

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.
Plaintiffs

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Case No.: 4:11-CV-00506-BP

-vs-

HIGH-TECH INSTITUTE, INC.
d/b/a ANTHEM EDUCATION GROUP
and HIGH TECH INSTITUTE
Defendant.

PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANTS' TWO MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs Marcus Champion, Jody Hendrix, and Kelsey DeSanto respectfully submit the following facts which controvert Defendant's alleged summary judgment facts and which show there to be genuine issues of material fact such that Plaintiffs' claims should proceed to trial and be decided by a jury. This pleading and these facts are incorporated by reference as part of Plaintiffs' factual responses in Plaintiffs' Suggestions in Opposition to the two pending Motions for Summary Judgment filed by Defendant.

A. Claims of Plaintiff Marcus Champion

1. Plaintiff Marcus Champion enrolled in High-Tech Institute's Criminal Justice Program in late 2005. The following are some of the representations made to him by a High-Tech Institute Admissions Representative prior to his enrollment in order to get Mr. Champion to enroll:

- * Employment would be located by High Tech for graduates of the High Tech criminal justice program;

- * That the school had professionals in the placement department who were connected to a network of potential employers for High Tech criminal justice graduates and that these professionals were in direct contact with criminal justice industry contacts at prospective employers;
- * Graduates of the High Tech criminal justice program could reasonably anticipate employment in government criminal justice positions;
- * Graduates of the High Tech criminal justice program could reasonably anticipate employment in positions such as: court bailiffs, homeland security jobs, probation officers, and security specialists;
- * That the average starting salary for High Tech criminal justice program graduates was between \$40,000 and \$50,000;
- * That credits earned at High Tech would transfer to all other colleges and universities;
- * That the school and program were fully and properly accredited; and,
- * That the Criminal Justice Program had internships and other hands-on opportunities.

(Second Amended Complaint, ¶ 13a, b, d, e, f, g, ¶ 18h, i, j, k).

2. None of the above-referenced representations turned out to be true. (Second Amended Complaint, ¶ 19).

3. When Marcus Champion was a Senior at Hickman Mills High School, High Tech and its Admissions Representative Kathy Carrier had a booth at a College Career Fair. (Champion Depo., pp. 19:10-25, 31:10-5, 33:18-34:15).

4. During their discussions at the College Career Fair and in the in-home meeting, High Tech Admissions Representative Kathy Carrier represented to Marcus Champion that High Tech provided assistance in locating employment and that High Tech's graduates are guaranteed a job in the field. (Champion Depo., pp. 80:45-14, 81:1-10, 126:15-128:22).

5. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19).

6. During their discussions at the College Career Fair, High Tech Admissions Representative Kathy Carrier represented that the "average starting salary" for High Tech Criminal Justice Program graduates was between \$40,000 and \$50,000 per year. (Champion Depo., pp. 127:13-128:6).

7. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19).

8. After hearing these initial representations from High Tech Admissions Representative Kathy Carrier at the College Career Fair, Marcus Champion told his mother about it, and his mother later contacted Kathy Carrier based on the contact information she had provided Marcus at the College Career Fair. (Champion Depo., pp. 33:18-34:3; Jones Depo., p. 29:4-10).

9. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier met with Marcus Champion and his mother. (Champion Depo., p. 38:21-39:15).

10. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented at that time that High Tech Institute – Kansas City had professionals in the placement department who were connected to a network of potential

employers for High Tech criminal justice graduates and that these professionals were in direct contact with criminal justice industry contacts at prospective employers. (Champion Depo., pp. 129:11-130:2).

11. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 130:3-23).

12. In the meeting at Marcus Champion's home in December, 2005, High Tech's Admissions Representative represented that graduates of the High Tech Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Champion Depo., p. 131:12-21).

13. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 131:24-132:5).

14. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented that graduates of the High Tech Criminal Justice Program could reasonably anticipate employment in positions such as: court bailiffs, homeland security jobs, probation officers, detectives, police officers, parole officers, and security specialists. (Champion Depo., pp. 40:16-41:8, 133:2-23, 134:21-135:2).

15. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19).

16. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented that the Criminal Justice Program was a

hands-on program where Marcus could get a lot of hands-on training. Ms. Carrier said that there would be hands-on at actual crime scene investigations, that there would hands-on in the firearms training, and that High Tech had internships with local departments. (Champion Depo., pp. 40:16-24, 89:13-90:3).

17. The representation set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, was false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 90:4-17).

18. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier showed a flip chart and represented that the normal starting salary for entry-level detectives and security agents was between \$40,000 and \$50,000 per year and that the normal starting salary for entry-level probation and parole officers was \$60,000 per year. Mr. Champion testified he believed he was receiving the school's knowledge on the subject of starting salaries for its Criminal Justice Program graduates – "I figured that, to me, that's what they knew they were paying at that time." (Champion Depo., pp. 51:19-52:25, 113:16-114:4; Jones Depo., pp. 41:1-13, 45:23-46:4).

19. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19; Champion Depo., p. 53:1-8).

20. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier represented that the credits earned at High Tech Institute – Kansas City would transfer Marcus chose to go to a different school and pursue a four-year degree – saying "your credits will go to any school you choose to go to." (Champion Depo., pp. 106:19-

107:24). Ms. Carrier also specifically represented that the High Tech credits would transfer to UMKC and other schools like UMKC, such that Marcus could further his education at a public university and would only have to do two more years for a Bachelor's Degree. (Champion Depo., pp. 108-13-109:10; Jones Depo., pp. 50:4-51:7).

21. At a later point, a High Tech Institute Financial Aid Representative reiterated the representation that High Tech Institute's credits would transfer if Marcus Champion later chose to attend another school for a Bachelor's Degree. (Champion Depo., pp. 106:1-18).

22. The representations set forth in the two immediately preceding paragraphs, made by High Tech's Representatives, were false. (Second Amended Complaint, ¶ 19; Champion Depo., pp. 105:18, 143:18-144:3, 144:9-17; Jones Depo., pp. 73:7-75:8).

23. Marcus Champion attempted to transfer his High Tech credits to Blue River College for the police academy, and he was informed by Blue River College that the High Tech credits were not transferable. (Champion Depo., pp. 143:18-144:3, 144:9-17).

24. Marcus Champion has contacted UMKC to see if he could attend their Criminal Justice Program to continue and get a four-year degree, and he was told by UMKC that none of his High Tech credits were transferable to UMKC. (Champion Depo., p. 144:4-8).

25. Marcus Champion has not been able to continue his education because of the non-transferability of High Tech's credits. He will have to start over. (Champion Depo., p. 187:13-19).

26. In the meeting at Marcus Champion's home in December, 2005, High Tech Admissions Representative Kathy Carrier did not tell advise Marcus or his mom that there had not yet been a graduate from the Criminal Justice Program at High Tech Institute – Kansas City. (Champion Depo., pp. 73:20-78:6).

27. Despite this, Ms. Carrier had Marcus sign the front side of a document entitled “A Message From The Campus President.” Marcus read the top part of the document but was not shown that there was even a back side to the document. (Champion Depo., pp. 75:20-77:8).

28. High Tech Institute does not leave a copy of the “A Message From The Campus President” document with the student enrollee, and did not leave a copy of it with Marcus Champion or his mother. (Champion Depo., pp. 73:20-78:6).

29. High Tech does not have prospective student enrollees sign on the reverse side of the “A Message From The Campus President” document where the statistical information is actually presented. There is no legitimate reason for High Tech not to require such a signature be directly on the page conveying supposedly important information. (Torres I Depo., pp. 39:17-40, Champion Depo., pp. 75-78).

30. High Tech does not leave a copy of the “A Message From The Campus President” document home with the student enrollee, and there is no legitimate reason why it does not do so. In fairness, a copy should be provided to the student enrollee. (Torres I Depo., pp. 37:21-38:11, 39:17-40:1, 43:19-23).

31. High Tech Institute also failed to inform Marcus Champion fully regarding the issue of transferability of High Tech credits. (Champion Depo., p. 166:1-8).

32. High Tech Institute also failed to inform Marcus Champion regarding the status of their academic accreditation. (Champion Depo., p. 166:14-19).

33. During this in-home meeting, High Tech Admissions Representative Kathy Carrier was continually filling out paperwork and obtaining signatures from Marcus Champion and his mother. (Champion Depo., p. 60:5-13).

34. During this one in-home meeting, Marcus Champion signed the enrollment paperwork to attend High Tech Institute's Criminal Justice Associates Degree Program. (Champion Depo., pp. 41:15-42:1).

35. Marcus Champion did not read the documents that Kathy Carrier asked him to sign at this in-home meeting. He skimmed them, but did not read because of a "bad habit" of not reading materials when presented to him for signature by persons who have gained his trust. (Champion Depo., pp. 60:19-22, 64:9-14, 65:7-13, 98:1-99:19).

36. Marcus Champion's mom did not read the entirety of the documents that Kathy Carrier asked her to sign at this in-home meeting. She only read what was filled in and then trusted the oral explanation of the Admissions Representative. (Jones Depo., p. 16:7-16, 16:23-3, 23:3-7, 25:11-14, 26:L20-23, 27:8-17, 28:2-19, 40:16-17, 48:17-25). Marcus Champion's mother, Sandra Jones, testified, "I feel that we trusted her explanation of the documents and we did not take the time to read through them. . . . we trusted the explanations that we were being given at that time" (Jones Depo., pp. 55:18-23, 58:8-10).

37. Marcus Champion was not provided a catalog by Kathy Carrier, even though Ms. Carrier had Marcus unknowingly sign documents that said he had received a school catalog. (Champion Depo., p. 64:6-8)

38. Marcus Champion does not recall copies of documents being left after meeting. (Champion Depo., pp. 46:14-47:10).

39. At orientation in June of 2006, High Tech officials reiterated the representations that there would be job placement as well as internships. (Champion Depo., p. 105:1-10).

40. Marcus Champion did not read other documents which High Tech had students sign

at orientation. He did not read because of a "bad habit" of not reading materials when presented to him for signature by persons or an institution who he at that time trusted. (Champion Depo., pp. 83:9-84:23).

41. Marcus Champion began classes at High Tech in June of 2006, after graduating from High School in May. (Champion Depo., p. 20:7-9).

42. Marcus Champion was already working as a security guard before he started school at High Tech. (Champion Depo., pp. 21:9-21).

43. Marcus Champion did not investigate the things represented to him by Kathy Carrier. He noted, "I didn't feel that Ms. Carrier was telling me anything that was untrue, so I kind of just believed what I was being shown." (Champion Depo., p. 69:13-17).

44. On the form he completed at some point during the initial in-home visit with High Tech Admissions Representative Kathy Carrier, Marcus Champion intended to write that he expected to be making \$20 per hour and not \$20,000. High Tech's counsel Marty Loring initially thought that a \$20 per hour job multiplied by 2,000 work hours would result in a \$48,000 annual salary. Marcus Champion agreed with Mr. Loring's math, until both acknowledged that math was not their strong suits. (Champion Depo., pp. 93:1-15).

45. Close to the time of his graduation in May of 2008, Marcus Champion learned from another student in the Criminal Justice Program, Jody Hendrix, that High Tech Institute had been having issues with its accrediting bodies. (Champion Depo., pp. 141:13-142:17). The accreditation issues were important to Marcus. (Champion Depo., pp. 141:13-19).

46. Marcus Champion graduated in May of 2008 with an Associates of Applies Science in Criminal Justice. High Tech failed to provide him any meaningful job placement assistance, and

Marcus Champion has never been able to earn more than \$15 per hour in security guard, prison guard, or other positions. (Champion Depo., pp. 89:13-90:17, 187:3-188:16). Marcus Champion sought assistance but he did not receive any assistance in the graduate placement area from High Tech. (Champion Depo., pp. 105:1-10, 130:17-23).

47. High Tech Institute charged Marcus Champion more than \$25,000 in tuition and books alone. (Defendant's Ex. C).

48. Kathy Carrier (Katherine Gharst) was the High Tech Admissions Representative who enrolled Marcus Champion. (Carrier Depo., pp. 4:16-5:6). Ms. Carrier worked for High Tech Institute – Kansas City as an Admissions Representative during the time period between January of 2004 and the summer of 2007. (Carrier Depo., p. 7:1-17). She understood that she was a salesperson in her role as a High Tech Admissions Representative. (Carrier Depo., p. 27:21-23). Her starting pay at High Tech was \$40,000 per year, and she was making \$70,000 per year when she left. (Carrier Depo., p. 130:3-6). She had previously been employed doing mortgages, as a bridal salon manager, and in the interior design business. (Carrier Depo., pp. 123:21-126:22). She left High Tech to work as an account executive for a heating and air-conditioning cleaning company. (Carrier Depo., p. 9:12-23). Ms. Carrier has some college credits, but she does not remember if the number of college credits she has is more than twenty. The courses she took were in music, acting, and interior design. (Carrier Depo., pp. 13:17-15:14).

49. In addition to Marcus Champion, Kathy Carrier has enrolled at least two other former High Tech students who have made claims that she engaged in fraud and deception regarding job placement, salary, and credit transfer – Chad Anderson and Virginia Saenz. (Carrier Depo., pp. 144:17-146:10, 147:15-22).

50. Kathy Carrier utilized scripts and flip charts as part of her High Tech Admissions Representative presentation. (Carrier Depo., p. 23:1-17).

51. Kathy Carrier admitted she did not give a catalog to students prior to their enrollment. She claims, "I showed it, but I didn't give it to them." She could not recall any particular part of the catalog that she showed the student. (Carrier Depo., p. 28:16-23).

52. In her deposition, Kathy Carrier originally testified that High Tech trained her that it was "regionally accredited, which meant that there -- if a student wanted to transfer their credits, they were transferrable, however, it would be up to the accepting school as to whether or not they would accept those credits." She further testified, "we were nationally accredited initially and then we were regionally accredited, I don't know." (Carrier Depo., pp. 49:21-52:8). She testified, "Again, my training was that the credits were transferrable, but it would have to be up the accepting school as to whether or not they would accept those credits. And that's exactly what I would tell my students." (Carrier Depo., p. 52:9-16).

53. After a break, Ms. Carrier said that she had been confused when she said High Tech was regionally accredited, claiming, "I was confused. Because when I think about it, we were nationally accredited." (Carrier Depo., pp. 59:22-60:5).

54. Kathy Carrier does not recall what High Tech Institute told her was the difference between national accreditation and regional accreditation, and she does not recall High Tech ever advising her that nationally accredited schools' credits don't transfer well to other schools. (Carrier Depo., pp. 60:13-61:13).

55. Regionally accredited colleges and universities such as Avila, Missouri Valley College, Drury University, Rockhurst University, William Jewell, UMKC, and the Community

Colleges will not even consider for transfer credits from nationally accredited schools such as High Tech Institute/Anthem College. (Carrier Depo., pp. 62:7-65:10). High Tech never informed Admissions Representative Kathy Carrier of this fact. (Carrier Depo., pp. 62:7-65:10).

56. High Tech Admissions Representative Kathy Carrier does not remember ever advising student enrollees that national accreditation meant that credits would not transfer as readily as regionally accredited institutions' credits. (Carrier Depo., pp. 65:17-66:9).

57. High Tech Admissions Representative Kathy Carrier does not remember ever being given anything in writing from High Tech regarding what she could or could not tell a potential student enrollee about prospective salary. (Carrier Depo., p. 92:11-14, 122:18-21).

58. High Tech Admissions Representative Kathy Carrier does not remember ever being given anything in writing from High Tech regarding what she could or could not tell a potential student enrollee about job placement. (Carrier Depo., p. 92:15-18, 122:14-17).

59. High Tech Admissions Representative Kathy Carrier does not remember ever being given anything in writing from High Tech regarding what she could or could not tell a potential student enrollee about credit transfer. (Carrier Depo., p. 122:22-25).

60. High Tech trained Admissions Representative Kathy Carrier to get the student interested and enrolled on the same day. (Carrier Depo., p. 112:21-113:6).

61. During her time period at High Tech, Admissions Representative Kathy Carrier was never made aware of any written policies regarding what she should do if she became aware of a student complaint. She doesn't remember any training on that subject. (Carrier Depo., p. 127:14-21).

61. High Tech Admissions Representative Kathy Carrier knew that she had to enroll

students or she wasn't going to keep her job. (Carrier Depo., p. 131:12-18, 246:18-25). She received pay increases based on the number of student enrollments she accomplished. (Carrier Depo., p. 247:4-7). There were rankings exchanged at High Tech showing which reps had enrolled the most and who had enrolled the least. (Carrier Depo., p. 136:6-13).

62. High Tech Admissions Representative Kathy Carrier admits she told Marcus Champion and his mother that High Tech would assist him in finding a job in the program field. (Carrier Depo., pp. 215:17-22). She does not recall whether or not she told Marcus and his mom that a very high percentage of criminal justice graduates get jobs in the career field. (Carrier Depo., pp. 215:12-16).

