

To: Under Secretary Ted Mitchell
From: Borrower Defense Unit
Date: January 10, 2017
Re: Recommendation for ITT Borrowers Alleging That They Were Guaranteed Employment -- California Students

ITT Technical Institute ("ITT") consistently represented that all graduates obtained jobs after graduation or, relatedly, that its students were guaranteed employment after graduation. These representations were false and misleading. This memorandum addresses borrower defense (BD) claims premised on these misrepresentations submitted by borrowers who attended an ITT campus in California.¹ As set forth below, the Borrower Defense Unit recommends full relief (subject to the statute of limitations) for borrowers² who (1) enrolled at any ITT California campus between January 1, 2005³ and ITT's closing and (2) whose claim is premised on a promise, guarantee, or other assurance that they would receive a job upon graduation, including representations that all graduates obtain employment.

I. Summary of ITT's Representations to Borrowers Promising Employment

Like former Corinthian students,⁴ former ITT students have submitted guaranteed employment claims that are factually consistent, pervasive across campuses, and constant over a span of years. In these BD applications, ITT borrowers (both from California and throughout the country) consistently allege, each in their own words,⁵ that ITT staff promised, guaranteed, or otherwise assured that they would be placed in jobs. These oral representations occurred both in person and during phone calls with prospective students. The Department has received guaranteed employment claims from borrowers at every campus sampled, dating back to the 1990s. Based on those statements, as well as corroborating evidence from former ITT employees, a preponderance of the evidence demonstrates that ITT guaranteed or otherwise assured borrowers future job placement.⁶

¹ As discussed below, guaranteed jobs misrepresentations were evident throughout ITT's campuses nationwide. Because California law has already been thoroughly analyzed by the Department for the same claim in connection with Corinthian Colleges, we recommend proceeding with discharges for ITT California students with guaranteed jobs allegations, as set forth below.

² For purposes of this memorandum, Parent PLUS borrowers are included in the definition of California students.

³ Although this memorandum only addresses borrowers who enrolled on or after January 1, 2005, additional evidence (including from additional BD claims) may support future relief for applicants who enrolled prior to 2005. The Department will evaluate this evidence on an ongoing basis and may update this recommendation accordingly.

⁴ See Memorandum from Borrower Defense Unit to Under Secretary Mitchell re: Corinthian Borrowers Alleging That They Were Guaranteed Employment (Jan. 9, 2017).

⁵ The Department has received ITT BD applications submitted via narratives in Word documents and emails, as well as via forms provided to borrowers by the Debt Collective. A vast majority of these allegations are unprompted. Some versions of the Debt Collective form ask about "false and misleading conduct relating to job prospects," but the Department's BD website has only instructed borrowers to provide "other information...that you think is relevant."

⁶ We have reviewed the ITT evidence on a nationwide level as well as on a California-specific level. As set forth below, ITT's conduct with respect to guaranteed jobs was consistent nationwide; we have found nothing unique about ITT's conduct in California as compared to other states. Thus, the fact section addresses both California-specific evidence as well as nationwide evidence.

A. Guaranteed Employment Representations Consistent in Nature

Of 320 randomly sampled BD applications submitted by ITT borrowers, 103 (32% of the total) state that the borrower was promised, guaranteed, or otherwise assured employment.⁷ The unprompted factual similarity of these BD claims evidence a strong indicia of reliability. For example, at ITT-San Diego, where 7 of 19 BD applications sampled alleged guaranteed employment, borrowers submitted the following highly consistent statements:

- “The school assured me that I would find employment in my field of study and that the industry of my field of study was in high demand.”⁸
- “I was also told by the recruiters from the school about wages I could make that I have yet to be able to earn due to the fact that the school is and was not very credible. . . .The ITT Tech recruiters assured me A.A. students graduate making around 50-60K a year and the B.S. graduates would be around \$80k a year. They misrepresented their product, their name brand and their education.”⁹
- “The promises were that it would be easy to find a high paying job right away.”¹⁰
- “I was promised that once I graduated I would be able to get into any field of my choice from Crime Scene Investigator, Crime Mapping, Probation to Detective to many many more. The promise of salaries starting at 50K upward depending on my field of choice and my recruiter said employers are beating down their door saying we want to hire the graduates as they know the latest and the best information available.”¹¹
- “They promised to place me into a good job making a middle class wage but were unable to put myself or other students into anything but a low paying temp job. Then it was promised that I would be better off with a Bachelors from ITT in order to get the higher pay job. I and multiple other students were duped into thinking that.”¹²
- “They additionally gave promises of placement in good jobs, while in reality I have been swamped with a large amount of debt, inability to attain a job in the degree field or of even better earnings.”¹³
- “I was also told that they have a great job placement program and that all students that seek help would be placed with a job within my new field after the first six months of school.”¹⁴

B. Guaranteed Employment Representations Pervasive Throughout ITT

Guaranteed employment representations were not limited to ITT-San Diego. In fact, such representations were pervasive throughout ITT’s network of campuses in California and nationwide. Former students alleged guaranteed employment at each of the 22 ITT campuses sampled, which were located across 17 states (CA, IL, MI, PA, WA, AK, VA, MO, FL, NM, TX, OR, TN, AL, NY, OK, and WI). A sample of these claims, detailed below, demonstrates the pervasiveness of guaranteed employment misrepresentations throughout ITT:

⁷ This total excludes allegations that may pertain to guaranteed jobs but were not sufficiently specific to qualify for relief. For example, allegations that ITT’s career services offices did not assist the borrower in finding a job were not interpreted as guaranteed employment claims.

⁸ BD1655184.

⁹ BD1639392.

¹⁰ BD1655377.

¹¹ BD1605233.

¹² BD1655410.

¹³ BD1655354.

¹⁴ BD1638087.

