UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

BRITTANY ROBERSON, REBECCA FREEMAN, BIANCA VIÑAS, TIFFANY KING, and TRESHA THOMPSON, individually and on behalf of others similarly situated,

Plaintiffs,

v.

HEALTH CAREER INSTITUTE LLC (dba HCI COLLEGE LLC and HCI ACQUISITION LLC), FLORIAN EDUCATION INVESTORS LLC, and STEVEN W. HART,

Defendants.

Civil Action No. 9:22-cv-81883-RAR

District Judge: Rodolfo A. Ruiz, II
Magistrate Judge: Ryon M. McCabe

PLAINTIFFS' MOTION FOR CERTIFICATION OF A RULE 23 CLASS AND OPENING MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs Brittany Roberson, Rebecca Freeman, Bianca Viñas, Tiffany King, and Tresha Thompson ("Plaintiffs") hereby move this court to certify a primary class and four subclasses comprising more than one thousand former nursing students who were victims of deceptive tactics, misrepresentations and omissions, and racial targeting employed by Defendants Health Career Institute LLC, dba HCI College LLC and HCI Acquisition LLC ("HCI"), a for-profit college; its parent company, Florian Education Investors LLC ("FEI"); and HCI Chairman and FEI CEO Steven W. Hart ("Hart").

STATEMENT OF FACTS

Defendants offer an Associate of Science in Nursing degree (the "RN Program") at HCI's two campuses in South Florida: the main campus in West Palm Beach ("HCI-WPB") and a branch campus in Ft. Lauderdale ("HCI-FTL"). The five Named Plaintiffs, and more than one thousand other aspiring nurses, saw HCI as a path to better a future. Unfortunately, Defendants saw HCI as a temporary investment, which they described to FEI investors in 2022 as follows:

[redacted]

Exhibit 1 (filed under seal) at 1. In fact, Defendants' difficulties achieving satisfactory graduate passage rates on the NCLEX,[1] the nursing licensure exam, and difficulties meeting other benchmarks set by the Florida Board of Nursing began before 2019. Relevant to this case, between 2018 and the present, Defendants engaged in the unlawful practices described in detail in

[1] There are two versions of the NCLEX: the NCLEX-RN is the licensure exam for prospective registered nurses ("RNs") and the NCLEX-PN is the licensure exam for prospective licensed practical nurses ("LPNs"). RN Program graduates expect to sit for the NCLEX-RN.

Plaintiffs' Second Amended Complaint, ECF No. 93 ("SAC"), and summarized herein, with the primary goal of preventing their "investment" from being shut down by the Florida Board of Nursing ("BON") for failure to meet state requirements.

A. Rules Governing Nursing Programs and the Nursing Profession in Florida

Institutions that offer nursing programs in Florida must seek and maintain approval from the BON to operate and enroll students. The BON issues each approved nursing program an education program code ("NCLEX code"), which is used by program graduates when they sit for the NCLEX. In order to maintain BON approval to operate, Florida nursing programs must comply with the requirements of the Nurse Practice Act, Chapter 464, Fla. Stat. The SAC details the rules governing nursing programs in Florida, *see* ECF No. 93 ¶¶ 59–92; most relevant here are the "NCLEX requirement" and the "accreditation requirement."

The "NCLEX requirement" requires that a nursing program must achieve a graduate NCLEX passage rate that is not more than 10 percentage points lower than the average passage rate, during the same calendar year, for U.S.-educated graduates of comparable degree programs taking the NCLEX nationally for the first time. § 464.019(5)(a)(1), Fla. Stat. If a nursing program does not satisfy the NCLEX requirement for two consecutive calendar years, the BON places the program on probationary status. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If it fails to achieve the required passage rate for any one calendar year, the BON may extend the program's probationary status for an additional year. If the program is not granted the one-year extension or fails to achieve the required passage rate by the end of such extension, the BON must terminate the program. § 464.019(5)(a)(2), Fla. Stat.

The "accreditation requirement" requires nursing programs to be accredited by one of three

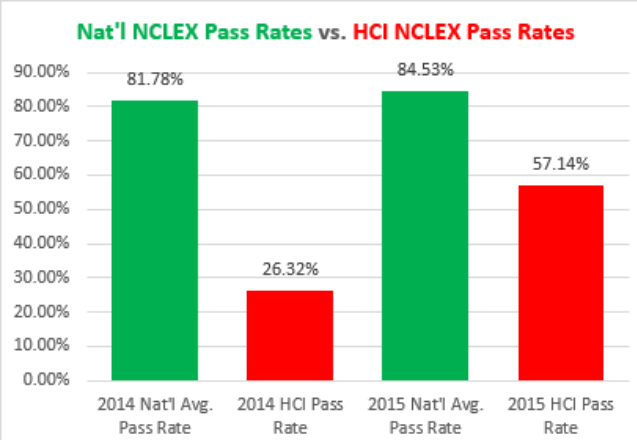
specialized nursing accrediting agencies recognized by the United States Secretary of Education. § 464.003, Fla. Stat. Nursing programs that were approved and that enrolled students before July 1, 2014, were required to satisfy the accreditation requirement by July 1, 2019. § 464.019(11)(a), Fla. Stat. Nursing programs that first enrolled students after July 1, 2014, are required to satisfy the accreditation requirement within five years after the date of first enrolling students. §§ 464.019(11)(b)-(c), Fla. Stat. A nursing program that fails to meet the accreditation requirement "shall be terminated and is ineligible for reapproval under its original name or a new program name for a minimum of 3 years after the date of termination." § 464.019(11)(c), Fla. Stat.

B. Defendants' Predatory Practices

As alleged in Plaintiffs' Second Amended Complaint and corroborated through class discovery, Defendants have engaged in a pattern of deceptive conduct in their operation of the RN Program at HCI College. They deceptively market the RN Program as a quick path to a well-paying career and specifically target their predatory product to Black women. Defendants misrepresent RN Program outcomes and obscure the fact that uniform, yet arbitrary and unannounced, obstacles effectively block RN students from graduating and preclude them from sitting for the NCLEX. The vast majority of students who enroll in the RN Program never graduate. Between January 6, 2020, and May 8, 2023, at least 1,032 students enrolled in HCI for the first time and are no longer attending. Exhibit 2 (filed under seal). Of those, only 190 graduated. *Id.* This means at least 81% of enrollees dropped out of HCI's RN program. This is no coincidence. Defendants' uniform predatory tactics all but ensured that each HCI student would be left in the same predicament: burdened with debt and no closer to achieving their dream of becoming a nurse.

1. *Misrepresentations About the RN Program*

The BON first approved HCI to operate an RN program at its West Palm Beach campus ("HCI-WPB") in 2013. Exhibit 3. The BON issued the RN Program at HCI-WPB the NCLEX code 70755. Exhibit 4. In the succeeding years, as seen in the chart below, HCI-WPB RN Program graduates struggled to pass the NCLEX-RN.



See Exhibit 5; Exhibit 6. Based graduates' NCLEX scores in 2014 and 2015, in 2016—the first year the HCI-WPB RN Program was subject to the BON's NCLEX requirement, *i.e.*, needing to attain a passage rate within 10 points of the national average—the BON placed it on probationary status. Exhibit 7. The BON removed the HCI-WPB RN Program from probationary status in 2017. Exhibit 8. In October 2017, the BON approved HCI to operate an RN program at its Fort Lauderdale branch campus ("HCI-FTL"). The BON issued the RN Program at HCI-FTL the NCLEX code 704135. Exhibit 9.