63. High Tech Admissions Representative Kathy Carrier admits a student should be able to trust what he or she is told by a High Tech Admissions Representative prior to enrollment. (Carrier Depo., pp. 222:22-223:2).

64. High Tech Admissions Representative Kathy Carrier admitted she was not aware of any facts to support a representation that graduates of High Tech's Criminal Justice Program could anticipate certain employment in certain positions, or that the average starting salary was \$40,000 to \$50,000 per year, or that credits from High Tech would transfer to all other colleges and universities. (Carrier Depo., pp. 228:25-229:9).

65. Kathy Carrier submitted a written letter of resignation from High Tech. (Carrier Depo., pp. 9:23-10:2). Her letter of resignation included that she had expressed her concerns numerous times only to have them continuously fall on deaf ears. (Carrier Depo., pp. 235:8-23). She further wrote as follows: "In order to continue representing High Tech with confidence, I would have to see some change at the local campus," and that change was to get rid of President Erin Cunningham. (Carrier Depo., pp. 238:16-239:13). She also wrote: "Our job is to change peoples'

lives by doing whatever it takes to get them into school and help complete their education.” (Carrier Depo., pp. 240:23-241:3).

B. Claims and Testimony of Plaintiff Jody Hendrix

66. Plaintiff Jody Hendrix enrolled in High-Tech Institute’s criminal justice program in 2006. Mr. Hendrix attended Liberty High School and then served in the Air Force from March of 1998 to October of 2002, when he was honorably discharged. He served in several military law enforcement and other positions, and he served in Saudi Arabia on two different occasions in 2000 and 2001. (Hendrix Depo., pp. 69:18-72:25). Prior to attending High Tech, Mr. Hendrix had also already been employed in several loss prevention and other security positions. (Hendrix Depo., pp. 8:12-9:6, 74:18-75:7).

67. The following are some of the representations made to Jody Hendrix by a High-Tech Institute Admissions Representative prior to his enrollment:

- * Employment would be located by High Tech for graduates of the High Tech criminal justice program;
- * That the school had professionals in the placement department who were connected to a network of potential employers for High Tech criminal justice graduates and that these professionals were in direct contact with criminal justice industry contacts at prospective employers;
- * Most of the graduates of the High Tech criminal justice program were hired by the Kansas City Missouri Police Department;
- * Graduates of the High Tech criminal justice program could reasonably anticipate employment in government criminal justice positions;
- * Graduates of the High Tech criminal justice program could reasonably

anticipate employment in positions such as: coast guard crewman, court clerks, court bailiffs, crime scene investigators, crime scene analysts, highway patrol officers, homeland security jobs, park rangers, probation officers, security specialists, and victim advocates;

- * That the average starting salary for High Tech criminal justice program graduates was between \$40,000 and \$60,000;
- * Credits earned at High Tech would transfer to all other colleges and universities;
- * That the school and program were fully and properly accredited.; and,
- * That the Criminal Justice Program had internships

(Second Amended Complaint, ¶ 13; ¶18 h, i, j, k; Hendrix Depo., pp. 9:9-10:8, 10:23-11:8, 230:14-22, 271:13-20).

68. None of the above-referenced representations turned out to be true. (Second Amended Complaint, ¶ 19).

69. Jody Hendrix first learned about High Tech Institute from a CareerBuilder newspaper that has job listings. (Hendrix Depo., p. 15:7-19).

70. During his initial visit to High Tech Institute – Kansas City around July of 2006, Jody Hendrix saw playing in the lobby a video. The video depicted jobs that Mr. Hendrix would only later find out were not attainable without a Bachelor's Degree. (Hendrix Depo., pp. 12:19-24, 84:7-85:10, 139:1-6; 140:3-20). The video is the one to which Criminal Justice instructor Cheryl Ann Stewart objected as noted in her Affidavit referenced in paragraph 176, below.

71. During his initial visit to High Tech Institute– Kansas City, Jody Hendrix met with High Tech Admissions Representative Faith Perdue. (Hendrix Depo., p. 12:10-11).

72. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute credits would transfer to all other colleges and specifically to UMKC and the Community Colleges. (Hendrix Depo., pp. 9:12-18, 191:4-193:8, 194:3-195:3, 196:17-197:1, 232:6-14)

73. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19 and paragraphs below).

74. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute had graduate placement advisors who were going to be in direct contact with potential employers, who had industry ties, and who were experts in the Criminal Justice field. (Hendrix Depo., pp. 9:19-10:2, 49:21-50:9, 51:6-52:3, 221:13-16, 222:221-223:5). A written brochure also stressed there would be direct contact with potential employers made by graduate placement for student graduates. (Hendrix Depo., p. 97:2-5).

75. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19).. There was not even a Criminal Justice Placement Advisor for much of the time period that Jody Hendrix and Marcus Champion were in school and in need of placement. (Hendrix Depo., pp. 10:3-8). Mr. Hendrix did not receive any graduate placement assistance from High Tech.. (Hendrix Depo., pp. 126:19-127:8, 129:9-133:23).

76. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute guaranteed that it would locate in-field position for him upon graduation. (Hendrix Depo., pp. 9:24-10:2, 96:7-96:20).

77. The representations set forth in the immediately preceding paragraph, made by High

Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19).

78. At their first meeting, High Tech Admissions Representative Faith Perdue represented that positions such as juvenile probation officer, coast guard crewman, victim advocates – and with starting pay of \$50,000 to \$60,000 per year as a juvenile probation officer – were available to High Tech graduates with only an Associate's Degree and without a Bachelor's Degree. (Hendrix Depo., pp. 139:1-6; 140:3-20, 226:20-228:2).

79. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19; (Hendrix Depo., pp. 139:1-6; 140:3-20, 158:17-159:17).

80. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Hendrix Depo., p. 226:10-16).

81. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19).

82. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that most of the graduates from High Tech's Criminal Justice Program were being placed with the Kansas City Police Department. (Hendrix Depo., p. 143:1-12, 144:25-145:7, 223:6-224:7).

83. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19). The only person from to become so employed was already in police academy at the time he was attending High Tech. (Hendrix Depo., p. 146:2-12).

84. At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that there would be an externship in the Criminal Justice Program. (Hendrix Depo., p. 162:17-25).

85. The representations set forth in the immediately preceding paragraph, made by High Tech's Admissions Representative, were false. (Second Amended Complaint, ¶ 19; Hendrix Depo., p. 162:17-25).

86. Financial Aid at High Tech Institute also misled Jody Hendrix in advising the his GI Bill would cover the cost of the school, but that did not end up being the case. (Hendrix Depo., pp. 23:9-24:9, 234:24-236:10).

87. Jody Hendrix took a few days and two or three visits before he was officially enrolled due to having to find the ability to pay the \$50 enrollment fee. (Hendrix Depo., pp. 16:14-17:20, 88:19-89:7).

88. Jody Hendrix signed where he was told to sign by financial aid and only skimmed the materials. (Hendrix Depo., p. 24:4-9).

89. Jody Hendrix did not read any of the documents that High Tech Admissions Representative Faith Perdue had him sign, as there was a stack of materials and he trusted her. "I mean, the air that she presented this in and the facts – the things that she was saying verbally to me motivated me that I didn't have to search for fine print or things written on the back of documents." (Hendrix Depo., pp. 81:15-82:18, 91:8-93:11, 93:22-94:8, 103:6-12, 104:1-3). High Tech Admissions Representative "told me this covered everything we discussed. Initial here, here, here, sign and date and we move on." (Hendrix Depo., p. 94:8-13).

90. Jody Hendrix was not shown the back side of the Message from Campus President document. (Hendrix Depo., p. 99:7-91, 103:6-12). One document was signed by Jody Hendrix when

it was blank. (Hendrix Depo., pp. 136:20-137:4).

91. Jody Hendrix does not recall ever receiving a handbook from High Tech. (Hendrix Depo., pp. 110:18-111:4). He had never seen the catalog. (Hendrix Depo., p. 148:6-17).

92. While attending High Tech, Jody Hendrix, who had fired an M16 while in military duty, was instructed in a ballistics course by someone who had never held a gun. (Hendrix Depo., p. 10:12-15).

93. At the all-school meeting in late 2007 or early 2008 at which High Tech – Kansas City Campus President Erin Cunningham announced that the school was having issues with its accreditation body, the complete bases for the issues were not accurately disclosed, nor was the actual status of the loss of accreditation approval to issue Associate’s Degrees. “We were led to believe that they were only being examined and everything was going to be fine.” (Hendrix Depo., pp. 52:9-53:9, 56:16-57:3, 59:1-17). At that meeting, High Tech Institute – Kansas City Campus President Erin Cunningham told the students that their High Tech credits would transfer to the Community Colleges if they wanted to transfer. (Hendrix Depo., pp. 59:1-17, 61:7-11).

94. Jody Hendrix contacted UMKC and was told that the High Tech Institute credits would not transfer so as to allow Mr. Hendrix to pursue the Bachelor’s Criminal Justice Program at UMKC. (Hendrix Depo., pp. 26:16-27:11, 193:9-23). His credits also did not transfer from High Tech Institute to Colorado Technical University or University of Phoenix. (Hendrix Depo., pp. 27:4-21).

95. Jody Hendrix did not receive any of the promised job placement assistance from High Tech. His first job after graduation was as an associate substance abuse counselor for Kansas City Community Centers, making approximately \$25,000 per year. (Hendrix Depo., pp. 81:1-11). Mr. Hendrix found this position on his own. (Hendrix Depo., pp. 135:19-22). This job was not in

the area in which he wanted to work – geographically or professionally, nor was his subsequent position with Marillac Center for Children, where he made between \$10 and \$12 per hour. (Hendrix Depo., pp. 135:23-136:17, 170:20-172:16, 216:1-8).

96. The contractual agreement of the school to Jody Hendrix included the promises of job placement assistance, professional ties, and internships/externships. (Hendrix Depo., p. 237:6-20, 238:22-239:12). None of these things ever happened. (Hendrix Depo., p. 245:1-23). Jody Hendrix sought assistance but he did not receive any assistance in the graduate placement area from High Tech. (Hendrix Depo., pp. 237:6-20, 238:22-239:12, 245:1-23).

97. Jody Hendrix recalls filling out several Student Critique forms during school and voicing his displeasure with a lot of the things that were happening at High Tech. (Hendrix Depo., pp. 82:7-284:2).

98. Faith Perdue was the High Tech Admissions Representative who enrolled Jody Hendrix. (Hendrix Depo., p. 12:10-11). Ms. Perdue worked for High Tech Institute – Kansas City as an Admissions Representative during the time period between May of 2006 and January of 2007. (Perdue Depo., p. 12:10-12). Prior to going to work for High Tech, Ms. Perdue was a leasing agent and an assistant manager for an apartment community. (Perdue Depo., pp. 109:24-110:21). She did not have any college credit hours before she went to work for High Tech Institute as an Admissions Representative. (Perdue Depo., p. 111:8-23).

99. Former High Tech Admissions Representative Faith Perdue had not recollection of enrolling a student by the name of Jody Hendrix at High Tech. Even after reviewing documents, she has no specific recall of her interactions with Jody Hendrix. (Perdue Depo., p. 12:14-21).

100. During her employment at High Tech Institute, Faith Perdue was supervised by

Assistant Director and Director of Admissions Deborah Lang. (Perdue Depo., p. 49:12-25, 125:16-21).

101. While working at High Tech, Faith Perdue was never informed that there were many complaints coming from students about misinformation being provided by Admissions. (Perdue Depo., pp. 51:19-52:11). During her training, she was never advised of the extensive prior history of complaints of misrepresentations against High Tech Admissions. (Perdue Depo., pp. 56:16-21).

102. Several complaints of misrepresentations were made by Criminal Justice and Surgical Technology Program Students in their Student Critiques shortly after Faith Perdue was hired in 2006, including complaints about job placement, credit transfer, and starting salary misrepresentations made by admissions at High Tech. (Perdue Depo., pp. 53-63, 74-76, 79-83, 101-103, 106-109).

103. Former High Tech Institute Admissions Representative Faith Perdue admitted that she would tell student enrollees as a standard practice that the school had a Career Services Department available to assist them. (Perdue Depo., p. 77:3-9). She was trained by High Tech to advise students that there was "continuous placement assistance." (Perdue Depo., pp. 162:20-163:4).

104. When enrolling students, former High Tech Institute Admissions Representative Faith Perdue followed the things in the training manual and the training she received from High Tech. (Perdue Depo., p. 77:14-19).

105. Faith Perdue was the Admissions Representative for Letoya Hardin, one of the 38 Plaintiffs in the Fallo case who claimed misrepresentations and deceptions in job placement, credit transfer, and other matters. Ms. Perdue was never made aware that Ms. Hardin had claimed that Ms. Perdue and High Tech had defrauded and deceived her. (Perdue Depo., pp. 78:8-24, 87:20-97:15,

100:15-23). Faith Perdue admits she would have used the same routine with Jody Hendrix that she did with Letyoa Hardin. (Perdue Depo., p. 96:6-11).

106. Former High Tech Admissions Representative Faith Perdue admits that she told Jody Hendrix that he could be a juvenile probation officer, bailiff, victim advocate, detectives, as well as the other jobs listed in the High Tech written sales literature, upon completion of his Associated of Applied Science from High Tech Institute. (Perdue Depo., pp. 104:10-106:13, 165:15-170:22).

107. Faith Perdue relied on High Tech to train her on the difference between regional accreditation and national accreditation. (Perdue Depo., pp. 112:16-113:4) Faith Perdue acknowledged that there is a big difference, and that regional accreditation can be much better than national accreditation, depending on the student. (Perdue Depo., p. 113:10-14).

108. Faith Perdue does not remember High Tech training her on the difference between regional and national accreditation, and she does not recall being told by High Tech that credits from regionally accredited institutions would transfer better than from the nationally accredited institution. (Perdue Depo., pp. 115:12-24). She was never told that neither Rockhurst nor Avila will accept any of High Tech's credits. (Perdue Depo., p. 117:5-9).

109. Faith Perdue was able to obtain a "conversion" – getting the enrollment – on 47 percent of the potential enrollees such as Jody Hendrix that she got in for a face-to-face interview. (Perdue Depo., pp. 123:23-124:22).

110. On one of her High Tech performance reviews, Faith Perdue was reprimanded for having a low conversion rate. (Perdue Depo., p. 125:25-126:14).

111. At the time she enrolled Jody Hendrix, Faith Perdue was well below the required number of enrollments that she was required to have. (Perdue Depo., pp. 205:4-206:18).

112. While Faith Perdue was an Admissions Representative at High Tech, there were

Admissions Meetings every day, and there was a whiteboard which listed the students that each Admissions “advisor” had enrolled for the next start. (Perdue Depo., pp. 126:15-20, 127:4-14).

113. Faith Perdue received quotas from High Tech in terms of the number of enrollments she was expected to make. (Perdue Depo., pp. 127:15-128:8).

114. High Tech Institute trained Admissions Representative Faith Perdue to not give out cost information over the phone. (Perdue Depo., pp. 128:17-135:25, 186:21-187:5, 198:14-200:8).

115. High Tech Institute trained Admissions Representative Faith Perdue to “not hand out or ever show a catalog until the student is enrolled.” (Perdue Depo., pp. 128:17-135:5, 136:19-137:4, 202:4-18). She followed that policy and training. (Perdue Depo., p. 137:5-8). If it violated ACCSCT guidelines, it was because High Tech trained her to it that way. (Perdue Depo., pp. 137:9-138:6).

116. As part of her training, High Tech Institute trained Admissions Representative Faith Perdue assumed a fake identity, went to other for-profit colleges, and acted like she was interested in attending so as to “mystery shop” the competition. (Perdue Depo., p. 139:10-142:22, 206:20-207:22).

117. As a High Tech Admissions Representative, Faith Perdue was expected to make 100 calls to potential students per day. (Perdue Depo., p. 145:1-3). She had a set number of potential students that she was required to interview in-person each day, and High Tech encouraged the Admissions Representatives to double-book. (Perdue Depo., p. 146:14-22). Total time for the entire process from the minute the potential student comes in the door to talk until the time they leave signed up and enrolled by Faith Perdue is one hour to an hour and a half. (Perdue Depo., p. 147:7-25).

118. High Tech Institute trained Admissions Representative Faith Perdue to seek to find

the prospective student's hot button. (Perdue Depo., p. 188:17-20, 201:11-20).

119. High Tech Institute trained Admissions Representative Faith Perdue to say to each prospective student: "I am going to set aside some time for you and I to get together and do some one-on-one career planning." (Perdue Depo., p. 190:8-16).

120. High Tech Institute trained Admissions Representative Faith Perdue to tell each prospective students that she "will be able to help you map out a path to ensure your career success," and Faith Perdue followed this training. (Perdue Depo., pp. 190:17-191:6).

