rule of Civil Procedure 50 was amended to eliminate the terms "judgment notwithstanding the verdict" or "JNOV" and "directed verdict" and to use the all-encompassing term "judgment as a matter of law" or "JMOL." For consistency's sake, MSB will use the term JMOL throughout this brief, even for decisions that used the term "JNOV" or "directed verdict."

I. [redacted]

Minnesota recognizes at-will employment, which allows an employer to dismiss an employee without cause at any time. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627 (Minn. 1983). Where the employee proves all of the required elements, the MWA provides an exception to at-will employment. Minn. Stat. § 181.932 (2012). The applicable version of the statute[5] provides that an employer shall not discharge an employee because "the employee … in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer." *Id.*, subd. 1(1). As Weber has conceded, she was an at-will employee; as such, MSB cannot be held liable for terminating her unless she has proven by a preponderance of the evidence that she was terminated in violation of the MWA. (*See* T. 342:21-345:22; Ex. 45). Even when the evidence is viewed in the light most favorable to Weber, it is insufficient to meet her evidentiary burden.

A claim under the MWA may be established through direct or indirect evidence. *Wood v. SatCom Mktg., LLC*, 705 F.3d 823, 828 (8th Cir. 2013). "[D]irect evidence is evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action." *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004) (internal quotation marks and citation omitted). Weber has produced no direct evidence of retaliation, so she must prove her claim using the *McDonnell-Douglas* burden shifting method. *See McGrath v. TCF Bank Sav., FSB*, 502 N.W.2d 801, 805 (Minn. Ct. App. 1993) (applying *McDonnell-Douglas* to MWA claim), *aff'd as modified*, 509 N.W.2d 365 (Minn. 1993).

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[5] The Minnesota legislature amended the MWA during its last session. 2013 Minn. Laws 83. However, the amendments were not effective until May 25, 2013, well after the events at issue here. *Id.* As such, the amendments are not applicable to this proceeding, as the Court correctly ruled during trial. (T. 819:18-20.)

Initially, Weber must establish a *prima facie* claim of retaliation by showing that: (1) she engaged in statutorily protected activity; (2) MSB took an adverse employment action against her; and (3) a causal connection exists between her statutorily protected activity and MSB's adverse employment action. *See Gee v. State Colls. & Univs.,* 700 N.W.2d 548, 555 (Minn. Ct. App. 2005); *Cokley*, 623 N.W.2d at 630. If Weber establishes a *prima facie* case, the burden shifts to MSB to articulate a legitimate, nonretaliatory reason for its action. *Cokley*, 623 N.W.2d at 630. The burden thereafter returns to Weber, who must produce evidence sufficient to demonstrate that MSB's articulated reasons are pretextual, and the real reason for the action was unlawful retaliation. *Id.* The evidence adduced at trial, however, is wholly insufficient to establish a *prima facie* case of retaliation, let alone for Weber to carry her ultimate burden of proving that MSB terminated her for engaging in protected activity.

Plaintiffs' jury verdicts under the MWA have proven difficult to sustain on appeal. Over the last twenty years, the supreme court and court of appeals have decided several cases by either instructing the district court to grant JMOL in favor of the employer or affirming the district court's grant of JMOL for the employer. In *Cokley*, for example, the supreme court held that the district court erred by failing to grant JMOL where the plaintiff "did not engage in protected activity and failed to present evidence beyond speculation to show any causal link between the concerns she expressed and the decision to eliminate her position." 623 N.W.2d at 634. In another instructive case, *Kidwell*, the court of appeals overturned a jury verdict for $197,000 in the employee's favor, and the supreme court affirmed, holding that the employee had not offered evidence from which a reasonable jury could conclude that the employee engaged in protected conduct. 784 N.W.2d at 221. Specifically, the supreme court found that the employee did not make a "report" to expose an illegality, but had instead acted to provide advice to his client as

part of his normal job duties as in-house counsel. *Id.* at 230. And in *Obst v. Microtron*, the court of appeals overturned yet another jury verdict in the employee's favor, and the supreme court again affirmed, concluding that the employee failed to establish that his reports implicated a violation or suspected violation of an actual law. 14 N.W.2d 196, 204-05 (2000). Still other cases have affirmed the district court's decision to grant JMOL in favor of the employer. *See, e.g.*, *Schwarzrock v. Remote Techs., Inc.*, A10-473, 2011 Minn. App. Unpub. LEXIS 49, at *21 (Minn. Ct. App. Jan. 11, 2011) (holding that district court did not err in granting JMOL to employer where employee's report was not made to expose an illegality). These decisions reflect an appellate recognition of the MWA's complexity for juries, and the higher courts' expectation that district courts will take pains to assure all legally required elements have been sufficiently proven before a plaintiff's verdict is sustained. In light of this caselaw, the jury's verdict in favor of Ms. Weber is unlikely to stand, and judgment in favor of MSB should be granted.

A. Weber Did Not Report Good Faith Violations or Suspected Violations of Any Federal or State Law

To establish that she made a good faith report of a violation or suspected violation of federal or state law, Weber must first show that she made a report. *See* Minn. Stat. § 181.932, subd. 1(1). A report involves "(1) … mak[ing] or present[ing] … an official, formal, or regular account of or (2) … relat[ing] or tell[ing] about" an actual or suspected violation of federal or state law. *Gee*, 700 N.W.2d at 555. Minnesota courts have clearly identified the parameters of a report under the MWA, which at the very least requires that Weber produce evidence not only that she was aware of facts that purportedly constituted an illegality, but also that she communicated those facts to her employer. *See id.* A report is not a comment or statement that "merely express[es] [Weber's] dissatisfaction with [MSB's] conduct and policy[.]" *Hitchcock v. FedEx Ground Package Sys.*, 442 F.3d 1104, 1106 (8th Cir. 2006). Nor is a report a

"[n]onspecific reference[] to past practices." *Cokley*, 623 N.W.2d at 631. A report also is not "the mere mention of a suspected violation already acknowledged by one's employer." *Donahue v. Schwegman, Lundberg, Woessner & Kluth, P.A.*, 586 N.W.2d 811, 813 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999), *abrogated on other grounds by Anderson-Johanningmeier v. Mid-Minnesota Women's Ctr., Inc.*, 637 N.W.2d 270 (Minn. 2002). Even when the evidence is viewed in the light most favorable to the verdict, it is clear that Weber's statements, concerns, and conjectures did not amount to "reports" under the MWA.

Next, even if Weber made a report, she must show she did so in "good faith," as that term has been interpreted by the courts. *Obst*, 614 N.W.2d at 202. Although the question of "[w]hether a plaintiff made a report in 'good faith' is a question of fact," a court may determine as a matter of law that certain actions were not taken in good faith and therefore do not constitute protected activity. *Rothmeier v. Inv. Advisers, Inc.*, 556 N.W.2d 590, 593 (Minn. Ct. App. 1996.) Good faith is determined by analyzing the report's content and the plaintiff's purpose, with "the central question [being] whether the report[] [was] made for the purpose of blowing the whistle, i.e., to expose an illegality." *Obst*, 614 N.W.2d at 202. Specifically, for a report to have been made in good faith, it must have been "made for the purpose of exposing an illegality and not a vehicle, identified after the fact, to support a belated whistle-blowing claim." *Id.*

Minnesota courts have identified a number of factors informing the determination whether a report has been made in good faith. First, when the employee is making the report as part of an assigned job duty, she is unlikely to be doing so for the purpose of reporting an illegality. *Kidwell*, 784 N.W.2d at 227, 229-30. Second, when a report is made to individuals with whom the employee ordinarily works, it is less likely that the employee's purpose in making a report was to expose illegality. *See id.* Finally, when the employer was well aware of

the alleged violation at the time the report was made, it is also unlikely that the report was made in good faith since it is "difficult, if not impossible, to say that at the time the reports were made, [the plaintiff's] purpose was to expose an illegality." *Obst*, 614 N.W.2d at 202. In fact, at some point, once the employee has herself raised her concerns to several individuals in several fora, "we must simply declare the whistle blown." *Wood*, 705 F.3d at 829. When the evidence is examined in the light most favorable to Weber, it is clear that her so-called "reports" were not made in good faith: they involved topics that fell within her job duties, were made to other leaders with whom she regularly interacted, and involved concerns that had been identified on numerous occasions by Weber and others.

Finally, even if Weber establishes that she made actionable "reports," and that she did so in "good faith"—which she did not—she must also prove that in doing so, she identified facts which, if true, would have constituted a violation of an actual federal or state law. *Kratzer*, 771 N.W.2d at 19. If no state or federal statute or regulation prohibits the reported conduct, there can be no statutorily protected activity. *See, e.g.*, *id.* at 20 (no statutorily protected conduct where no law required disclosure of commission agreement); *Obst*, 614 N.W.2d at 204 (no statutorily protected conduct where no law required manufacturing plan to be followed and customer to be notified of deviation from the plan); *Hedglin v. City of Willmar*, 582 N.W.2d 897, 902 (Minn. 1998) (no statutorily protected conduct where no law prohibited firefighters from "showing up at fire calls while drunk"). Nor does a report of conduct that the employee erroneously believes to violate a state or federal law amount to protected activity. *Kratzer*, 771 N.W.2d at 22-23.

Weber contends that she made "reports" of actual or suspected violations of the Accrediting Bureau of Health Education Schools ("ABHES") standards, Title IV financial aid regulations, and the Minnesota consumer protection statutes. 34 C.F.R. §§ 668.71-.72; Minn.

Stat. §§ 325D.44, 325F.67. However, to the extent that Weber reported facts that, if true, would have violated the ABHES standards or the Title IV regulations, those reports are not actionable under the MWA because as Weber admits, ABHES is not a governmental body, and ABHES accreditation standards are not laws. *See Kratzer*, 771 N.W.2d at 20; *Obst*, 614 N.W.2d at 204; *Hedglin*, 582 N.W.2d at 902; (T. 418:24-419:3.)

Further, the federal Title IV financial aid regulations merely enumerate the circumstances under which the Secretary of Education may take emergency action against "an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates." 34 C.F.R. §§ 668.71(a), 668.83. As such, this regulation "is not a mandate in the penal or regulatory sense of the word," but merely imposes conditions necessary to receive a federal benefit. *Nichols v. Metro. Ctr. for Indep. Living, Inc.*, 50 F.3d 514, 517 (8th Cir. 1995). Nonetheless, as MSB explains below, even if reports implicating these provisions were actionable, Weber has failed to provide evidence she reported facts that, if true, would have constituted a violation.

Weber has cited only two laws—the Minnesota deceptive trade practices and false advertising statutes—regarding which she could have reported actual or suspected legal violations. Minn. Stat. §§ 325D.44; 325F.67. To establish that she reported a violation or suspected violation of the Minnesota Deceptive Trade Practices Act ("MDTPA"), Minn. Stat. § 325D.44, Weber must have adduced specific evidence she reported facts that, if true, would show: (1) MSB engaged in conduct prohibited by the statute and (2) MSB's wrongful conduct caused damage to an individual. *Ford Motor Credit Co. v. Majors*, No. A04-1468, 2005 Minn. App. LEXIS 448, at *8-9, 19-21 (Minn. Ct. App., May 3, 2005). To establish a violation of the Minnesota False Advertising Act ("MFAA"), Minn. Stat. § 325F.67, Weber must have adduced

specific, admissible evidence she reported facts that, if true, would show: (1) MSB published a false or misleading advertisement; (2) MSB published the false or misleading advertisement with an intent to mislead; and (3) an individual was damaged. *See LensCrafters, Inc. v. Vision World, Inc.*, 943 F. Supp. 1481, 1491 (D. Minn. 1996); *Ford Motor Credit*, 2005 Minn. App. LEXIS 448, at *10.

Moreover, for this Court to conclude that Weber reported facts that, if true, would have amounted to a violation of these statutes, she must have offered some particularity regarding the circumstances constituting a violation. *See Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 182 (Minn. Ct. App. 2012), *review denied* (Minn. Apr. 25, 2012). Specifically, to establish a report of facts that, if true, would have violated the MDTPA or the MFAA, Weber had to, at a minimum, present evidence that she reported to MSB the "who, what, when, where, and how: the first paragraph of any newspaper story." *Id.* at 184 (quotation omitted). Stated another way, Weber must have adduced evidence that, at the very least, she informed MSB of (1) who made the alleged misrepresentation; (2) what misrepresentation was allegedly made; (3) under what circumstances the alleged misrepresentation was made; and (4) what was obtained by MSB as a result of the misrepresentation. *See id.* The evidence adduced at trial—even when it is read in the light most favorable to the verdict—shows that Weber did not report this basic information to MSB. Consequently, she failed to prove she reported facts that, if true, would have amounted to a violation of the MDTPA or the MFAA.

In opposition to summary judgment and at trial, Weber has been utterly unable to present evidence that, when read in the light most favorable to her, would be sufficient to prove that she engaged in protected activity. *See Langeslag*, 664 N.W.2d at 864 (articulating standard for JMOL); *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (articulating standard for summary

judgment). Once summary judgment on Weber's whistleblower claim was denied, it became the jury's confusing task to analyze whether Weber's myriad concerns and disagreements amounted to (1) reports, (2) made in good faith, and (3) actual or suspected violations of law. When the law and the evidence are logically examined against one another, however, it is clear as a matter of law that Weber failed to prove she was a whistleblower – despite the jury's confusion to the contrary.