HCI-WPB's RN Program had insufficient NCLEX passage rates again in 2017, and the BON again issued a Notice of Intent to place the program on probation. Exhibit 10. In March 2018, HCI challenged the BON's Notice of Intent to place the RN Program on probation by filing an action with Florida's Department of Administrative Hearings. Exhibit 11. HCI's challenge of the BON's Notice of Intent arguably kept the probationary status from taking effect and thus prevented HCI from being ineligible for approval of a new program application pursuant to

Sec. 464.019(5)(a)(2), Fla. Stat.

In May 2018, HCI applied to the BON for approval to operate a "new" RN Program at its West Palm Beach campus. Exhibit 12 at 3. HCI's May 2018 application did not explain, or even expressly acknowledge, the existence of its current RN Program operating under NCLEX code 70755. *Id.* However, the "Nursing Student Handbook" that was submitted as part of the application was the 2017-2018 handbook for students enrolled at HCI-WPB under NCLEX code 70755. *Id.* at 161–209. Furthermore, the details of the "new" HCI-WPB program contained in Defendants' application were substantively identical to those reported by Defendants to the BON in HCI-WPB's prior-year compliance report for the existing program. Exhibit 13.

In March 2019, the BON issued a Notice of Intent to place the "old" HCI-WPB RN Program (NCLEX code 70755) on probationary status (again) due to its failure to achieve satisfactory NCLEX-RN passage rates in 2017 and 2018. Exhibit 14. This probationary status was imposed for the 2019 and 2020 calendar years. *Id.* Because it failed to obtain programmatic accreditation by July 1, 2019, the BON terminated the "old" HCI-WPB RN Program on August 26, 2019, as required by Florida law. Exhibit 15.

Most students who enrolled in the HCI-WPB RN Program before September 2019 continued in the "old" RN Program through 2020 in what is referred to as a "teach-out," whereby an institution agrees to wind down an education program while fulfilling its contractual and educational obligations to the students still enrolled. But the "new" HCI-WPB RN Program, now operating under NCLEX code 704146, was substantially identical to, and intermingled with, the "old" RN program that had been terminated. From the time HCI-WPB began enrolling students in its "new" RN Nursing Program through August 2022, even HCI's college catalogs stated that the HCI-WPB RN Program was licensed by the Florida Department of Health and BON under the old

NCLEX code, 70755. Exhibit 16 (filed under seal) at 3; Exhibit 17 at 3; Exhibit 18 at 3.

RN students who enrolled in the HCI-WPB RN Program on or after September 1, 2019, until at least the end of 2020, received the same Form 609a disclosure, required by the Florida Commission on Independent Education ("CIE"), that claimed zero graduates of the program had taken the NCLEX-RN exam. *E.g.*, Exhibit 19; Exhibit 20; Exhibit 21; Exhibit 22. Defendants did not disclose, for example, that the previous, substantively identical HCI-WPB RN Program had a 55% NCLEX passage rate in 2018—30 points lower than the national average. Exhibit 23. Even when HCI-WPB's CIE Form 609a disclosures purported to reflect testing information from the previous academic year, Defendants failed to include in the disclosed number of institutional first-time test takers those who tested under the "old" HCI-WPB RN Program NCLEX code (70755). *Compare* Exhibit 24 *with* Exhibit 25. Defendants *never* disclosed that the previous, substantively identical HCI-WPB RN Program was on probation in 2018 and would have still been on probation in 2020 had it not been terminated. *See* Exhibit 10; Exhibit 14. Defendants also did not disclose that the substantively identical HCI-WPB RN Program was terminated for lack of programmatic accreditation in August 2019 and was barred from seeking reapproval and enrolling any new students until at least August 2022. *See* Exhibit 15.

Despite seeking accreditation numerous times from the Accreditation Commission for Education in Nursing ("ACEN"), one of the recognized specialized nursing accreditors, neither HCI-WPB nor HCI-FTL has achieved the required programmatic accreditation. The RN Program at HCI-WPB is currently in candidacy status with ACEN. Exhibit 26 at 152:23–25. The RN Program at HCI-FTL was denied ACEN candidacy in 2020, Exhibit 27; it achieved candidacy status in 2021, but failed to apply for accreditation before its period for eligibility expired, Exhibit 28. HCI-FTL has not reapplied for ACEN candidacy. *Id.* And in 2023, the Accrediting

Commission of Career Schools and Colleges ("ACCSC") twice deferred the renewal of HCI's institutional accreditation because of concerns about the RN Program. Exhibit 29.

2. *Unlawful Retail Installment Contracts*

Because it is a for-profit post-secondary institution, federal law requires that at least 10% of HCI's revenue come from non-Title IV (federal student aid) sources. *See* 20 U.S.C. § 1094(a)(24). To comply with this "90-10 Rule," pursuant to internal Authorization Guidelines—through which Defendants FEI and Hart exercise control over HCI—Defendants encourage RN students to supplement federal aid with institutional loans, which are made through retail installment contracts and require students to make monthly payments while attending school. Exhibit 30 (filed under seal) at 16–17; Exhibit 31 (filed under seal) at 17–18; Exhibit 32 (filed under seal) at 25–26; Exhibit 33 (filed under seal) at 24–25; Exhibit 34 (filed under seal) at 25–28. The retail installment contracts require immediate payment while students are in school, do not offer income-sensitive repayment options, do not offer forbearance, are not eligible for public service loan forgiveness, and have a risky acceleration clause that makes the entire balance due upon a single missed payment. Exhibit 35. But even with these highly unfavorable terms, Defendants know that these debts are unlikely to be repaid, as evidenced by the fact that HCI immediately writes off 100% of a student's outstanding retail installment contract balance as bad debt when a student withdraws, and 50% of a student's outstanding retail installment contract balance when a student graduates. Exhibit 30 at 17; Exhibit 31 at 18; Exhibit 32 at 26; Exhibit 33 at 25; Exhibit 34 at 28.

HCI is not, and has never been, licensed to offer retail installment contracts in Florida, as

required by Sec. 520.32(1), Fla. Stat. Exhibit 36.[2] By failing to apply for a license to offer retail installment contracts as required by Florida law, HCI freely lent an enormous sum of money to vulnerable students, who HCI knew could not afford the charges, without oversight or fear of recourse.

Since 2013, Defendants have been in a contractual business relationship with Tuition Options for the servicing of retail installment contracts entered into by HCI students. Exhibit 37 (filed under seal). Between September 2019 and the present, 1,250 students—nearly every student who enrolled in the RN Program—entered into identical retail installment contracts with Defendants. Exhibit 35 (standard RIC); Exhibit 38 (response to Interrogatory 19, showing that between September 3, 2019, and July 10, 2023, HCI entered into 1,251 retail installment contracts with nursing students). Of the $5,999,539 in credit extended to HCI students in retail installment contracts during this time, less than half had been repaid as of May 28, 2023. Exhibit 38.

Defendants use the retail installment contract program to extract money from RN students, threatening to withhold access to educational services if students fall behind on their payments. Until February 2023, the Authorization Guidelines stated, "[redacted]" Exhibit 30 at 17; *see also* Exhibit 31 at 18 (same); Exhibit 32 at 26 (same); Exhibit 33 at 24 (same). For a time, according to Pedro De Guzman, HCI's CEO, HCI's official policy was "that we could not release students to the Florida Board of Nursing [to sit for the NCLEX-RN] or send their transcripts if the

[2] Plaintiffs subpoenaed the Florida Office of Financial Regulation, the agency that issues retail installment seller licenses, seeking, *inter alia*, "[a]ll Documents, ESI, and Communications from between January 1, 2017, and the present concerning any licensure applications submitted by either HCI or Tuition Options, particularly with respect to retail installment contracts."

students were, you know, in arrears in what they owed us." Exhibit 26 at 111:10–13.