121. High Tech Institute trained Admissions Representative Faith Perdue to enthusiastically say to each prospect: "I know that we can help you!!!" (Perdue Depo., pp. 194:17-195:1).

122. High Tech Institute specifically trained Admissions Representative Faith Perdue to attempt to get the consumer potential student enrollee to not make an intelligently-stimulated decision, but instead to make an emotional decision, come in for a face-to-face meeting, and enroll that same day in High Tech. (Perdue Depo., pp. 195:2-196:9).

123. Admissions Representative Faith Perdue was taught by High Tech to sell the school through trying to draw an emotional response out of the prospective student, and that is what she did. (Perdue Depo., p. 271:8-15).

124. High Tech Institute trained Admissions Representative Faith Perdue in handling objections and in keeping control of the interview with the prospective student enrollee. (Perdue Depo., pp. 197:21-198:13).

125. Faith Perdue does not recall any instructions from High Tech with regard to obtaining student signatures on enrollment documents other than those set forth in the training manual. (Perdue Depo., pp. 202:19-203:8, 203:24-204:2).

126. Faith Perdue was never made aware of any policies at High Tech regarding what to do if she became aware of a student complaint. (Perdue Depo., p. 220:13-21).

127. The charges from High Tech for tuition and books for Jody Hendrix' Associates of Applied Science Degree in Criminal Justice was \$24,904. (Perdue Depo., p. 224:13-225:8)

128. Faith Perdue was trained by High Tech to go over the "benefits" of attending High Tech and referencing jobs and income. (Perdue Depo., pp. 235:16-236:6).

129. Faith Perdue was trained by High Tech in how to close the sale. (Perdue Depo., p. 236:15-17).

130. Faith Perdue acknowledged that a potential student should be able to trust their High Tech Admissions Representative as a counselor/advisor who is looking out for their best interests. (Perdue Depo., p. 239:1-5).

131. Faith Perdue acknowledged that a potential student should be able to trust what he or she is told by their High Tech Admissions Representative. (Perdue Depo., p. 239:11-15).

132. Faith Perdue acknowledged that a potential student should be able to rely on what he or she is told by their High Tech Admissions Representative. (Perdue Depo., p. 239:16-20).

133. High Tech trained Faith Perdue that prospective students would be relying on the information she provided them during enrollment. (Perdue Depo., p. 240:3-6).

134. Faith Perdue acknowledged that the Admissions Representative at High Tech has much greater knowledge and more information than the prospective students who are coming in to talk to them. (Perdue Depo., p. 239:6-10).

C. **High Tech Has Operated Through A Pattern and Practice of Fraud and Deception**

135. From April of 2008 until February of 2011, Marilyn Knight was Campus President for High Tech Institute – Kansas City. From July of 2007 to April of 2008, Ms. Knight was the Director of Education overseeing all academic programs at High Tech Institute – Kansas City. She was the Program Manager for the Medical Billing & Coding Program at High Tech Institute – Kansas City from May of 2004 until July of 2007, and she taught courses at the school from September of 2003 until May of 2004. (Knight II Depo., pp. 31:24-35:6).

136. While she was Campus President, the school changed its name from High Tech Institute to Anthem College. This was an overall corporate change in which many locations previously called “High Tech Institute” were changing their name to Anthem College. The change was a name-change only, and nothing change in operations or personnel. (Knight I Depo., pp. 20:24-23:8).

137. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight admitted that High Tech Institute operated through a pattern and practice of misinformation coming from its Admissions Representatives since its inception in 2003 in Kansas City. (Knight II Depo., pp. 315:24-316:9).

138. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight admitted that High Tech Institute – Kansas City’s Admissions Representatives were prone to lie to potential new students. (Knight II Depo., pp. 144:8-11). She does not remember the number of times she talked with Kansas City Admissions personnel about the misinformation being fed to potential students, but she did not ever document any of those conversations. (Knight II Depo., pp. 144:12-145:1).

139. Former High Tech/Anthem College Campus President and Director of Education

Marilyn Knight admitted that High Tech/Anthem had Student Critique forms completed by every student at the end of every class – which at High Tech/Anthem is every 30 days. (Knight II Depo., pp. 44:21-45:19).

140. The Student Critique form asked the current student to evaluate the teacher on page 1, but it asked questions on pages 2 and 3 about other aspects of the school. Included in these is question 2 on part 2 which asks the current student whether he/she has found the school to be as it was represented when he/she enrolled. (Knight II Depo., pp. 45:20-46:13, 167:5-168:4).

141. The completed Student Critiques are reviewed by the Campus President, the Campus Director of Education, and the Program/Department Chair. (Knight II Depo., pp. 48:22-25, 51:22-52:6, 129:1-7, 160:9-168:21). Some of the Student Critique responses were communicated by Marilyn Knight to High Tech/Anthem's Home Office. (Knight II Depo., pp. 65:22-67:1). Concerns expressed on the Student Critique responses with regard to misrepresentations made by High Tech Admissions Representatives are claimed to have been shared with the Director of Admissions, but there was never any documentation. (Knight II Depo., pp. 66:20-67:16). Former Campus President and Director of Education Marilyn Knight said she did not document any follow-up to a Student Critique complaint because the company's Home Office did not tell her to do so. (Knight II Depo., p. 183:4-21).

142. The Student Critique responses provide knowledge to High Tech of how current students believe the school was represented to them and on how the school was being operated. (Knight II Depo., pp. 194:23-195:3).

143. The following highlights are contained in Exhibit 12 and are just some of the complaints received by High Tech Institute – Kansas City from then-current Criminal Justice on Student Critique forms. These complaints included those regarding misrepresentations from High

Tech Admissions Representatives regarding job placement, starting salary, credit transfer, externships, and other matters. (Knight II Depo., pp. 226-247, Ex. 12).

144. The above complaints exist despite the fact that Defendant has only produced the Student Critiques for a tiny fraction the Criminal Justice Program classes, with the others, mysteriously, not able to be located. Defendant has failed to produce the Student Critiques for nearly all of the classes attended by Plaintiff Jody Hendrix and Plaintiff Marcus Champion. Defendant has failed to produce virtually any Student Critiques for the time period in 2007 and 2008 while Mr. Hendrix and Champion were in school.

145. The following highlights are contained in Exhibit 13 and are just some of the complaints received by High Tech Institute – Kansas City from then-current Surgical Technology Program students on Student Critique forms. These complaints include such comments as “shady;” “many things are not as I was told when being sold on the school;” “Recruiter either didn’t have the knowledge or wasn’t honest about certain aspects of my training;” “The recruiters seem to be more interested in getting you in than telling you the whole truth;” and, “they lied.” These complaints included those regarding misrepresentations from High Tech Admissions Representatives regarding job placement, starting salary, credit transfer, externships, and other matters. (Knight II Depo., pp. 247-313, Ex. 13).

146. The above complaints exist despite the fact that Defendant has only produced the Student Critiques for a tiny fraction the Surgical Technology Program classes, with the others, somehow, not able to be located.

147. On almost a monthly basis between 2003 and 2011, High Tech Institute – Kansas City received forms back from students expressing that the school had been misrepresented at the time of enrollment. Despite hundreds of such complaints of fraudulent misrepresentation,

High Tech did nothing to investigate or stop the fraud and deception. Exhibit 14 is entitled Index #1 of Example Student Critique Complaints of Fraud/Deception and contains summaries of 130 student complaints of fraud and misrepresentation committed by High Tech at the time of enrollment. Exhibit 15 is entitled Index #2 of Example Student Critique Complaints of Fraud/Deception and contains summaries of more than 250 other student complaints of fraud and misrepresentation committed by High Tech at the time of enrollment.. Exhibit 16 is entitled Index #3 of Example Student Critique Complaints of Fraud/Deception and contains summaries of more than 75 other student complaints of fraud and misrepresentation committed by High Tech at the time of enrollment.

148. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) The Arizona Home Office of High Tech/Anthem College actually made all major decisions for the Kansas City Campus. (Knight II Depo., p. 39:12-24). The Campus Presidents receive an enrollment budget from Home Office, and they are required to meet those enrollment numbers or face possible employment repercussions. (Knight I Depo., p. 49:5-9). High Tech/Anthem's Home Office placed high pressure student enrollment/sales expectations on its Campus Presidents. (Knight II Depo., pp. 69:2-72:22). The Campus Presidents, in turn, require their Directors of Admissions (Sales) meet those enrollment budgets or face employment consequences. (Knight I Depo., pp. 49:10-23, 54:24-6).
- (b) The Admissions Representative's job is to obtain adequate enrollment

production to meet the school's objectives. (Knight I Depo., pp. 115:22-116:6). High Tech Admissions Representatives are disciplined and terminated for failing to meet the enrollment quotas provided to them. (Knight I Depo., pp. 55:7-56:20, 57:16-58:3). High Tech, however, has never reprimanded an Admissions Representative for providing misinformation to a prospective student or students. (Knight I Depo., p. 73:16-22).

- (c) High Tech trained its personnel to assume fake identities and to then go to other schools and act interested in those schools so as to bring back information and materials to High Tech. (Knight II Depo., p. 40:3-41:20). High Tech/Anthem College's Home Office personnel also engage in these activities of assuming fake names and getting materials from other schools under false pretenses. (Knight II Depo., pp. 85:20-87:17, 96:17-97:9).
- (d) High Tech/Anthem's Home Office did not direct Marilyn Knight or others at High Tech Institute – Kansas City to document student complaints in writing, and Ms. Knight agrees it would have been a good idea for Home Office to have had such a requirement. (Knight II Depo., pp. 67:17-68:3; Knight I Depo., pp. 96:21-97:15). There were, however, no written guidelines, policy, or procedure that tell an employee of High Tech that they should go to the director of admissions when a prospective student, student, or graduate comes to them with a complaint about misinformation from admissions. (Knight I Depo., pp. 95:21-96:10). There were no written guidelines noting that a student complaint about misinformation provided by admissions should be memorialized in a written document. (Knight I Depo., p. 96:11-20). There

were no unwritten protocols or procedures at High Tech/Anthem College for handling complaints from prospective students, students, or graduates about misinformation provided to them by High Tech Admissions Representatives. (Knight I Depo., p. 97:16-20).

- (e) In March of 2008, a High Tech Institute – Kansas City Admissions Representative name Briza Handley sent an email to all at the Kansas City Campus noting her resignation and also noting that she cannot continue to mislead students. Her email further notes that the school is lacking in ethics and that there is stress in trying to meet sales goals placed on admissions staff. Nothing was done by High Tech to follow up on this email from an outgoing sales person in Kansas City or to investigate any of the issues raised therein. (Knight II Depo., pp. 150:2-154:12).
- (f) In February of 2009, a former student who attended in 2007 complained in writing that he was misadvised by his High Tech Institute – Kansas City Admissions Representative who told him that his credits would transfer to other schools. He also complained that lab supplies were so short that students were having to go to trash cans to try to find lab supplies. (Knight II Depo., pp. 154:13-159:25).
- (g) In 2011, High Tech/Anthem College's Home Office again became aware that several students felt their Kansas City Admissions Representatives lied to them when they enrolled. Nothing was again done to terminate or discipline the offending Admissions Representatives. (Knight II Depo., pp. 125:2-14, 127:8-128:15, 129:14-134:8). The Home Office response in not terminating

offending Admissions Representatives was inappropriate and shows that High Tech/Anthem College does not care that its students are being lied to in order to get them to enroll. (Knight II Depo., pp. 133:6-134:8).

- (h) In 2011, High Tech/Anthem College's Home Office acknowledged that many students in the Surgical Technology Program at Kansas City had been lied to by their High Tech Admissions Representatives. (Knight II Depo., pp. 135:3-136:12, 137:16-141:17, 145:2-147:12).

149. In an April, 2008 First Amended Complaint, 38 former students from High Tech Institute – Kansas City alleged Defendant engaged in a pattern and practice of fraud and deception, claiming also that their Admissions Representatives had committed fraud and deception with regard to job placement, starting pay, credit transfer, and other matters. Many of the plaintiffs in this *Fallo* case were from the Surgical Technology Program. (Knight I Depo., pp. 73:23-74:14, 75:21-76:19, 80:14-81:11, 87:25-89:9).

150. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that High Tech/Anthem College's Home Office had provided no policy or procedure saying an Admissions Representative is not to tell prospective students that credits will transfer to other schools and universities. (Knight I Depo., p. 85:4-85:21).

151. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that High Tech/Anthem College's Home Office in Arizona did not provide adequate resources to run the Kansas City Campus, to supply the classrooms and various programs, or to oversee the admissions personnel for compliance at the Kansas City Campus. (Knight II Depo., pp. 75:19-77:11, 79:8-23). For example, the instructor who also served as librarian was told that he could order one book or so a month for the High Tech Institute – Kansas

City library, which is in a tiny little room. (Knight II Depo., pp. 122:24-124:13).

152. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that High Tech and its Admissions Representatives have more and greater information about careers and about the school than does the potential student enrollee. (Knight I Depo., p. 64:10-16).

153. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that a prospective student should be able to trust what he or she is told by a High Tech Admissions Representative prior to enrollment. (Knight I Depo., p. 64:17-24).

154. Former High Tech/Anthem College Campus President and Director of Education Marilyn Knight also admitted that a prospective student should be able to rely on what he or she is told by a High Tech Admissions Representative prior to enrollment. (Knight I Depo., pp. 64:25-65:6).

155. Karen Matthews was employed as the Director of Admissions by High-Tech Institute at the Kansas City, Missouri location from approximately April 23, 2007 to October 8, 2007. Karen Matthews attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) While employed as Director of Admissions, High-Tech Institute placed extreme pressure on Ms. Matthews on the Admissions Representatives to meet High-Tech Institute's unreasonable student enrollment expectations.
- (b) The corporate officials at High-Tech Institute were strict about having the school terminate Admissions Representatives who did not meet the student enrollment quotas set by the corporation. This placed the Admissions Representatives in the position of having pressure on them to tell false things and make false promises in order to make a sale and meet their quotas.
- (c) At the same time as it was placing such pressure on admissions, High-Tech Institute had inadequate institutional compliance controls or guidelines. Based on my observations during my time period at High-Tech Institute, the

corporation's training and oversight of admissions personnel was neither reasonable nor adequate.

- (d) High-Tech Institute school facilities in Kansas City were sub-par. Both its faculty and the supposed "education" being provided did not seem to be legitimate. Director of Admissions Matthews witnessed from the upper management at High-Tech Institute a total concern for the money bottom line and a total lack of concern for educational quality or true career outcomes for the school's students and graduates.
- (e) Ms. Matthew learned while working as Director of Admissions at High-Tech Institute that High-Tech Institute Admissions Representatives often made a "convenient" misrepresentation in claiming that national accreditation such as that held by High-Tech Institute was a good thing and that it meant that all of your credits would transfer to any other college anywhere else in the country. Ms. Matthews notes that such a statement to prospective students by High-Tech Institute Admissions Representatives would be deceptive and likely untrue.
- (f) Was not initially told by High-Tech Institute locally or nationally that the school was on probation with its accrediting body or that High-Tech Institute lost its degree granting authority from that accrediting body. Instead, Director of Admissions Matthews first learned of High-Tech Institute's loss of degree granting authority from a new student's parent. This parent had somehow learned through their own independent investigation about High-Tech Institute's accreditation and degree-granting authority problems.
- (g) After she discovered that High-Tech Institute at the Kansas City location and elsewhere had lost its degree granting authority, Director of Admissions Karen Matthews went into Kansas City Campus Director Erin Cunningham's office and told her how upset she was to learn about this. She advised Ms. Cunningham that the school should have told her as Director of Admissions, and that it should also have told the other employees and the students and prospective students. In response, Ms. Cunningham screamed at Karen Matthews that it was none of her business or anyone else's business about the accreditation issues. This High-Tech Institute Campus President then said that this was not going to be used as an excuse for Ms. Matthews not to hit the enrollment numbers that had been set for her as Director of Admissions.

(Affidavit of Karen Matthews, Ex. 1).

156. Willis Zoellers was employed as an Agency Admissions Representative by High-Tech Institute at the Kansas City, Missouri location for approximately nine months in 2008.