- ITT-Orange (CA): "I was told that ITT had a 100% job placement upon graduating students."¹⁵
- ITT-Anaheim (CA): "I was promised that immediately after graduating, I would be placed in a job within my field of study."¹⁶
- ITT-Sylmar (CA): "I was told that my degree would guarantee me employment."¹⁷
- ITT-Rancho Cordova (CA): "The sales representative stated that after completion of my education courses I would make between \$50,000 and \$75,000 USD per year."¹⁸
- ITT-Oak Brook (IL): "They advised me that I would have a job waiting for me. The credits for the field I was in were not accredited. The degree is not worth anything and the school is a scam."¹⁹
- ITT-Swartz Creek (MI): "They guarantee jobs right after graduating."²⁰
- ITT-Harrisburg (PA): "I was told on several occasions by ITT Admissions Representatives that the school has 100% job placement upon completion for students"²¹
- ITT-Seattle (WA): "They said that 100% job placement and that I should have no problem finding a job in my field."²²
- ITT-Little Rock (AK): "They promised that they had companies like Blizzard Entertainment, Electronic Arts, Sony, Nintendo, etc. fighting for graduates for their companies . . . They not only lied about the job placement but they lied about the fact that we could be making a 5 figure salary."²³
- ITT-Springfield (VA): "I WAS LED BY THE RECRUITER TO BELIEVE THAT THE JOB OPPORTUNITIES WOULD BE POURING IN."²⁴
- ITT-Arnold (MO): "I was told that I would get a job in my field"²⁵
- ITT-Albuquerque (NM): "ITT lied about job prospects and guaranteed a job after graduation."²⁶
- ITT-Richardson (TX): "After the tour ended, the counselor told me the multimedia program was game development and stated that upon completion of the program I would have a guaranteed job through their job placement program and that the starting base pay for such a job was \$70,000/year."²⁷
- ITT-Portland (OR): "Told me they would have me in a career by the end of my first year in school."²⁸
- ITT-Knoxville (TN): "I was told that they had 100's of jobs waiting for only their graduates. No one but ITT Tech graduates could apply to these jobs"²⁹
- ITT-Bessemer (AL): "I was promised job placement upon completing my courses . . . I was also given an estimated range of amount of starting salary/hourly pay."³⁰
- ITT-Greenfield (WI): "They also provided misleading stories about how their program would land me the job of tomorrow and how much people in my field were being paid during and after graduation."³¹
- ITT-Tulsa (OK): "They said they would have me working in the gaming industry....they told me to look in the classifieds."³²

¹⁵ BD156693.

¹⁶ BD1651614.

¹⁷ BD1639208.

¹⁸ BD1601288.

¹⁹ BD156627.

²⁰ BD153161.

²¹ BD156697.

²² BD1600120.

²³ BD153747.

²⁴ BD155274.

²⁵ BD1659434.

²⁶ BD1604365.

²⁷ BD1659402.

²⁸ BD1607247.

²⁹ BD1619298.

³⁰ BD1655120.

³¹ BD1604587.

ITT Claims			
Campus	Applications reviewed	Applications alleging guaranteed employment representation	%
San Diego (CA)	19	7	42.11%
Anaheim (CA)	10	4	40.00%
Rancho Cordova (CA)	15	2	13.33%
Sylmar (CA)	16	2	12.5%
Dayton (OH)	12	5	41.66%
Arnold (MO)	23	6	26.09%
Greenfield (WI)	17	6	35.29%
Knoxville (TN)	18	5	27.78%
Portland (OR)	14	2	14.29%
Richardson (TX)	15	3	20.00%
Spokane Valley (WA)	30	10	33.33%
Tampa (FL)	17	4	23.53%
Arlington Heights (IL)	11	3	27.27%
Getzville (NY)	10	1	10%
Albuquerque (NM)	9	3	33.33%
Various Campuses ³³	84	39	46.43%
TOTAL	320	102	31.90%

Moreover, BD applications alleging guaranteed employment are buttressed by numerous borrower statements in connection with government investigations and private litigation, as well as statements provided to the Borrower Defense Unit by veterans targeted by ITT for enrollment.³⁴

C. Guaranteed Employment Representations Constant Across Years

Guaranteed employment representations also are constant across a span of years. Importantly, the claims of borrowers who attended in earlier years are consistent with claims submitted by students who attended more recently. Just as the claims sampled at each campus corroborate each other, the following allegations over time strongly suggest that representations of guaranteed employment were endemic at ITT:

- [2005]: “Promised great jobs and prosperous careers . . .”³⁵

³² BD153174.

³³ This number includes a random sample of 84 claims from 22 campuses across 18 states.

³⁴ In response to government investigations, ITT borrowers consistently alleged that they were “guaranteed to get a job,” *Consumer Financial Protection Bureau v. ITT Educational Services, Inc.*, Civil Action 14-00292-SEB-TAB (S.D. Ind.) (hereinafter “CFPB Case”), Declaration of MT at ¶ 3 (July 11, 2016); that they would be placed in “jobs in their field of study within nine months of graduating,” *Commonwealth of Massachusetts v. ITT Educational Services, Inc.*, Civil Action 16-0411 (Mass. Sup. Ct. Compl. at ¶ 55, filed Mar. 31, 2016) (hereinafter “MA AG Case”); and that “recruiters guarantee ITT will find you a job,” S. Health, Educ., Labor & Pensions Comm., *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (2012) (hereinafter “Harkin Report”), p. 539, available at https://www.help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf. These statements are corroborated by 90 allegations of guaranteed employment cited in a recent class action filed by the Harvard Legal Services Center, *Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan. 3, 2017), as well as by dozens of guaranteed employment allegations submitted by veterans who attended ITT, *Veterans Education Success, “ITT Trends”* (2016) (compiling summaries of interviews and student quotations) (on file) (hereinafter “ITT Trends”).

³⁵ BD156898 (ITT Torrance).