1 [redacted]

Weber contends she lodged reports with members of MSB's leadership about MSB's policies and procedures regarding applicants and students with felony convictions. At trial, Weber conceded that MSB's enrollment application referred applicants to the Student Handbook, which explained that a felony conviction could affect employability in the health care field, and to the Catalog, which stated that students in some disciplines may be subject to a criminal background check. (T. 351:21-355:13; Exs. 235,[6] 236,[7] 237,[8] 239.[9]) Weber also acknowledged that, beginning with applications for Winter 2011, MSB's enrollment agreement included a specific felony disclosure statement directed toward MA program applicants. (T. 373:15-374:12;

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[6] Ex. 235 is an excerpt from MSB's 2009-2010 Student Handbook regarding felony disclosures. It states that, "[a] prospective student in a health science field who has not been found guilty of a felony or anyone who has pled guilty to a felony, may not be eligible to take certification examinations and may not be employable. Certifying boards and employing agencies may occasionally grant waivers to applicants. Moreover, different states have different laws regarding felonies and the impact on professional qualifications."

[7] Ex. 236 is an excerpt from MSB's 2010-2011 Student Handbook regarding felony disclosures. It contains the same language as Ex. 235.

[8] Ex. 237 is an excerpt from MSB's 2010 Catalog regarding criminal background checks. It states that "[a] student who is entering and completing a career program should be aware that future employers may elect, or be required, to do background investigations on prospective employees to determine if any criminal records exist. This most frequently occurs when a prospective employee will be involved in 'direct contact services' with clients or residents. Background checks may also be required for internships, externships, and practicums."

[9] Ex. 239 is an excerpt from MSB's 2011 Catalog regarding criminal background checks. It contains the same language as Ex. 237.

Ex.242.[10]). Herrmann also testified without contradiction that MSB opted to have students sign the felony disclosure statement at enrollment to ensure that they were apprised of the potential effect of a felony conviction on employability, but that MSB decided to perform background checks immediately prior to externship so that MSB could assure the externship site that the student did not have a disqualifying conviction. (T. 972:11-15.)

Nonetheless, Weber testified that she made the following reports regarding MSB's background check process and felony disclosure statements:

- During "all [her] reports," the dates and times of which she did not provide, Weber "[told] them [she was] getting all these complaints from the students and you need to be looking at this background check process." (T. 246:22-24.)

- During "the entire time [Weber] was dean, [she] gave input, made reports to change the wording [of the felony disclosure statement], to change the process, to change the timing of their background checks, felony disclosures." (T. 362:7-13.)

- During a March 2011 meeting with Provost David Metzen, Weber "talk[ed] about the background check process" and why MSB was waiting until a student's externship to perform a background check. (T. 636:25-637:3; 638:4-7.)

- During three meetings in April 2011 with various members of MSB's leadership, Weber discussed the "background check process." (T. 561:12-18.)

- On April 28, 2011, Weber sent an email to members of MSB's leadership, including her supervisor, Lolita Keck, former Chief Compliance Officer Karan Krna, and Chief Operating Officer Jeanne M. Herrmann, forwarding a message from the Washington County Public Defender's office regarding a student with a conviction, pointing out that she believed it was problematic to perform a background check immediately before the

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[10] Ex. 242 is an application for the Winter 2011 quarter which includes a "Felony Disclosure Statement" for "ALL Medical Assistant Students" that informs applicants that (1) a felony conviction could affect their ability to take the CMA examination or to be employed in the medical assisting field; (2) by signing the enrollment agreement, they are certifying that they have not been convicted of a felony within the last seven years; and (3) they will be subject to a background check at the appropriate time in the program.

> externship, requesting a meeting to discuss the issue, and stating "I think we need to rethink doing these checks at enrollment like several other schools are doing." (T. 396:22-402:13; Ex. 228.)

In all this vague testimony—which is Weber's most specific on the topic—Weber merely states the bald conclusion that she made "reports." This is very different from providing the jury with evidence of specific facts sufficient to establish "reports" under the MWA. Unfortunately, to prevail on her claim, Weber needed to adduce evidence from which the jury could conclude that she "provided an account of" something by communicating facts. Participating in revision of MSB's practices, or suggesting further changes be considered, are simply not "reports" under the MWA. *Hitchcock*, 442 F.3d at 1106. As such, there was no sufficient evidentiary basis for the jury to conclude that Weber met the particularity requirement for proving she engaged in protected activity. *See Gee*, 700 N.W.2d at 555.

Next, even if Weber's inexact testimony regarding conversations about MSB's background check process and felony disclosure statements could be considered evidence of "reports," it is clear that these reports were not made in good faith. Both Weber's testimony and the documentary evidence demonstrate that Weber consistently worked on issues related to the criminal backgrounds of MA program applicants and students; that she worked regularly and recurrently on those issues with several members of MSB's leadership team; that she expressed her opinions about MSB's criminal background check process and felony disclosure statements throughout her time at MSB—in several cases, effecting affirmative changes in MSB's practices; and that in some instances, she sent emails implicitly or explicitly defending the very same felony disclosure language and background check process that she claimed at trial to have

"reported" as unlawful. (*See* Exs. 201,[11] 211,[12] 213,[13] 266,[14] 270,[15] 300.[16]) Thus, because Weber's statements regarding MSB's background check process fell squarely within her job duties, were made within her normal channels of communication, and had been consistently raised for months—if not years—prior to her termination, they could not have been made for the purposes of exposing illegality. *Kidwell*, 784 N.W.2d at 227, 229-30; *Obst*, 614 N.W.2d at 202.

Furthermore, even if Weber's "reports" about background checks were made in good faith, they do not constitute reports of facts that, if true, would have amounted to a violation of federal or state law. Weber offered extensive testimony that she was concerned about MSB's felony disclosure statement and the criminal background check process, but she testified that she made only two alleged "reports": (1) she believed that MSB should conduct background checks for its MA students upon their enrollment in the program, and (2) she thought that the wording of MSB's felony disclosure statement should be changed. (T 246:22-247:3; 561:9-19; T. 396:22-

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[11] Ex. 201 is an August 2010 email exchange regarding the language in the felony disclosure statement including Weber and members of MSB's leadership, including Krna, Herrmann, Keck, and former Chief Academic Officer Michele Ernst. (T. 364:9- 374:12.)

[12] Ex. 211 is an October 22, 2010, email exchange that includes an email from Weber to members of MSB's leadership, including Herrmann, Krna, Keck, Ernst, and former Vice President Myhre, outlining the background check process for the MA program that Weber had developed. (T. 374:18-376:18.)

[13] Ex. 213 is the minutes from the December 9, 2013, Program Dean meeting which lists one of Weber's proudest accomplishments as "[i]mprov[ing] the background check process for MA students." (T. 549:8-553:3.)

[14] Ex. 266 is a December 20, 2010, email exchange between Weber and Bruce Christman in which Weber advised Christman regarding the process of working with a student whose background check has revealed a felony conviction. (T. 383:12-385:4.)

[15] Ex. 270 is a January 6, 2011, email exchange between Weber, Andy Hoeveler, and Dan Peterson in which Weber advised Hoeveler and Peterson regarding the process of working with a student whose background check has revealed a felony conviction. (T. 385:11-389:13.)

[16] Ex. 300 is a late March 2011 email exchange involving Weber and members of MSB's leadership, including Herrmann, Krna, and Keck, regarding whether to do multiple background checks when a student does not pass the CMA review course—which must be passed before the externship, and during which the background check is completed. (T. 402:14-409:9.)

402:13; Ex. 228.) Neither of these so-called "reports," however, are reports of actual or suspected violations of law.

First, Weber's "report" regarding the timing of background checks does not include any of the most basic facts that, if true, would be necessary to establish a violation of the Title IV regulations, the MFAA, or the MDTPA. The Title IV regulations and the MFAA prohibit false or misleading statements. 34 C.F.R. § 668.71; Minn. Stat. § 325F.67. But Weber's "report" regarding the timing of background checks did not identify any false or misleading statement or representation by MSB. And the MDTPA prohibits deceptive trade practices, such as passing off goods or services as those of another, causing a likelihood of confusion about the source or sponsorship of goods or services, advertising goods or services with an intent not to sell them as advertised, or "any other conduct which *similarly* creates a likelihood of confusion or of misunderstanding." Minn. Stat. § 325D.44 (emphasis added). However, Weber presented no evidence—nor could she—that she reported specific or particular facts which, if true, would have shown performing background checks on students before their externships—rather than at enrollment—amounted to a deceptive trade practice. *See id.* Simply put, she did not prove (or even attempt to prove) that Globe made any representations to applicants or students about the timing of their criminal background checks. Rather, Weber's recommendation regarding the timing of background checks was a classic example of an "express[ion of Weber's] dissatisfaction with [the employer's] conduct and policy[,]" not a report of actual or suspected illegal activity. *Hitchcock*, 442 F.3d at 1106.

Second, Weber's "report" regarding the felony disclosure statement similarly fails to include specific or particular facts that, if true, would establish a violation of the federal financial aid regulations or the Minnesota consumer fraud statutes. Weber testified generally that she

sought to change "the wording [of the felony disclosure statement]," but her "report" did not include the basic facts needed to establish a claim under any of these laws and regulations. (*See* T. 362:7-13.) But Weber did not identify the specific felony disclosure statement that she believed was misleading or explain how it was misleading. (*See id.)* Moreover, Weber did not identify any facts indicating that (1) a student had or could have reasonably relied on the statement (as required under the Title IV regulations); (2) the statement had caused damage to any particular individual (as required under the MFAA and the MDTPA); or (3) MSB published the felony disclosure statement with an intent to mislead (as required under the MFAA). (*See id.*) At bottom, Weber's testimony on this issue was nothing more than a statement of her disagreement with language which she herself was involved in drafting. *See Hitchcock*, 442 F.3d at 1106; (Ex. 201.)

2 [redacted]

Weber devoted a significant amount of her testimony to "reports" she allegedly made regarding shortages of MA externships and the distances students had to travel for externships. It is undisputed that, over several quarters, MSB had difficulty locating a sufficient number of externships for its MA students and that MSB campus and corporate leadership—including Weber—were working to resolve the issue. However, Herrmann's uncontroverted testimony indicated that only six students experienced any delays in their externships, and all of those students had been offered timely externships, opting instead to delay their starts to minimize their travel.[17] (T. 990:13-992:17.) Significantly, Weber could not identify any students who waited a quarter to begin an externship without agreeing to do so. (T. 557:4-9.)

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[17] When she was asked to identify any students whose externships had been delayed, Weber referred to an email that had previously been introduced into evidence and stated that the email indicated that, at the Eau Claire campus, "19 students were held up and 56 total were involved in

Still, Weber testified that she made a number of "reports" regarding externship shortages:

- statements at unspecified times to Hermann and Krna that campuses needed support for externships so students are not "waiting to finish their education" and that MSB should slow enrollment (T. 228:20-229:13);

- an email on March 17, 2011, to Metzen and Keck stating that "[w]e have 38 students that still need placement" and describing a plan to reach out to ABHES's executive director to ask her to familiarize potential externship sites with programmatic accreditation by ABHES (T. 259:11-266:21; 501:3-504:13; Ex. 219);

- a statement in March 2011 to Metzen regarding the "externship crisis" and how students were not getting "what they were promised when they started school" (T. 637:20-639:4);

- a statement in late March or early April 2011 to Myhre regarding students having to wait for externships (T. 561:11-19); and

- statements at three meetings in April with members of MSB's leadership team regarding "students waiting, the bribes for them to drive" (T. 561:9-19).

But these vague statements, all in relation to externship shortages that were already well known to MSB were not "reports" of any sort, let alone of illegality. *See Donahue*, 586 N.W.2d at 813 ("mere mention" of an issue already recognized by one's employer is not a report). Therefore, they provide no basis for a claim under the MWA.

Even assuming these statements were reports, however, they were not made in good faith. Weber repeatedly testified that she was not in charge of finding externships for every single MA student, and her counsel repeatedly emphasized that MSB's externship policy did not specifically mention the Network Dean. (T. 147:22-148:17; 540:13-19; T. 716:14-25; 826:39-827:12; 860:3-7; 1043:14-1044:5; 1167:17-1168:5.) But the evidence showed Weber was actively working with corporate and campus personnel to develop and implement network-wide strategies for

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this delay." But the email that Weber relied upon dealt with MA program graduates who were awaiting job placement, not students who were awaiting externship placement. *See* Ex. 21 As such, Weber's testimony is unsupported by the very email that she cited.

ensuring that students obtained appropriate externships, even providing input on the very externship policy which Weber used to try to prove she had no responsibility for externships. (T. 540:20-544:3; Exs. 256,[18] 261,[19] 272,[20] 19,[21] 28,[22] 31, 262-63, 269, 286-287,[23] & 39.[24]) Weber also conceded there had been discussions about externship shortages preceding her tenure as Network Dean; the evidence showed that, since at least January 2011, there had been serious discussions involving Weber and members of MSB leadership regarding such shortages, and that by March 2011, employees at all levels of MSB, not just Weber, were expressing concerns about

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[18] Ex. 256 is an August 26, 2010, email exchange between Weber and Miriam Williams, the Network Director of Academic Delivery, in which Williams, who was revising MSB's externship policy, asked Weber for input about the externship policy with regard to the MA program, and Weber responded by saying, "I do not have say over much, but the externship requirements, which is part of the curriculum is my little program area to work with, so thanks for bringing attention to this." After this statement, Weber provides a significant amount of information regarding the standards for MA externships.

[19] Ex. 261 is a compilation that includes an October 22, 2010, response from MSB's Brooklyn Center campus to ABHES regarding violations identified during the ABHES accreditation visit. The response notes that Weber "developed an Externship Site Evaluation Form for evaluating potential externship sites." (Ex. 261 at MSB-Weber001457.)