Mr. Zoellers attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) While employed as an Admissions Representative at High-Tech Institute, there was extreme pressure placed on Mr. Zoellers and other admissions personnel to meet unreasonable student enrollment expectations.
- (b) Mr. Zoellers had a quota of five enrollments per month as an agency admissions representative. If he did not meet my quota of five, there would be an oral discussion with the director of admission who would tell him he needed to meet his quota or be terminated.
- (c) There were several admissions representatives who were terminated for not meeting the quotas assigned.
- (d) High-Tech Institute trained Mr. Zoellers and other admissions representatives to "enroll for the next start," and there was typically a start every 2-4 weeks or so.
- (e) Overall sales process Mr. Zoellers was trained in included first getting the prospective student to come to the High-Tech Institute location for an in-person interview. High-Tech admissions representatives are trained to be ready to receive a volume of calls during shows such as Jerry Springer because of the commercials the school runs during those shows. The representatives are trained not to provide information regarding the costs of the program over the phone, but instead to deflect such questions and get the prospective student to come to the school in-person.
- (f) Once the prospective student arrives at the school, the first thing is the interview, followed by a power point presentation, and then the tour. The power points were by program, included audio and video, and were approximately 5-10 minutes in length. Salary ranges were included in the power points, and admissions reps were trained to stress the high end of the ranges provided.
- (g) During the tour, the prospective student was brought by the lobby, the campus president's office, the financial aid "wizards," students services, and graduate placement. At each of these stops, the prospective student was to be introduced to someone who would have a 30 second or so sales pitch to make. At the career placement stop on the tour, the typical sales pitch from someone in that office was to say - "our graduates are all doing great," that "all are happy and working in their field," and that "all are placed in their field for sure."

- (h) High-Tech Institute trained Mr. Zoellers and other admissions representatives to, during the entire process, find “hot buttons” and “create a sense of urgency.”
- (i) At the end of the tour, the admissions representatives at High-Tech Institute were trained to say “What do you think?”; “When can you start?”; and “We’ve got classes starting as soon as . . .” They were trained to say that there were only two spots left and to look at our appointment books and indicate that they had several appointments coming up with people who were likely to fill those two spots.

(Affidavit of Willis Zoellers, Ex. 2).

157. Witness Lynn Magenheimer was employed as an enrollment processor in Admissions at High-Tech Institute in Kansas City, from approximately February of 2005 to November of 2005. Ms Magenheimer attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) Ms. Magenheimer attended weekly meetings with the President and other administrators (admissions director, financial aid director, and others). Each High-Tech Institute admissions representative would come in one-by-one and report to the group about the prospects he/she was recruiting. The representative would say whether or not he/she had accomplished the goal for enrollments that was provided to him/her by the school. There would be added pressure on the school in general if enrollments were down and on the individual representative if he/she didn’t have confirmed starts for each session.
- (b) From these meetings and her experience at High-Tech Institute, it was clear to Ms. Magenheimer that admissions was “sales.” They worked leads and used scripts. The school encouraged the admissions people to re-contact prospective students and to get their enthusiasm up. The admissions representatives were to get the prospective student on campus and not to answer questions on the phone if at all possible. If a student was not scheduled to start immediately, the admissions representatives were encouraged during the weekly meetings to contact the enrolled student frequently until their start date. When a prospective student missed a financial aid meeting or they had concerns about the student arranging transportation, they were encouraged to have them return to campus.

(Affidavit of Lynn Magenheimer, Ex. 3).

158. Witness Juli Kay Atkinson was employed by High-Tech Institute at the Kansas City, Missouri location from March 29, 2004 to October 5, 2008. She was a massage therapy instructor from March 29, 2004 until August 9, 2004, at which time she became the MT299 Massage Clinic Supervisor. During some of this time period, she was also lead instructor and acting program manager. Ms. Atkinson attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) While employed at High-Tech Institute, Ms. Atkinson heard admissions representatives tell prospective students that they would make between \$40 and \$80 per hour upon graduation from the school's massage therapy program.
- (b) She advised the admissions department and other personnel at High-Tech Institute that they were not accurately representing massage therapist pay in what they were telling prospective students. She prepared a business earnings profile for massage therapists so as to accurately set forth some of the job and earnings possibilities. The business earnings profile was distributed to faculty and administration, but was not provided to prospective students prior to their enrollment in High-Tech Institute. What she prepared was not well received by the administration because the potential earnings numbers were much lower than the unrealistic ones that admissions had been telling prospective students.
- (c) Observed that admissions at High-Tech Institute was totally sales-driven. She observed an admissions representative named Debra being trained to tell students false information regarding how much they were going to make upon graduation. She then heard this same Debra tell prospective students over and over again that they would be making \$80 per hour as a massage therapist upon graduation. At one point in an in-service meeting, she told Campus President Joan Ellison, with Debra and all the other faculty and staff present, that admissions personnel needed to start telling prospective students the truth if the school wanted students to trust admissions personnel.
- (d) While employed at High-Tech Institute, she also heard admissions representatives tell prospective students during the tour – “your credits will transfer . . . you’ll get a degree.”

(Affidavit of Juli Kay Atkinson, Ex. 4).

159. Witness Mark Pelmore previously served as an instructor at Anthem College in

Kansas City, formerly known as High-Tech Institute. He taught at Anthem/High-Tech during the years 2007 through 2011. Mr. Pelmore attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) He heard over and over again students talking about what Anthem/High-Tech's admissions representatives had told them, including that their credits would transfer from Anthem/High-Tech to other local public universities, community colleges, and private colleges and universities. He heard these matters from students during the entire time period he worked at Anthem/High-Tech.
- (b) Observed that many incoming students had been led to believe that their job placement and starting salary prospects were much higher than reality. Mr. Pelmore observed this during the entire time period I worked at Anthem/High-Tech.
- (c) He witnessed from upper management in administration meetings a lack of concern for education and a total concern for student enrollment numbers and profits. "Fill the seats" was a phrase Mr. Pelmore heard often from upper management at Anthem/High-Tech. There was also a push from upper administration to make sure new students showed up for the first two weeks because more monies could be retained by the school at that point. There was pressure placed by upper administration on instructors to pass students so that the seat remained filled and money kept flowing in to the school.

(Affidavit of Mark Pelmore, Ex. 5).

160. Witness Dawn Bennett previously served as an instructor at Anthem College in Kansas City, formerly known as High-Tech Institute. She taught at Anthem/High-Tech from approximately January of 2010 to February of 2011. Ms. Bennett attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) She recalled many students were upset to find out during school that their Anthem/High-Tech credits would not transfer to many other colleges and universities. Those students in her classes indicated to Ms. Bennett that they believed their Anthem/High-Tech credits would transfer because their admissions representatives had told them when they enrolled that the Anthem/High-Tech credits would transfer to all other colleges and universities.

- (b) She observed that many students had misconceived notions about job availabilities and the salary/pay they could expect to make upon graduation. Ms. Bennett observed that several students had misconceived notions about the job market conditions and prospects, as well as the time period it would take to obtain employment. The students advised her that they received these misconceived notions about job availability and salary/pay from admissions personnel at Anthem/High-Tech.

(Affidavit of Dawn Bennett, Ex. 6).

161. Witness Jennifer Lewis was previously employed at High-Tech Institute in Kansas City from approximately June of 2003 to December of 2007. She was employed as an instructor, and she taught many different courses including anatomy & physiology and all of the massage modalities. Ms. Lewis attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech:

- (a) She observed that several students had misconceived notions about the salary or pay they could expect to make upon graduation from the massage therapy program as well as about the job market conditions and prospects. The students advised Ms. Lewis that they received these misconceived notions about the salary or pay from admissions personnel at High-Tech Institute.
- (b) Ms. Lewis' observation and experience was that the school at High-Tech Institute was more interested in profits than academics and that students were considered to be "body counts" – a term she heard used by High-Tech Institute personnel to refer to students.

(Affidavit of Jennifer Lewis, Ex. 7).

162. Defendant trains its Admissions Representatives to overcome the objections of the potential student. (Lang Depo., p. 34:10-13).

163. Defendant also trains its Admissions Representative to uncover the "hot buttons" of the potential students and in "closing techniques" in order to get them to sign the Application and enrollment paperwork on the same day as their first in-person visit to Defendant's school. (Lang Depo., pp. 77:20-78:11, 80:17-23, 81:21-82:1, 102:9-103:24; Payne Depo., pp. 34:10-37:19, 40:11-

41:1).

164. Defendant's practices result in high-pressure sales tactics, as Defendant was illegally basing the pay increases of its Admissions Representatives on the number of students those Admissions Representatives enrolled. (Lang Depo., pp. 73:10-76:22, 75:17-20, 85:19-89:25).

165. With further regard to Defendant's greater bargaining power, knowledge, and strength, Defendant High-Tech Institute's Admissions Representative Training Manual notes as follows regarding its potential students/customers:

“Characteristics of our typical student:
Single parent.
Economically disadvantaged.
Unemployed or underemployed
Individuals that lack an outside support system
Low Self Confidence
Low Self Esteem”

(Ex. 9; Perdue Depo., p. 163:5-16).

166. Defendant trains its Admissions Representatives to gain the trust of the prospective student/customer. (Lang Depo., pp. 205:6-212:18; Payne Depo., p. 59:4-13). Defendant's training manual instructs its Admissions Representatives as follows: “The more you know about the individual and their challenges, the better the chance of gaining their commitment and trust.” (Ex. 9, Day 3).

167. Overall, Defendant trains its admissions personnel to try their best to not get any intelligent decision-making or thoughtful career analysis to be undertaken by their prospective students/customers. In this regard, Defendant's training manual provides as follows:

“In some cases, there may not be much forethought prior to making the call. Studies show that most consumer buying decisions are not intelligently stimulated, but emotionally and these decisions come and go, most of the time in a matter of moments. With this in mind, time can be our worst enemy unless we understand how to use it wisely. Knowing that an inquiry can 'cool' very quickly, we must be able

to not only schedule the appointment on the first call, but be sure that we are actually face-to-face with the individual within 24 hours.

(Ex. 9, Day 2; Payne Depo., pp. 41:2-25; Lang Depo., p. 140:7-22).

168. Once face-to-face, emotional hot buttons of the prospective student/ customer are pushed and the hard selling starts, with the Defendant's Admissions Representatives trained to get the prospective student/customer to sign the enrollment agreement at their first meeting. (Ex. 9, Day 3; Payne Depo., pp. 43:13-22; Knight I Depo., pp. 125:8-126:17).

169. Deborah Lang was a High-Tech Institute Admissions Representative at Kansas City for several years, and she also served as Director of Admissions for a period of time. (Lang Depo., pp. 8, 94-99). Ms. Lang admitted in her deposition that she was trained by High-Tech Institute that the school's credits would transfer to community colleges. (Lang Depo., p. 31:22-25). She also admitted she was trained by High-Tech Institute that the school's credits would transfer to other nationally-accredited schools. (Lang Depo., p. 29:1-10). Ms. Lang was not trained by High-Tech Institute on the large number of area colleges that won't even consider credits from nationally-accredited schools such as High-Tech Institute/Anthem College for transfer. (Lang Depo., p. 26:1-29:10).

D. Additional Evidence Regarding High Tech's Practices and Processes For Obtaining Student Signatures On Enrollment Paperwork

170. High Tech Institute - Kansas City's Admissions personnel were trained to enroll the student in the very next start that exists for the program, and that can sometimes be the next week, as High Tech starts new classes and students each month. (Knight I Depo., pp. 61:2-62:22). As noted above, they were also trained to enroll the prospective student on the very first visit.

171. High Tech Institute - Kansas City's Admissions personnel were also trained to tell the student that they will sit down and explore the best career opportunities for them and to gain their

trust. (Knight I Depo., pp. 63:8-64:9).

172. Defendant High-Tech Institute procures signatures on its form enrollment agreements and other forms through a series of institutionalized and uniform frauds. These frauds included requiring prospective student to sign the following false statement which was included in each and every one of the form enrollment agreements created by Defendant for Plaintiff and others: “. . . I certify having received an exact copy of this agreement and a copy of the school catalog” (Lang Depo., pp. 34:24-36:15, 42:11-44:4).

173. Despite the fact that Defendant includes this statement in the form Application of Plaintiff and all other students, Defendant’s training guidelines for admissions representatives show it never provides a copy of its school catalog to a prospective student prior to enrollment. Indeed, Defendant’s training guide for its admission representatives notes as follows:

“If after a lead call, the result of the phone call required the rep to send some information to the prospect, the rep should only send a brochure not a catalog. Catalogs are only to be handed out to students once they are enrolled.” (Day 2)

“Again, it is very important that potential students are never shown a catalog during the interview process, or at any time prior to enrollment. Students receive a catalog at enrollment, but have never seen one prior to. This also means that catalogs are never sent in the mail to prospects as a means of giving them information about the school. The only exception to this policy would be for Agency Representatives, at the specific request of an Agency.” (Day 3 of Training)

(Ex. 9 – Excerpts from Defendant’s Admissions Representative Training Manual; Knight I Depo., pp. 114:22-115:12).

174. Defendant High Tech’s admissions training and practices in this regard were directly contrary to the requirements of its Accrediting body which noted as follows: “The school must provide the student with a current and complete catalog prior to signing the enrollment

agreement.” (Lang Depo., pp. 34:24-36:15, 42:11-44:4). Defendant High Tech’s Admissions personnel had never been trained on the appropriate admissions requirements of its Accrediting body, but instead were trained to do just the opposite by High Tech. (Lang Depo., pp. 34:20-36:15; 42:11-44:4, 127:11-128:9; Payne Depo., pp. 31:15-33:13). Only within the past year have Defendant’s Admissions personnel been trained that a prospective student can now get a catalog before they enroll – but only if they specifically request it. (Payne Depo., p. 27:7-25).

175. High Tech Institute – Kansas City has known from Student Critique form responses since at least July of 2007 that student enrollees do not actually read the entirety of enrollment contracts and other enrollment documents before signing or initialing. (Knight II Depo., p. 192:13-25).

E. High Tech’s Criminal Justice Program

176. Witness Cheryl Ann Stewart is a Kansas practicing criminal defense attorney who previously served as an adjunct instructor in the criminal justice program at High-Tech Institute in Kansas City. She taught at High-Tech Institute for approximately nine months in the 2005 to 2006 time frame. Ms. Stewart attests to the following which evidence the pattern and practice of fraud and deception engaged in by High Tech in its Criminal Justice Program:

- (a) She observed that several students had misconceived notions about the types of jobs for which they would be qualified and the salary or pay they could expect to make upon graduation from the criminal justice program. She also observed that several students had misconceived notions about the job market conditions and prospects, as well as the time period it would take to obtain entry-level employment positions. The students advised her that they received these misconceived notions about the salary or pay from admissions

personnel at High-Tech Institute.

- (b) At one point during her time as an instructor at High-Tech Institute, Ms. Stewart noticed the marketing video that was played by the school for prospective students to view while waiting in the lobby of the admissions office. She also viewed this same video material on a television commercial for High-Tech Institute. She noticed that several of the criminal justice field careers discussed and depicted in that video were not ones for which the prospective student would be qualified to even apply for with an Associates Degree from High-Tech Institute.
- (c) After seeing this video, Ms. Stewart discussed it with the head of the Criminal Justice Program, Jack Phan. Mr. Phan agreed that the video was inaccurate in that it displayed jobs that the prospective student would not be able to obtain with the High-Tech Institute Associate's Degree. They both agreed that the school should not be showing it to potential students.
- (d) She had some students come to her disappointed to hear that none of their credits were going to transfer from High-Tech Institute to University of Missouri Kansas City (UMKC). These students indicated that they had been told by High-Tech's admissions representative that their High-Tech credits would all transfer to other colleges such as UMKC.

(Affidavit of Cheryl Ann Stewart, Ex. 7).

177. For a period of time, High Tech Graduate Placement only had a part-time person working in placement-related activities for the Criminal Justice Program. (Torres II Depo., p. 280:6-14).

178. Chuck Torres in High Tech – Kansas City’s Graduate Placement Department does not recall High Tech having anyone at the Kansas City Campus contacting prospective employers before there were graduates of the program. (Torres II Depo., pp. 282:7-283:2).

179. No graduate of High Tech’s Criminal Justice Program was ever employed as a court bailiff. (Torres II Depo., pp. 284:20-285:1).

180. No graduate of High Tech’s Criminal Justice Program was ever employed as a crime scene investigator. (Torres II Depo., p. 285:2-8).

181. No graduate of High Tech’s Criminal Justice Program was ever employed by the FBI. (Torres II Depo., p. 285:9-15).

182. No graduate of High Tech’s Criminal Justice Program was ever employed as a juvenile probation officer. (Torres II Depo., p. 285:16-21).

183. High Tech’s statistics do not support a representation that most graduates of the High Tech Criminal Justice Program were hired by the Kansas City Missouri Police Department. (Torres I Depo., p. 121:18-22).

184. High Tech’s former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that most of the graduates of High Tech’s Criminal Justice Program were hired by the Kansas City Police Department. (Reed Depo., pp. 31:21-32:2).

185. High Tech’s former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that High Tech Institute – Kansas City had professionals in the placement department who were connected to a network of potential employers for High Tech Criminal Justice Program graduates. (Reed Depo., pp. 32:14-33:1).

186. High Tech’s former Director of Graduate Placement/Career Service Erin Reed

testified that the only criminal justice industry employer she recalls that her advisors were in contact with was the Kansas City Community Center. (Reed Depo., pp. 33:21-34:8).

187. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Reed Depo., p. 34:9-15). High Tech Graduate Placement Manager Chuck Torres similarly knew of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment in government criminal justice positions. (Torres I Depo., p. 122:10-15).

188. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment as Coast Guard crewmen, court bailiff, crime scene investigator, crime scene analyst, highway patrol officer, homeland security officer, park ranger, or security specialist positions. (Reed Depo., pp. 34:16-38:1).

189. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment as a probation officer. (Reed Depo., p. 37:6-10).

190. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that graduates of High Tech's Criminal Justice Program could reasonably anticipate employment as a victim advocate. (Reed Depo., p. 38:2-6).

191. High Tech's former Director of Graduate Placement/Career Service Erin Reed

testified that she was aware of no facts to support the claim that the average starting salary for graduates of High Tech's Criminal Justice Program was between \$40,000 and \$50,000 per year. (Reed Depo., p. 38:7-13). High Tech Graduate Placement Manager Chuck Torres similarly knew of no facts to support the claim that the average starting salary for graduates of High Tech's Criminal Justice Program was between \$40,000 and \$50,000 per year. (Torres I Depo., p. 12:16-20).

192. High Tech's former Director of Graduate Placement/Career Service Erin Reed testified that she was aware of no facts to support the claim that credits earned at High Tech would transfer to all other colleges and universities. (Reed Depo., p. 38:14-19).

193. Erin Reed of High Tech's Graduate Placement can only identify one Criminal Justice Program graduate that the school actually assisted in placing them in their job. That person was a female who became employed at the Kansas City Community Center. (Reed Depo., pp. 23:17-24:18).

F. Additional Admissions From High Tech Graduate Placement Personnel

194. High Tech Institute has graduate placement and pay statistics broken down by diploma program versus associate's degree program, but it does not provide that information to prospective student. (Torres II Depo., pp. 310:4-8, 311:21-312:4; Torres I Depo., pp. 36:14-37:15).

195. High Tech Institute includes part-time jobs in its graduate placement and pay statistics, but it does disclose that to the prospective student. (Torres II Depo., pp. 312:5-313:10).

196. High Tech Institute classifies a student graduate as "placed by school" even when High Tech did not provide the job lead. (Torres II Depo., p. 313:20-25).

197. Chuck Torres and the Graduate Placement Department at High Tech – Kansas City have never deemed a job not to be either in the program field or a related field. (Torres II Depo., p. 317:2-16; Torres I Depo., pp. 157:17-158:25). Working as a direct store delivery associate at Wal-

Mart is deemed by High Tech to be employment in a related field to the Criminal Justice Program's Associate's Degree. (Torres I Depo., pp. 244:20-247:1).

198. High Tech Institute includes in its graduate placement and pay statistics person who are in the same job when they graduate as when they started at High Tech, but it does not disclose that to the prospective student. (Torres II Depo., p. 314:6-16).

199. In several of its "A Message From the Campus President" documents, High Tech failed to disclose entire period and groups of information. (Torres I Depo., pp. 52:3-6, 130:22-133:22, 135:17-136:8, 136:17-22, 138:24-139:21, 140:22-141:8, 141:15-143:7, 169-180, 210-215, 217).

200. Chuck Torres in Graduate Placement heard complaints from students regarding High Tech's credits not transferring and about salary misrepresentations made to them at the time of enrollment, but he did not document those complaints. He was never instructed to memorialize complaints such as those from students. (Torres II Depo., pp. 319:6-321:5).

201. Chuck Torres in Graduate Placement was never told of the harsh criticisms reported by so many students on their Student Critiques regarding the Graduate Placement Department and its ineffectiveness. (Torres II Depo., pp. 321-354, 431-464).

202. High Tech's Graduate Placement Department acknowledged that having an externship program is critically important in order for students to obtain quality employment. (Torres II Depo., pp. 414:21-416:2).

203. The Criminal Justice Program at High Tech Institute – Kansas City did not have an internship or externship program. (Torres II Depo., p. 416:3-8).

G. Evidence Regarding Non-Transferability Of High Tech/Anthem Credits

204. The catalogs for University of Missouri Kansas City for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 17).

205. The catalogs for William Jewell University in Liberty, Missouri for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 18).

206. The transfer of credit policies for Avila University in Kansas City, Missouri make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 19).

207. The catalogs for Central Missouri State for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 20).

208. The catalogs and policies for Northwest Missouri State for the years 2005 to the present make it clear that it only accepts credits on transfer from regionally-accredited institutions. (Exhibit 21).

H. High Tech's Probation and Loss Of Degree-Granting Authority

209. In January of 2007, High-Tech Institute's accrediting body noted that "the institutions were not in compliance with the Commission's standards governing faculty qualifications or the design and content of degree programs." (Ex.10, p. 1). The accrediting body also wrote that "the Commission has good cause to believe that these compliance concerns are systemic in nature." (Ex. 10, p. 1).

210. Further noted was the fact that 4 of the 7 general education faculty members at the Kansas City location "appear[ed] to lack appropriate academic coursework and preparation to teach the general education courses assigned to them." (Ex. 10, p. 6). With regard to the 18 full-time and

1 part-time faculty in the programs, High-Tech Institute's accreditor noted that one "does not have the requisite practical experience or training to teach" the course he was teaching, and that 8 of the other "faculty members have not earned or do not possess a degree related to the courses they are currently teaching and there is no showing of outstanding professional experience or contributions to the occupational field of study." (Ex. 10, p. 7).

211. Also noted in the Probation Order from the accreditors was the high number of instructors at the schools operated by High Tech across the country "who were awarded a degree credential from HTI, many under what appear to be similar circumstances" – a degree awarded to a current instructor in an amazingly short period of time. (Ex. 10, pp. 21-22, see also pp. 17-20 – "Integrity of Degrees Awarded Issues").

212. In an October 12, 2007 communication, High-Tech Institute's Accrediting body continued "the Probation Order for all HTI-affiliated schools." (Ex. 11, p. 1).

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed pursuant to the ECF system, this 12th day of August, 2013.



/s/ Dirk Hubbard
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.
Plaintiffs

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Case No.: 4:11-CV-00506-BP

-vs-

HIGH-TECH INSTITUTE, INC.
d/b/a ANTHEM EDUCATION GROUP
and HIGH TECH INSTITUTE
Defendant.

**PLAINTIFF KELSEY DESANTO'S SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)
Plaintiffs) Case No.: 4:11-CV-00506-BP
)
)
-vs-)
)
HIGH-TECH INSTITUTE, INC.)
d/b/a ANTHEM EDUCATION GROUP)
and HIGH TECH INSTITUTE)
Defendant.)

EXHIBITS TO
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT

- Exhibit 1 – Statement of Karen Matthews
- Exhibit 2 – Statement of Willis Zoellers
- Exhibit 3 – Statement of Lynn Magenheimer
- Exhibit 4 – Statement of Juli Kay Atkinson
- Exhibit 5 – Statement of Mark Pelmore
- Exhibit 6 – Statement of Dawn Bennett
- Exhibit 7 – Statement of Cheryl Ann Stewart
- Exhibit 8 – Statement of Jennifer Lewis
- Exhibit 9 – Excerpts From High Tech's Admissions Training Manual
- Exhibit 10 – ACCSCT 1/07 Probation Letter to High-Tech Institute
- Exhibit 11 – ACCSCT 10/07 Probation Letter to High-Tech Institute
- Exhibit 12 – Student Critique Form Complaints – Criminal Justice*
- Exhibit 13 – Student Critique Form Complaints – Surgical Technology*
- Exhibit 14 – Summary #1 of Student Critique Form Complaints*
- Exhibit 15 – Summary #2 of Student Critique Form Complaints*
- Exhibit 16 – Summary #3 of Student Critique Form Complaints*
- Exhibit 17 – Excerpt from UMKC Catalog Re: Transfer of Credits
- Exhibit 18 – Excerpt from William Jewell Catalog Re: Transfer of Credits
- Exhibit 19 – Excerpt from Avila Policy Re: Transfer of Credits
- Exhibit 20 – Excerpt from CMSU Catalog Re: Transfer of Credits
- Exhibit 21 – Excerpt from NWMS Catalog Re: Transfer of Credits* Exhibit to

be filed under seal as containing documents designated by Defendant as "confidential"

COMES NOW Plaintiff Kelsey DeSanto, by and through counsel, and in opposition to Defendant High-Tech Institute, Inc.'s Motion for Summary Judgment, state as follows:

I. INTRODUCTION

Plaintiff in this case includes Kelsey DeSanto – a former student who attended the Kansas City location of High-Tech Institute/Anthem College in the Surgical Technology Program. High-Tech Institute/Anthem College is a for-profit, proprietary school owned by Anthem Education Group. Anthem Education Group currently owns and operates many for-profit school locations, including many locations known previously as High-Tech Institute which changed their school names to Anthem College. Over the period of time from 2003 to the present, this Kansas City location has offered a limited number of academic programs, most of which progress toward a “Diploma” or an “Associate of Applied Sciences” degree.

Plaintiff claims that Defendant engaged in a pattern and practice of fraudulent misrepresentations, material omissions, and deceptive conduct in order to sell its school's programs and in order to induce prospective students to sign enrollment contracts with the school. The admissions advisors and other staff at each High-Tech Institute/Anthem College location are expected to utilize a myriad of corporately-designed sales and marketing techniques in order to get a prospective student to enroll. Student recruitment at High-Tech Institute/Anthem College is driven by high-pressure sales techniques and strategies. The national corporate parent company makes the policies, provides the training, and sets the enrollment quotas for the admissions personnel at its schools. These sales persons are trained by corporate to induce the prospective student to sign up for the program that makes the most money for the school. They are trained to create a “sense of urgency,” to “overcome objections,” to gain the trust of the prospective student, and where possible to sign the prospective student up on the first in-person visit. These sales persons are provided

explicit training from Defendant in how to close the sale and enroll students in the few and limited programs offered at the Kansas City location.

The pattern and practice of misconduct perpetrated by Defendant involves fraudulent misrepresentations and material omissions relating to topics such as (a) job placement services provided by the school upon graduation; (b) job demand and job prospects for High-Tech/Anthem program graduates; (c) starting salary for High-Tech/Anthem program graduates; and, (d) transferability of High-Tech/Anthem credits to other colleges and universities.

As to Plaintiff DeSanto, Defendant engaged in specific fraudulent misrepresentations which are set forth as to each Plaintiff in Count I and which were set forth in her deposition. Defendant also failed to disclose several key material facts, and these material and fraudulent omissions are also set forth in Count I. Specifically, Ms DeSanto claims High Tech's Admissions Representative misrepresented (a) that credits transfer (DeSanto Depo., pp. 70:12-71:16), (b) about job placement prospects, percentages and type of job opportunities working in surgeries in hospitals (DeSanto Depo., pp. 73:16-74:2, 112:8-18, 113:21-116:25, 162:14-163:20), (c) and about starting pay (DeSanto Depo., pp. 87:7-17, 113:21-114:11).

Count II alleges that this corporate Defendant engaged in deceptive conduct in violation of the Missouri Merchandising Practices Act (MPA). Judge Wright dismissed that Count on the pleadings based on his view that the product purchased from a for-profit school qualified for the "business pursuits" exception to the MPA because some of the alleged misrepresentations related to job placement, job prospects, and starting salaries. According to Judge Wright's Order, these unwary student enrollees at High Tech do not qualify for the consumer protection laws in Missouri because High Tech misled them with regard to some matters related to jobs. His Order noted that if the majors were something like Art History, then the business pursuits exception would not apply.

Plaintiff disagrees with Judge Wright's Order and would request the Court to reexamine that ruling in light of the facts now fully set forth in this matter in Plaintiffs' Common Statement of Facts. Those facts show this to be exactly the type of situation that the MPA was designed to prevent. In any event, Plaintiffs' MPA claims have presently been dismissed, subject to the Court's possible Order reinstating them.

Count III alleges Defendant was negligent in the training and supervision of its admissions personnel, and Count IV alleges breach of contract. As explained more fully in the argument section below, Plaintiff DeSanto believes her evidence is sufficient to have those claims submitted to the jury, but she is dismissing those claims in the interest of focusing this matter on the intentional and fraudulent conduct engaged in by Defendant.

Defendant High Tech Institute has filed a Motion for Summary Judgment which addresses some, but not all, of the Count I fraud claims asserted by Plaintiffs DeSanto. Defendant's Motion also does not accurately characterize Plaintiff's claims or the evidence. Indeed, when the Court consider Plaintiff's controversions of Defendant's factual contentions as well as the extensive additional facts provided in Plaintiffs' separately-filed Statement of Common Facts, Defendant's Motion with regard to Plaintiff's fraud claims should be denied based on the factual disputes alone. In addition, denial of Defendant's Motion for Summary Judgment on Plaintiff's fraud claims is directly supported by several prior orders of Missouri State Courts and of United States District Courts in the Western District of Missouri.

II. PLAINTIFF'S RESPONSE TO DEFENDANT'S ALLEGED UNCONTROVERTED FACTS AND PLAINTIFFS' STATEMENT OF FACTS GENUINELY IN DISPUTE WHICH DEFEAT SUMMARY JUDGMENT

Defendant's Motion does set forth an accurate or complete statement of facts regarding the claims and evidence of Plaintiff DeSanto. Thus, Plaintiff has separately filed an accurate and more

complete statement of the true facts revealed in the discovery process in this case. Plaintiff incorporates herein by reference her separate Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions for Summary Judgment. Those facts make it clear that all of the fraud claims of Plaintiff DeSanto should proceed to trial and that Defendant's Motion for Summary Judgment on those fraud claims should be denied in its entirety.

In addition, Plaintiff responds to Defendant's specific alleged facts as follows:

1. Uncontroverted.
2. Uncontroverted.
3. Uncontroverted.
4. Uncontroverted with explanation that the documents were not read by Plaintiff before signing because she trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (DeSanto Depo., pp. 64:18-65:12, 83:2-15, 89:19-25, 102:17-103:10, 109:23-110:5; SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166).¹ Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the

¹SF References are to paragraphs of facts and citations contained in Plaintiffs' separately-filed Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions For Summary Judgment.

enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

5. Uncontroverted with explanation that the documents were not read by Plaintiff before signing because she trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (DeSanto Depo., pp. 64:18-65:12, 83:2-15, 89:19-25, 102:17-103:10, 109:23-110:5; SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

6. Controverted. Ms. DeSanto did not testify that the entirety of the materials were read to her or that the materials were read accurately. the documents were not read by Plaintiff before signing because she trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (DeSanto Depo., pp. 64:18-65:12, 83:2-15, 89:19-25, 102:17-103:10, 109:23-110:5; SF ¶¶ 36, 43,

63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

7. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiff before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High

Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

8. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

9. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing

because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

10. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each

month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

11. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

12. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives

engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

13. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each

month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

14. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

15. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives

engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

16. Uncontroverted.
17. Uncontroverted.
18. Controverted. Ms. DeSanto was told that credits would transfer. (DeSanto Depo., pp. 70:12-71:16).
19. Controverted. Ms. DeSanto was guaranteed employment assistance and opportunities by High Tech. (DeSanto Depo., pp. 113:21-116:25, 118:4-8, 162:14-163:20). She was also told misleading placement percentages. (DeSanto Depo., pp. 73:16-74:2, 162:14-163:20; SF194-199). She was told jobs were being located for graduates by High Tech in hospitals such as Shawnee Missions Medical Center working in surgery. (DeSanto Depo., p. 112:8-18).
20. Uncontroverted that Ms. DeSanto testified she knew she would have to do her part.

21. Uncontroverted that Ms. DeSanto testified she knew she would have to do her part.
22. Uncontroverted that Ms. DeSanto testified she knew she would have to do her part.
23. Controverted. (DeSanto Depo., pp. 70:12-71:16).
24. Uncontroverted with explanation. It is clear that High Tech's credits will not transfer to any regionally-accredited institution such as UMKC or the Community Colleges. (SF ¶¶ 204-208).

25. Uncontroverted.

26. Uncontroverted.

27. Uncontroverted.

28. Uncontroverted.

29. Uncontroverted with explanation. High Tech's graduate experience showed a much lower starting salary..

30. Uncontroverted.

31. Uncontroverted.

32. Uncontroverted with explanation. The evidence is that High Tech's credits do not transfer, that their graduates do not get jobs located for them by the school, and that the average pay is not as high as High Tech stated initially to Ms. DeSanto.

33. Uncontroverted.

34. Uncontroverted.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate if, viewing the evidence most favorably to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Thompson v. Hirano Tecseed Company, Ltd., 456 F.3d 805, 808 (8th Cir. 2006) (citing Fed.R.Civ. 56(c)). Summary judgment is not appropriate if the prima facie case

is supported by facts sufficient to raise a genuine issue for trial. Thompson, 456 F.3d at 808 (citing A.T. Turner v. Gonzales, 421 F.3d 688, 694 (8th Cir. 2005)).