3. *Misrepresentation of Program Attributes*

The Nurse Practices Act requires that at least 50 percent of the program's nursing curriculum consist of clinical training, § 464.019(1)(b)(1), Fla. Stat.; that "[n]o more than 50 percent of the program's clinical training consist[] of clinical simulation," § 464.019(1)(c), Fla. Stat.; and that "the program director and at least 50 percent of the program's faculty members are registered nurses who have a master's or higher degree in nursing or a bachelor's degree in nursing and a master's or higher degree in a field related to nursing," § 464.019(1)(a)(1), Fla. Stat. Defendants implicitly and explicitly represented to Plaintiffs and members of the Proposed Class that the RN Program fully complied with these requirements. *E.g.*, Exhibit 16 at 2 (stating that HCI is licensed by CIE); Exhibit 39 (discussing clinical experiences). But in fact, most RN instructors are part-time, Exhibit 40 at 59:23–60:10 (stating that during the relevant time period, HCI-WPB had 10 to 15 part-time instructors and five full-time instructors, while HCI-FTL had 10 to 15 part-time instructors and three to four full-time instructors); the RN Program suffers from extremely high turnover, *id.* at 227:11–12 (discussing "staffing shortfalls" and "employee turnovers"); *id.* at 178:12–193:18 (discussing resignations and departures of succession of Directors of Nursing); and Defendants do not provide meaningful clinical instruction, Exhibit 41 ¶¶ 14–16; Exhibit 42 ¶¶ 14–16; Exhibit 43 ¶¶ 13–16; Exhibit 44 ¶¶ 14–16; Exhibit 45 ¶¶ 12–14. Clinical opportunities are limited because of HCI's accreditation status. *E.g.*, Exhibit 46.; *See* Exhibit 41 ¶ 17; Exhibit 42 ¶ 17; Exhibit 43 ¶ 17; Exhibit 44 ¶ 17. Students in the RN Program did not spend at least 50 percent of their class time in clinical training, and significantly more than 50 percent of the clinical training they did receive was—at best—clinical simulation, in violation of Sec. 464.019(1), Fla. Stat. *See* Exhibit 41 ¶¶ 14–16; Exhibit 42 ¶¶ 14–16; Exhibit 43 ¶¶ 13–16;

Exhibit 44 ¶¶ 14–16; Exhibit 45 ¶¶ 12–14. Students received very little hands-on instruction; much of their clinical time was spent in study hall without access even to simulation. *Id.*

Since as early as 2016, HCI officials have routinely misled, and sometimes lied to, its student body about its accreditation status, a material piece of information. Exhibit 47. In 2020, HCI's website stated that it was in candidacy status with ACEN, and school officials told students that it was just awaiting a site visit to become accredited. Exhibit 48. In fact, the school had not yet been granted candidacy status; the accreditor asked the school to remove the misleading information. *Id*. Both HCI-WPB and HCI-FTL were granted ACEN candidacy in 2021. The period of eligibility for HCI-WPB to apply for ACEN accreditation expired September 23, 2022, and for HCI-FTL it expired September 20, 2022; neither program applied by these deadlines. Despite this fact, until at least October 21, 2022, HCI's website stated that the RN Program was eligible for ACEN accreditation. Exhibit 49. This statement was deleted after HCI was contacted by the accreditor and directed to remove the erroneous information. Exhibit 50. Even afterwards, however, HCI continued to misinform students about the RN Program's programmatic accreditation status. *See* Exhibit 28.

4. ***Arbitrary Barriers to Advancement and Graduation***

Foreshadowing Defendants' next abusive practice toward HCI's RN students, in March 2021, Defendant Hart left FEI investors a voice message stating, in part, [redacted]" Exhibit 51 (filed under seal). Reflecting a similar sentiment, around this time HCI's VP of Academic and Regulatory Affairs explained to HCI faculty that "[redacted]" Exhibit 53 (filed under seal).

HCI could have, but did not, change its enrollment standards or educational spending. Rather, Defendants began weeding out already enrolled students using a new, uniformly applied grading policy implemented in summer 2021 at HCI-WPB and fall 2021 at HCI-FTL. The new policy increased the amount of tuition—often in the form of increased retail installment contract balances—and time it took for the Proposed Class to complete the program, and allowed Defendants to manipulate HCI-WPB's and HCI-FTL's NCLEX passage rates by decreasing the number of program graduates who could take, and possibly fail, the NCLEX-RN. Under the new policy, students were required to achieve both an 80 percent overall score and at least 50 percent in every subcategory of end-of-semester specialty exams in order to advance through the program (the "50% Rule"). Exhibit 52 (filed under seal). The 50% Rule was inconsistent with HCI's Enrollment Agreements and college catalogs, which expressly state throughout the class period that all written and practical examinations, and each core nursing course, must be passed with a minimum score of 80 percent. *E.g.*, Exhibit 17 at 42; Exhibit 18 at 41; Exhibit 54 at 6. Defendants understood this: faculty meeting minutes from May 14, 2021, note, "[redacted]" Exhibit 52. And the new policy had the intended effect: between the time the changes were implemented and June 2023, at least 419 students dropped out of the RN program, and at least 315 students repeated a course. *See* Exhibit 55.

Students who advanced to the final "Capstone" course in spite of the new testing requirements were met with additional, unexpected hurdles. The Capstone course consisted almost exclusively of the Virtual-ATI ("VATI"), a 12-week, online course published and administered by ATI. Exhibit 41 ¶ 23; Exhibit 42 ¶ 23; Exhibit 44 ¶ 20. The VATI course is designed to prepare students for a comprehensive predictor exam also designed and administered by ATI. *See* ATI, "Receive Personalized Education from an Expert: Virtual-ATI® + Boardvitals,"

https://www.atitesting.com/nclex-prep/virtual-ati. For the majority of the proposed class period, HCI's standardized Enrollment Agreements and/or college catalogs identified the ATI Comprehensive Predictor exam as the exit exam for which a minimum stated score was required to complete Capstone and graduate. Exhibit 54 at 6; Exhibit 17 at 43. In late 2021, despite the specifications in HCI's Enrollment Agreements and college catalogs, Defendants ceased using the ATI Comprehensive Predictor as the final graduation requirement. Exhibit 41 ¶ 26; Exhibit 42 ¶ 26; Exhibit 44 ¶¶ 23, 30. Instead, Defendants would not allow any student to pass the Capstone course and graduate unless they took an exam designed by a different third party and achieved a benchmark set by Defendants, regardless of the student's score on the ATI Comprehensive Predictor exam. Exhibit 41 ¶¶ 26–27; Exhibit 42 ¶¶ 26–27; Exhibit 44 ¶¶ 23–24, 30–31. Moreover, students were permitted to retake their final exit exam, in violation of their Enrollment Agreements and HCI's college catalogs. Exhibit 41 ¶ 29; Exhibit 42 ¶ 29; Exhibit 44 ¶¶ 25, 31.