- [2006]: “I was told that I would be able to make about 64K once I graduated because I was going into a Bachelors program degree. I got promised the stars and the sky.”³⁶
- [2007]: “I was also led to believe that what I was going to school for would be a sure job after graduation.”³⁷
- [2009]: “I was told that I would definitely have a job if I enrolled.”³⁸
- [2011]: “We were told that there would be no problem getting a job and they would help.”³⁹
- [2013]: “I was told I would obtain a job in the field upon graduation, easily with a high salary.”⁴⁰

As further discussed below, these claims are supported by corroborating evidence from former employees and spanning the period of at least 2005 to the school’s closure.

D. Statements of Former ITT Employees Corroborate Guaranteed Employment Claims

ITT borrower defense claims based on guaranteed employment misrepresentations are substantiated by the affidavits, interviews, and testimony of former employees at campuses nationwide. This former employee evidence establishes that, in response to oral directives from management, recruiters from at least 2005 through ITT’s closing led prospective students to believe that employment was guaranteed.

ITT orally directed staff to present recruitment documents in a manner that guaranteed or otherwise assured employment. ITT employees were trained to provide these oral promises of employment despite the existence of written documents to the contrary.⁴¹ For example, one former employee explained that “[w]ritten instruction from ITT headquarters was contradicted by oral instructions from the District Manager or a Senior Vice President . . . [ITT] was interested in getting students into the school no matter what it took to do so.”⁴² Another former employee, in testimony before the National Advisory Committee on Institutional Quality and Integrity (NACIQI), explained that recruiters “were consistently trained . . . to go verbally around the requirements” and that, even if recruiters did not expressly guarantee employment, “it was taken that way.”⁴³

As a result, former employees at ITT consistently report that staff guaranteed or otherwise assured employment. Some employees guaranteed employment expressly. For example, one former employee stated, “[m]arketing told students not to worry about prior felonies and they would get placed in jobs.”⁴⁴ Another stated, “I heard recruiters assure students that they would get a great job that would enable them to pay back

³⁶ BD156228 (ITT-Sylmar).

³⁷ BD1659496 (ITT-Rancho Cordova).

³⁸ BD157549 (ITT-Indianapolis).

³⁹ BD156506 (ITT-Swartz Creek).

⁴⁰ BD154555 (ITT-Murray).

⁴¹ *State of New Mexico v. ITT Educational Services, Inc.*, Civil Action D-202-CV-2014 (D.N.M) (hereinafter “*NM AG Case*”), ITT Training Document entitled “The Importance of our Language: Comments to Avoid,” dated July 18, 2011, ITT-NMAG 0006448 (Feb. 26, 2014) (explaining that ITT disseminated a document on “Comments to Avoid,” which barred personnel from promising job placement and stated, “[w]e do not guarantee jobs to any student or graduate”).

⁴² *CFPB Case*, Interview of Wendy Maddox-Wright, former employee from April 2005 to August 2011, ITT-Louisville (Jan. 28, 2014). See also *id.*, Interview of Amy St. Clair Lachman, former employee, ITT-Johnson City (April 9, 2014) (“[E]mployees knew what ITT wanted and it was not about helping people. Rather, it was about how many people ITT could get into a chair.”).

⁴³ Transcript of Testimony of ITT Recruiter Matthew Mitchell before NACIQI at 217 (June 23, 2016) (Mitchell was employed as a recruiter in 2013).

⁴⁴ *CFPB Case*, Interview of former employee Sarah Doggett (employed from late 2005 to 2009) at 6 (ITT-Louisville, Feb. 26, 2014).

their loans.”⁴⁵ And another explained that “[b]efore showing any forms or numbers to students, financial aid staff was trained to emphasize all of the benefits students would receive from their education. From 2004 to 2007, this was done with the guidance of a ‘return on investment document’ that [the President and CEO of ITT] developed” which “contained misleading information about the average salaries of graduates of different programs.”⁴⁶

Recruiters, under pressure to enroll students, used a variety of tactics to pave the way for these false employment promises, including presenting documents in a manner that led students to believe employment was assured. A review of ITT’s internal “Mystery Shopper” audio files corroborated testimony that recruiters deceived prospective students with a “wink and a nod.” In one recording, for example, a recruiter displayed a “Career Wheel” and reassured the borrower regarding his chances of landing one of the entry level jobs listed: “As long as you have the foundation to be able to go in there and experience some of this, you’ll be good to go.”⁴⁷

Guaranteed employment claims are further corroborated by recent ACICS findings against ITT⁴⁸ as well as by numerous former employee statements regarding falsification of student documents and manipulation of job placement statistics.⁴⁹ Based on the widespread evidence cited herein that ITT guaranteed or otherwise assured employment to its prospective students during the period of 2005 until the school’s closure in 2016, we recommend no further year-by-year or campus-by-campus breakdown for additional ITT campuses.

II. Evidence of the Falsity of the Alleged Representations

ITT’s own records show that for the students who managed to graduate, the school was unsuccessful at placing thousands of them. Moreover, former employee statements show the school knew it could not live up to its employment promises. For example, according to a former employee from ITT-Louisville, marketing representatives told prospective students that they could get jobs creating PlayStation games with a certain Bachelor’s degree; however, not a single student with the degree obtained employment.⁵⁰ Another former

⁴⁵ CFPB Case, Affidavit of former employee Rodney Lipscomb at ¶ 25 (ITT-Tallahassee, Aug. 17, 2016) (Lipscomb was Dean of Academic Affairs at Tallahassee from April 4, 2011 to January 28, 2015).

⁴⁶ *Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan. 3, 2017), Affidavit of Dawn Lueck (Dec. 20, 2016) Lueck began working at ITT’s Henderson, Nevada, campus in 1999. In 2002, she began working at ITT’s corporate office in Carmel, Indiana, as a student loan refund coordinator. In 2003, she moved to ITT’s Murray, Utah campus, where she began working as a financial aid administrator, and was promoted to director of finance in 2006. In 2007, she moved to ITT’s new Phoenix, Arizona campus to set up their financial aid department, and was employed there until she left ITT in 2009.