[20] Ex. 272 is a January 11, 2011, email exchange between Weber and MSB's leadership, including Myhre and Herrmann, in which she thanked everyone for helping her "figure out concerns and action for supporting the campuses in externship," and in which she listed a number of action items for <u>her</u> to assist the campuses in finding externship opportunities.

[21] Ex. 19 is a February 28, 2011, email exchange between Weber and Lynne Hendrick, MA Program Chair at the Elk River campus, in which Hendrick sought Weber's assistance regarding externship placement. (T. 327:16-328:16.)

[22] Ex. 28 is a series of emails between April 11 and April 19, 2011, including Weber and MSB's leaders Myhre, Keck, Krna, Herrmann, and Metzen, which reflect a number of action items <u>for Weber</u> relating to externships that came out of two of the three April meetings during which Weber allegedly made "reports" about the expected externship shortage.

[23] Exs. 31, 262-63, 269, 286-287 are a number of emails from late 2010 and early 2011 involving Weber and demonstrating that Weber was highly involved with contacting Allina, a large host of MSB externs, in order to address Allina's concerns about MSB's externs and their decision to stop accepting MSB externs. (T. 481:10-485:9; 489:7-498:23; 540:8-544:9.)

[24] Ex. 39 is MSB's externship policy.

externship shortages. (T. 229:14-231:4; Ex. 23.[25]) Thus, because Weber's statements to MSB management (1) were made as part of her job duties, within her normal channels, and simply re-raised preexisting issues that were already well known to MSB, they were not made in an effort to expose illegality. *See Kidwell*, 784 N.W.2d at 227, 229-30; *Obst*, 614 N.W.2d at 202.

Next, assuming that Weber's so-called reports were made in good faith, they were not reports of illegality. Weber apparently believes that statements regarding the existence of an "externship crisis," the number of students who were waiting for externships, and her opinion that students were not getting "what they were promised when they started school" are reports of illegality. But Weber utterly failed to identify any specific or particular false or misleading statement or representation that was made by MSB to applicants or students, or any deceptive trade practice that resulted in any externship shortages, let alone one which she actually reported or to which she testified. 34 C.F.R. § 668.71; Minn. Stat. § 325F.67; Minn. Stat. § 325D.44. Essentially, Weber argued that, because there were externship shortages, MSB must have violated the Title IV regulations, the MDTPA, or the MFAA and, because she made statements about externship shortages, she must have reported facts that, if true, amounted to a violation of federal or state law. But she did not point to any specific statement by MSB to any applicants or students about when their externships would be completed, or how quickly. While her illogic may have been persuasive to the jury, it is insufficient as a matter of law to establish protected activity under the MWA.

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[25] Ex. 23 is an email exchange from March 21 and 22, 2011, including Weber, Herrmann, Krna, Keck, and Metzen which contains an email from Herrmann stating that "we have truly reached a crisis situation. This conversation has been going on for months. I had email yesterday from the regional team stating significant numbers of students are still not placed for their externship starting on April 3. This is the same scenario that brought us all together a quarter ago to devise a plan for getting this fixed."

Next, Weber apparently believed that she made a report of illegality based on her testimony that, at three meetings in April 2011 with various MSB leaders, she discussed "the bribes for them to drive," which apparently refers to a proposal to provide gas cards to students who travelled more than 50 miles for an externship. (T. 301:25-302:24.) But Weber was unable to confirm that any such proposal was ever adopted, let alone whether it would have violated any federal or state law. This means that, at most, it was an unactionable "planned" violation of law.[26] (T. 563:24-564:18.) Herrmann's undisputed testimony indicated that the proposal was never implemented, because the students who were offered externships that would require more than 50 miles of travel opted to wait an additional quarter to complete their externships. (T. 997:22-T. 998:8.) Further, Weber claimed that she reported violations or suspected violations of only three laws—the Title IV regulations, the MDTPA, and the MFAA—and she has not shown, nor can she, that her mere use of the word "bribe" to describe a proposal to provide gas cards to students constituted a report of facts that, if true, would have amounted to a false or misleading statement or other deceptive trade practice under any of the laws or regulations she cited. *See* 34 C.F.R. § 668.71; Minn. Stat. § 325F.67; Minn. Stat. § 325D.44.

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[26] The applicable version of the MWA prohibits an employer from terminating an employee because the employee "in good faith, reports *a violation or suspected violation* of any federal or state law or rule adopted pursuant to law to an employer…." Minn. Stat. § 181.932, subd. 1(1) (2012) ("Applicable Minn. Stat. § 181.932, subd. 1(1)") (emphasis added) (amended by 2013 Minn. Laws 83 (effective May 25, 2013)). This language does not protect employees who report facts that could only violate a federal or state law in the future, as is evidenced by the 2013 legislature's amendment of the MWA to protect employees who "in good faith, report[] a violation, suspected violation, or *planned violation* of any federal or state law or common law or rule adopted pursuant to law to an employer…." 2013 Minn. Laws 83 § 4 (to be codified at Minn. Stat. § 181.932, subd. 1(1)) (emphasis added) ("Amended Minn. Stat. § 181.932, subd. 1(1)"). As such, even if providing gas cards to students could be construed to violate the law, the proposal to do so was not actionable under the applicable version of the MWA.

Finally, Weber appears to consider her repeated recommendations that MSB slow enrollment—which would not have had any effect on students who had already reached their externships—to be "reports." (T. 228:20-229:13; 998:24-999:6.) However, these recommendations were not reports of facts at all. Rather, Weber's dissatisfaction with MSB's response to her recommendation is precisely the type of disagreement regarding policy that is not actionable under the MWA. *Hitchcock*, 442 F.3d at 1106.

3 [redacted]

Weber also asserted that she made reports to MSB's executives regarding the change in MA programmatic accreditors from the Commission on Accreditation of Allied Health Education Programs ("CAAHEP") to ABHES. In particular, she testified that:

- On April 5, 2010, Weber sent an email to Ernst and Keck explaining why she was opposed to changing programmatic accreditors from CAAHEP to ABHES and initially described it as "one of the first reports she made," but later stated that she was "not making a report of illegality" at the time. (T. 194:14-22; 195:6-12; 202:13-16; Exs. 1 & 2.)

- During "the entire 15 months" she was a Network Dean, Weber made "several reports" to several MSB executives that "[she] believed it to be misleading to not list the accreditation change to prospective students on the website." (T. 435:3-11.)

Weber's statements are insufficiently detailed to constitute "reports"; at best, they show she disagreed with MSB's decision to switch to ABHES, that she advocated for MSB to maintain accreditation with CAAHEP, and that she believed MSB should inform students it was planning to switch programmatic accreditors before the switch was made. Weber's statements are not reports; they are simply nonactionable reflections of her "dissatisfaction with [MSB's] conduct and policy." *See Hitchcock*, 442 F.3d at 1106.

Moreover, even if Weber's statements could be considered "reports," they could not have been made in good faith. Weber was a part of the discussions regarding the change in

programmatic accreditors, and she was heavily involved in the implementation of the change. (T. 194:14-22; 195:6-12; 202:13-16; 216:23-25; Exs. 1, 2,[27] 9,[28] 213,[29] 217,[30] 27.[31]) Also, Weber regularly discussed this issue with MSB leadership, including Ernst, Krna, Herrmann, and Myhre. (*See id.*) In fact, Krna worked with Weber on almost a daily basis and frequently travelled with her for accreditation-related business. (T. 697:6-13.) And most important, Weber expressed her opposition to the change in accreditors, as well as her opinion that it was "misleading to not list the accreditation change to prospective students on the website," throughout her 15-month tenure as Network Dean. (T.184:23-186:20; T. 194:14-22; 195:6-12; 435:3-6; Exs. 1 & 2.) Therefore, because Weber's "reports" regarding the accreditation change fell within her job duties, were made to individuals with whom she ordinarily worked, and were ultimately redundant, they were not made in good faith as a matter of law. *Kidwell*, 784 N.W.2d at 227, 229-30; *Obst*, 614 N.W.2d at 202.

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[27] Exs. 1 & 2 are email exchanges from early April 2010 involving Weber, Ernst, Krna, and Keck in which Weber was asked to provide feedback on the proposal to change from ABHES to CAAHEP and in which Weber opined that CAAHEP is a more reputable programmatic accreditor than ABHES.

[28] Ex. 9 is a September 30, 2010, email exchange between Weber and Rebecca Goodroad, a Network Admissions Support Specialist, in which Goodroad sought feedback from Weber regarding the MA—including the planned change in accreditors—that should be included in admissions slides.

[29] Ex. 213 are minutes from a December 9, 2010, Program Dean meeting in which the ABHES conversions are listed as one of Weber's proudest accomplishments.

[30] Ex. 217 is a series of email exchanges from late February and early March 2011, initially between Weber and network admissions personnel regarding information that should be provided to students about the change in programmatic accreditors, and then between Weber and MA program chairs, campus directors admissions, and regional directors in which Weber explained how admissions personnel should discuss programmatic accreditation and the change in programmatic accreditors.

[31] Ex. 27 is an email from Weber to Myhre, accompanied by a survey she conducted of various campuses regarding their perceptions of CAAHEP and ABHES and the switch from CAAHEP to ABHES.

But even if Weber's "reports" were made in good faith, her statements in opposition to the change in programmatic accreditors simply do not constitute good faith reports of illegality under the MWA. From April 2010 to April 2011, Weber regularly expressed opposition to the switch in programmatic accreditors based on her perceptions that (1) ABHES's standards were less rigorous than those of CAAHEP; (2) ABHES graduates did not perform as well as CAAHEP graduates on the CMA Exam; and (3) ABHES graduates had a more difficult time obtaining employment than CAAHEP graduates. (Exs. 1 & 2; T.184:23-186:20; T. 194:14-22; 195:6-12.) But Weber's self-serving testimony that these statements were "reports"—which she later contradicted—cannot transform her statements from opinions to facts that, if true, would have constituted violations of federal or state law. (Exs. 1-2; T. 194:14-22; 195:6-12.) To the contrary, Weber's statements about the ABHES conversion were simply expressions of disagreement with MSB's policy decision, and cannot be considered protected activity under the MWA. *See Hitchcock*, 442 F.3d at 1106.

Similarly, Weber's disagreement with MSB's decision not to state on its website that it was changing programmatic accreditors until it had been accredited by ABHES do not constitute reports of illegality. At the outset, any statements made after January 18, 2011—by which time MSB's website had clearly begun listing ABHES as a programmatic accreditor for the MA program —but before April 30, 2011—by which time Weber had been terminated—are "[n]onspecific references to past practices" that cannot constitute "reports." *Cokley*, 623 N.W.2d at 631; *see also Hannan*, 776 F. Supp. 2d at 948; (Ex. 69.) As such, only Weber's statements between February 1, 2010—the date she became a Network Dean—and January 18, 2011—the date by which MSB's website had been changed—could theoretically constitute "reports."

Even these statements, however, do not constitute reports of facts that, if true, would have constituted a violation of federal or state law. At trial, Weber did not testify she reported that MSB's website included false statements about the programmatic accreditation of the MA program. In fact, she conceded that MSB's website accurately listed certain campuses as being accredited by CAAHEP, even though she testified to the contrary at her deposition. (T. 433:11-17; Affidavit of Kristin Graham ("Graham Aff.") Ex. A, Dep. of Heidi Weber ("Weber Dep.") 48:22-51:10.) Rather, Weber testified for the first time at trial she reported that MSB's website was misleading because it did not inform prospective students that MSB was planning to switch programmatic accreditors. (T. 434:25-436:19.) But Weber's "report" again did not specify why she believed that the statement was misleading, nor did it include facts indicating that (1) a student could have or had reasonably relied on the statement (as required under the Title IV regulations); (2) the statement had caused damage to any particular individual (as required under the MFAA and the MDTPA); or (3) MSB declined to state that it was planning to change programmatic accreditors with an intent to mislead (as required under the MFAA). (*See id.*)

The uncontroverted evidence shows that ABHES standards actually prohibited MSB from stating that it was planning to change programmatic accreditors until its campuses had actually been accredited by ABHES. (*See* Ex. 231 at MSB-Weber005823.) The ABHES standards admonish that:

> No reference to ABHES accreditation can be made in reference to any program prior to final action by ABHES granting inclusion of a program within an institution's current grant of accreditation or the granting of programmatic accreditation. Institutions or programs in the initial application stage, either for accreditation or a substantive change…may not make any reference to ABHES accreditation.

(*See id.*) In fact, according to Krna's unrefuted testimony, because there are only two programmatic accreditors for Medical Assisting—CAAHEP and ABHES—MSB could not even

state that it was in the process of changing programmatic accreditors because that statement would clearly reveal that MSB was seeking ABHES accreditation. (T. 698:14- 699:17; 704:7-18.)

Although ABHES is not a governmental entity and does not have the power to make laws, it is recognized as an accrediting agency by the U.S. Department of Education. (Ex. 231 at MSB-Weber005770.) As part of the recognition process, it was required to provide its standards to the Department and show that they were widely accepted by educational institutions, licensing bodies, practitioners, and employers. 34 C.F.R. § 602.13. Weber has offered no evidence to indicate that the Department—which plays a significant role in regulating higher education—has any concerns with the standard above, which was adopted to prevent schools from misleading students into believing that a school will obtain programmatic accreditation from ABHES simply because it has applied for it. (*See* Ex. 231 at MSB-Weber005823.) As such, Weber has failed to fulfill her burden of demonstrating that MSB violated the Title IV financial aid regulations, the MDTPA, or the MFAA by complying with ABHES standards and waiting until it was accredited by ABHES to announce the accreditation change on its website.