HCI's high-stakes testing rules were designed to preserve revenue (by maintaining high enrollment numbers) and squeeze profits from students who elected to retake the semester they supposedly failed while keeping them from graduating and taking the NCLEX-RN. Defendants unveiled the new testing requirements in surreptitious ways and never disclosed to Plaintiffs and Class Members such unreasonably high bars to passing during the initial enrollment period. Exhibit 41 ¶¶ 19–21; Exhibit 42 ¶¶ 19–21; Exhibit 43 ¶¶ 19–21; Exhibit 45 ¶¶ 17–19. Defendants made arbitrary and capricious changes to the curriculum with these tests and grading requirements that students were not aware of, and did not agree to, when they enrolled. These changes were significant, disruptive, and served no educational or pedagogical purpose; instead, they were specifically designed to help Defendants game the BON NCLEX requirement. Exhibit 1 at 1 ("[redacted]

[redacted]").

That these changes were also intentional, uniform, and equally applied to Class Members is made clear in investor reports and voicemails Defendant Hart provided to the FEI investors during and after the time period in which the changes were implemented. For example, FEI's 2021 Q2 Investor Report, distributed in August 2021, declared: "[redacted]" Exhibit 56 (filed under seal). Similarly, in a voice message sent to FEI investors in March 2022, Defendant Hart announced: "[redacted]" Exhibit 57 (filed under seal).

5. *Racial Targeting*

Defendants intentionally advertise the RN Program to people of color, specifically Black women. Advertisements for the RN Program feature almost exclusively Black models. Exhibit 58. And the racial targeting is successful—HCI's student population is disproportionately Black. Of the 705 students who enrolled at HCI-FTL between January 6, 2020, and May 8, 2023, 445 of them—63%—were Black or African American. Exhibit 2. Of the 734 students who enrolled at HCI-WBP in the same period, 365 of them—50%—were Black or African American. *Id.* By contrast, census data shows that as of July 2022, Broward County was only 30.6% Black and Palm Beach County was only 20.1% Black.[3]

[3] Data obtained from the U.S. Census Bureau, QuickFacts, available at: https://www.census.gov/quickfacts/palmbeachcountyflorida (last accessed Dec. 19, 2023); and https://www.census.gov/quickfacts/browardcountyflorida (last accessed Dec. 19, 2023).

ARGUMENT

Plaintiffs move for class certification under Federal Rule of Civil Procedure 23(b)(2) and (b)(3). Class certification is the most practicable means to challenge Defendants' deceptive practices toward putative class members.

A. Standard for Class Certification

The moving party must affirmatively demonstrate compliance with all of Rule 23's requirements. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). All classes must satisfy the prerequisites of Rule 23(a): numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). Once the court concludes that these threshold requirements have been met, it must then examine whether the action falls within one of three categories of suits set forth in Rule 23(b). *Behrend*, 569 U.S. at 33. When deciding whether to certify a class, "[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). As outlined below, Plaintiffs have satisfied each of the subsection (a) threshold requirements, and can also establish predominance and superiority, as required by Rule 23(b)(3), and that injunctive or declaratory relief is appropriate respecting the class as a whole, as required by Rule 23(b)(2).[4]

B. The Class Is Adequately Defined.

"Before a district court may grant a motion for class certification, a plaintiff seeking to represent a proposed class must establish that the proposed class is adequately defined and clearly ascertainable." *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012) (quotation

[4] A court may certify both a class for injunctive relief under Rule 23(b)(2) and a damages class under Rule 23(b)(3). *Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 315–16 (S.D. Fla. 2001).

omitted). A proposed class is ascertainable and adequately defined if "its membership is capable of determination." *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1304 (11th Cir. 2021). The proposed class definitions meet these standards. The proposed Primary Class is "all students who enrolled in the RN Program at HCI after September 1, 2019," the date that HCI first enrolled students in the "new" program at West Palm Beach. The proposed subclasses are:

- All students who enrolled at HCI in the RN Program operating under NCLEX code 704146 (the "WPB Subclass");
- All HCI students who enrolled in HCI's RN Program after September 1, 2019, signed retail installment contracts, and were denied advancement in the RN Program and/or had their transcripts or other HCI records withheld or delayed for any period of time as a result of their retail installment contract balance (the "Withholding Subclass");
- All HCI students who enrolled in the Capstone nursing course and paid for VATI after September 1, 2019 (the "VATI Subclass"); and
- All Black students who enrolled in the RN Program at HCI after September 1, 2019, and who took out student loans to pay for their education (the "Targeting Subclass").

Each of these is a straightforward, objective category, based on information readily available to Defendants. Accordingly, membership in each of these classes is clearly capable of being determined, and the ascertainability requirement is satisfied. *See Cherry*, 986 F.3d at 1304.

C. Named Plaintiffs Have Individual and Class Standing.

Before reaching the Rule 23 analysis, the Court must determine that at least one Named Plaintiff has standing to raise each class claim. *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). A plaintiff has standing to represent a class if she satisfies the individual standing prerequisites and is part of the class and possesses the same interest and suffers

the same injury as the class members. *Fox v. Ritz-Carlton Hotel Co., L.L.C.*, 977 F.3d 1039, 1046 (11th Cir. 2020). To establish individual standing, a plaintiff must show (1) an "injury-in-fact," (2) a causal connection between the alleged injury and the defendant's challenged action, and (3) that "the injury will be redressed by a favorable decision." *Shotz v. Cates*, 256 F.3d 1077, 1081 (11th Cir. 2001) (quotations omitted).

Here, each Named Plaintiff has individual standing to raise Counts 1 through 5, which assert violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") and Florida contract law related to arbitrary grading and advancement requirements, misrepresentations of educational services provided, and unauthorized retail installment contracts, because they were all subjected to Defendants' unlawful actions. Ms. Roberson, Ms. Freeman, Ms. Viñas, and Ms. King have standing to raise Count 6: all were students at HCI-WPB who enrolled in the "new" RN Program and were not informed that the "old" RN Program was terminated for lack of programmatic accreditation and on probation for failing to meet the NCLEX requirement. Ms. Roberson and Ms. Thompson have standing to raise Count 7, as each was the victim of unlawful transcript or advancement withholding. Ms. Roberson, Ms. Freeman, and Ms. King have standing to raise Count 8, as all were deceptively sold a Capstone course that was little more than the publicly available Virtual-ATI program. And Ms. Roberson, Ms. King, and Ms. Thompson have standing to raise Counts 9 and 10: all are Black women who were racially targeted with Defendants' predatory product. All of the Named Plaintiffs were injured by Defendants' actions because they took on debt, wasted money and years of their lives, and did not receive the education or degree that Defendants agreed to confer upon their completion of stated program requirements. As a result, the Named Plaintiffs were left with a near-worthless education and are worse off today than before they enrolled at HCI. Finally, an award of monetary damages and injunctive or

declarative relief would remedy much of the harm each Named Plaintiff suffered.

The Named Plaintiffs also have standing as representatives of the proposed classes. All Named Plaintiffs are members of the Primary Class. Ms. Roberson is a member of the WPB Subclass, the Withholding Subclass, the VATI Subclass, and the Targeting Subclass; Ms. Freeman is a member of the WPB Subclass and the VATI Subclass; Ms. Viñas is a member of the WPB Subclass; Ms. King is a member of the WPB Subclass, the VATI Subclass, and the Targeting Subclass; and Ms. Thompson is a member of the Withholding Subclass and the Targeting Subclass.