In determining a motion for summary judgment the court must accept as true **all** facts presented by the non-moving party and supported by the record. Id. (citing Beck v. Skon, 253 F.3d 330, 332-33 (8th Cir. 2001)). If a “rational trier of fact could find for the nonmoving party” then the trial court must find that genuine issues of fact exist and that summary judgment precluded. Unleashed Innovations, Inc. v. Deltic Timber Corp., 2003 WL 22661159 *1 (8th Cir. 2003).

Defendant’s Motion does not meet the standard for being granted summary judgment under Rule 56(c).

IV. ARGUMENT AND AUTHORITY

A. Plaintiff’s Fraud Claims And Evidence Are Sufficient For The Jury’s Consideration (Responding to Pages 9-15 of Defendant’s Suggestions)

Defendant’s Motion for Summary Judgment does not fully set forth Plaintiff’s’ fraud claims or the evidence supporting those claims. It broadly argues that Plaintiffs cannot proceed with their misrepresentation claims because: (a) “for the most part, there is no evidence that anyone made the representations”; and, (b) “those representations were either true, not material, or were not believed or relied upon by DeSanto.” (Defendant’s Suggestions, pp. 9-10).

Defendant’s Motion should be denied, as Plaintiffs’ Statement of Facts and controversions above make it clear that there is evidence that the representations were made, that they were false, material, and that it was reasonable for Plaintiff to rely upon what was said by the High Tech Admissions Representatives and High Tech..

For years, High Tech Institute/Anthem College has engaged in a pattern and practice of dishonest and fraudulent business practices designed to mislead prospective students concerning what an education at this proprietary school will mean upon graduation. In Missouri and in the

Eighth Circuit the law has long held that common law fraud can be proven by demonstrating a pattern of similar conduct by the wrongdoer. Further and more specifically, in Missouri State and Federal Courts, claims by proprietary school students who have been defrauded and deceived with regard to job placement, starting salaries, credit transfer have long been deemed actionable. Indeed, Judge Wright previously denied Defendant's Motion to Dismiss which claimed much the same as Defendant's present Motion when it asserted that Plaintiffs' fraud claims were not actionable because they involved promised of future action to be engaged in by third parties. Judge Wright denied Defendant's claim, as such fraudulent conduct by for-profit colleges such as High Tech has been deemed actionable time and time again by many courts. Such claims of future conduct to be engaged in by third parties are actionable when there is a relationship of trust, when there is superior bargaining power, and when there is greater information known on the part of one of the parties. Each of those applies to Plaintiff's claims.

In their separately-filed Statement of Common Facts, Plaintiffs demonstrate to the Court that all of the misrepresentations made to them during and after the enrollment process were material and false, and that High Tech has made these same misrepresentations to other students before, during, and after their enrollment. The primary culprit in most of the fraudulent statements is the process utilized; however, high-pressure sales persons mislabeled as "admissions representatives" serve as the catalyst for an elaborate fraudulent scheme being perpetrated upon the public and the government. Time and time again, High Tech Admissions Representatives made identical misrepresentations to other prospective students concerning things like average starting salary, job placement, and transferability of credit hours. Plaintiffs' evidence further demonstrates a pattern and practice with regard to document signing by prospective students that is fraught with fraudulent and improper conduct on the part of High Tech. Telling is the fact that High Tech trains its Admissions Representative to never hand out or show a catalog to a prospective student enrollee until the

enrollment paperwork is signed, and yet that very enrollment paperwork states that the student has already received and reviewed the catalog. (SF ¶ 115).

Plaintiffs present compelling affidavits, documents and deposition testimony about the elaborate and well rehearsed fraudulent schemes that have been developed and implemented by High Tech's ownership to generate millions of dollars in student loan revenues on the backs of unsuspecting and poorly prepared students. **Indeed, High Tech's former Campus President and Director of Education has admitted that High Tech – Kansas City operated through a pattern and practice of misinformation coming from its Admissions Representatives since its inception in 2003 in Kansas City and that the High Tech Admissions Representatives in Kansas City were prone to lie to new potential new students.** (SF ¶137 and ¶138). Plaintiffs' evidence also includes hundreds and hundreds of similar complaints from other students. (SF ¶¶ 139-147, 148(e), 148(f), 148(g), 148(h), 149). Plaintiffs' evidence also includes direct admissions from the Admissions Representatives who enrolled Plaintiffs, as well as those who trained them. (SF ¶¶ 48-65, 98-134). Plaintiffs' evidence includes direct admissions and facts showing the falseness of the representations repeatedly made to these Plaintiffs and others by High Tech/Anthem. (SF ¶¶ 176-193, 204-208). Plaintiffs' evidence include direct admissions and facts showing High Tech's emotional manipulation of prospective students and its fraudulent practices with regard to obtaining student signatures on enrollment documents. (SF ¶¶ 122-123, 162-168).

Indeed, the High Tech Admissions Representative who enrolled one of the Plaintiffs in this case, Faith Perdue, admitted High Tech Institute specifically trained Admissions Representative Faith Perdue to attempt to get the consumer potential student enrollee to not make an intelligently-stimulated decision, but instead to make an emotional decision, come in for a face-to-face meeting, and enroll that same day in High Tech. (Perdue Depo., pp. 195:2-196:9). She also admitted she was

taught by High Tech to sell the school through trying to draw an emotional response out of the prospective student, and that is what she did. (Perdue Depo., p. 271:8-15).

Defendant claims Plaintiff has not shown the misrepresentations occurred, but Plaintiff has evidenced their specific alleged misrepresentations as well as pattern and practice of such. Ms DeSanto claims High Tech's Admissions Representative misrepresented (a) that credits transfer (DeSanto Depo., pp. 70:12-71:16), (b) about job placement prospects, percentages and type of job opportunities working in surgeries in hospitals (DeSanto Depo., pp. 73:16-74:2, 112:8-18, 113:21-116:25, 162:14-163:20), (c) and about starting pay (DeSanto Depo., pp. 87:7-17, 113:21-114:11).

Defendant claims Plaintiff should not have trusted or relied on what High Tech's Admissions Representatives said, but the testimony of High Tech officials is that students are expected to trust and rely on what is said by Admissions Representatives and that those Representatives have much more and greater information than the prospective student. (SF ¶¶ 63, 130-134, 152-154).

Defendant's reliance on its disclosures is factually and legally erroneous. First, none of those disclosures were knowing. Second, such disclosures are not legally valid to disclaim a fraud.

With further regard to the placement percentages shown to Kelsey DeSanto and other prospective students, Plaintiff's evidence is that Defendant was misleading and fraudulent in providing incomplete and inaccurate statistics. For example, High Tech Institute has graduate placement and pay statistics broken down by diploma program versus associate's degree program, but it does not provide that information to prospective student. (Torres II Depo., pp. 310:4-8, 311:21-312:4; Torres I Depo., pp. 36:14-37:15). High Tech Institute includes part-time jobs in its graduate placement and pay statistics, but it does disclose that to the prospective student. (Torres II Depo., pp. 312:5-313:10). High Tech Institute classifies a student graduate as "placed by school" even when High Tech did not provide the job lead. (Torres II Depo., p. 313:20-25). Further, Chuck Torres and the Graduate Placement Department at High Tech – Kansas City have never deemed a

job not to be either in the program field or a related field. (Torres II Depo., p. 317:2-16; Torres I Depo., pp. 157:17-158:25). High Tech Institute also includes in its graduate placement and pay statistics person who are in the same job when they graduate as when they started at High Tech, but it does not disclose that to the prospective student. (Torres II Depo., p. 314:6-16). Finally, in several of its "A Message From the Campus President" documents, High Tech failed to disclose entire period and groups of information. (Torres I Depo., pp. 52:3-6, 130:22-133:22, 135:17-136:8, 136:17-22, 138:24-139:21, 140:22-141:8, 141:15-143:7, 169-180, 210-215, 217).

With regard to credit transfer, Plaintiffs' evidence shows Defendant High Tech specifically represented credits would transfer to other colleges when they do not. The following is what was observed by former High Tech Director of Admissions Karen Matthew in early 2007:

- * Ms. Matthew learned while working as Director of Admissions at High-Tech Institute that High-Tech Institute Admissions Representatives often made a "convenient" misrepresentation in claiming that national accreditation such as that held by High-Tech Institute was a good thing and that it meant that all of your credits would transfer to any other college anywhere else in the country. Ms. Matthews notes that such a statement to prospective students by High-Tech Institute Admissions Representatives would be deceptive and likely untrue.

(SF ¶155(e)).

The above facts show there are genuine issues that must be decided by a jury. As such, Defendant's Motion for Summary Judgment must be overruled.

Defendant's Motion re-asserts many of the same arguments made to no avail in its Motion for Judgment on the Pleadings Regarding Future Events Misrepresentations, as well as in several prior actions, including: (a) on summary judgment in a prior case before the United States District Court for the Western District of Missouri, and, (b) on summary judgment in a case before the Honorable Senior Judge Michael Maloney in Clay County Circuit Court.

Appendix A previously filed with Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings contained some 2007 Orders of the United States District Court for the Western District of Missouri in Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW, denying many of these same arguments. Appendix B to that prior response also contained some 2009 Orders and some transcript excerpts from the Missouri Circuit Court for Clay County, Missouri, Senior Judge Michael Maloney, in Walters, et al. v. CEC, et al., Case No. 07CY-CV07481, who denied on summary judgment many of the same legal arguments the corporate Defendant has asserted in its Motion in this case.

In Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW – a case that involved several former graduates of a different proprietary school in the Kansas City area, Judge Wright denied defendants' motion for summary judgment which made many of the same or similar substantive arguments as those now asserted herein. Two of the Orders from the Bradley case were attached as Appendix A to Plaintiffs' prior response to Defendant's Motion for Judgment on the Pleadings. [See Orders dated 2/22/07 and 4/6/07].

At pages 12-13 of the 2/22/07 Order, the Bradley Court sets forth and rejects the same arguments that Defendant asserts herein: "SBC challenges whether plaintiff Roberts can show that SBC made a representation of a present and existing fact, and not a statement of opinion, expectation or prediction for the future. . . . If a jury believes the testimony and evidence of the plaintiffs in this case, the jury will be able to find that SBC's admissions representatives made representations of fact, not opinion, to prospective students that were false at the time the statements were made to the prospective students. Obviously the types of representations that were made to the prospective students were material to their decision as to whether or not to enroll in SBC." Id.

In Walters, et al. v. CEC, et al., Case No. 07CY-CV07481 (Clay County Circuit Court), these same arguments were rejected in their entirety by the Honorable Judge Michael Maloney upon a full

factual record. An Order and some transcript excerpts from the Walters case were previously attached as Appendix B to Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings. At the hearing, Judge Maloney made it clear he had reviewed the law and evidence and determined that the former students' claims were appropriate to proceed to trial. ("I don't think I'm required to sort through and make credibility judgments about what a jury is likely to do with it. I think I'm supposed to look to see if the plaintiffs can get to a jury on, I'm going to call it an intentional tort." Id. at p. 121).

Defendant High-Tech Institute is very familiar with valid claims such as those brought by these Plaintiffs resulting from Defendant's pattern and practice of deception at schools it owns and operates across the United States. There are many, many former and current claims, and none have had a court agree with the arguments Defendant sets forth in its Motion in this case.

With regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, job placement, job demand, and transferability of High-Tech/Anthem credits to other schools, Defendant claims that these misrepresentations -- made by its school admissions advisors in order to get Plaintiffs and many other students to enroll -- were not statements of present fact. To the contrary, the factual record reveals that specific factual misrepresentations were made to Plaintiffs in various of these areas, and those misrepresentations are actionable under Missouri law.

Further, under Missouri case law and the Restatement of Torts, even any statement that is an "opinion" is actionable under the circumstances in this case where the admissions advisor and the school itself sought to gain the trust of the prospective students, were in positions of superior knowledge regarding that matters represented, and concealed key facts. Also with regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, Defendant claims that those misrepresentations relate to the actions of third parties over whom Defendant has

no control. Defendant's contentions are lacking in merit, as case law makes it clear that these specific misrepresentations are actionable.

Defendant argues that their representations to Plaintiffs about "anticipated salaries" necessarily concerned future actions of independent third parties which Defendant claims are not actionable. The purported "future events" rule Defendant seeks to invoke is not so hard and fast as they would have the Court believe, and the same arguments have been rejected by Missouri Courts when asserted by other for-profit colleges like Defendant in their attempts to escape liability to the former students they have defrauded and deceived through their pattern and practice of deception.

"It is well settled that false representations as to future results *when made by one having or professing to have superior knowledge based on past experience of himself or others, are in effect, false representations of existing conditions and support allegations of fraud.*" Nichols v. Hendrix, 312 S.W.2d 163, 165-166 (Mo. App. 1958), quoting Wendell v. Ozark Orchard Co., 200 S.W. 747, 749 (Mo. App. 1917)(emphasis supplied).

Similarly, in Dawes v. Elliston, 369 S.W.2d 285 (Mo. App. 1963), the defendant insurance adjuster undertook to negotiate a settlement of plaintiff's personal injury claim arising from a car wreck caused by her son. Plaintiff claimed the adjuster procured the release of her claim by fraud. At trial, the jury agreed. On appeal, defendant contended that his representations as to future events could not sustain a claim of fraud. Id., at 287.

The Dawes Court rejected defendant's argument, noting as follows:

The statement made (as the jury found) that if plaintiff did not accept \$500.00, which the attorney was giving her because he felt sorry for her, she would get nothing and her son would lose his insurance and his license we think was a statement of fact. It was made by a claims adjuster for insurer of plaintiff's son, with experience in that field. It was made with the intention that plaintiff believe it and act on it, which she did. The declarant knew it was false and that he did not believe the events predicted would or could come true. But plaintiff was an elderly woman, of little worldly experience or means, of little education and of no business experience. She was dealing where a wrong step by her might well result in great harm to her son. These

elements of actionable fraud were present, and were the essentials to a submission of the issue.

Id. at 288.

Both *Dawes* and *Nichols* thus recognize that where defendant purports to have specialized knowledge and experience in the specific matter, its opinions of future events (including the actions of third persons) may be statements of fact as to such matters that will support a fraud claim. That rule is particularly applicable here because Plaintiffs have shown that Defendant's admissions representatives were trained in techniques that would enable them to secure the confidence and trust of Plaintiffs.

Plaintiffs' facts suggests that Plaintiffs' reasonably understood Defendant's representations about such matters as "statement[s] of fact intended to put plaintiff off his guard," rather than mere "off the cuff remark[s] meant as a general expression of opinion." *Constance*, 25 S.W.3d at 587-588, citing *Clark v. Olson*, 726 S.W.2d 718, 720 (Mo. banc 1987). See also, *Conroy Piano Co. v. Pesch*, 279 S.W. 226, 229 (Mo. App. 1925) ("the question of whether the representation is of opinion or fact is for the jury").

For all of the above legal reasons and factual disputes, Defendant's Motion For Summary Judgment on Plaintiff's Fraud claims should be denied.

B. Plaintiff's Negligent Training and Supervision Claims

Plaintiff does not believe her claims for negligent training and supervision of admissions personnel were previously dismissed. In any event, and although Plaintiffs' evidence in their Common Statement of Facts show many faults in the training and supervision of its admissions personnel, Plaintiffs believe the evidence is that Defendant was intentional in that training and was intentionally perpetuating a pattern and practice of fraud in its training and manipulation of its admissions personnel.

Plaintiffs' evidence regarding High Tech's inappropriate training and supervision of its Admissions Representatives includes the following: having trainees assume fake identities and mystery shop the competition, using scripts that make false statements, using enrollment agreements that say a catalog has been provided and yet training to never show or hand out a catalog until after the student is enrolled, not following up on any complaints, and much more. Each of these things, however, is being intentionally done by High Tech as a means of manipulating its own personnel. As such, Plaintiff DeSanto agrees to dismissal of the negligence claims in Count III of the Second Amended Complaint.

C. Plaintiff's Breach Of Contract Claims

Although Plaintiff believes the evidence is sufficient to support submitting her breach of contract claims to the jury in that Defendant made several promises in the enrollment documents that it did not keep, Plaintiff has determined to proceed to trial only on their fraud and negligence claims. As such, Plaintiff agrees to dismissal of the contract claims in Count IV of the Second Amended Complaint.

V. CONCLUSION

Defendant's Motion for Summary Judgment with regard to the fraud claims of Plaintiff DeSanto should be denied in its entirety. As set forth above, Plaintiffs DeSanto agrees to dismissal of her contract and negligence claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed pursuant to the ECF system, this 12th day of August, 2013.



/s/ Dirk Hubbard
Attorney for Plaintiff

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)
Plaintiffs) Case No.: 4:11-CV-00506-BP
)
)
-vs-)
)
HIGH-TECH INSTITUTE, INC.)
d/b/a ANTHEM EDUCATION GROUP)
and HIGH TECH INSTITUTE)
Defendant.)