4 [redacted]

During trial, Weber testified that she raised concerns regarding MSB's placement rates,[32] namely:

- Weber stated that she spoke to Metzen—apparently around March 17, 2011—to discuss a variety of things, including "placement." (T. 501:3-14.)
- Weber stated that during the second of three meetings in April 2011 with MSB leaders, she raised concerns about the "[l]ack of placement opportunities for students without being told." (T. 264:24-265:7.)

[32] "Placement" refers to students' post-enrollment acceptance of employment, as opposed to externships.

- Weber stated that during the last of the three meetings in April 2011, she and MSB leaders discussed how to deal with the decision of Allina not to accept MSB students for externships or MSB students for employment. (T. 266:2-16.)

Again, Weber's nonspecific contentions that she discussed issues or sought solutions regarding job placement with MSB leadership—absent any facts establishing those discussions were not generalized concerns but specific accounts of events or conduct—are simply not evidence of "reports." Weber simply established no evidentiary basis for concluding that she engaged in protected activity.

Assuming that Weber's vague statements of concerns could be considered "reports," they were not made in good faith as required by the MWA. As she herself admitted, Weber participated in the audits of MSB's placement numbers prior to the ABHES accreditation visits; she was involved in working with employers like Allina to develop employment opportunities for students; and she was also involved with reviewing marketing materials that listed the employers at which MSB's MA graduates had been placed. (T. 193:3-15; 216:17-25; 222:23-223:16; 313:3-10; 425:1-425:10; 427:3-428:1; 476: 5-21; 489:14-491:14; Exs. 205,[33] 261.[34]) In other words, any "reports" that Weber made about placement—the specifics of which were never established by her—were squarely part of her job duties. Moreover, Weber was neither the first nor the only person to raise such generalized concerns about placement rates. *Kidwell*, 784

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[33] Ex. 205 is an email exchange between September 2 and 8, 2010 between Weber and several members of MSB's leadership, including Ernst, Herrmann, Keck, and Krna, regarding the positions which should count as placements for MA graduates.

[34] Ex. 261 is a compilation that includes an October 22, 2010, response from MSB's Brooklyn Center campus to ABHES regarding violations identified during the ABHES accreditation visit. The response notes that Weber "provided the campus with a document that assists the Career Services Department with more specific guidelines to determine whether a placement should be classified as in-field, related field or out-of-field (not a placement)." (Ex. 261 at MSB-Weber001455.)

N.W.2d at 227, 229-30. In fact, Weber admitted that it was not her but an ABHES evaluator who first raised a concern about discrepancies in placement rate calculations, and the undisputed evidence showed that other individuals within MSB were raising concerns about Allina's decision not to accept MSB students for placement. (T. 223:12-16; Ex. 262.[35]) Because these so-called "whistles" had been "blown" by others, there was no basis for the jury to find that Weber raised these issues for the purpose of exposing them. *Obst*, 614 N.W.2d at 202.

Furthermore, even if Weber made her placement rate "reports" in good faith, they do not constitute reports of facts that, if true, would have amounted to a violation of federal or state law. At trial, Weber testified that she had a number of concerns regarding job placement rates and job placement opportunities, but she only testified to three reports. First, Weber testified that, around March 17, 2011, she met with Metzen to discuss a variety of issues, including "placement." (T. 501:3-14.) But she did not testify to reporting any facts regarding placement to Metzen, let alone that she reported facts that would have amounted to a violation of the Title IV regulations, the MDTPA, or the MFAA. In fact, she did not testify about any facts bearing on placement rates at all.

Next, Weber testified that, during the second of three April 2011 meetings with MSB leaders, she raised concerns about the "[l]ack of placement opportunities for students without being told." (T. 264:24-265:7.) Again, this vague testimony was insufficient to demonstrate that Weber reported any of the facts necessary to establish a violation of the Title IV regulations, the MDTPA, or the MFAA. To establish a violation of those laws, Weber had to show that MSB made a false or misleading statement to a prospective or current student, as required under the

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[35] Ex. 262 is a November 17, 2010, email from Kim Wallingford to a number of individuals, including Weber and Brooklyn Park Campus Director Diana Igo, regarding Allina's inability to host as many MA students beginning January 2011.

Title IV regulations and the MFAA, or that MSB engaged in any deceptive practice against a prospective or current student, as required under the MDTPA. Weber's testimony established neither requirement.

Finally, Weber stated that, during the last of the three meetings in April 2011, she and MSB leaders discussed how to deal with the decision of Allina not to accept MSB students for externships or MSB students for employment. (T. 266:2-16.) But Weber provided no explanation—nor can she—of how that discussion between her and several MSB leaders about reengaging Allina constituted a report of facts that, if true, would have constituted a violation of law. Based on the evidence adduced at trial, there is no indication that Weber identified any false or misleading statements or deceptive practices relating to Allina, or that she raised any facts or information not already known to MSB's leadership team.

5 [redacted]

At trial, Weber testified that, in March 2011, she made a "report" to Metzen during which she also raised an issue concerning "the kinds of students that come into this school and their inability to even read or do basic math and how they target a certain demographic of student," "transfer of credit issues," "advertising," and "what admissions folks do," and that she used words like "deceptive, deceitful, and liability." (T. 637:20-639:4.) But again, Weber's vague testimony is insufficient to establish that she reported facts that, if true, would have constituted a violation of federal or state law. *See Kratzer*, 771 N.W.2d at 19. Weber failed to introduce evidence that she informed Metzen of any specific misrepresentations or deceptive practices by MSB regarding these issues. Minn. R. Civ. P. 9.02; *Baker*, 812 N.W.2d at 182. In fact, on cross examination, Weber was unable to identify a single student who had enrolled at MSB based on a false, misleading, or deceptive statement, let alone one who had suffered any damage as a consequence. (T. 347:4-348:9.) In the absence of any such evidence, there was no basis for the

jury to conclude that Weber reported facts about MSB's representations on transferability of credits, admissions practices, or advertising that, if true, would have violated any federal or state law. *See Kratzer*, 771 N.W.2d at 19.[36]

B. No Causal Connection Exists Between Any Statutorily Protected Activity and Weber's Termination

Even if Weber could meet her burden of establishing a *prima facie* case that she engaged in statutorily protected activity, which she cannot, her whistleblower claim still fails because she cannot show there was a causal connection between any protected activity and her discharge. *See Cokley*, 623 N.W.2d at 630. Weber maintains that the "reports" she made to Metzen in March 2011, to Myhre at the end of March or the beginning of April 2011, and to several members of MSB's leadership team during three meetings in April 2011, were temporally proximate to her termination on April 29, 2011. (T. 636:20-641:21.) But "close proximity between an employee's complaint and [her] termination of employment, without any other circumstantial evidence, fails to raise an issue of material fact regarding causation." *Pope v. ESA Servs.*, 406 F.3d 1001, 1010 (8th Cir. 2005) (citing *Thompson v. Campbell*, 845 F. Supp. 665, 675 (D. Minn. 1994) ("[A]n inference of retaliatory motive is not justified by virtue of the timing of [the employee's] discharge alone.")).

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[36] At trial, Melissa Beck, a former MSB student, testified that a former MSB admissions representative informed her that her credits would transfer but she later learned that this was not the case. (T. 609:18-612:12.) However, neither Weber nor Beck testified that Weber ever became aware of this conversation, let alone that Weber had ever reported this conversation (or any concern based upon the conversation) to anyone at MSB. In fact, Beck testified that, prior to trial, she had never met or spoken to Weber. (T. 608:17-22.) As such, to the extent there is any evidence in the record regarding misrepresentations about the transferability of credits, the evidence relates to an incident about which Weber was not aware of and could not have made a report. Moreover, the incident involved one former admissions representative who was terminated for unethical conduct. (T. 1037:9-18.) This evidence could not possibly have proven or related to any alleged report by Weber; given its resulting irrelevance, Ms. Beck's testimony should have been excluded.

As Weber testified throughout trial, she and others frequently complained or raised issues during her tenure at MSB about background checks, the conversion from CAAHEP to ABHES, externship shortages, and calculation of placement rates, among other things. But when an employee complains about the same issue for a period of time, a significant lapse between the first complaint and the employee's eventual termination undermines any causal connection between the two. *Williams v. Thomson Corp.*, Civ. No. 00-2256 (MJD/SRN), 2003 U.S. Dist. LEXIS 4481, at *42-43 (D. Minn., Mar. 21, 2003) (no causal connection where complaints began several years before termination). By her own admission, the "reports" that form the basis for her claims were raised throughout Weber's fifteen-month tenure as a Network Dean. (T. 229:14-231:4; 362:7-13; 435:3-6.) Because she raised the same issues over a protracted period, the time between her first complaint and her layoff negates any causal connection between the two and, as such, she cannot establish a *prima facie* case of retaliation. *See Williams*, 2003 U.S. Dist. LEXIS 4481, at *42-43.

C. Weber Cannot Demonstrate that MSB's Legitimate, Nonretaliatory Reasons For Terminating Her Were Pretextual

Weber's MWA claim fails because she cannot establish a *prima facie* case. But even if Weber had some specific, admissible evidence that she engaged in statutorily protected activity, <u>and</u> that a causal connection existed between that activity and her termination, MSB would still be entitled to JMOL.

MSB had a legitimate, nonretaliatory reason for terminating Weber, and she cannot establish that MSB's reason was a pretext for unlawful retaliation. *See Cokley*, 623 N.W.2d at 630. Weber was terminated because she had lost the confidence of the campus and field personnel that she was supposed to serve, and was perceived as an ineffective leader by corporate leadership and campus personnel. (T. 1112:10-1113:2.) Specifically, Herrmann,

Metzen, and Shana Weiss, the former Regional Director for Wisconsin, testified that Weber provided inaccurate information about a number of program-related issues, failed to provide much-needed support to the campuses, and did not respond to communications from campus personnel. (T. 974:1-14; 982:1-983:22; 1022:5-1025:1, 1083:10-15, 1084:20-1085:4, 1108:9-21, 1221:9-1231:4; Ex. 298, 302.) Though Weber fought strenuously to prevent this evidence from reaching the jury, she did nothing to counteract it, and adduced no evidence whatsoever to show that the campus or field personnel who complained about Weber's leadership and performance had any bias against her based on her alleged status as a whistleblower, or that any of them were even aware of her alleged reports. In light of the uncontradicted evidence of these serious concerns, not only did MSB meet its burden of articulating a legitimate nonretaliatory reason for its action, but Weber failed to provide any evidentiary basis for concluding that MSB's reasons for terminating Weber were in fact pretexts for unlawful retaliation.

CONCLUSION

MSB respectfully asks the Court to grant this motion for JMOL. In particular, MSB asks the Court to grant MSB's motion for JMOL on Weber's whistleblower claim because it is unsupported by the evidence.

NILAN JOHNSON LEWIS PA

Dated: October 18, 2013

By: s/ Matthew E. Damon

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ACKNOWLEDGEMENT

The above-signed hereby acknowledges that, pursuant to Minn. Stat. §549.211, costs, disbursements and reasonable attorney and other sanctions may be awarded to the opposing party or parties in this litigation if the Court should find the above-signed acted in bad faith, asserted a claim or defense that is frivolous and costly to the other party, asserted an unfounded position solely to delay the ordinary course of proceedings or to harass, or committed a fraud upon the Court.

s/ Matthew E. Damon

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STATE OF MINNESOTA

COUNTY OF WASHINGTON

DISTRICT COURT

TENTH JUDICIAL DISTRICT

CASE TYPE: EMPLOYMENT DISCRIMINATION

Heidi Weber,

Plaintiff,

vs.

Minnesota School of Business, Inc.
d/b/a Globe University,

Defendant.

Court File No. 82-CV-12-2797
Hon. Thaddeus V. Jude

DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS ALTERNATIVE MOTION FOR NEW TRIAL OR REMITTITUR

INTRODUCTION

> "*The matter does not appear to me now as it appears to have appeared to me then." --George William Wilshere Bramwell, English Judge of the Exchequer, Andrews v. Styrap, 26 L.T. 706 (1872).*

Minnesota School of Business, Inc. ("MSB") asks the Court to recognize and rectify the impact of improper argument and evidence adduced at trial by Heidi Weber ("Weber"). In some instances, this recognition will also require that the Court reconsider its own rulings and, ultimately, change its mind. But that is the very purpose of the motion for new trial afforded by the Rules; it assumes that judges are willing to reconsider their rulings and, like Judge Bramwell many years ago, think differently upon second thought. MSB submits that such reconsideration is, in certain cases, necessary, and that this is one such case: throughout the complex, seven-day trial, inappropriate evidence and improper arguments from Weber prejudiced Minnesota School of Business, Inc. ("MSB"). This motion provides the opportunity for the Court to negate their impact by ordering a new trial.

Specifically, MSB asks the Court to grant this motion for a new trial or remittitur on any or all of the following bases:

- The irrelevant and prejudicial testimony of former Network Dean of Business Jeanne St. Claire and MSB graduate Melissa Beck. The prejudicial impact of this evidence was exacerbated by the Court's ruling preventing MSB from questioning St. Claire about the bias inherent in being represented by Weber's law firm.
- The ruling allowing former Regional Director for MSB's Wisconsin campus, Shana Weiss Blegen, to testify only as a rebuttal witness.
- Weber's counsel's improper and prejudicial arguments for punitive damages in his closing.
- The jury's speculative and conjectural damages award, which requires either a new trial or remittitur.
- The jury's failure to properly consider the evidence, or lack of evidence, concerning Weber's mitigation and recoverable damages.
- The Court's failure to instruct the jury on essential elements of the MWA.
- The Court's instructions on issues that were not relevant, and instructions that were vague, unnecessary and confusing.