Further, the Named Plaintiffs possess the same interest and suffered the same injury as putative class members. In the Eleventh Circuit, "class representative standing does not necessarily require that the class representative suffer injury at the same place and on the same day as the class members." *Fox*, 977 F.3d at 1047. Rather, courts look "to the nature of the injury," and whether it stemmed from the defendant's common policy or practice. *See id.* (plaintiff had standing to represent a class of employees at 49 of defendant's restaurants where he alleged that defendant employed the same unlawful practices at all of its locations, although he only worked at one); *see also Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1302, 1307 (11th Cir. 2008) (plaintiffs had standing to represent a proposed class of insurance policy holders who were hit by four different hurricanes, although they only suffered damages from one hurricane). Because the Named Plaintiffs and the class members suffered "identical" injury as a result of Defendants' pattern of deceptive conduct, Plaintiffs have standing to bring claims on behalf of the classes. *See id.*

D. The Requirements of Rule 23(a) Are Satisfied.

Plaintiffs have satisfied the threshold requirements of Rule 23(a).

1. The Class Is So Numerous that Joinder of All Members Is Impracticable.

Rule 23(a)(1) requires that the class be so numerous that joinder of all members is

impracticable. "This is generally a 'low hurdle, and a plaintiff need not show the precise number of members in the class.'" *Arnstein v. Phillips*, No. 21-cv-82516, 2023 WL 7129909, at *6 (S.D. Fla. Sept. 26, 2023) (quoting *Schojan v. Papa Johns Int'l, Inc.*, 303 F.R.D. 659, 664 (M.D. Fla. 2014)). Although "there is no fixed numerosity rule," generally "more than forty" is "adequate." *Id.* (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)). From January 6, 2020, to May 8, 2023, 1,439 students enrolled in the RN Program. Exhibit 2. The Primary Class thus easily satisfies the Eleventh Circuit's rule and meets the requirement of Rule 23(a)(1). *See id.*

Each subclass also clears Rule 23(a)(1)'s "low hurdle." *See id.* The WPB Subclass includes at minimum the 734 students who enrolled in the RN Program at HCI-WPB from January 6, 2020, to May 8, 2023. Exhibit 2. Given that the withholding policy was uniform, *see infra* Part E.1.A, and that 243 retail installment contracts originated in 2019 or 2020 have an outstanding balance of more than 50%, while 89 retail installment contracts originated between 2019 and 2022 have a balance of more than 90%, Exhibit 38 (response to Interrogatory 19), it is reasonable to assume that the Withholding Subclass includes a significant portion of the Primary Class. Even if the policy only affected 10% of the Primary Class, the Withholding Subclass would include 144 students. The VATI Subclass includes, at minimum, the 551 students who enrolled in the Capstone course between January 2020 and March 2023 at either HCI campus. Exhibit 55. And the Targeting Subclass includes at least the 810 Black or African American students who enrolled in the RN Program from January 6, 2020, to May 8, 2023. Exhibit 2. These numbers are more than adequate. *See Arnstein*, 2023 WL 7129909, at *6 (finding subclasses of 126 members, 80 members, and between 20 and 40 members satisfied numerosity).

2. The Class Members Share Common Questions of Law and Fact.

"For purposes of commonality under Rule 23(a)(2), . . . Plaintiff[s] must only identify one

issue whose resolution will affect all or a significant number of the putative class members." *Bouton v. Ocean Properties, Ltd.*, 322 F.R.D. 683, 698 (S.D. Fla. 2017). "The commonality element is generally satisfied when a plaintiff alleges that defendants have engaged in a standardized course of conduct that affects all class members." *Gibson v. Lynn Univ., Inc.*, No. 20-cv-81173, 2021 WL 1109126, at *4 (S.D. Fla. Mar. 23, 2021) (internal citation omitted). Here, each of Plaintiffs' claims is centered on Defendants' practice or policy of using deceptive acts and omissions to peddle its predatory product. In the discussion of predominance, *infra* Part E.1, Plaintiffs set forth dozens of common questions of law and fact. The commonality requirement of Rule 23(a)(2) is therefore satisfied. *See Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016) ("[P]laintiffs will necessarily satisfy the commonality requirement if they can show predominance."); *see also Bouton*, 322 F.R.D. at 698; *Gibson*, 2021 WL 1109126, at *4–5.

3. The Named Plaintiffs' Claims Are Typical of the Class.

To meet Rule 23(a)(3)'s typicality requirement, proposed class representatives must possess the same interest and suffer the same injury as the class members they represent. *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). The claims need not be identical; rather, there only needs to be a "sufficient nexus" between the legal claims of the representatives and those of the rest of the class. *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012) (quoting *Prado*, 221 F.3d at 1278–79). "This nexus exists 'if the claims or defenses of the class and the class representative arises from the same event or pattern or practice and are based on the same legal theory.'" *Id.* (quoting *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984)). Furthermore, typicality can be found "despite substantial factual differences . . . when there is a strong similarity of legal theories." *Belin v. Health Ins. Innovations, Inc.*, 337 F.R.D. 544, 557 (S.D. Fla. 2021) (omission in original) (quoting *Williams v. Mohawk Indus., Inc.*, 568

F.3d 1350, 1356 (11th Cir. 2009)). Far from precluding a finding of typicality, any variations in the experiences of the Named Plaintiffs "offer a broad spectrum of experiences that collectively illustrate the alleged failures of" and misdeeds committed by Defendants. *See Fla. Pediatric Soc'y v. Benson*, No. 05-cv-23037, 2009 WL 10668698, at *11 (S.D. Fla. June 25, 2009).

Each Named Plaintiff, like every other class member, was the victim of the same or similar deceptive tactics, misrepresentations, and omissions. As explained *infra* Part E.1, Defendants systematically misrepresented or obscured the status of HCI's RN Program and the nature of its educational services; arbitrary grading and graduation policies were uniformly applied throughout the RN Program; all RN students received a subpar product; and Defendants' predatory acts, policies, and practices disparately impacted and intentionally discriminated against Black women. Plaintiffs' allegations thus are sufficient to satisfy typicality. *Belin*, 337 F.R.D. at 557–58 (plaintiffs' claims are typical of the class where all "stem from a uniform scheme" in which class members were misled to believe they were buying a particular product).

Furthermore, given that the same practices occurred at both HCI-WPB and HCI-FTL, questions of law and fact applicable to students of both campuses are substantially similar. The Authorization Guidelines govern the operation of both campuses, *see* Exhibits 30–34, and the same college catalogs apply to students at both campuses, *see* Exhibits 16–18. One of Defendant HCI's corporate representatives, Alecia Dennis, testified that HCI-WPB and HCI-FTL have the same curriculum, Exhibit 59 at 34:23–35:20, and use the same evaluation tools, *id*. at 35:21–25, 155:9–157:24. She also testified that the 50% Rule was in place at both campuses, though it may have been rolled out on different dates. *Id.* at 247:7–252:16.

4. The Named Plaintiffs and Class Counsel Will Fairly and Adequately Protect the Interests of the Class.

Rule 23(a)(4) requires that the representative parties "fairly and adequately protect the

interests of the class." The "adequacy of representation analysis encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (internal quotation marks and citation omitted). "Minor conflicts are not enough to render representation inadequate: the conflict must be 'substantial' and 'fundamental' to the specific issues in controversy." *In re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070, 1091 (11th Cir. 2023) (citing *Valley Drug*, 350 F.3d at 1189).