EXHIBITS TO
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT

- Exhibit 1 – Statement of Karen Matthews
- Exhibit 2 – Statement of Willis Zoellers
- Exhibit 3 – Statement of Lynn Magenheimer
- Exhibit 4 – Statement of Juli Kay Atkinson
- Exhibit 5 – Statement of Mark Pelmore
- Exhibit 6 – Statement of Dawn Bennett
- Exhibit 7 – Statement of Cheryl Ann Stewart
- Exhibit 8 – Statement of Jennifer Lewis
- Exhibit 9 – Excerpts From High Tech's Admissions Training Manual
- Exhibit 10 – ACCSCT 1/07 Probation Letter to High-Tech Institute
- Exhibit 11 – ACCSCT 10/07 Probation Letter to High-Tech Institute
- Exhibit 12 – Student Critique Form Complaints – Criminal Justice*
- Exhibit 13 – Student Critique Form Complaints – Surgical Technology*
- Exhibit 14 – Summary #1 of Student Critique Form Complaints*
- Exhibit 15 – Summary #2 of Student Critique Form Complaints*
- Exhibit 16 – Summary #3 of Student Critique Form Complaints*
- Exhibit 17 – Excerpt from UMKC Catalog Re: Transfer of Credits
- Exhibit 18 – Excerpt from William Jewell Catalog Re: Transfer of Credits
- Exhibit 19 – Excerpt from Avila Policy Re: Transfer of Credits
- Exhibit 20 – Excerpt from CMSU Catalog Re: Transfer of Credits
- Exhibit 21 – Excerpt from NWMS Catalog Re: Transfer of Credits* Exhibit to

be filed under seal as containing documents designated by Defendant as "confidential"

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MARCUS CHAMPION, et. al.)
Plaintiffs) Case No.: 4:11-CV-00506-BP
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-vs-)
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HIGH-TECH INSTITUTE, INC.)
d/b/a ANTHEM EDUCATION GROUP)
and HIGH TECH INSTITUTE)
Defendant.)

**DEPOSITION TRANSCRIPTS REFERENCED IN
PLAINTIFFS' COMMON STATEMENT OF FACTS
REFERENCED IN
SUGGESTIONS IN OPPOSITION TO
DEFENDANT'S TWO MOTIONS FOR SUMMARY JUDGMENT**

- Appendix 1 – Deposition of Marcus Champion
- Appendix 2 – Deposition of Jody Hendrix
- Appendix 3 – Deposition of Kelsey DeSanto
- Appendix 4 – Deposition of Kathy Carrier (Gharst)
- Appendix 5 – Deposition of Faith Perdue
- Appendix 6 – Deposition of Sandra Jones
- Appendix 7– Deposition I of Marilyn Knight
- Appendix 8 – Deposition II of Marilyn Knight
- Appendix 9 – Deposition I of Charles Torres
- Appendix 10 – Deposition II of Charles Torres
- Appendix 11 – Deposition of Erin Reed
- Appendix 12 – Deposition of Deborah Lang
- Appendix 13 – Deposition of Terri Payne

COME NOW Plaintiffs Marcus Champion and Jody Hendrix, by and through counsel, and in opposition to Defendant High-Tech Institute, Inc.'s Motion for Summary Judgment, state as follows:

I. **INTRODUCTION**

Plaintiffs in this case include Marcus Champion and Jody Hendrix – two former students who attended the Kansas City location of High-Tech Institute/Anthem College in the short-lived and no-longer-offered Criminal Justice Program. High-Tech Institute/Anthem College is a for-profit, proprietary school owned by Anthem Education Group. Anthem Education Group currently owns and operates many for-profit school locations, including many locations known previously as High-Tech Institute which changed their school names to Anthem College. Over the period of time from 2003 to the present, this Kansas City location has offered a limited number of academic programs, most of which progress toward a “Diploma” or an “Associate of Applied Sciences” degree.

Plaintiffs claim that Defendant engaged in a pattern and practice of fraudulent misrepresentations, material omissions, and deceptive conduct in order to sell its school's programs and in order to induce prospective students to sign enrollment contracts with the school. The admissions advisors and other staff at each High-Tech Institute/Anthem College location are expected to utilize a myriad of corporately-designed sales and marketing techniques in order to get a prospective student to enroll. Student recruitment at High-Tech Institute/Anthem College is driven by high-pressure sales techniques and strategies. The national corporate parent company makes the policies, provides the training, and sets the enrollment quotas for the admissions personnel at its schools. These sales persons are trained by corporate to induce the prospective student to sign up for the program that makes the most money for the school. They are trained to create a “sense of urgency,” to “overcome objections,” to gain the trust of the prospective student, and where possible

to sign the prospective student up on the first in-person visit. These sales persons are provided explicit training from Defendant in how to close the sale and enroll students in the few and limited programs offered at the Kansas City location.

The pattern and practice of misconduct perpetrated by Defendant involves fraudulent misrepresentations and material omissions relating to topics such as (a) job placement services provided by the school upon graduation; (b) job demand and job prospects for High-Tech/Anthem program graduates; (c) starting salary for High-Tech/Anthem program graduates; (d) transferability of High-Tech/Anthem credits to other colleges and universities; (e) availability of externships; and, (f) accreditation of the school and various programs.

As to Plaintiffs Marcus Champion and Jody Hendrix, Defendant engaged in specific fraudulent misrepresentations which are set forth as to each Plaintiff in Count I and which were further amplified in each's deposition. Defendant also failed to disclose several key material facts, and these material and fraudulent omissions are also set forth in Count I. The fraud claims and the deposition testimony of Marcus Champion and Jody Hendrix are addressed in detail in the Argument section.

Count II alleges that this corporate Defendant engaged in deceptive conduct in violation of the Missouri Merchandising Practices Act (MPA). Judge Wright dismissed that Count on the pleadings based on his view that the product purchased from a for-profit school qualified for the "business pursuits" exception to the MPA because some of the alleged misrepresentations related to job placement, job prospects, and starting salaries. According to Judge Wright's Order, these unwary student enrollees at High Tech do not qualify for the consumer protection laws in Missouri because High Tech misled them with regard to some matters related to jobs. His Order noted that if the majors were something like Art History, then the business pursuits exception would not apply.

Plaintiffs' disagree with Judge Wright's Order and would request the Court to reexamine that ruling in light of the facts now fully set forth in this matter in Plaintiffs' Common Statement of Facts. Those facts show this to be exactly the type of situation that the MPA was designed to prevent. In any event, Plaintiffs' MPA claims have presently been dismissed, subject to the Court's possible Order reinstating them.

Count III alleges Defendant was negligent in the training and supervision of its admissions personnel, and Count IV alleges breach of contract. As explained more fully in the argument section below, Plaintiffs Champion and Hendrix believe their evidence is sufficient to have those claims submitted to the jury, but they are dismissing those claims in the interest of focusing this matter on the intentional and fraudulent conduct engaged in by Defendant.

Defendant High Tech Institute' has filed a Motion for Summary Judgment which addresses some, but not all, of the Count I fraud claims asserted by Plaintiffs Champion and Hendrix. Defendant's Motion also does not accurately characterize Plaintiffs' claims or the evidence. Indeed, when the Court consider Plaintiffs' controversions of Defendant's factual contentions as well as the extensive additional facts provided in Plaintiffs' separately-filed Statement of Common Facts, Defendant's Motion with regard to Plaintiffs' fraud claims should be denied based on the factual disputes alone. In addition, denial of Defendant's Motion for Summary Judgment on Plaintiffs' fraud claims is directly supported by several prior orders of Missouri State Courts and of United States District Courts in the Western District of Missouri.

II. PLAINTIFFS' RESPONSE TO DEFENDANT'S ALLEGED UNCONTROVERTED FACTS AND PLAINTIFFS' STATEMENT OF FACTS GENUINELY IN DISPUTE WHICH DEFEAT SUMMARY JUDGMENT

Defendant's Motion also does not come close to setting forth an accurate or complete statement of facts regarding the claims and evidence of Plaintiffs Champion and Hendrix. Thus,

Plaintiffs have separately filed an accurate and more complete statement of the true facts revealed in the discovery process in this case. Plaintiffs incorporate herein by reference their separate Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions for Summary Judgment. Those facts make it clear that all of the claims of Plaintiffs Champion and Hendrix should proceed to trial and that Defendant's Motion for Summary Judgment should be denied in its entirety.

In addition, Plaintiff responds to Defendant's specific alleged facts as follows:

1. Uncontroverted.
2. Uncontroverted.
3. Uncontroverted.
4. Uncontroverted with explanation that the documents were not read by

Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166).¹ Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student

¹SF References are to paragraphs of facts and citations contained in Plaintiffs' separately-filed Common Statement of Facts Referenced in Suggestions in Opposition to Defendants' Two Motions For Summary Judgment.

enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

5. Uncontroverted with explanation that the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

6. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things

that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

7. Uncontroverted with explanation that Defendant has wrongfully attempted in its enrollment documents to disclaim the frauds High Tech knows its Admissions Representatives engage in on a routine basis. Also, the documents were not read by Plaintiffs before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. (SF ¶¶ 36, 43, 63, 88-89, 130-134, 152-154, 166). Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶

175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

8. Uncontroverted with explanation that the documents were not read by Plaintiff Champion or his mother before signing because they trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. Some information also was not seen because it was on the back side of documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

9. Uncontroverted with explanation that the documents were not read by Plaintiffs Hendrix before signing because he trusted that High Tech and its Admissions Representatives would not include things that were entirely the opposite of what the Admissions Representatives had said. Some information also was not seen because it was on the back side of

documents, while Plaintiffs were shown only the front side. Indeed, there is no place for signature of the student on the back side of either the Enrollment Agreement or the "A Message from the Campus President" document. (SF ¶¶ 27-30, 33-38, 40, 51, 90). In addition, Defendant knew that frauds in these specific disclaimer areas were being committed by its Admissions personnel each month and that students did not read the fine print in High Tech's supposed disclaimers. (SF ¶¶ 175). Next, Defendant's document practices and processes show the fraudulent nature in which High Tech trains its personnel to procure and actually procures the student enrollee's signature on the enrollment documents. (SF ¶¶ 91, 115, 122-125, 162-168, 170-174). Finally, Defendant's entire admissions process is built on emotional and psychological manipulation of prospective students and getting them to make unintelligent and uninformed decisions. (SF ¶¶ 162-168).

10. Uncontroverted.

11. Uncontroverted.

12. Uncontroverted.

13. Controverted in part. Defendant has taken only some of Mr. Champion's testimony and has not accurately set forth Mr. Champion's complete claims and testimony. Defendant's alleged fact 13g is a good example as Mr. Champion testified as to much more regarding blatant misrepresentations by Kathy Carrier that his credits would transfer to any college and specifically to UMKC. Defendant has done the same with Mr. Champion's testimony regarding salary misrepresentations, incorrectly ignoring and limiting much of Mr. Champion's actual testimony and claims. Mr. Champion's claims are more accurately and completely set forth in Plaintiffs' Common Statement of Facts, ¶¶ 1-22.

14. Uncontroverted.

15. Uncontroverted that the statement that "most of the graduates of the High

Tech criminal justice program were hired by the Kansas City, Missouri Police Department” was not made to Plaintiff Champion. High Tech made that specific misrepresentation to Plaintiff Hendrix.

16. Controverted. Mr. Champion was told that jobs were guaranteed. (SF ¶¶ 4, 10). During their discussions at the College Career Fair and in the in-home meeting, High Tech Admissions Representative Kathy Carrier represented to Marcus Champion that High Tech provided assistance in locating employment and that High Tech’s graduates are guaranteed a job in the field. (Champion Depo., pp. 80:45-14, 81:1-10, 126:15-128:22).

17. Controverted. Mr. Champion was told that jobs were guaranteed. (SF ¶¶ 4, 10). During their discussions at the College Career Fair and in the in-home meeting, High Tech Admissions Representative Kathy Carrier represented to Marcus Champion that High Tech provided assistance in locating employment and that High Tech’s graduates are guaranteed a job in the field. (Champion Depo., pp. 80:45-14, 81:1-10, 126:15-128:22).

18. Uncontroverted with explanation. It is uncontroverted that High Tech made these representations and did not follow through on them for Plaintiff Champion. In addition, the evidence is that there was no meaningful job placement assistance for any of the High Tech Criminal Justice Program graduates. (SF ¶¶ 46, 75, 96, 177-193).

19. Controverted. Mr. Champion requested placement assistance and it was not provided. (SF ¶ 46). Marcus Champion sought assistance but he did not receive any assistance in the graduate placement area from High Tech. (Champion Depo., pp. 105:1-10, 130:17-23).

20. Uncontroverted.

21. Uncontroverted.

22. Uncontroverted, but he expected based what High Tech said that the starting salary would be in the range of what High said and that at least expected such a range was a possibility. It was not.

23. Controverted. The testimony cited by Defendant does not support the contention. In addition, the Flip Chart shown to Marcus Champion showed entry level detective as a position that could be obtained immediately after graduation from High Tech. (Champion Depo., p. 52:13-19).

24. Controverted.

25. Controverted. Defendant High Tech lost its approval from its accreditors to issue Associates Degrees for all the reasons set forth in Plaintiffs' Common Statement of Facts. (SF ¶¶ 209-212).

26. Controverted. The testimony is that the meeting occurred in late 2007 or early 2008. High Tech was not truthful in those meetings. (SF ¶ 45).

27. Controverted. Marcus Champion testified that he was told by UMKC that his High Tech credits would not transfer and so he did not fill out an application. (SF ¶¶ 20-24).

28. Uncontroverted with explanation that High Tech therefore had full and complete knowledge that UMKC and the Community Colleges do not accept High Tech credits on transfer, and yet High Tech trains its Admissions Representatives to say that such credits do transfer. (SF ¶¶ 155(e), 169).

29. Uncontroverted.

30. Controverted in part. The cited testimony does not support Defendant's factual contention. Mr. Champion said he worked for a company that did clean up for private persons after a criminal event.

31. Uncontroverted in part. Mr. Champion did not and has not made anywhere near the income that High Tech told him it would obtain for him in the job it was supposed to locate for him.

32. Uncontroverted.

33. Uncontroverted.
34. Uncontroverted with explanation. The two or three follow-ups were so that Mr. Hendrix could come up with the \$50 application fee. (SF ¶ 87).
35. Uncontroverted that these were two of the potential careers Mr. Hendrix was considering.
36. Controverted in part. Defendant has taken only some of Mr. Hendrix's testimony and has not accurately set forth Mr. Hendrix's complete claims and testimony. Defendant's alleged fact 13d is a good example as Mr. Hendrix testified as to much more regarding blatant misrepresentations by Faith Perdue that his credits would transfer to any college and specifically to UMKC. Defendant ignores all of Mr. Hendrix's prior testimony regarding credit transfer and then attempts to cite for the Court only that which occurred on page 191-196. Defendant and its attorneys have appropriately done the same with Mr. Hendrix's testimony regarding salary misrepresentations, incorrectly ignoring and limiting much of Mr. Hendrix's actual testimony and claims. Mr. Hendrix's claims are more accurately and completely set forth in Plaintiffs' Common Statement of Facts, ¶¶ 67-85.
37. Uncontroverted that Mr. Hendrix said both the brochures and the Admissions Representative Faith Perdue made this representation.
38. Uncontroverted with explanation.
39. Controverted. Faith Perdue told Jody Hendrix he was guaranteed a job located by High Tech after graduation. (SF ¶¶ 67, 76). At their first meeting, High Tech Admissions Representative Faith Perdue represented to Jody Hendrix that High Tech Institute guaranteed that it would locate in-field position for him upon graduation. (Hendrix Depo., pp. 9:24-10:2, 96:7-96:20).
40. Uncontroverted.

41. Uncontroverted with explanation. Mr. Hendrix was told that he would be hired in a juvenile probation office position with his High Tech Associate's Degree.

42. Uncontroverted.

43. Uncontroverted.

44. Uncontroverted.

45. Uncontroverted.

46. Uncontroverted.

47. Uncontroverted with explanation. High Tech did nothing to assist Mr. Hendrix in locating this position, which paid under \$25,000 per year.

48. Uncontroverted.

49. Uncontroverted.

50. Uncontroverted.

51. Uncontroverted.

52. Uncontroverted with explanation that the only call Mr. Hendrix got after he submitted his State-wide Missouri application was for an interview for a rural position in outer areas of Missouri.

53. Uncontroverted.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate if, viewing the evidence most favorably to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Thompson v. Hirano Tecseed Company, Ltd., 456 F.3d 805, 808 (8th Cir. 2006) (citing Fed.R.Civ. 56(c)). Summary judgment is not appropriate if the prima facie case is supported by facts sufficient to raise a genuine issue for trial. Thompson, 456 F.3d at 808 (citing A.T. Turner v. Gonzales, 421 F.3d 688, 694 (8th Cir. 2005)).