ARGUMENT[1]

I. Standard of Review for New Trial and Remittitur

A motion for new trial gives the district court the opportunity to correct errors without subjecting the parties to the expense and inconvenience of an appeal. *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 686 (Minn. 2004). Under Minn. R. Civ. P. 59.01, a new trial may be granted on several grounds, including:

(a) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

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[1] The factual and procedural backgrounds are summarized in Defendant's Motion for Judgment as a Matter of Law.

(b) Misconduct of the jury or prevailing party;

* * *

(e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;

(f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of the motion;

(g) The verdict, decision, or report is not justified by the evidence, or is contrary to law[.]

Minn. R. Civ. P. 59.01 provides the only grounds upon which a new trial may be granted. *Id.*

"Remittitur may be granted on the ground that an excessive verdict appears to have been given under the influence of passion and prejudice or on the ground that the damages are not justified by the evidence." *Kawpien v. Starr*, 400 N.W.2d 179, 184 (Minn. Ct. App. 1987) (citing *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 400-01 (Minn. 1977)). It is within the district court's discretion to determine whether damages are excessive and whether the cure therefor is remittitur or a new trial. *Ray v. Miller Meester Adver., Inc.*, 664 N.W.2d 355, 368 (Minn. Ct. App. 2003), *aff'd* 684 N.W.2d 404 (Minn. 2004).

II. MSB is Entitled to a New Trial and/or Remittitur Because Numerous Errors at Trial, Each Standing Alone or Considered Together, Prejudiced MSB

A. This Court Should Grant MSB a New Trial Because the Testimony of St. Claire and Beck was Irrelevant and Prejudicial

Over MSB's objection, this Court allowed Jeanne St. Claire ("St. Claire") and Melissa Beck ("Beck") to testify on Weber's behalf. Because their testimony was wholly irrelevant and prejudicial, MSB is entitled to a new trial.

To prove her whistleblower claim, Weber was required to show she was discharged because she, in good faith, reported a violation of a state or federal law. *See* Minn. Stat.

§ 181.932, subd. 1(1). *See* discussion *supra*, Section II. But St. Claire and Beck's testimony did not tend to prove or disprove any material fact that related to Weber's claim. Their personal connections to Weber were either nonexistent or extremely attenuated, and their testimony was consequently unconnected and irrelevant to any alleged "reports" made by Weber.

Generally, all relevant evidence is admissible. Minn. R. Evid. 402. But "[e]vidence which is not relevant is not admissible." *Id.* "Relevant evidence" is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401; *State v. Nelson*, 823 N.W.2d 908 (Minn. Ct. App. 2012) (quoting Minn. R. Evid. 401). Relevant evidence "logically tends to prove or disprove a material fact in issue." *Shea v. Esensten*, 622 N.W.2d 130, 134 (Minn. Ct. App. 2001) (quotation omitted). "What is of consequence to the litigation depends upon the scope of the pleadings, the theory of recovery and the substantive law." Minn. R. Evid. 401 cmt.

And even relevant testimony may be excluded if it is prejudicial, that is, if its probative value is substantially outweighed by the risk of "unfair prejudice, confusion of the issues, or misleading the jury." Minn. R. Evid. 403. Minnesota categorically prohibits the introduction of "character" evidence, except in limited circumstances inapplicable here, because of its high likelihood of prejudicing the factfinder. *See* Minn. R. Evid. 404(b) ("Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith."). Whether because the objectionable evidence is irrelevant, prejudicial, or both, "entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kroning v. State Farm Auto Ins. Co.*, 567 N.W.2d 42, 45 (Minn. 1997) (quoting *Uselman v. Uselman*, 464 N.W.2d 130, 138

(Minn. 1990)). An evidentiary ruling is "prejudicial" if it might reasonably have changed the result of the trial. *W.G.O. ex rel. A.W.O. v. Crandall*, 640 N.W.2d 344, 349 (Minn. 2002).

1. St. Claire's Testimony was Irrelevant and Prejudicial

As noted in MSB's motion in limine, St. Claire's testimony was wholly irrelevant to Weber's whistleblower claim. St. Claire is a former Brooklyn Center campus instructor who later became a Network Dean of Business at the Woodbury corporate office. (T. 913:20-914:2.[2]) As a Network Dean, St. Claire worked in physical proximity to Weber (T. 916:24-917:1), was likewise terminated by MSB (T. 951:15-17), and filed her own whistleblower claim. (T. 952:18-25.) But St. Claire's own claims were wholly unrelated to Weber's claim. St. Claire had no job duties related to Weber's MA program. (T. 951:1-3.) Rather, St. Claire oversaw the Business program. (T. 913:25-914:4.) St. Claire was evaluated, received progressive discipline, and was terminated, and had a different supervisor than Weber throughout those events. (T. 951:4-17.) St. Claire's testimony did not logically tend to prove or disprove any material fact at issue in Weber's MWA claim. And the temporal overlap between Weber's and St. Claire's employment did not change this fact; it had no bearing on the admissibility of St. Claire's testimony. Consistent with MSB's numerous objections before and during trial, therefore, this testimony should have been excluded as irrelevant.

Moreover, St. Claire's testimony should have been excluded as unfairly prejudicial under the Minn. R. Evid. 403 balancing test. Over MSB's objection, St. Claire testified that she made reports of "illegal conduct" during the course of her employment. (T. 925:13-15.) St. Claire

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[2] (Affidavit of Jeremy D. Robb, Ex. A, excerpts from Trial Transcript (hereinafter the Trial Transcript is referred to as "T.")

testified, "I made a couple different points. One was that the online courses and the residential courses were not congruent and may not meet ACICS accrediting standards and that the admissions recruiting PowerPoints were – were deceitful and did not give a true picture."[3] (T. 925:23-926:3.) St. Claire also testified that she believed that the admissions department used deceptive placement numbers. (T. 927:2-16.)

This testimony was prejudicial for two reasons. First, St. Claire offered a legal conclusion—she was not qualified to testify whether the conduct she allegedly reported in fact constituted "illegal conduct." *See, e.g.*, *Safeco Ins. Co. of Am. v. Dain Bosworth, Inc.*, 531 N.W.2d 867, 873 (Minn. Ct. App. 1995) ("Opinions regarding legal issues are ordinarily not admissible."), *review denied* (Minn. July 20, 1995). Second, St. Claire's own claims or complaints, which related only to her employment as Network Dean of Business, have no bearing on Weber's claims, which related only to the MA program. As a result, the testimony offered by St. Claire and allowed by the Court essentially functioned as character evidence: Weber was erroneously allowed to offer evidence of a prior act to show action in conformity therewith. This error was highly prejudicial, and requires that the Court grant MSB a new trial. *See Nickolay v. Orr*, 172 N.W. 222, 222 (Minn. 1919) ("We have been referred to no authority, and have found none, that holds or intimates it proper in a civil case to attack the character or reputation of one accused of wrongdoing by proof of prior acts of like wrongs to others. And certainly the mere attempt to inquire about wrongful conduct towards others, before plaintiff has offered the slightest proof of the wrong upon which she sues, must be regarded as highly prejudicial to defendant's right to a fair trial."). Given the absence of any relation between St.

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[3] St. Claire failed to clarify whether she was testifying about online courses and the residential courses for the business program, the MA program, or every program at MSB, but there was no foundation for any testimony on her part concerning any aspect of the MA program.

Claire's alleged complaints and reports and those alleged by Weber, the jury could only have been confused about the appropriateness of using such information to find liability.[4]

This prejudice was compounded by the Court's decision prohibiting MSB from asking whether St. Claire was represented by the same law firm as Weber. If St. Claire's testimony was indeed relevant, as the Court concluded, then the bias inherent in St. Claire's representation by the same law firm was surely relevant. *See*, Minn. R. Evid. 616. Aside from Weber and her counsel, nobody stood to gain more from Weber's success at trial than St. Claire. This fact made St. Claire's testimony less credible than it would have been without the evidence of bias. Under Minn. R. Evid. 616, "[f]or the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible." *Id.* (emphasis added); *see also* Minn. R. Evid. 616 cmt. (stating that a witness's bias, prejudice, or interest is a fact of consequence under Minn. R. Evid. 401); *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995) ("The partiality or bias of a witness is 'always relevant as discrediting the witness and affecting the weight of his testimony.'") (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)). Here, the jury was prevented from considering that the same attorneys were advocating for St. Claire and Weber in matters that would be lucrative to both individuals and their shared lawyers. The Court's exclusion of this evidence was prejudicial. Consequently, MSB is entitled to a new trial.

2. Beck's Testimony was Irrelevant and Prejudicial

Beck's testimony was likewise irrelevant to Weber's MWA claim. A paralegal student from 2008 to 2010, she was never enrolled in the MA program. (T. 608:5-8, 625:12-17.) Beck

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[4] This evidence, unfortunately, also dovetailed with Weber's counsel's closing argument, in which the jury was improperly encouraged to punish MSB. *See* argument *infra*, Section II.D.

did not know Weber, was not aware of Weber making so-called "reports" of legal violations, and had never been part of communications between Weber and MSB leaders. (T. 608:17-22, 630:12-631: 9.) Thus, Beck's testimony had nothing to do with Weber's MWA claim.

Beck substantively complained that a MSB admissions representative overstated to her the transferability of credits and MSB's job placement rates for paralegals. (T. 613:14-615:13, 618:4-619:23.) But as Beck testified, she never met or spoke to Ms. Weber prior to trial. (T. 608:17-22, 630:12-17.) Nor did Weber offer any testimony that she had somehow learned of or witnessed the representations allegedly made to Beck or, more significantly, that she had made "reports" about those representations. Therefore, Beck's testimony did not logically tend to prove or disprove any material fact at issue in Weber's claim. The slight alleged overlap between Beck's enrollment as a student and Weber's tenure as an employee does not change this relevance analysis. Consequently, Beck's testimony also should have been excluded as irrelevant.

But Beck's testimony was also prejudicial to MSB, allowing her to air her private grievances about MSB's paralegal program, none of which had anything to do with Weber's MWA claim. Beck complained that her credits would not transfer (T. 612:2-4); that her admissions counselor "was very enthusiastic" and "appeared as a salesperson" (T. 613:14-16); and that she was "guaranteed" $30,000 per year in salary upon graduation. (T. 615:14-18.)[5] Beck further complained that she believed MSB's advertised placement rates were false and that one of MSB's employees could not give her any "solid jobs" to make the amount of money that

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[5] When asked whether the admissions counselor actually used the word "guarantee," however, Beck stated that she did not remember. (T. 615:17-18.) She also admitted that she was earning approximately $29,000 per year. (T. 629:8-16.)

she desired. (T. 19:6-23.) Much like St. Claire's testimony, Beck's testimony had no probative value because she testified about the paralegal program, not the MA program.

Moreover, any probative value was substantially outweighed by the prejudice to MSB. Like St. Claire's testimony, Beck's testimony was simply evidence of unrelated prior acts, offered to prove that MSB acted towards Weber in conformity with its alleged actions towards Beck. Such evidence is simply not allowed under Minn. R. Evid. 404(b). Because Beck's testimony was so unrelated to Weber's MWA claim, it could only have confused the jury into thinking that Beck's complaints about MSB somehow related to and supported Weber's MWA claim. Allowing such testimony was prejudicial error that requires a new trial. *See Nickolay*, 172 N.W. at 222.[6]

St. Claire and Beck's testimony had no meaningful bearing on whether Weber was discharged because she, in good faith, reported a violation of federal or state law. The Court erred by failing to exclude their testimony as irrelevant and prejudicial, and compounded those errors by preventing MSB from evincing evidence of St. Claire's bias as a witness. These errors warrant a new trial.

B. MSB is Entitled to a New Trial Because Shana Weiss Blegen was Unjustifiably Limited to Testifying Only as a Rebuttal Witness

At the beginning of trial, the Court granted Weber's motion in limine to exclude the testimony of Shana Weiss Blegen ("Weiss"), a former Regional Director for MSB's Wisconsin campuses. (T. 59:24-25.) The Court concluded that Weiss had not been properly disclosed as a witness and that she could therefore testify as a rebuttal witness only. Because Weiss was

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[6] Again, the prejudice of Beck's testimony was also compounded by Weber's counsel's closing argument, in which the jury was improperly encouraged to punish MSB.

properly disclosed to Weber, the testimony she offered was highly probative, and limiting her testimony was prejudicial, the Court's ruling was erroneous and MSB is entitled to a new trial.

This Court based its order to exclude Weiss's testimony on Rule 26.05, which provides that

> A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect <u>and</u> if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(emphasis added).

While MSB's initial interrogatory answers did not identify Weiss as a person of knowledge, other documents produced in discovery did. For example, MSB produced an email from Weiss, stating among other things that certain MSB campuses were having "serious issues" with Weber. (Affidavit of Kristin Graham ("Graham Aff."), Ex. B.) Weber was obviously aware of the import of this email, because her counsel introduced it as an exhibit during the October 10, 2012, deposition of Jeanne Herrmann, and asked her questions about it. (*Id.,* Ex. C, Dep. of Jeanne Herrmann ("Herrmann Dep."), 252:6-25.) Moreover, during the same deposition, Herrmann testified to a report from Weiss about Weber not showing up for a campus meeting. (*Id.* at 206:21-207:15.) Therefore, Weiss's potential as a witness was clearly "made known to [Weber] during the discovery process," and there was no basis under Rule 26.05 for excluding her testimony.