In the present case, there is no apparent conflict of interest between the proposed class members and either the Named Plaintiffs or their counsel. Exhibit 41 ¶ 39; Exhibit 42 ¶ 39; Exhibit 43 ¶ 30; Exhibit 44 ¶ 39; Exhibit 45 ¶ 37; Exhibit 60 ¶ 19. All class members have the same interest in obtaining compensatory, declaratory, and injunctive relief for their injuries caused by Defendants' deceptive and predatory acts. The Named Plaintiffs will not benefit in any way from actions that will prove harmful to the interests of class members. Indeed, the Named Plaintiffs can only recover if they succeed on legal theories that would also lead to recovery for the class. *See infra* Part E.1. Moreover, the Named Plaintiffs have demonstrated the willingness and ability to vigorously represent the class. All have appeared for depositions, participated in extensive interviews with counsel during the drafting of the complaint and the preparation of the present motion, actively participated in the extensive discovery process, and have communicated with Plaintiffs' counsel regularly regarding the progress and strategy of this case. Exhibit 41 ¶ 38; Exhibit 42 ¶ 38; Exhibit 43 ¶ 29; Exhibit 44 ¶ 38; Exhibit 45 ¶ 36; Exhibit 60 ¶ 20. Further, Plaintiffs' counsel satisfy the adequacy requirements of Rules 23(a) and 23(g). The Project on Predatory Student Lending is an organization that has represented hundreds of thousands of former

students in cases relating to predatory practices of for-profit colleges. Nicole Mayer is a solo practitioner specializing in consumer finance, class action litigation, and civil rights laws; she spent four years as an enforcement attorney at the Consumer Financial Protection Bureau and four years as in-house counsel overseeing consumer lending and loan servicing. Together, Plaintiffs' counsel have significant experience representing plaintiffs in class actions and are thus uniquely qualified to prosecute this action. Exhibit 60 ¶¶ 3–17. Moreover, they have invested significant time in identifying and investigating potential claims in this action and are committed to advancing the costs of this litigation. Exhibit 60 ¶ 21.

E. The Requirements of Rule 23(b)(3) Are Satisfied.

To satisfy the requirements of Rule 23(b)(3), the proposed class representatives must show "that the questions of law or fact common to putative class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." In the present action, common questions predominate and class treatment is far superior to other methods for adjudicating the matters at issue.

1. Common Questions and Issues Predominate.

Common issues predominate over any individual inquiries necessary to establish Defendants' liability under FDUPTA, § 501.201 Fla. Stat. *et seq.*; Florida contract law; the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*.

Common questions predominate in a class if they have "a direct impact on every class member's effort to establish liability" and entitlement to injunctive and monetary relief. *Babineau v. Federal Exp. Corp.*, 576 F.3d 1183, 1191 (11th Cir. 2009). To evaluate whether common issues

predominate, the Court considers whether the common questions are "more prevalent or important than the non-common" questions and whether the "proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods, Inc. v. Bouaphakeo,* 577 U.S. 442, 453 (2016) (internal quotation marks and citation omitted). Not all issues—or even all important issues—must be common for common issues to predominate: "When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately." *Id.* (internal quotation marks and citation omitted). Here, common issues predominate because the issues that will drive the outcome of every one of class members' claims will be decided under identical legal standards and can be resolved using common evidence.

a. Common questions predominate as to Plaintiffs' FDUTPA claims.

Under FDUTPA, a plaintiff must establish three elements: (1) a deceptive act or unfair practice, (2) causation, and (3) actual damages. *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. Dist. Ct. App. 2006). All of these elements are objective questions of law, *Carriuolo*, 823 F.3d at 985, and all can be answered by common proof, *see In re Checking Acct. Overdraft Litig.*, 307 F.R.D. 630, 645 (S.D. Fla. 2015) (holding that "[p]redominance is a test readily met in certain cases alleging consumer . . . fraud, particularly where . . . uniform practices and misrepresentations give rise to the controversy," and collecting cases (alterations in original) (internal quotation marks and citations omitted)).

As an initial matter, the question of whether Defendants share liability for the alleged violations is a common question, answerable by common proof. To be individually liable for FDUTPA violations, an individual must have "(1) participated directly in the deceptive acts or practices; or (2) possessed the authority to control them; and (3) had some knowledge of the

practices." *Fed. Trade Comm'n v. Student Aid Ctr., Inc.*, 281 F. Supp. 3d 1324, 1336 (S.D. Fla. 2016) (internal citation omitted). Whether Defendant Hart or single-member, single-employee Defendant FEI participated in the allegedly deceptive practices, possessed the authority to control them, and/or had some knowledge of them is thus a question that every member of the class could answer using the same evidence: (i) deposition testimony establishing that Mr. Hart sits on HCI's Executive Committee with the company's CEO and CFO, Exhibit 26 at 188:20–25; (ii) corporate documents showing that FEI is the sole managing member of HCI, Exhibit 61 at 1, and that the CEO of HCI "shall, subject to the direction of [FEI], have general supervision and control of [HCI's] business," *id.* at 4; (iii) HCI's Authorization Guidelines, through which FEI and Hart control the company's operations, Exhibits 30–34; and (iv) communications to FEI investors, *e.g.*, Exhibits 1, 51, 54, 55.

As to Count 1, Plaintiffs allege that although clear grading and advancement policies were initially established by HCI, Defendants applied new, arbitrary grading and advancement requirements uniformly to them and to other class members following their enrollment. *See supra*, Summary of the Facts Part B.4. They will prove this claim through common evidence including (i) standard college catalogs, Exhibits 16–18; (ii) substantively identical Enrollment Agreements signed by all class members, Exhibit 54; (iii) faculty meeting notes, Exhibit 52 (discussing the implementation of the 50% Rule); (iv) deposition testimony of Arlette Petersson, HCI's former Vice President of Academic and Regulatory Affairs and current curriculum consultant, Exhibit 40 at, *e.g.*, 122:2–124:3 (discussing development of the 50% Rule); (v) dozens of substantially similar student complaints made to Defendants about the unfairness of the new policies, Exhibit 62 (filed under seal); and (vi)_communications from accreditors, *e.g.*, Exhibit 63 ("The Commission found that the school has yet to demonstrate that graduation requirements are stated accurately or

consistently in both the catalog and enrollment agreement.").

As to Count 2, Plaintiffs allege that Defendants made the same misrepresentations and omissions regarding the educational services provided to them as to other class members. *See supra*, Summary of the Facts Part B.3. They will prove this claim through common evidence including (i) standard college catalogs, Exhibits 16–18; (ii) statements made on HCI's website, Exhibit 39; (iii) communications from regulators and accreditors, *e.g.*, Exhibit 29; Exhibit 64 at 3 (stating that required clinical competencies are not covered by current clinical sites); Exhibit 65 at 8 ("[T]he reviewers were unable to verify whether the faculty are qualified to teach in their assigned course(s)"); (iv) communications from clinical sites, Exhibit 46; (v) deposition testimony, Exhibit 40 at 59:23–60:10; and (vi) factually consistent declarations from the Named Plaintiffs, *e.g.*, Exhibit 41 ¶¶ 14–16; Exhibit 42 ¶¶ 14–16; Exhibit 43 ¶¶ 13–16; Exhibit 44 ¶¶ 14–16; Exhibit 45 ¶¶ 12–14 (discussing clinicals); Exhibit 41 ¶ 18; Exhibit 42 ¶ 18; Exhibit 43 ¶ 18; Exhibit 44 ¶¶ 18; Exhibit 45 ¶ 15 (discussing instructors).

As to Count 3, Plaintiffs allege that Defendants offered class members uniform retail installment contracts without first obtaining the required license and collected on those illegal retail installment contracts pursuant to centralized guidelines. ECF No. 90 ¶ 504; *see supra*, Summary of the Facts Part B.2. They will prove this claim through common evidence including (i) identical retail installment contracts, Exhibit 35; (ii) HCI's servicing agreement with Tuition Options, Exhibit 37; and (iii) communications from regulators, Exhibit 36; Exhibit 66.