⁴⁷ *Audiotape: ITT Mystery Shopper Investigation*, ITDS0000009 at 30 mins (Nov. 21, 2012) (on file).

⁴⁸ ACICS found that ITT violated its requirements for reporting job placements rates. See Letter from Roger Williams (Interim President, ACICS) to Kevin Modany (President and CEO, ITT) re: Continue Show-Cause Directive (Aug. 17, 2016), available at <http://acics.org/commission%20actions/content.aspx?id=6712>.

⁴⁹ CFPB Case, Interview of former employee Bradley Parrish, ITT-Knoxville (April 23, 2014) (explaining that some graduate employment verification forms, or GEI’s, “had been falsified and student signatures had been fabricated . . . These were called ‘magic GEI’s’ because magic tape was used to either transfer a student signature from another form to the GEI or to have the student sign a blank GEI”); CFPB Case, Complaint at ¶ 33 (alleging that “placement rates do not include former students who did not graduate . . . may include jobs that do not require the degrees students paid for . . . and may include positions that were merely seasonal”); *City of Austin Police Ret. Sys. v. ITT Educ. Servs., Inc.*, 388 F. Supp. 2d 932, 938 (S.D. Ind. 2005) (former ITT employee who worked as a mater admissions representative at ITT-San Bernardino (CA) allegedly “concealed adverse student statistics by switching students from program to program”); *id.* (former ITT employee from the Torrence, California Campus stated that ITT fabricated and stretched its student statistics and that ITT’s graduate placement figures were inaccurate by at least 20%).

⁵⁰ CFPB Case, Interview of former employee Sarah Doggett, ITT-Louisville (Feb. 26, 2014) (employed from late 2005 to 2009).

employee, who served as the Dean of Academic Affairs at ITT-Tallahassee, stated that recruiters asked prospective students if they were familiar with the show “CSI Miami” and then guaranteed future employment as crime scene investigators, even though he was “not aware of a single student who graduated from the Criminal Justice program and became a CSI.”⁵¹ Instead, most of those students became security guards – “positions that didn’t require a degree at all.”⁵²

The narratives in borrower defense applications also support these conclusions. Many students that make guaranteed employment allegations – and many other ITT BD applicants – state that they were unable to find a job at graduation; that they were unable to find employment that used their degree; and/or that they were forced to remain in a job that they had prior to enrolling at ITT.⁵³ These narratives are consistent with student accounts provided to law enforcement agencies⁵⁴ and non-profit organizations regarding their inability to find employment related to their fields of study.⁵⁵ In sum, the evidence overwhelmingly shows that ITT could not truthfully guarantee employment upon graduation.

III. Application of the Borrower Defense Regulation Supports Eligibility and Full Relief for California Students Making Guaranteed Employment BD Claims Under California Law, Subject to Reduction for Borrowers Affected by the Statute of Limitations

For the reasons set forth below, California students with borrower defense claims predicated on a guaranteed employment allegation have a valid claim under the “unlawful” and “fraudulent” prongs of California’s Unfair Competition Law (“UCL”),⁵⁶ which prohibits a wide range of business practices that constitute unfair competition, including corporate misrepresentations.⁵⁷

Moreover, California students with guaranteed employment allegations should, under California law, be granted full loan discharges and refunds of amounts already paid, subject to reduction for borrowers affected by the statute of limitations.

A. The Department Will Apply California Law to Claims by California Students

The Higher Education Act directs the Secretary, “[n]otwithstanding any other provision of State or Federal law,” to “specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a [Direct] loan, except that in no event may a borrower recover from

⁵¹ CFPB Case, Affidavit of former employee Rodney Lipscomb at ¶ 25 (ITT-Tallahassee, Aug. 17, 2016) (Lipscomb was Dean of Academic Affairs at Tallahassee from April 4, 2011 to January 28, 2015).

⁵² *Id.*

⁵³ See *supra*, Section I and *infra* Section III(E).

⁵⁴ CFPB Case, Complaint at ¶¶ 36-49 (providing that numerous students complained that ITT promised better results than they were able to achieve and that ITT misled potential students through job placement rates which inappropriately included temporary work); *Id.* Declaration of Jacy Belyeu at ¶ 8 (ITT-Tucson July 14, 2016) (stating that “[i]n the three years since I graduated, my ITT degree hasn’t increased my pay of my job opportunities as promised”); *Id.* Declaration of Michael Tolliver at ¶ 10 (ITT-Chattanooga, July 11, 2016) (stating that since graduating, the “degree has been worthless to me. I have applied for hundreds of jobs in the IT field and I haven’t been hired in the field. The job opportunities the recruiter talked about have not been available as he promised”).

⁵⁵ See *ITT Trends* (providing dozens of statements by veteran borrowers attending California campuses, as well as campuses nationwide, that ITT promised them jobs upon graduation).

⁵⁶ CAL. BUS. & PROF. CODE § 17200.

⁵⁷ Although we elected to review applications of borrowers attending California campuses based on California law, see *supra* note 1, we note that claims by such borrowers may also be reviewed under Indiana law, the location of ITT’s corporate headquarters. Indiana law would support relief for guaranteed jobs claims under the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a) *et seq.*, as well as under the Indiana common law theory of constructive fraud, *Rice v. Strunk*, 670 N.E.2d 1280, 1284 (Ind. 1996); *Harmon v. Fisher*, 56 N.E.3d 95, 100 (Ind. App. 2016).

the Secretary, in any action arising from or relating to a [Direct] loan..., an amount in excess of the amount such borrower has repaid on such loan.”⁵⁸ The current borrower defense regulation states that “the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.”⁵⁹

At the time of its closing, there were more ITT students *and* campuses in California than in any other state.⁶⁰ ITT was incorporated in Delaware but operated no campuses there. ITT’s corporate headquarters were located in Indiana, but at the time of closing fewer than 3% of its students were Indiana residents, a smaller number of residents than each of the following eleven states (in order from most to least)—California, Texas, Florida, Ohio, Virginia, Pennsylvania, Michigan, Georgia, Tennessee, North Carolina and Alabama.