Moreover, excluding Weiss as a fact witness and limiting her to testifying as a rebuttal witness was prejudicial to MSB. As a rebuttal witness, Weiss was only permitted to testify regarding specific incidents or issues to which Weber had testified. (T. 1218:13-1231:7.) As a fact witness, in contrast, Weiss would have been able to testify about how she became acquainted with Weber, her various interactions with Weber between the summer of 2010 and

the fall of 2011, her campuses' concerns about Weber, and her communications with Herrmann and Metzen about those concerns. (Graham Aff., Ex. D, Aff. of S. Weiss Blegen.) This evidence was crucial to allowing the jury to understand that Weiss had significant knowledge regarding Weber's performance, that Weiss gave Weber the benefit of the doubt for several months – and the key fact that Herrmann and Metzen did not hear the bulk of Weiss's concerns until mid- to late-March, after Weber's performance review was given by Lolita Keck. As such, Weiss's exclusion as a fact witness was prejudicial to MSB and requires a new trial.

C. MSB is Entitled to a New Trial and/or Remittitur Because Weber's Counsel Improperly and Prejudicially Sought Punitive Damages During Closing Argument.

Although this Court properly and explicitly denied Weber's motion for punitive damages (T. 1217), Weber's counsel improperly and repeatedly argued for punitive damages during closing argument. (T. 1285-86.) This conduct was not only purposeful—it occurred only an hour or two after Weber's punitive damages motion was denied—but inappropriate, inflammatory, and prejudicial to the outcome of the case. Accordingly, MSB is entitled to a new trial and/or remittitur of the jury award.

Minn. R. Civ. P. 59.01(b) provides for a new trial in cases of misconduct by the prevailing party. Because the district court is in the best position to determine whether attorney misconduct has tainted a trial, it has discretion to grant a new trial on that ground. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 479 (Minn. Ct. App. 2006), *review denied* (Minn. Aug. 23, 2006). "An objection to improper remarks, a request for curative instruction, and a refusal by the trial court to take corrective action are generally prerequisites to the obtaining of a new trial[.]" *Hake v. Soo Line Ry. Co.*, 258 N.W.2d 576, 582 (Minn. 1977). But a new trial may also be granted "where the misconduct is so flagrant as to require the court to act on its own motion, or is so extreme that a corrective instruction would not alleviate the

prejudice." *Id.*; *see also Strand v. Great Northern Ry. Co.*, 46 N.W.2d 266, 275 (Minn. 1951) (holding that when opposing counsel invites jury confusion and raises a new argument on which the jury is not instructed, it is an abuse of discretion not to grant a new trial). "The paramount consideration in determining whether a new trial is required in cases alleging misconduct is whether prejudice occurred. The prejudice must be such that it affected the outcome of the case." *Lake Superior Ctr. Auth.*, 715 N.W.2d at 479 (internal citation omitted).

As noted above, Weber's counsel improperly and repeatedly argued for punitive damages during closing argument. The term "punitive damages" typically refers to damages in excess of the amount necessary to make the plaintiff whole.[7] Here, counsel requested damages in excess of 36 million dollars, far exceeding any plausible make-whole request. Generally, punitive damages are an extraordinary remedy imposed to punish the defendant for wrongdoing and to deter the defendant and others from engaging in similar conduct in the future. *See, e.g.*, *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996). Punitive damages are also viewed as an "expression of moral condemnation" for particularly reprehensible conduct. *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 432 (2001); *Shetka v. Kueppers, Kueppers, VonFeldt & Salmen*, 454 N.W.2d 916, 920 (Minn. 1990) (punitive damages function "to punish and to deter wrongful conduct").

An attorney can commit misconduct requiring a new trial by inappropriately arguing for punitive damages. In *Johnson v. Washington County.*, 518 N.W.2d 594, 600-01 (Minn. 1994), a jury found a school district and a county liable for the wrongful death of a seven-year-old boy.

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[7] Black's Dictionary defines "punitive damages" as "[d]amages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specif., damages assessed by way of penalizing the wrongdoer or making an example to others. Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract." Black's Law Dictionary 335 (8th ed. 2005).

518 N.W.2d at 597. On appeal, the school district argued that, although punitive damages are not permitted against school districts and counties, "plaintiff's counsel made irrelevant and prejudicial statements in closing argument designed to persuade the jury to award punitive damages." *Id.* at 600. In closing argument at trial, plaintiff's counsel (1) described defendants' conduct as indecent, despicable, and immoral; (2) stated that the school district lied after the accident; and (3) stated that if the jury awarded the damages requested, "people might start listening to jurors who hear despicable cases like this." *Id.* Although the supreme court ultimately deferred to the district court's denial of the school district's motion for a new trial based on attorney misconduct, it noted that "plaintiff's counsel did make inappropriate and inflammatory comments." *Id.* at 601. The supreme court further stated that it agreed with the court of appeals "that counsel's conduct came close to warranting a new trial primarily because his closing argument seemed to center on encouraging the jury to punish the district and county for outrageous and reckless conduct." *Id.*

If counsel's conduct in *Johnson* "came close" to warranting a new trial, the conduct of Weber's counsel in this case surely requires a new trial. Here, this Court denied Weber's motion for punitive damages at the close of Weber's case, stating that "[p]unitive damages are an extraordinary remedy that's not generally favored by the Court. And the clear and convincing standard of MSB acting with willful indifference . . . has not been met." (T. 1217:21-25.)[8] But in closing argument, Weber's counsel repeatedly made inappropriate and inflammatory arguments that encouraged the jury to punish MSB:

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[8] Even if the Court had granted Weber's motion for punitive damages, counsel's arguments still would have been prejudicial, because MSB had explicitly requested the bifurcated proceeding to which it was statutorily entitled in the event that this Court granted the punitive damages motion. (*See* T. 1189:15-1190:14.)

- "But where I think what jurors don't recognize is the power that you have. You have the ability, collectively, to change corporate conduct. You have more power than the [P]resident of the United States, [C]ongress, you have more power than the [P]ope to make and effectuate change. You have that power because you can hold this company accountable to what it did – for what it did to Heidi Weber." (T. 1285:4-11 (emphasis added).)

- "So you could do this. You could make a difference. You could make a real difference. You could, by your verdict, change the way every for-profit and career school does business because if you come back with a large verdict for Weber, I would submit that it will be on the front of newspapers, in the media around the country, for decades." (T. 1285:21-1286:2 (emphasis added).)

- "And if you come back with a number that is significant, and I'm going to tell you, suggest, and of course it's your call, but this would change the way companies do business." (T. 1286:16-20 (emphasis added).)

- "And I'm serious, $36 million. On August 13, 2013, there will be discussion around the country, I'd submit, that you changed the way for-profit colleges do business and they would all step back and think twice. You have that power to do that if you have the courage." (T. 1286:20-24 (emphasis added).)

It is unmistakable that Weber's counsel inappropriately pursued her punitive damages argument, flouting the Court's denial of her requested amendment. This tactic could only have prejudiced the jury with respect to both liability and damages.

Indeed, Weber's argument addressed both deterrence and punishment, the two main purposes of punitive damages. *See BMW of N. Am., Inc.*, 517 U.S. at 568 (stating that punitive damages are imposed to punish the defendant and deter similar conduct). First, the argument is loaded with references to deterring other for-profit colleges and the general industry to which they belong—about which the jury had no evidence—rather than compensating Weber for any harm that she may have actually suffered. (T. 1285:2-1286:24.) This argument was particularly egregious because not only had the Court already denied Weber's motion for punitive damages, the Court had also excluded as irrelevant evidence regarding other career schools or for-profit institutions—in particular, media reports regarding congressional hearings on such schools, as

well as an additional report about the practices of for-profit institutions in general—at the outset of trial. (*See* T. 25:22-26:18 ("In general, I think [Exhibit 71, a general media report] would be prejudicial if it's a general, just a general entry. If it's something that's specific to the claim, at that point the Court would consider it as relevant.").) But Weber's argument went further, specifically referencing punishment as well. For example, counsel requested a damages award of $36 million, an amount that bore no relation to any evidence of harm suffered by Weber, and told the jury that it had the extraordinary power to hold MSB "accountable" for what it did to Weber. (T. 1285:7-15.) In doing so, Weber's counsel asked the jury to penalize MSB for its allegedly wrongful behavior. It was a punitive damages argument in every respect.

The prejudicial closing argument here was analogous to the closing argument at trial in *Vanskike v. Acf Indus.*, 665 F.2d 188 (8th Cir. 1981). In *Vanskike*, the district court granted the defendant's motion for a directed verdict on the issue of punitive damages because plaintiff "had not made a submissible case." 665 F.2d at 209. Despite the district court's ruling, plaintiff's counsel told the jury:

> Here in this case, you as the conscience of the American public, will tell two railroad companies what kind of equipment they should furnish to people who are going to work around their equipment. And you, as the conscience of the American public, will tell an industry, [and defendant], what it must do in the design of a product.

Id. Defense counsel moved for a mistrial, but the district court denied the motion. *Id.* The Eighth Circuit reversed and remanded for a new trial, holding that a jury cannot be told directly or in effect that they may consider punishment or deterrence as an element of punitive damages unless the evidence warrants the submission of punitive damages. *Id.* at 210. The Eighth Circuit stated that "there can be little doubt that [the plaintiff's] closing argument invited the jury both to punish [defendant] and to deter others from like conduct . . . . We agree with [the defendant] that

such an inflammatory argument resulted in an excessive award." *Id.* Thus, the Eighth Circuit reversed and remanded for a new trial. *Id.*

Here, there is little doubt that Weber's closing invited the jury to punish MSB and deter others from like conduct. The only difference is that here, Weber's counsel repeatedly invited the jury to do so. (T. 1285:2-1286:24.) And here, Weber's counsel admonished the jury that it had extraordinary power—more power than the President, more power than Congress, and more power than the Pope—to punish MSB. These comments, combined with counsel's repeated references to the media, newspapers, and "discussion around the country," were even more egregious than the prejudicial comments in *Vanskike*, and more deserving of a new trial.

In addition, the Court's attempted curative instruction at trial failed to alleviate the prejudice of Weber's closing argument. MSB's counsel timely objected to the punitive damages argument during the closing, stating that "[t]his is a punitive damages argument. It's an inappropriate argument." (T. 1286:3-5.) The Court responded by stating, "You know, I will instruct the jury to consider the arguments in the spirit of a closing argument and anything said by the attorneys, of course, is not evidence." (T. 1286:8-11.) But after this statement, Weber's counsel continued to argue for punitive damages, encouraging the jury to award $36 million to change "the way for-profit colleges do business." (T. 1286:20-24.) Thus, not only was the curative instruction inadequate on its face—it did not instruct the jury to actually disregard the inappropriate punitive damages argument—it was inadequate in its impact, because the Court allowed Weber's counsel to continue to argue for punitive damages.

Following Weber's counsel's closing argument, the attorneys and the Court had an off-the-record discussion. (T. 1288:2-3.) After the discussion, the Court instructed the jury that "attorneys aim to do many things and of course this is not a punitive damages trial and you

should disregard, you know, any statements that have to do with publicity or any type of punishment." (T. 1288:4-8.) This curative instruction was again inadequate for at least three reasons. First, the instruction was tardy. It should have been given when MSB's counsel initially objected to the closing argument, and it should have been given yet again when Weber's counsel inappropriately continued to make a punitive damages argument following the objection. Second, the instruction assumed that the jury knew that it could not punish MSB, or that the jury even knew what the phrase "punitive damages trial" meant. At a minimum, a curative instruction required an explanation that the jury could not award money to punish MSB, or to deter MSB or others, when calculating any damages award. Third, where, as here, counsel's closing remarks constituted extreme misconduct, any curative instructions likely would have been inadequate. *Hake*, 258 N.W.2d at 582; *Bisbee v. Ruppert*, 306 Minn. 39, 47, 235 N.W.2d 364, 370 (1975). Not only did Weber's counsel defy this Court's denial of her motion for punitive damages, he continued to argue for punitive damages even after MSB's counsel objected and that objection was sustained.

In sum, Weber's counsel improperly and repeatedly argued for punitive damages during closing argument. Such conduct was inflammatory, prejudicial, and affected the outcome of the case. Accordingly, this Court should grant MSB a new trial.

D. The Court Should Grant a New Trial or a Remittitur of the Jury's Damages Award Because the Damages Award is Remote and Speculative

The jury awarded Weber damages as follows:

- Past embarrassment and emotional distress .....
- Loss of past wages and employment benefits .....
- Future embarrassment and emotional distress .....
- Loss of future earning capacity and employment benefits .....

(b)(6)

As set forth below, the evidence does not justify the damages awarded. Accordingly, MSB is entitled to a new trial and/or a remittitur of the jury's damages award.