As to Count 6, Plaintiffs Roberson, Freeman, Viñas, and King allege that Defendants systematically misrepresented the RN Program at HCI-WPB as a "new" program to members of the WPB Subclass. *See supra*, Summary of the Facts Part B.1. They will prove this claim through common evidence including (i) standard college catalogs, Exhibits 16–18; (ii) National Council of

State Boards of Nursing ("NCSBN") reports of HCI graduates' NCLEX-RN scores, *e.g.*, Exhibits 23, 25; (iii) records of BON disciplinary actions, Exhibit 10; Exhibits 14–15; (iv) accreditor communications and evaluations, *e.g.*, Exhibit 65 at 2 (noting that HCI-WPB's application for ACEN candidacy ignores the "old" program, and directing "[t]he faculty [to] ensure that the Self-Study Report provides accurate and comprehensive information regarding the history of the associate nursing program"); Exhibit 67 ("The [ACEN] reviewers also noted that while the new curriculum is referenced as concept-based, the curriculum model does not reflect a concept-based model. Courses are noted to be the same course rubric and name as courses in the teach-out curriculum."); (v) identical misleading Form 609a disclosures, Exhibits 19–22, 24; and (vi) consistent declarations from the Named Plaintiffs, *e.g.*, Exhibit 41 ¶¶ 8–9; Exhibit 42 ¶¶ 8–9; Exhibit 43 ¶¶ 8–9; Exhibit 44 ¶¶ 8–9.

As to Count 7, Plaintiffs Roberson and Thompson allege that Defendants applied a standard policy to members of the Withholding Subclass. *See supra*, Summary of the Facts Part B.2. They will prove this claim through common evidence of unlawful retail installment contracts, *see* discussion of Count 3, *supra*; and common evidence of a unified policy, including (i) standard college catalogs, Exhibit 16 at 21 ("[redacted]"); Exhibit 17 at 23 (same); Exhibit 18 at 20 (same); (ii) deposition testimony, Exhibit 26 at 111:10–13; (iii) HCI newsletters, *e.g.*, Exhibit 68 ("[A]s of January 1st, 2020 students will not be allowed to enter HCI College if they are past due on their tuition options [sic] payment plan."); Exhibit 69 ("Tuition Options monthly payments must be paid each month to avoid being dismissed from your program."); (iv) the Authorization Guidelines, Exhibit 30 at 17; Exhibit 31 at 18; Exhibit 32 at 26; Exhibit 33 at 24; and (v) consistent declarations from the Named Plaintiffs, *e.g.*, Exhibit 41 ¶ 34; Exhibit 45 ¶ 31.

Finally, as to Count 8, Plaintiffs Roberson, Freeman, and King allege that Defendants deceptively marketed the Capstone course as more than the Virtual-ATI program to them and other members of the VATI Subclass. *See supra*, Summary of the Facts Part B.4. They will prove this claim through common evidence, including (i) information about the uniform cost of the VATI program, *see* ATI, "Receive Personalized Education from an Expert: Virtual-ATI® + Boardvitals," https://www.atitesting.com/nclex-prep/virtual-ati; (ii) information about the uniform cost of the Capstone course, Exhibit 16 at 71; Exhibit 17 at 73; Exhibit 18 at 68; (iii) course syllabi, Exhibit 70 (filed under seal); (iv) deposition testimony of Capstone instructor Alecia Dennis, Exhibit 59 at 218:18–221:4; and (v) consistent declarations from the Named Plaintiffs, *e.g.*, Exhibit 41 ¶ 23; Exhibit 42 ¶ 23; Exhibit 44 ¶ 20.

Under settled Eleventh Circuit precedent, the first two elements of Plaintiffs' FDUTPA claims are susceptible to class-wide proof. *See, e.g.*, *Carriuolo*, 823 F.3d at 986–87 (questions of whether practice was deceptive or unfair and whether deception caused class members' injury are amenable to class-wide resolution); *Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1282 (11th Cir. 2011) ("'[R]ecovery under the FDUTPA does not hinge on whether a particular plaintiff actually relied on [a defendant's] claims . . . ; rather, 'whether that allegedly deceptive conduct would deceive an objective reasonable consumer [is a] common issue[ ] for all the putative class members, amenable to classwide proof.'" (alterations in original) (citations omitted)); *Bowe v. Pub. Storage*, 318 F.R.D. 160, 181 (S.D. Fla. 2015) (where defendant "made the same representations to its customers via a standard presentation" and "the class members all participated in [defendant's program] . . . based on the same representations," allegedly deceptive acts and causation are common to the class). This is true regardless of whether Plaintiffs can establish that all class members were exposed to identical misrepresentations or omissions. *See*

Bobbitt v. Acad. of Ct. Reporting, Inc., 252 F.R.D. 327, 344 (E.D. Mich. 2008) ("Although the plaintiffs may not remember the exact words and some of the details may differ from student to student, the thrust of the [school's] misrepresentation remains the same."); *Miles v. Am. Online, Inc.*, 202 F.R.D. 297, 303–04 (M.D. Fla. 2001) (common issues predominated with respect to plaintiffs' FDUTPA claim premised on defendants' "deceptive advertising and marketing campaign"); *see also Indiana Bus. Coll. v. Hollowell*, 818 N.E.2d 943, 951 (Ind. Ct. App. 2004) (predominance requirement of Indiana law was satisfied in fraud action against a college, despite differences as to whether class members "received certain materials and when they received them; as to whether they were able to find employment and if so, how and in what area," where there were "substantial common facts," as each class member attended the same program after incurring considerable expense in reliance upon defendant's misrepresentations and omissions as to the program); *Wiley v. Adkins*, 48 S.W.3d 20, 23 (Ky. 2001) ("[a]s each member of the class was a former student of the college who claimed to have been the victim of fraud," "questions of law or fact that are common to the members of the class predominate over the questions which affect individual members" despite some factual differences).

Finally, although individualized damages analyses would not defeat class certification, *Behrend*, 569 U.S. at 35, here damages are susceptible to class-wide proof. FDUTPA damages can be calculated as the purchase price when the product is rendered valueless as a result of the defect, or as the difference between the market value of the product in the state it was delivered and the market value of the product according to the contract. *Rollins, Inc. v. Heller,* 454 So.2d 580, 585 (Fla. Dist. Ct. App. 1984). Under this "benefit of the bargain" model, class members' out-of-pocket payments are immaterial. *See Carriuolo*, 823 F.3d at 986. Plaintiffs will demonstrate that the education they received at HCI was essentially worthless using common evidence, including (i)

data on student advancement through the program, *e.g.*, Exhibit 2 (showing that, as of May 2023, only 190 out of 1,439 RN Program enrollees had graduated); Exhibit 55; (ii) accreditor communications, *e.g.*, Exhibit 29; Exhibit 71 at 8 ("This reviewer noted that the revenue exceeds the expenses by 64-74%. This reviewer is not clear where the additional monies are spent related to the nursing program."); and (iii) NCLEX passage rates, *e.g.*, Exhibit 25. Because of the deficient educational services offered by Defendants and outlined above, even those students who were able to complete the RN Program and sit for and pass the NCLEX did so with little to no help from HCI. And Plaintiffs are seeking the purchase price of their HCI tuition as damages. *See Rollins*, 454 So.2d at 585; *see also Collins v. Quincy Bioscience, LLC*, No. 19-cv-22864, 2020 WL 3268340, at *29 (S.D. Fla. Mar. 19, 2020) (purchase price was appropriate measure of damages for a drug that had no ameliorative properties). Because the tuition for the RN Program is standardized, the FDUTPA model provides a standardized class-wide damages figure. *Carriuolo*, 823 F.3d at 986.

b. Common questions predominate as to Plaintiffs' breach of contract claims.