Here, the Department has determined that it is appropriate to apply California law to claims by California students. This approach is reasonable and consistent with common state choice-of-law analyses, which look primarily to the location of the wrong (and only secondarily to the place of incorporation or location of corporate headquarters). Indeed, the key factor in the choice-of-law analysis under California law,⁶¹ Indiana law,⁶² and the Restatement (2nd) of Conflict of Laws is the location “where the wrong occurred.”⁶³ Accordingly, because the wrong for California students occurred in California, it is reasonable for the Department to determine that a California court would apply California law in addressing the claims of ITT’s California students.

B. California Students Making Guaranteed Employment Allegations Have A Valid Claim Under the “Unlawful” and “Fraudulent” Prongs of the California UCL

California’s UCL prohibits unfair competition, providing civil remedies for “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law].”⁶⁴ Here, ITT’s statements leading prospective students to believe that they were guaranteed employment constitute “unlawful” and “fraudulent” business practices under the UCL.

1. The Unlawful Prong

The UCL bars “anything that can properly be called a business practice and that at the same time is forbidden by law.”⁶⁵ Thus, if a business practice violates any law, this is *per se* a UCL violation.⁶⁶ Corporate

⁵⁸ 20 USC § 1087e(h).

⁵⁹ 34 C.F.R. § 685.206(c)(1).

⁶⁰ At the time of closing, ITT operated fourteen campuses in California. No other state operated more than nine. Similarly, ITT enrolled 4,482 California residents, over 1,100 more than Texas, the state with the second largest student population.

⁶¹ *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 593–94 (9th Cir. 2012). See also *Hernandez v. Burger*, 102 Cal.App.3d 795, 802, 162 Cal. Rptr. 564 (1980), cited with approval by *Abogados v. AT & T, Inc.*, 223 F.3d 932, 935 (9th Cir. 2000) (holding that the state with “the predominant interest” is the state “where the wrong occurred.”)

⁶² Indiana treats a consumer protection claim as recovery in tort. See *McKinney v. State*, 693 N.E.2d 65, 72 (Ind. 1998) (finding that, despite the fact that “fraud is not an element of” an IDCSA claim, “the action is nonetheless based on fraud”). Under Indiana law, the choice-of-law rule governing tort actions is *lex loci delicti*—“the law of the place where the tort was committed is the law of the resulting litigation.” *Eby v. York-Div., Borg-Warner*, 455 N.E.2d 623, 626 (Ind. Ct. App. 1983).

⁶³ Restatement (Second) of Conflict of Laws § 145 (1971) (“Subject only to rare exceptions, the local law of the state where conduct and injury occurred will be applied to determine whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor’s conduct was entitled to legal protection.”).

⁶⁴ CAL. BUS. & PROF. CODE § 17204, *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320 (Cal. App. Ct. 2011); see also *Cel-Tech Communications v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 540 (Cal. 1999).

⁶⁵ *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1266 (1992) (citations omitted).

misrepresentations like ITT's promises of employment are prohibited by a number of state and federal laws.⁶⁷ In particular, ITT's misrepresentation regarding its student's employment prospects violates the prohibition against "unfair or deceptive acts or practices" in the Federal Trade Commission Act ("FTC Act").⁶⁸ Determining whether statements to consumers violate the FTC Act involves a three-step inquiry considering whether: "first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material."⁶⁹

Applying that three step inquiry, ITT clearly violated the FTC Act.

1. As described above, ITT made representations to students regarding guaranteed employment;
2. Also as described above, those representations were false, erroneous, and misleading; and
3. As discussed below, the representations regarding guaranteed employment were material.

To be material, "a claim does not have to be the *only* factor or the *most* important factor likely to affect a consumer's purchase decision, it simply has to be an important factor"; furthermore, express claims are presumptively material.⁷⁰ Representations that students are guaranteed employment meet the FTC Act's materiality threshold because borrowers considered the promise of employment to be important when making their enrollment decisions. In attestations submitted to the Department, these borrowers have specifically identified false promises of employment as the misconduct giving rise to their claim. Moreover, given that ITT schools were heavily career-focused, the guarantee of a job would have been highly material to a prospective student's evaluation of the school. Indeed, for many students, the principal purpose of attending a career college like ITT was to obtain employment in a particular field.⁷¹ Based on the school's misrepresentations, individuals considering enrollment reasonably believed that they were certain to find employment upon graduation. Accordingly, ITT's false or misleading misrepresentations regarding guaranteed employment were material and therefore violated the unlawful prong of the FTC Act and constituted an unlawful business practice under the UCL.

⁶⁶ See *Kasky v. Nike*, 27 Cal. 4th 939, 950 (2002); see also *People v. E.W.A.P. Inc.*, 106 Cal. App. 3d 315, 317 (Ct. App. 1980); *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 808 (N.D. Cal. 1989) (finding that a plaintiff had standing to sue under the UCL based in part on alleged violations of federal environmental regulations).

⁶⁷ Though the analysis below focuses exclusively on the FTC Act, ITT's misrepresentations to students may also violate other state and federal laws. For example, the California Education Code states that an institution shall not "promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation." Cal. Educ. Code §94897, et seq. However, because the conclusion below is that ITT's conduct violates the FTC Act, this memorandum does not reach the issue of whether it may be unlawful under other applicable rules.