1. Remote, Speculative, or Conjectural Damages are not Recoverable

Under Minn. R. Civ. P. 59.01(g), a new trial may be granted where the evidence does not justify the amount of a verdict. *Lesewski v. Nielsen*, 254 Minn. 186, 289, 95 N.W.2d 13, 16 (1959); *Pulkrabek v. Johnson*, 418 N.W.2d 514, 515 (Minn. Ct. App. 1988), *review denied* (Minn. May 4, 1988). The evidence does not justify the amount of a verdict if the damages are remote, speculative, or conjectural. *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980) ("In a civil action the plaintiff has the burden of proving future damages to a reasonable certainty. This rule insures that there is no recovery for damages which are remote, speculative, or conjectural."); *Ahrenholz v. Hennepin Cnty*, 295 N.W.2d 645 (Minn. 1980) (jury could not base award of substantial damages on speculation and conjecture); *Anderson v. Benson's Estate*, 394 N.W.2d 171 (Minn. Ct. App. 1986) (damages resulting from alleged failure by former sole shareholder to file corporate income tax return were remote and speculative); *Olson v. Aretz*, 346 N.W.2d 178, 183 (Minn. Ct. App. 1984) ("Damages which are remote and speculative cannot be recovered.") (citing *Jackson v. Reiling*, 311 Minn. 562, 563, 249 N.W.2d 896, 897 (1977)). "There is no general test of remote and speculative damages; therefore such matters usually should be left to the judgment of the [district] court." *Olson*, 346 N.W.2d at 183 (citing *Jackson*, 249 N.W.2d at 897). But a plaintiff must prove every element of a claim, including the existence of damages, by a preponderance of the evidence. *Hill v. Tischer*, 385 N.W.2d 329, 332 (Minn. Ct. App. 1986). Thus, speculative damages, or those based on an "off-the-cuff estimate," may not be recovered. *Hill*, 385 N.W.2d at 332.

2. The Jury's Damages Award was Unsustainable

a. Weber had the Duty to Mitigate Damages

Plaintiffs generally have an obligation to take reasonable measures to mitigate damages. *See Cnty. of Blue Earth v. Wingen*, 684 N.W.2d 919, 924 (Minn. Ct. App. 2004); *Deutz-Allis Credit Corp. v. Jensen*, 458 N.W.2d 163, 166 (Minn. Ct. App. 1990) (stating that nonbreaching party is duty bound under contract law to "use reasonable diligence to mitigate damages"). This rule specifically applies to wrongfully discharged employees, who have an obligation to mitigate damages after discharge. *Soules v. Indep. Sch. Dist. No. 518*, 258 N.W.2d 103, 106 (Minn. 1977); *Stevens v. Sch. Bd. of Indep. Sch. Dist. No. 271*, 296 Minn. 413, 415, 208 N.W.2d 866, 868 (1973). Generally, if a wrongfully discharged employee fails to make a reasonable effort to pursue or unreasonably declines to accept other employment, the employee is prevented from recovering the full amount of the salary. *Soules*, 258 N.W.2d at 106; *see also Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 627 (Minn. 1988) ("Victims of discrimination, however, do have the duty to minimize damages by using 'reasonable diligence in finding other suitable employment.'") (quoting *Ford v. Motor Co. v. E.E.O.C.*, 458 U.S.219, 231 (1982)). "Generally, a claimant forfeits his or her right to recover back pay from the employer from the time he or she declines a job substantially equivalent to the one lost." *Anderson*, 417 N.W.2d at 231-32.

In *Soules*, for example, a plaintiff elementary school teacher was wrongfully terminated from her employment with defendant. 258 N.W.2d at 105. After her termination, plaintiff was offered a full-time teaching position at a lower salary. *Id.* at 107. Plaintiff declined the offer, stating that she had an aversion to taking a full-time position for less than 60% of what she was previously earning while working for defendant. In considering whether plaintiff was entitled to

the full amount of money due under her teaching contract, the supreme court stated, "When a wrongfully discharged employee fails to exert a reasonable effort to pursue or unreasonably declines to accept other employment, the rule of unavoidable consequences may prevent him from recovering the full amount of salary promised under the contract." *Id.* at 106. And plaintiff's efforts, the supreme court held, were nonexistent or "lackadaisical at best." *Id.* at 107-08. Thus, the supreme court reduced plaintiff's damages award by what she could have earned working for the school from which she received an offer. *Id.* at 108.

b. Weber Failed to Fulfill her Duty to Mitigate Damages

Here, like the plaintiff in *Soules*, Weber failed to mitigate damages. After her termination from MSB on April 29, 2011, she moved to Rapid City, South Dakota in "June or July of 2011." (T. 571:19-22.) Although Weber went approximately four months without a job, she presented little to no evidence that she mitigated damages during this time, other than that she "tried to identify any opportunities [she] could." (T. 571:9-10.) Weber eventually obtained a teaching job for the fall semester for the Rapid City School District, but her contract ended in December 2011. (T. 572:1-4.) Her reasons for being terminated were cryptic at best. (T. 571:23-572:17.) She merely testified that (1) her departure from that job was mutual; (2) the school ended her contract; (3) in order for her husband to secure a job in the Twin Cities, her family had to move back; and (4) her daughters were unhappy in Rapid City, so Weber moved back for "their benefit." (T. 572:3, 11-17.) Weber went about three months without a job after her teaching job ended in South Dakota. She presented vague evidence that she conducted web searches, visited schools to drop off resumes, and filled out online applications. (T. 282:17-23.) Weber also estimated that she applied to "[t]wo or three hundred jobs" since her employment ended with MSB. (T. 283:11.) She did not explain why she could not be more precise about the number of applications she claimed to have submitted. Exhibit 57 shows that Weber applied to

several jobs after her teaching job ended in South Dakota, and that several employers were interested in employing her. (Ex. 57.) But Weber did not present evidence about how she followed up on these leads, or why she was unable to obtain a job with interested employers. Weber submitted a "job log" showing her efforts, or lack thereof, at finding a job. (Ex. 58.) The "job log" shows that Weber went several days at a time—sometimes even more than a week—without any documented efforts toward finding a job. (*See* Ex. 58.)

After returning to the Twin Cities area three months later, in March 2012, Weber was offered and accepted a position in April 2012 as a medical assistant with Metro Urology, which

(b)(6)

school might have an offer for her to be a teacher if that school decided to launch a program in the Twin Cities area, but it never materialized. (T. 583:11-16.)

As the supreme court held in *Soules*, it was not reasonable for Weber to quit her position at Metro Urology. And Weber submitted vague, scant evidence that she attempted to mitigate damages after she quit this position. Weber applied to teach a MA course at Anthem Education. (Ex. 57.) She also received vague emails from her careerbuilder.com and simplyhired.com accounts. (*Id.*) But her "job log" shows that she tried to look for jobs online for just 10 days in June 2013 and for just three days in July 2013. (Ex. 58.) As a result, Weber forfeited her right to recover lost wages from MSB from the time she quit her job at Metro Urology.

Because Weber failed to exert a reasonable effort to pursue employment, and then unreasonably declined to accept continued employment at Metro Urology, Weber is not entitled to damages for loss of past wages and employment benefits. And even if the Court concludes that Weber is entitled to damages for loss of past wages and employment benefits, she is only entitled to the total of her past wages and benefits minus her mitigation efforts, which is approximately (b)(6) (*See* Add. A.) Consequently, MSB is entitled to a new trial or, alternatively, remittitur.

c. This Court Should Grant a New Trial on Damages or Remittitur to Reduce the Jury's Past Damages Award

(b)(6)

20) ar

These awards were not supported by the evidence. As the attached Addendum shows, the jury evidently failed to consider both the appropriate amount of benefits received by Weber and the impact of Weber's failure to mitigate damages. (*See* Add. A (outlining the appropriately reduced jury award should the Court decline to grant MSB's motion for JMOL or a new trial).) Both awards are so extraordinarily high and beyond Weber's actually proven damages that the jury could only have compensated Weber for her loss of educational benefits. But as discussed *infra* in Section II.E.2, Weber cannot recover any damages for loss of educational benefits because (1) Weber and her family did not actually seek out an education after Weber's termination; (2) Weber was not enrolled in any classes at the time of her termination; (3) Weber and her family did not incur any education expenses or indebtedness; and (4) Weber's husband and daughter are not parties to this lawsuit. Because the damages rendered in this case are remote, speculative, and conjectural, MSB respectfully requests that this Court grant MSB a new trial and/or remittitur to reduce the damages award.

d. Future Damage Awards Must be Reasonably Certain

A plaintiff may recover for damages that have already materialized or come to pass at the time suit is brought; or, in certain circumstances, for things that the plaintiff proves are more likely than not to materialize in the future. *Pietrzak*, 295 N.W.2d at 507; *see also Cardinal Consulting Co v. Circo Resorts Inc.*, 297 N.W.2d 260 (Minn. 1980) (holding that established business can recover lost profits if it can demonstrate with reasonable certainty both their occurrence and their amount); *Duchene v. Wolstan*, 258 N.W.2d 601, 605-06 (Minn. 1977) (holding that future loss must be reasonably certain as established by a preponderance of the evidence). Nevertheless, the plaintiff always has the burden of proving future damages to a reasonable certainty, and cannot recover for damages which are remote, speculative, or conjectural. *Pietrzak*, 295 N.W.2d at 507.

e. Weber Failed her Burden of Proving Future Damages to a Reasonable Certainty

Here, Weber offered no specific or expert testimony regarding the likelihood of future employment or the expected duration of her future economic damages—except that she cut off her own earnings and opened herself up to greater out-of-pocket loss by quitting her job at Metro Urology. Weber quit her job at Metro because she felt "discomfort" after thirteen months. (T. 582:10-14.) This choice cut off her economic damages from this point forward. *See Anderson*, 417 N.W.2d at 231-32 ("Generally, a claimant forfeits his or her right to recover back pay from the employer from the time he or she declines a job substantially equivalent to the one lost.") At the very most, the jury should have awarded Weber future economic damages based on the differential between her MSB salary and benefits and her Metro salary and benefits, which was approximately (b)(6) (Weber's annual MSB earnings of (b)(6) which is twelve months' worth of her 2012 Metro Urology wages and benefits equaling (b)(6) In

the absence of any evidence concerning the duration of future economic loss, and setting aside for the moment Weber's intentional and voluntary decision to abandon the wages and benefits she was earning through Metro Urology, the jury's (b)(6) award for future economic damages obviously goes well beyond any applicable earnings differential, and well beyond reason.

Second, Weber presented little to no evidence that she sought to mitigate damages after she quit Metro, which was her burden. As already noted, during the post-Metro timeframe, Weber applied to teach a MA course and received vague emails from her careerbuilder.com and simplyhired.com accounts. (Ex. 57.) Her "job log" shows that she tried to look for jobs online for just 10 days in June 2013 and for just three days in July 2013. (Ex. 58.) Thus, Weber failed to fulfill her duty to mitigate future damages. *See Anderson*, 417 N.W.2d at 627 (stating that wrongfully discharged employees have the duty to minimize damages by using reasonable diligence to find other employment). Moreover, Weber presented no expert evidence regarding the "reasonableness" of her job search; nor did she present any evidence about the duration of future economic loss. Consequently, there was no justification for the $154,000 future damages award rendered by the jury in this case. Because the future damages award was not reasonably certain, this Court must grant MSB a new trial and/or remittitur. *See Pietrzak*, 295 N.W.2d at 507.

E. This Court Should Grant a New Trial Because the Jury Instructions and Verdict Form Were Erroneous

A new trial "'is required if the jury instruction was erroneous and such error was prejudicial'" or "'if the instruction was erroneous and its effect cannot be determined.'" *Daly v. McFarland*, 812 N.W.2d 113 (Minn. 2012) (quoting *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002)). Here, MSB is entitled to a new trial because (1) the Court did not utilize MSB's requested jury instruction—or its special verdict questions—for Weber's

MWA claim; (2) the Court utilized Weber's requested jury instruction that a plaintiff need only show that a law is "implicated" by her reports; and (3) the Court did not utilize MSB's requested instruction regarding educational benefits.

1. Jury Instructions Regarding Actionable Reports Under the MWA

In its proposed jury instructions—which were the basis for its proposed special verdict form—MSB submitted the following instruction for finding liability under the MWA:

> [MSB] was not permitted to terminate Weber if you find that she has proven:
>
> 1. she reported particular facts; and
> 2. those facts, if true, would have amounted to violations of the Minnesota deceptive trade practices or false advertising statutes in effect at the time of her report(s); and
> 3. her purpose, at the time of these report(s), was to expose illegal action, rather than to perform her job duties; and
> 4. she did not make statements or disclosures knowing that they were false or that they were in reckless disregard for the truth; and
> 5. she was terminated for her report(s) of legal violations.

Instead, the Court utilized CIV JIG 55.65 and 55.66, along with the corresponding special verdict questions. Specifically, the Court instructed that:

> **Duty not to retaliate**
>
> An employer may not terminate an employee [if]:
>
> 1. The employee in good faith reported an actual or suspected violation of a state or federal law to an employer or
>
> The employee refuses an employer's order that the employee believes, based on objective facts, violates any state or federal law or rule or regulation. The employee must inform the employer that the order is being refused for that reason, and
>
> 2. The employee's report played a part in the employer's decision.

Good Faith

> A report is made in good faith if it is made for the purpose of exposing illegal action.
>
> Good faith must be decided at the time the report is made, not after later events have occurred.

Under the circumstances of this case, however, use of these instructions was inadequate to guide the jury.

Weber testified to generalized concerns about MSB's practices, vague statements about those concerns, and her unsupported belief that those concerns involved violations of law. As such, it was essential that the jury be provided with particularized instructions to guide them in making the findings that are required under both statutory law and case law, notably that Weber reported facts, that those facts could have amounted to legal violations, that her purpose was to expose illegal action, and that she did not make statements knowing they were false or in reckless disregard for the truth. *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 227, 229-30 (Minn. 2010); *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 19 (Minn. 2009); *Obst v. Microtron, Inc.*, 614 N.W.2d 196, 202 (Minn. 2000). Without such instructions, the jury was allowed to conclude that Weber could have engaged in protected activity by simply reporting something – in this case, almost anything – she believed might violate a law, when in fact, the MWA requires that Weber show she reported specific facts which, if true, would have violated a specific law. *See Kratzer*, 771 N.W.2d at 19.