In determining a motion for summary judgment the court must accept as true all facts presented by the non-moving party and supported by the record. Id. (citing Beck v. Skon, 253 F.3d 330, 332-33 (8th Cir. 2001)). If a “rational trier of fact could find for the nonmoving party” then the trial court must find that genuine issues of fact exist and that summary judgment precluded. Unleashed Innovations, Inc. v. Deltic Timber Corp., 2003 WL 22661159 *1 (8th Cir. 2003).

Defendant’s Motion does not come close to meeting the standard for being granted summary judgment under Rule 56(c).

IV. ARGUMENT AND AUTHORITY

A. Plaintiffs’ Fraud Claims And Evidence Are Sufficient For The Jury’s Consideration (Responding to Pages 14-26 of Defendant’s Suggestions)

Defendant’s Motion for Summary Judgment mis-characterizes Plaintiffs’ fraud claims and mis-states the evidence supporting those claims. It then broadly argues that Plaintiffs cannot proceed with their misrepresentation claims because: (a) “for the most part, there is no evidence that anyone actually made the representations about its school and criminal justice program”; and, (b) “those representations were true, not material, were not believed or reasonably relied upon by Plaintiffs, or caused no injury to Plaintiffs.” (Defendant’s Suggestions, p. 14).

Defendant’s Motion should be denied, as Plaintiffs’ Statement of Facts makes it clear that there is evidence that the representations were made, that they were false, material, and that it was reasonable for Plaintiffs to rely upon what was said by the High Tech Admissions Representatives and High Tech..

For years, High Tech Institute/Anthem College has engaged in a pattern and practice of dishonest and fraudulent business practices designed to mislead prospective students concerning what an education at this proprietary school will mean upon graduation. In Missouri and in the Eighth Circuit the law has long held that common law fraud can be proven by demonstrating a pattern of similar conduct by the wrongdoer. Further and more specifically, in Missouri State and

Federal Courts, claims by proprietary school students who have been defrauded and deceived with regard to job placement, starting salaries, credit transfer have long been deemed actionable. Indeed, Judge Wright previously denied Defendant's Motion to Dismiss which claimed much the same as Defendant's present Motion when it asserted that Plaintiffs' fraud claims were not actionable because they involved promised of future action to be engaged in by third parties. Judge Wright denied Defendant's claim, as such fraudulent conduct by for-profit colleges such as High Tech has been deemed actionable time and time again by many courts. Such claims of future conduct to be engaged in by third parties are actionable when there is a relationship of trust, when there is superior bargaining power, and when there is greater information known on the part of one of the parties. Each of those applies to Plaintiffs' claims.

In their separately-filed Statement of Common Facts, Plaintiffs demonstrate to the Court that all of the misrepresentations made to them during and after the enrollment process were material and false, and that High Tech has made these same misrepresentations to other students before, during, and after their enrollment. The primary culprit in most of the fraudulent statements is the process utilized; however, high-pressure sales persons mislabeled as "admissions representatives" serve as the catalyst for an elaborate fraudulent scheme being perpetrated upon the public and the government. Time and time again, High Tech Admissions Representatives made identical misrepresentations to other prospective students concerning things like average starting salary, job placement, and transferability of credit hours. Plaintiffs' evidence further demonstrates a pattern and practice with regard to document signing by prospective students that is fraught with fraudulent and improper conduct on the part of High Tech. Telling is the fact that High Tech trains its Admissions Representative to never hand out or show a catalog to a prospective student enrollee until the enrollment paperwork is signed, and yet that very enrollment paperwork states that the student has already received and reviewed the catalog. (SF ¶ 115).

Plaintiffs present compelling affidavits, documents and deposition testimony about the elaborate and well rehearsed fraudulent schemes that have been developed and implemented by High Tech's ownership to generate millions of dollars in student loan revenues on the backs of unsuspecting and poorly prepared students. **Indeed, High Tech's former Campus President and Director of Education has admitted that High Tech – Kansas City operated through a pattern and practice of misinformation coming from its Admissions Representatives since its inception in 2003 in Kansas City and that the High Tech Admissions Representatives in Kansas City were prone to lie to new potential new students.** (SF ¶¶137 and ¶138). Plaintiffs' evidence also includes hundreds and hundreds of similar complaints from other students. (SF ¶¶ 139-147, 148(e), 148(f), 148(g), 148(h), 149). Plaintiffs' evidence also includes direct admissions from the Admissions Representatives who enrolled Plaintiffs, as well as those who trained them. (SF ¶¶ 48-65, 98-134). Plaintiffs' evidence includes direct admissions and facts showing the falseness of the representations repeatedly made to these Plaintiffs and others by High Tech/Anthem. (SF ¶¶ 176-193, 204-208). Plaintiffs' evidence include direct admissions and facts showing High Tech's emotional manipulation of prospective students and its fraudulent practices with regard to obtaining student signatures on enrollment documents. (SF ¶¶ 122-123, 162-168).

Indeed, the High Tech Admissions Representative who enrolled Plaintiff Jody Hendrix, Faith Perdue, admitted High Tech Institute specifically trained Admissions Representative Faith Perdue to she was trained by High Tech to attempt to get the consumer potential student enrollee to not make an intelligently-stimulated decision, but instead to make an emotional decision, come in for a face-to-face meeting, and enroll that same day in High Tech. (Perdue Depo., pp. 195:2-196:9). She also admitted she was taught by High Tech to sell the school through trying to draw an emotional response out of the prospective student, and that is what she did. (Perdue Depo., p. 271:8-15).

Defendant claims Plaintiffs have not shown the misrepresentations occurred, but Plaintiffs have evidenced their specific alleged misrepresentations as well as pattern and practice of such.

Defendant claims Plaintiffs should not have trusted or relied on what High Tech's Admissions Representatives said, but the testimony of High Tech officials is that students are expected to trust and rely on what is said by Admissions Representatives and that those Representatives have much more and greater information than the prospective student. (SF ¶¶ 63, 130-134, 152-154).

Defendant's reliance on its disclosures is factually and legally erroneous. First, none of those disclosures were knowing. Second, such disclosures are not legally valid to disclaim a fraud.

Finally, with regard to credit transfer, Plaintiffs' evidence shows Defendant High Tech specifically represented credits would transfer to other colleges such as UMKC when they do not. The evidence of what happened to Plaintiff Hendrix and Champion confirms what was observed by former High Tech Director of Admissions Karen Matthew who found as follows, in early 2007:

- * Ms. Matthew learned while working as Director of Admissions at High-Tech Institute that High-Tech Institute Admissions Representatives often made a "convenient" misrepresentation in claiming that national accreditation such as that held by High-Tech Institute was a good thing and that it meant that all of your credits would transfer to any other college anywhere else in the country. Ms. Matthews notes that such a statement to prospective students by High-Tech Institute Admissions Representatives would be deceptive and likely untrue.

(SF ¶155(e)).

The above facts show there are genuine issues that must be decided by a jury. As such, Defendant's Motion for Summary Judgment must be overruled.

In addition, Defendant's Motion does not address many of the specific claims of Plaintiffs, as those claims and testimony are more fully set forth in Plaintiffs' Common Statement of Facts, paragraphs 1-22 and 66-86. For example, Defendant's Motion does not address the video shown by

High Tech which also provided false representations. (SF ¶70). With regard to this video, the Criminal Justice instructor at that time, Cheryl Ann Stewart, has attested as follows:

- * At one point during her time as an instructor at High-Tech Institute, Ms. Stewart noticed the marketing video that was played by the school for prospective students to view while waiting in the lobby of the admissions office. She also viewed this same video material on a television commercial for High-Tech Institute. She noticed that several of the criminal justice field careers discussed and depicted in that video were not ones for which the prospective student would be qualified to even apply for with an Associates Degree from High-Tech Institute.
- * After seeing this video, Ms. Stewart discussed it with the head of the Criminal Justice Program, Jack Phan. Mr. Phan agreed that the video was inaccurate in that it displayed jobs that the prospective student would not be able to obtain with the High-Tech Institute Associate's Degree. They both agreed that the school should not be showing it to potential students.

(SF 176). In addition, Defendant's Motion does not address Jody Hendrix's claim regarding High Tech's financial aid misrepresentations that he would be able to use his GI Bill to cover all the cost of school. (SF ¶86). Defendant's Motion does not address the claim of both Plaintiffs Champion and Hendrix for High Tech's misrepresentations that there would be externships in the Criminal Justice Program, which High Tech admits is vital to obtaining good employment. (SF ¶¶ 202-203). There are several other specific claims of misrepresentation as set forth in Plaintiffs' facts, which are not addressed in Defendant's Motion. As such, summary judgment must be denied on those claims.

With regard to the claims it does address, Defendant's Motion re-asserts many of the same arguments made to no avail in its Motion for Judgment on the Pleadings Regarding Future Events Misrepresentations, as well as in several prior actions, including: (a) on summary judgment in a prior case before the United States District Court for the Western District of Missouri, and, (b) on summary judgment in a case before the Honorable Senior Judge Michael Maloney in Clay County Circuit Court.

Appendix A previously filed with Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings contained some 2007 Orders of the United States District Court for the Western District of Missouri in Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW, denying many of these same arguments. Appendix B to that prior response also contained some 2009 Orders and some transcript excerpts from the Missouri Circuit Court for Clay County, Missouri, Senior Judge Michael Maloney, in Walters, et al. v. CEC, et al., Case No. 07CY-CV07481, who denied on summary judgment many of the same legal arguments the corporate Defendant has asserted in its Motion in this case.

In Bradley, et al. v. CEC, et al., Case #05-0930-CV-W-SOW – a case that involved several former graduates of a different proprietary school in the Kansas City area, Judge Wright denied defendants' motion for summary judgment which made many of the same or similar substantive arguments as those now asserted herein. Two of the Orders from the Bradley case were attached as Appendix A to Plaintiffs' prior response to Defendant's Motion for Judgment on the Pleadings. [See Orders dated 2/22/07 and 4/6/07].

At pages 12-13 of the 2/22/07 Order, the Bradley Court sets forth and rejects the same arguments that Defendant asserts herein: "SBC challenges whether plaintiff Roberts can show that SBC made a representation of a present and existing fact, and not a statement of opinion, expectation or prediction for the future. . . . If a jury believes the testimony and evidence of the plaintiffs in this case, the jury will be able to find that SBC's admissions representatives made representations of fact, not opinion, to prospective students that were false at the time the statements were made to the prospective students. Obviously the types of representations that were made to the prospective students were material to their decision as to whether or not to enroll in SBC." Id.

In Walters, et al. v. CEC, et al., Case No. 07CY-CV07481 (Clay County Circuit Court), these same arguments were rejected in their entirety by the Honorable Judge Michael Maloney upon a full

factual record. An Order and some transcript excerpts from the Walters case were previously attached as Appendix B to Plaintiffs' Response to Defendant's Motion for Judgment on the Pleadings. At the hearing, Judge Maloney made it clear he had reviewed the law and evidence and determined that the former students' claims were appropriate to proceed to trial. ("I don't think I'm required to sort through and make credibility judgments about what a jury is likely to do with it. I think I'm supposed to look to see if the plaintiffs can get to a jury on, I'm going to call it an intentional tort." Id. at p. 121).

Defendant High-Tech Institute is very familiar with valid claims such as those brought by these Plaintiffs resulting from Defendant's pattern and practice of deception at schools it owns and operates across the United States. There are many, many former and current claims, and none have had a court agree with the arguments Defendant sets forth in its Motion in this case.

With regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, job placement, job demand, and transferability of High-Tech/Anthem credits to other schools, Defendant claims that these misrepresentations -- made by its school admissions advisors in order to get Plaintiffs and many other students to enroll -- were not statements of present fact. To the contrary, the factual record reveals that specific factual misrepresentations were made to Plaintiffs in various of these areas, and those misrepresentations are actionable under Missouri law.

Further, under Missouri case law and the Restatement of Torts, even any statement that is an "opinion" is actionable under the circumstances in this case where the admissions advisor and the school itself sought to gain the trust of the prospective students, were in positions of superior knowledge regarding that matters represented, and concealed key facts. Also with regard to Plaintiffs' claims for misrepresentations made by Defendant relating to starting salaries, Defendant claims that those misrepresentations relate to the actions of third parties over whom Defendant has

no control. Defendant's contentions are lacking in merit, as case law makes it clear that these specific misrepresentations are actionable.

Defendant argues that their representations to Plaintiffs about "anticipated salaries" necessarily concerned future actions of independent third parties which Defendant claims are not actionable. The purported "future events" rule Defendant seeks to invoke is not so hard and fast as they would have the Court believe, and the same arguments have been rejected by Missouri Courts when asserted by other for-profit colleges like Defendant in their attempts to escape liability to the former students they have defrauded and deceived through their pattern and practice of deception.

"It is well settled that false representations as to future results *when made by one having or professing to have superior knowledge based on past experience of himself or others, are in effect, false representations of existing conditions and support allegations of fraud.*" Nichols v. Hendrix, 312 S.W.2d 163, 165-166 (Mo. App. 1958), quoting Wendell v. Ozark Orchard Co., 200 S.W. 747, 749 (Mo. App. 1917)(emphasis supplied).

Similarly, in Dawes v. Elliston, 369 S.W.2d 285 (Mo. App. 1963), the defendant insurance adjuster undertook to negotiate a settlement of plaintiff's personal injury claim arising from a car wreck caused by her son. Plaintiff claimed the adjuster procured the release of her claim by fraud. At trial, the jury agreed. On appeal, defendant contended that his representations as to future events could not sustain a claim of fraud. Id., at 287.

The Dawes Court rejected defendant's argument, noting as follows:

The statement made (as the jury found) that if plaintiff did not accept \$500.00, which the attorney was giving her because he felt sorry for her, she would get nothing and her son would lose his insurance and his license we think was a statement of fact. It was made by a claims adjuster for insurer of plaintiff's son, with experience in that field. It was made with the intention that plaintiff believe it and act on it, which she did. The declarant knew it was false and that he did not believe the events predicted would or could come true. But plaintiff was an elderly woman, of little worldly experience or means, of little education and of no business experience. She was dealing where a wrong step by her might well result in great harm to her son. These

elements of actionable fraud were present, and were the essentials to a submission of the issue.

Id. at 288.

Both *Dawes* and *Nichols* thus recognize that where defendant purports to have specialized knowledge and experience in the specific matter, its opinions of future events (including the actions of third persons) may be statements of fact as to such matters that will support a fraud claim. That rule is particularly applicable here because Plaintiffs allege that Defendant's admissions representatives were trained in techniques that would enable them to secure the confidence and trust of Plaintiffs. (*See* Paragraphs 22 and 23 of Plaintiffs' Second Amended Complaint).

Plaintiffs' facts suggest that Plaintiffs' reasonably understood Defendant's representations about such matters as "statement[s] of fact intended to put plaintiff off his guard," rather than mere "off the cuff remark[s] meant as a general expression of opinion." *Constance*, 25 S.W.3d at 587-588, citing *Clark v. Olson*, 726 S.W.2d 718, 720 (Mo. banc 1987). *See also, Conroy Piano Co. v. Pesch*, 279 S.W. 226, 229 (Mo. App. 1925) ("the question of whether the representation is of opinion or fact is for the jury").

For all of the above legal reasons and factual disputes, Defendant's Motion For Summary Judgment on Plaintiffs' Fraud claims should be denied.

B. Plaintiffs' Negligent Training and Supervision Claims

Plaintiffs do not believe their claims for negligent training and supervision of admissions personnel were previously dismissed. In any event, and although Plaintiffs' evidence in their Common Statement of Facts show many faults in the training and supervision of its admissions personnel, Plaintiffs believe the evidence is that Defendant was intentional in that training and was intentionally perpetuating a pattern and practice of fraud in its training and manipulation of its admissions personnel.

Plaintiffs' evidence regarding High Tech's inappropriate training and supervision of its Admissions Representatives includes the following: having trainees assume fake identities and mystery shop the competition, using scripts that make false statements, using enrollment agreements that say a catalog has been provided and yet training to never show or hand out a catalog until after the student is enrolled, not following up on any complaints, and much more. Each of these things, however, is being intentionally done by High Tech as a means of manipulating its own personnel. As such, Plaintiffs agree to dismissal of the contract claims in Count IV of the Second Amended Complaint.

C. Plaintiffs' Breach Of Contract Claims

Although Plaintiffs believe the evidence is sufficient to support submitting their breach of contract claims to the jury in that Defendant made several promises in the enrollment documents that it did not keep, Plaintiffs have determined to proceed to trial only on their fraud and negligence claims. As such, Plaintiffs agree to dismissal of the contract claims in Count IV of the Second Amended Complaint.

V. CONCLUSION

Defendant's Motion for Summary Judgment with regard to the fraud claims of Plaintiffs Champion and Hendrix should be denied in its entirety. As set forth above, Plaintiffs Champion and Hendrix agree to dismissal of their contract and negligence claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was filed pursuant to the ECF system, this 12th day of August, 2013.

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