⁶⁸ See FTC Act § 5(a)(1), 15 U.S.C. § 45(a)(1); FTC Act § 12(a), 15 U.S.C. § 52(a). While the FTC Act does not provide a private right of action, California courts have consistently recognized that a valid UCL claim under the "unlawful" prong does not require that the underlying law provide such a right. Thus, for example, the California Supreme Court has permitted plaintiffs to bring actions under the California Penal Code that do not allow for private lawsuits. See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 950 P.2d 1086, 1091 (Cal. 1998) ("whether a private right of action should be implied under [the predicate] statute ... is immaterial since any unlawful business practice ... may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200") (citing cases); see also *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 186 (Cal. 2013) ("It is settled that a UCL action is not precluded merely because some other statute on the subject does not, itself, provide for the action or prohibit the challenged conduct. To forestall an action under the [UCL], another provision must actually bar the action or clearly permit the conduct.").

⁶⁹ *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994).

⁷⁰ *Novartis Corp.*, 127 F.T.C. 580 at 686, 695 (1999); see also *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) ("Express claims ... are presumed to be material.").

⁷¹ Under these circumstances, students' reliance on a guarantee of employment was reasonable. Prospective students would have taken seriously a guarantee of employment and not interpreted it as mere "puffery." The large volume of ITT claims making guaranteed employment allegations is a clear indication that students believed what they were told.

2. The Fraudulent Prong

ITT's misrepresentations regarding employment prospects are also a fraudulent business practice under the UCL, and are therefore another form of unfair competition providing an independent basis for borrower defense relief for ITT students. To show that a business practice is fraudulent, "it is necessary only to show that members of the public are likely to be deceived."⁷² The UCL does not require knowledge of misrepresentation (scienter) or intent to defraud, as is required for fraudulent deceit under the California Civil Code.⁷³ Even true statements are actionable under the UCL if they are presented in a manner likely to mislead or deceive consumers, including by the omission of relevant information.⁷⁴ As noted, the representations ITT made to students guaranteeing employment were false and likely to deceive, for the reasons discussed above.

In order to bring a cause of action under the UCL, an individual must have "suffered injury in fact and . . . lost money or property" as a result of the deceptive practice alleged.⁷⁵ However, for a consumer who was deceived into purchasing a product⁷⁶—or a student who was deceived into enrolling at a school—it is sufficient for the individual to allege that they made their decision in reliance on the misrepresentations or omissions of the entity.

Reliance on the misrepresentation does not have to be "the sole or even the predominant or decisive factor influencing"⁷⁷ the individual's decision. Rather, "[it] is enough that the representation has played a substantial part, and so had been a substantial factor, in influencing [their] decision."⁷⁸

Express or implied claims like those made by ITT about employment prospects are presumptively material,⁷⁹ and, under the UCL, a showing of materiality gives rise to "a presumption, or at least an inference, of reliance."⁸⁰ However, as discussed above, the preponderance of evidence also demonstrates, independently, that employment was a central consideration for these borrowers—one which each of the applications in question identified, unprompted, as the crux of their dissatisfaction with their decision to enroll.⁸¹ Statements by large numbers of borrowers across ITT campuses make clear that the promise of employment entered substantially into their choice to attend ITT.

C. Weak Disclaimers In Some of ITT's Written Materials Do Not Cure Its False and Misleading Representations Guaranteeing Employment

ITT's promises of employment were false and misleading, despite the limited, fine print disclaimers on some enrollment agreements that the school does not guarantee "job placement" or "a salary." As set forth

⁷² See *Bank of the West*, 2 Cal. 4th at 1254.

⁷³ CAL CIV. C. §1709.

⁷⁴ *Boschma v. Home Loan Center*, 198 Cal. App. 4th 230, 253 (2011).

⁷⁵ *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1480 n. 13 (2005).

⁷⁶ See *Kwikset Corp. v. Superior Court*, 51 Cal. 4th at 316 (Cal. 2011).

⁷⁷ *In re Tobacco II Cases*, 46 Cal. 4th 298, 327 (2009) (internal quotation marks omitted).

⁷⁸ *Id.* (internal quotation marks omitted).

⁷⁹ See, e.g., *Telebrands Corp.*, 140 F.T.C. at 292 (presuming that claims are material if they pertain to the efficacy, safety, or central characteristics of a product); *FTC v. Lights of America, Inc.*, No. SACV10-01333JVS, 2013 WL 5230681, at *41 (C.D. Cal. Sept. 17, 2013) (holding that claims about the watts and lifetime of the LED light bulbs were *per se* material because they were express, and "that even if they were implied claims, they were material because the claims relate to the efficacy of the product."); *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008) (noting that an implied claim where the advertiser intended to make the claim was presumed to be material).

⁸⁰ *In re Tobacco II Cases*, 46 Cal.4th at 298.

⁸¹ Because deception occurs at the time of decision, it is sufficient for ITT students to say that they chose to enroll based upon a guaranteed employment misrepresentation, regardless of any subsequent employment.

below, these fine print disclaimers do not change the overall impression created by the oral representations described above.

For example, if a student examined an ITT enrollment agreement, the student would have to read through two pages of fine print to find a list of twenty-eight fine print disclaimers, the eleventh of which states that ITT “does not represent, promise or guarantee that Student or any other student will obtain employment.”⁸² This disclaimer is not highlighted or bolded in any way. The agreement then continues on with four more pages of fine print.

These disclaimers do not cure the falsity of ITT’s oral promises regarding employment prospects. Courts interpreting the FTC Act and the UCL have made clear that written disclaimers do not cure the falsity of oral misrepresentations.⁸³ The California Supreme Court also has held that misleading statements enticing consumers to enter into a contract may be a basis for a UCL claim, even though accurate terms may be provided to the consumer before entering into the contract.⁸⁴

The written disclaimers were hidden in text and provided only after admissions representatives orally promised employment. Moreover, here, ITT’s disclaimers were particularly ineffective when considered in the context of its unsophisticated student population and high-pressure admissions practices.⁸⁵ Indeed, there is evidence that some ITT students were not afforded the opportunity to even review the enrollment agreement prior to enrollment and that admission representatives would go so far as to e-sign enrollment paperwork on behalf of students, without their consent.⁸⁶ Moreover, as with Corinthian, ITT advertised heavily on daytime TV, targeting the un- or under-employed. Indeed, admissions representatives were under such tremendous pressure to enroll new students that even homeless veterans were recruited despite the additional challenges

⁸² See, e.g., ITT Albuquerque Enrollment Agreement (September 1, 2011) (on file).