This confusion was exacerbated by the Court's decision to instruct the jury that Weber could prevail by showing she engaged in either of two types of protected activity—reporting unlawful conduct or refusing an illegal order—even though Weber adduced no evidence related to a legally sufficient refusal. Minn. Stat. § 181.932, subd. 1. In fact, Weber's own counsel waived this theory of liability by agreeing to the Court's special verdict form, which addressed

reports, but not refusals. (*See* Special Verdict Form.) Nonetheless, the jury was instructed regarding refusals, creating the impression that there were two ways for Weber to establish MWA liability when, in fact, there was only one.

In particular, the "refusal" instruction includes a requirement that the employee's belief in illegality of the employer's order be "based on objective facts." On the other hand, the "reports" instruction contained no such guidance requiring that specific and particular facts be reported. The jury likely believed, therefore, that Weber's vague reports about perceived wrongdoing—which neither raised nor adduced specific facts, as required—could be treated as protected activity, because the jury instruction included no requirement of particularity or specificity. This is not the law which the jury should have been applying.

This error was aggravated by the Court's decision to utilize Weber's proposed instruction that "[a]n employee does not have to identify the actual statute that is violated by his or her report, but there must be a state or federal law or rule that is implicated by the employee's report." While this language is taken almost verbatim from *Abraham v. Cnty. of Hennepin*, 639 N.W.2d 342, 355 (Minn. 2002), it was too vague for a lay jury and likely confused them regarding the elements needed to establish a MWA claim. Specifically, by stating that there must simply be "a state or federal law or rule that is implicated by the employee's report," it is likely the jury believed that Weber's so-called reports need only be somewhat related to an actual federal law or statute for them to constitute protected activity. Stated another way, it is highly unlikely that, having been instructed that an employer cannot terminate an employee if "[t]he employee in good faith reported an actual or suspected violation of a state or federal law to an employer" and that there must simply be "a state or federal law or rule that is implicated by the employee's report," a lay jury would understand Weber was required to show that she

reported facts and that those facts, if true, must have constituted an actual violation of state or federal law. *See Kratzer*, 771 N.W.2d at 19 (explaining the contents of a report that is legally sufficient to constitute protected activity under the MWA). Thus, these jury instructions—whether examined alone or in tandem—require a new trial.

Finally, the Court also denied MSB's request to instruct the jury that Weber prove "she did not make statements or disclosures knowing that they were false or that they were in reckless disregard for the truth." (MSB's Proposed Jury Instructions.) Such an instruction, however, is contemplated by the MWA, which specifically "does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth." Minn. Stat. § 181.932, subd. 3. And at trial, there was ample evidence that, had Weber actually made the statements that she claimed to have made, they would have either been false or in reckless disregard for the truth. [9] As such, MSB was entitled to an instruction that allowed the jury to conclude that Weber's vague and reckless statements could not have constituted good faith reports. *Phillips v. Great N.R. Co.*, 100 N.W.2d 765, 767 (Minn. 1960) (internal quotations omitted) ("a party is entitled to a specific instruction on his theory of the case, if there is evidence to support it and if a proper request for such an instruction is made").

2. Jury Instruction Regarding Educational Benefits

The Court also declined to modify the JIGs regarding past and future damages to instruct the jury that Weber was only entitled to "educational benefits to the extent that Weber has paid

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[9] For example, Weber testified that MSB was misleading students by not informing them of the planned change in accreditors. However, if Weber had simply looked at the ABHES accreditation standards—of which she was clearly aware—she could have easily learned that it would have been misleading for MSB to publicize that it was seeking accreditation that it had not yet achieved. (T. 698:14-T. 699:17; 704:7-18; Ex. 231.)

to replace those benefits." This was prejudicial error because Weber cannot recover any damages for loss of other educational benefits.

Under MSB's educational benefits policy, Weber and her family were given the benefit of taking classes without tuition payment, assuming availability, as long as Weber was employed at MSB. (T. 587:19-588:12.) But when Weber's employment with MSB ended, Weber and her family either were not enrolled in classes or quit taking their classes. Weber, for example, was not enrolled in the health care management bachelor's degree program at the time of her termination:

> Q. As of the time of your termination, April 29, 2011, had you enrolled in the health care management bachelor's degree program?
>
> A. No. Because my performance review was done five weeks before my termination.

(T. 591:7-11.) And even if Weber had been enrolled in the health care management bachelor's degree program, it would have taken her just two years to complete the program at MSB, not four years. (T. 592:13-22.) Weber's husband and daughter, on the other hand, were enrolled at MSB at the time of Weber's termination. (T. 587:25-588:22.) But Weber's husband elected not to complete that program. He quit immediately, even though he could have completed the quarter without paying any tuition. (T. 1209:9-1210:8.) And neither Weber's husband nor Weber were able to testify as to whether their daughter completed the quarter, though Weber's husband conceded that she could have done so without paying any tuition. (T. 589:7-22.)

Weber's husband further testified that (1) he had not enrolled in any classes at MSB or elsewhere since spring of 2011; (2) his daughter had not enrolled in any classes at any other institutions; (3) he had not paid for any educational programs since he attended MSB; (4) Ms. Weber had not paid for any educational programs or incurred tuition expenses; and (5) nobody in

his family had sought student loans to enroll in any sort of educational program or institution. (T. 1210:9-1211:23.)

Weber presented no evidence that she or her family actually incurred any out-of-pocket education expenses. And Weber presented no evidence that she or any of her family members ever sought to continue their education at MSB or elsewhere after Weber's termination. For her own part, Weber was not even enrolled in the program for which she sought payment, and adduced no evidence she had any intention to enroll; in fact, she already held a health care management degree. (Ex. 46.) Consequently, the evidence did not justify a damages award for any lost educational benefits under Minn. R. Civ. P. 59.01(g), because any such award required the jury to speculate that Weber would have utilized the benefit.

MSB has not found any Minnesota caselaw that supports a damages award for lost educational benefits where Weber did not actually incur any education expenses. In at least one jurisdiction, damages for lost tuition were denied in the absence of payments actually made to another institution to continue the education. *See Verni v. Cleveland Chiropractic College*, No. WD62808, 2005 Mo. App. LEXIS 1544, at *16 (Mo. Ct. App. Oct. 25, 2005), *overturned in part on other grounds*, 212 S.W.3d 150 (Mo. 2007) (expelled student failed to produce any tuition statements from the school at which he went on to complete education). Although not precedential, *Verni* is persuasive authority—and more persuasive than any authority offered by Weber—that she must have actually incurred education expenses to be awarded educational benefit damages. And it is consistent with Minnesota caselaw holding that damages cannot be remote, speculative, or conjectural.

Finally, even if Weber could recover educational benefit damages, she cannot recover damages on behalf of her husband and daughter, who are not even parties to this lawsuit. Actual

damages are "'an amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses. – Also termed compensatory damages.'" *Ray v. Miller Meester Adver., Inc.*, 684 N.W.2d 404, 407 (Minn. 2004) (emphasis added) (citing Black's Law Dictionary 394 (7th ed. 1999)). Weber simply cannot recover damages on behalf of her husband and daughter for lost educational benefits. First, Weber's husband and daughter suffered no actual losses. As discussed above, they never actually incurred education expenses. Second, Weber's husband and daughter are not complainants. They are not parties to this action; and therefore, Weber cannot recover any damages on their behalf.

In sum, the Court erred in declining to modify the JIGs regarding past and future damages to instruct the jury that Weber was only entitled to "educational benefits" to the extent that Weber has paid to replace those benefits. This error was prejudicial to MSB, and therefore, MSB is entitled to a new trial.

F. Because the Cumulative Effect of Trial Errors Prejudiced MSB, a New Trial and/or Remittitur of the Jury Award is Required

A series of errors, each independently inadequate to require a new trial, can cumulatively result in prejudice sufficient to require a new trial. *Larson v. Belzer Clinic*, 292 Minn. 301, 307, 195 N.W.2d 416, 419 (1972) ("It is unlikely that any of the matters to which we have referred, standing alone, would be grounds for reversal. The sum of them, however, characterizes [respondent's] argument as prejudicial and unfair."); *In re Welfare of D.D.R.*, 713 N.W.2d 891, 907 (Minn. Ct. App. 2006) ("Although we find no one individual error that requires a new trial, the cumulative effect of trial error requires a new trial."). "Cumulative error exists when the cumulative effect of the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to defendant's prejudice by producing a biased jury." *State v. Penkaty*, 708 N.W.2d 185, 200 (Minn. 2006). In cases such as this one, with conflicting testimony and

difficult factual determinations, cumulative errors are more likely to prejudice defendant. *State v. Underwood*, 281 N.W.2d 337, 344 (Minn. 1979) ("In the case at bar, there was a great deal of conflicting testimony and the factual determinations must have been difficult. Under these conditions, any error, however small, may have prejudiced defendant. Considering the cumulative effect of the errors committed below, we are compelled to reverse.").

Numerous supreme court cases demonstrate that several purportedly inconsequential errors can have a cumulative prejudicial effect that warrants a new trial. In *Larson*, for example, the supreme court concluded that the district court erred by excluding testimony which the plaintiff sought to elicit from the defendant. 195 N.W.2d at 419. In addition, the supreme court concluded that defense counsel made an improper closing argument and inappropriately addressed opposing counsel by name on several occasions. *Id.* Although the supreme court noted that none of these errors alone would be grounds for reversal, it held that the sum of them was "enough to tip the scale." *Id.*

The errors at trial in this case were even more egregious than the errors in *Larson.* Here, any of the errors, standing alone, would be grounds for this Court to grant MSB a new trial:

- The Court erred by denying MSB's motion in limine to exclude the irrelevant and prejudicial testimony of former St. Claire and Beck. This prejudice was exacerbated by preventing MSB from questioning St. Claire about the fact that she and Weber are represented by the same law firm.
- The Court erred by allowing Weiss to testify only as a rebuttal witness.
- Weber's counsel improperly and prejudicially argued for punitive damages in his closing argument.
- The damages award was speculative and conjectural.
- The jury failed to properly consider the evidence, or lack of evidence, concerning mitigation and recoverable damages.
- The Court failed to properly instruct the jury on essential elements of the MWA.

- The Court erred by providing instructions on issues that were not relevant and/or providing instructions that were vague, unnecessary and confusing.

Again, any of these errors, standing alone, is sufficient to grant MSB a new trial. But even if this Court disagrees, MSB is still entitled to a new trial and/or remittitur because their cumulative effect prejudiced MSB. Together, these errors resulted in a damages award that was conjectural and speculative. Consequently, this Court should grant MSB a new trial and/or remittitur of the jury award rendered in this case.

CONCLUSION

MSB respectfully asks that, should the Court deny MSB's Motion for Judgment as a Matter of Law, the Court nonetheless grant this alternative motion for new trial and/or remittitur. In particular, MSB asks the Court to provide the following relief (in the alternative):

- grant MSB's motion for a new trial due to any (or all) of the prejudicial errors that occurred at trial; or
- grant MSB's motion for remittitur to reduce the speculative jury award rendered in this case.

NILAN JOHNSON LEWIS PA

Dated: October 18, 2013

By: s/ Matthew E. Damon

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ACKNOWLEDGEMENT

The above-signed hereby acknowledges that, pursuant to Minn. Stat. §549.211, costs, disbursements and reasonable attorney and other sanctions may be awarded to the opposing party or parties in this litigation if the Court should find the above-signed acted in bad faith, asserted a claim or defense that is frivolous and costly to the other party, asserted an unfounded position solely to delay the ordinary course of proceedings or to harass, or committed a fraud upon the Court.

s/ Matthew E. Damon
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ADDENDUM A

Past Damages from April 29, 2011 – Aug. 9, 2013

$58,710.00 ..... Wages per year at time of termination

+ $11,154.90 ..... Estimated amount of benefits per year (19% of salary) (T. 586:24-25; Ex. 299)

= $69,864.90 ..... Total MSB earnings per year (salary + benefits)

x 2 years and 15 weeks (prorated)

=$159,883.13 ..... Total MSB wages plus benefits lost (gross) from Apr. 29, 2011 – Aug. 9, 2013

- $16,408.34 ..... 2011 wages and benefits from Rapid City teaching job ($13,788.52 in wages + $2,619.82 in benefits (19% of wages)) (Ex. 59)

- $27,749.25 ..... 2012 Metro Urology wages and benefits ($23,318.70 in wages + $4,430.55 in benefits (19% of wages)) (Ex. 59)

- $9,855.58 ..... 2013 Metro Urology wages and benefits ($8,282 in wages + $1,573.58 in benefits (19% of wages)) (Ex. 59)

- $7,118.75 ..... Prorated wages and benefits Weber would have earned from May 28, 2013 – Aug. 9, 2013, if she had not quit her Metro Urology position ($37,017.49 annual wages and benefits prorated for 10 weeks).
- $5,000.00 ..... Royalties earned from sale of book

= $93,751.21 ..... Total damages for past wages and benefits minus mitigation

Future Damages after Aug. 9, 2013

$0.00 ..... Future damages proven at trial

Total Past and Future Damages

$93,751.21 ..... Total damages for past wages and benefits minus mitigation

+ $0.00 ..... Future damages proven at trial

= $93,751.21 ..... Total damages for past and future wages and benefits minus mitigation