⁸³ See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262-63 (E.D.N.Y. 1998) (finding that oral misrepresentations were not cured by written disclaimers); see also *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 228 (Cal. App. Ct. 2013) (finding under the UCL that Skype’s oral representation that a calling plan was “unlimited” was misleading despite the fact that it provided limits on the plan in a separate policy provided to customers).

⁸⁴ *Chern v. Bank of Am.*, 15 Cal. 3d 866, 876 (Cal. 1976) (“[T]he fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant’s practice of quoting a lower rate in its initial dealings with potential customers. The original, lower rate may unfairly entice persons to commence loan negotiations with defendant in the expectation of obtaining that rate.”).

⁸⁵ The nature of the enrollment process made it unlikely that students ever read such disclosures prior to admission. Students consistently reported that they were rushed through the enrollment process and subjected to high pressure sales tactics. ITT’s high pressure enrollment tactics are described in detail by numerous sources. See, e.g., Harkin Report at 527-531; *CFPB Case*, Complaint at ¶¶64-66 (“In contrast to the lengthy sales pitch, the enrollment and financial aid processes were much faster, so that many consumers did not know or did not understand what they signed up for. Recruiters induced prospective students to sign forms without giving them sufficient information about what they were signing [and] required potential students to sign an Enrollment Agreement before they could receive information about their financial aid options . . .”)

⁸⁶ *CFPB Case*, Affidavit of former admissions representative Ricky Bueche at ¶ 15 (ITT-Baton Rouge, 2010-2014) (explaining that “[m]any times, when students left the campus without agreeing to apply, the Director of Admissions would instruct representatives to go back to the computer to e-sign on behalf of the students to apply to ITT, without the students being present and without the students’ knowledge or agreement”); *Villalba Compl.* at Ex. 19, Student Statement 14 (“First and foremost I never physically signed an enrollment agreement (I have a copy). The recruiter signed for myself and my dad via computer, and because of this dishonest tactic my dad is on the hook for a parent plus loan.”); *Id.* at Student Statement 49 (“There are MANY instances that I have found on all the enrollment paperwork (that I have since gotten copies of) where my signature/initials were forged, and not in my handwriting. There were many things that weren’t explained to me AT ALL, where I was told to ‘sign’ electronically.”).

they would face in completing their studies.⁸⁷ In sum, the net impression of the oral misrepresentations on the typical ITT student likely would not have been altered by buried written disclosures.

Finally, the fact that the ITT guaranteed employment claims reviewed to date make no mention of any written disclaimer further supports the conclusion that the disclaimers were ineffective. As discussed above, viewed in light of the unsophisticated population ITT targeted, and the high pressure sales tactics and oral representations that ITT personnel employed, these disclaimers do not offset the net impression of the school's misrepresentations.

D. Eligible Borrowers

Based on the above analysis, the following ITT students should be eligible for relief: any BD claimant who enrolled at an ITT campus in California on or after January 1, 2005 and whose claim is premised on a promise, guarantee, or other assurance that they would receive a job upon graduation, including those told that all graduates obtain employment.

The Department will not undertake a case-by-case analysis of borrowers to determine whether they ultimately secured employment. As we found in the job-placement-rate analysis for Corinthian, the type of misrepresentation at issue here went to the overall value of the education (a school that can guarantee its students jobs must be a very good school indeed), and was substantial regardless of a borrower's ultimate ability to secure employment. Furthermore, in this case, the Department's review of borrower applications suggests that a presumption should be made that borrowers who raised this issue were not, in fact, able to secure employment.

E. Full BD Relief Should Be Provided to Eligible Borrowers, Subject to Reduction for Borrowers Affected by the Statute of Limitations

When determining the amount of relief due to plaintiffs under the UCL, California courts rely on cases interpreting the Federal Trade Commission Act.⁸⁸ In cases where a substantial/material misrepresentation was made, FTC law provides significant support for requiring complete restitution of the amount paid by consumers.⁸⁹

In a recent California federal court decision analyzing the appropriate remedy for consumers alleging educational misrepresentations under the UCL, the court explicitly analogized to the *Figgie* and *Ivy Capital*

⁸⁷ *CFPB Case*, Affidavit of former admissions representative Pearl Gardner at ¶¶ 11-12 (ITT-Atlanta South, 2008-2014) (“There was enormous pressure on me and the other representatives and financial aid coordinators (“FACS”) to make sales calls, enroll students, complete financial aid packages, and get students to attend an ITT class. This pressure was relentless . . . To solicit interest in ITT programs, I would go to job fairs, workforce events, and Stand Down events for homeless veterans (events where homeless veterans are given supplies and services, such as food, clothing, shelter, health screenings, and other assistance).”); *see also CFPB Case*, Complaint at ¶¶ 55-84 (summarizing mystery shopper evidence related to high pressure sales tactics).

⁸⁸ *See, e.g., Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015).

⁸⁹ *See, e.g., FTC v. Stefanich*, 559 F.3d 924, 931 (9th Cir. 2009) (determining that restitution should include “the full amount lost by consumers rather than limiting damages to a defendant’s profits”); *FTC v. Figgie International*, 994 F.2d 595, 606 (9th Cir. 1993) (“The injury to consumers . . . is the amount consumers spent . . . that would not have been spent absent [the] dishonest practices.”); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“restoration of the victims of [defendant’s] con game to the status quo ante” by use of defendant’s gross receipts is proper for restitution); *FTC v. Ivy Capital, Inc.*, No. 2:11-CV-283 JCM (GWF), 2013 WL 1224613 at *17 (D. Nev. 2013) (ordering full monetary relief for consumers harmed by misleading marketing regarding a business coaching program).

approach and found that a restitution model that aims to “restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest” was a justifiable basis for a class action theory of relief.⁹⁰

Here, there is ample reason not to “offset” the award of full relief to these borrowers in light of the lack of value provided by ITT.⁹¹ The facts described above closely resemble those relating to Corinthian Colleges, where the Department determined that borrowers should receive full relief. That determination was based in substantial part on the lack of value attendant to a Corinthian education, as evidenced by:

- Repeated misleading statements to students, regulators and accreditors;
- Elaborate job placement fraud; and
- Many student accounts stating that their affiliation with the school was an impediment rather than an asset as they sought employment.

Given such pervasive and highly publicized misconduct, the Department determined that the value of the education provided by Corinthian was severely limited.

ITT’s conduct was as flagrant as Corinthian’s. Hundreds of unprompted student statements confirm the lack of value of an ITT education, as ITT students time and again report that their education was sub-standard and that their degree or affiliation with the school was an impediment rather than an asset as they sought employment. These include numerous statements in BD claims,⁹² statements to VES,⁹³ and over 500 statements attached to the *Villalba* Class Action Complaint.⁹⁴

Furthermore, the ITT “brand” became severely tarnished in the lead-up to and wake of its collapse. Over the past several years, ITT has been the subject of a steady stream of federal, state, and private lawsuits and investigations detailing misleading statements to students regarding (among other things) placement rates, employment prospects, expected salaries, transferability of credits, and the quality of the education.⁹⁵ This

⁹⁰ *Makaeff v. Trump Univ.*, 309 F.R.D. 631, 637-8 (S.D. Cal. 2015) (internal quotations removed).

⁹¹ See *Makaeff*, 309 F.R.D. at 642 (allowing defendants to offer evidence warranting an offset from a baseline of full recovery).

⁹² See, e.g. BD1655232, BD1619298, BD1658596, BD155745, and BD153269 (alleging that employers “will not hire ITT grads because they find the college to be subpar,” that borrowers “had to take ITT off [their] resume” in order to get a job, that ITT grads were considered to have “no college education,” and that they were “mocked because of [their] education at ITT”).

⁹³ See, e.g., *ITT Trends* (containing statements from dozens of veterans who attended various ITT California campuses alleging, among other things, that “I feel scammed out of a proper education,” that “employers do not see the school as a real school,” that “no one would even consider me for employment,” and that “I wasted over 50k and 2 years of my life I can never get back”).


⁹⁴ The exhibits attached to the *Villalba* Complaint include the following: 521 statements explaining how an ITT degree operates as a disadvantage in the job market (Ex. 1); 326 statements explaining how ITT misrepresented the quality of instructors, training, curriculum, or facilities (Ex. 6); 62 statements describing how ITT is “ruining people’s lives” (Ex. 25); 473 statements about how ITT prevented other opportunities (Ex. 27); and 18 statements about how ITT debt has driven borrowers into or to the brink of homelessness (Ex. 28).

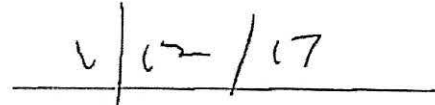
⁹⁵ See, e.g. *CFPB Case, MA AG Case, NM AG Case, Villalba et al. v. ITT ESI et al. (In re ITT ESI, No. 16-07207-JMC-7A)* (Bankr. S.D. Ind. Compl. filed Jan.3, 2017), and *Lipscomb v. ITT Ed. Servs. Inc.* (M.D. FL Compl. filed Apr. 8, 2015). In addition, over 15 state AGs have issued subpoenas or CIDs relating to fraud and deceptive marketing against ITT from the beginning of 2004 through the end of May 2014. These states include: Arkansas, Arizona, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee and Washington. See ITT Form 10-Q Quarterly Report (June 30, 2014).

conduct has also led to actions against ITT by the Department⁹⁶ and ACICS,⁹⁷ as well as to numerous negative national news stories.⁹⁸

Given this extensively well-documented, pervasive, and highly publicized misconduct, the Department has determined that the value of an ITT education—like Corinthian—is likely either negligible or non-existent. In a court proceeding, ITT would very likely be unable to produce any persuasive evidence showing why the amount of recovery should be offset by value received by the borrowers from ITT education so as to preclude full recovery. Accordingly, it is appropriate for the Department to award eligible borrowers full relief.

CONCUR:


Office of the General Counsel


Date

⁹⁶ In the years leading up to its closure, the Department increased financial oversight over ITT and required it to increase its cash reserves to cover potential damages to taxpayers and students. The nature and scope of the Department's actions against ITT are contained within a series of letters from the Department to ITT dated: August 19, 2014, August 21, 2014, May 20, 2015, June 08, 2015, October 19, 2015, December 10, 2015, June 6, 2016, July 6, 2016, and August 25, 2016.

⁹⁷ See Letter from Roger Williams (Interim President, ACICS) to Kevin Modany (President and CEO, ITT) re: Continue Show-Cause Directive (Aug. 17, 2016).

⁹⁸ See, e.g. Mary Beth Marklein, Jodi Upton and Sandhya Kambhampati, "College Default Rates Higher Than Grad Rates," USA TODAY (July 2, 2013) (listing more than 50 ITT campuses as "red flag" schools because student loan default rates were higher than graduation rates); Kim Clark, "The 5 Colleges that Leave the Most Students Crippled by Debt" Time.com (Sept. 24, 2014) (ranking ITT second on the list of schools that leave the most students crippled by debt).