For a breach of contract claim, Florida law requires a plaintiff to plead and establish: "(1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009). Plaintiffs allege that the HCI college catalogs and enrollment agreements constitute binding contracts. SAC ¶¶ 148, 160. The veracity of this allegation is a common legal issue central to every class member's contract claim. *See Gibson,* 2021 WL 1109126, at *5 (contractual relationship between university and its students may be "susceptible to class-wide proof based on the publications, policies, and other materials [the university] provided to its students"); *South v. Progressive Select Ins. Co.*, No. 19-cv-21760, 2020 WL 8641572, at *7–8 (S.D. Fla. Dec. 28, 2020) (contract with "uniform

relevant language" is common proof that can satisfy the element of a valid contract); *In re Checking Acct. Overdraft Litig.*, 286 F.R.D. 645, 657 (S.D. Fla. 2012) (contract claim "is amenable to common proof based on its uniform contract and the standardized contractual provisions"). Plaintiffs will prove there was a contract using common evidence: standard college catalogs and enrollment agreements. Exhibits 16–18; Exhibit 54. And if that is proven, determination of the material terms of the contract is a question of fact common to the class. *South*, 2020 WL 8641572 at *8.

In Count 4, Plaintiffs further allege that Defendants breached their contracts by making arbitrary and capricious changes to testing and grading requirements; in Count 5, they allege that Defendants breached their contracts by failing to provide adequate clinical placements. Plaintiffs allege that these breaches were the result of Defendants' centralized decision-making, and they will demonstrate that breach occurred in the same way, across the entire class, using the class-wide evidence summarized above in the discussion of Counts 1 and 2. While Defendants might argue that individual class members experienced the breaches differently, whether and to what extent Defendants breached the contracts are questions common to the class: to answer each, the Court will look at Defendants' policies, acts, and omissions, not at class members' responses to them. *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003); *see also South*, 2020 WL 8641572, at *8; *In re Checking Account Overdraft Litig.*, 286 F.R.D. at 657.

As to damages, the need for individualized damages analyses would not defeat class certification. *Behrend*, 569 U.S. at 35. Nevertheless, damages are susceptible to class-wide proof. Plaintiffs seek restitution in the form of the cost of their tuition. "The purpose of restitution . . . is to require the wrongdoer to restore that which he has received and thus tend to put the injured party in as good a position as he occupied before the contract was made." *Bowe v. Pub. Storage*, 106 F.

Supp. 3d 1252, 1271 (S.D. Fla. 2015) (quoting *Beefy Trail, Inc. v. Beefy King Int'l, Inc.*, 267 So.2d 853, 857 (Fla. Dist. Ct. App. 1972)). "Under Florida law, restitution is available as a type of recovery where there has been a breach of an express contract, so long as the breach goes to a material provision of the contract." *Id.* Because the purchase price of the RN Program is standardized, *see* Exhibit 16 at 71; Exhibit 17 at 73; Exhibit 18 at 68, Plaintiffs' damages can be established through common formulae and evidence. The question of whether Defendants' breach was material is also a question common to the class.

c. Common questions predominate as to Plaintiffs' ECOA claims.

The elements of a prima facie case of discrimination "are flexible and should be tailored, on a case-by-case basis, to differing factual circumstances." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1123 (11th Cir. 1993) (internal citation omitted). ECOA makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . on the basis of race." 15 U.S.C. § 1691(a). In traditional "reverse redlining" cases—cases alleging that a defendant-creditor extended credit to a borrower on less favorable terms than she would have received if she were a different race—there are two key questions: (1) whether the defendant's lending practices are predatory, and (2) whether they disparately impact or are intentionally targeted at members of a protected class. *See Hargraves v. Cap. City Mortg. Corp.*, 140 F. Supp. 2d 7, 20, 23 (D.D.C. 2000). Here, both will be answered class-wide through common evidence.

Plaintiffs allege discrimination with respect to multiple aspects of a credit transaction: predatory retail installment contract terms, changes to the cost of the product and the amount of credit needed to pay for it, the likely ability of students to repay the credit, the consequences of nonpayment, and the predatory nature of the product itself—an essentially worthless education. Whether any one of these constitutes a predatory or unfair term is a question of law that is common

to the class. *See Chen v. Chase Bank USA, N.A.*, No. 19-cv-01082, 2020 WL 264332, at *5 (N.D. Cal. Jan. 16, 2020) (whether defendant's common practice violated ECOA is the "core common question" and predominates over any difference with respect to that practice). And whether the product was in fact worthless is a question of fact common to the class, susceptible to class-wide proof, including (i) data tracking student outcomes, *e.g.*, Exhibit 2; Exhibit 55; (ii) accreditor communications, *e.g.*, Exhibit 29; Exhibit 71 at 8; and (iii) NCLEX passage rates, *e.g.*, Exhibit 25. Also common to the class is the question of whether the Court should tailor a different set of elements to the unique factual circumstances of this case. *See Fitzpatrick*, 2 F.3d at 1123.

Finally, the second question—whether Defendants engaged in racial targeting—is subject to common proof. This includes (i) a sample of Facebook advertisements featuring almost exclusively non-white models, Exhibit 58; (ii) deposition testimony of Sharon Munoz, HCI's marketing contractor, explaining HCI's targeted advertising, Exhibit 72 at 30:1–8 (describing Facebook's "look-alike audience option," which uses the profiles of the current, disproportionately Black student body to find prospective students), 80:10–14 (discussing use of stock images); (iii) the stock image databases from which photos used in HCI's advertisements are pulled, *e.g.*, https://www.istockphoto.com/photo/group-of-multiracial-medical-team-in-hospital-gm481113893-36654010 (showing image in Exhibit 58, at 10, is named "group of happy multiracial medical team in hospital" and tagged "Multiracial Group Photos," "African Ethnicity Photos," and "African-American Ethnicity Photos"); and consistent declarations from the Named Plaintiffs, Exhibit 41 ¶ 5; ; Exhibit 43 ¶ 5; Exhibit 44 ¶ 5; Exhibit 45 ¶ 5. Finally, evidence of targeting can be found by examining student body racial makeup, Exhibit 2, and comparing it to Census data. Because Defendants' corporate policies "constitute the very heart of the plaintiffs' . . . claims," common issues will predominate; if class certification were denied, all of the preceding

"would necessarily have to be re-proven by every plaintiff." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1257 (11th Cir. 2004); *see also, e.g.*, *Fair Hous. Ctr. of Cent. Indiana, Inc. v. Rainbow Realty Grp.*, Inc., No. 1:17-cv-1782, 2020 WL 1493021, at *3 (S.D. Ind. Mar. 27, 2020) (in reverse redlining case, whether defendant's program is discriminatory "is a question that can be answered as to all plaintiffs at once"); *Salvagne v. Fairfield Ford, Inc.*, 264 F.R.D. 321, 330 (S.D. Ohio 2009) (finding predominance as to ECOA claim because liability will be determined by defendant's policies and procedures, which affected each class member).

d. Common questions predominate as to Plaintiffs' Title VI claims.

Title VI provides redress to individuals who are excluded or discriminated against because of their membership in a protected class by an entity that receives financial assistance from the federal government, including a postsecondary educational institution. 42 U.S.C. § 2000d. Title VI prohibits reverse redlining. *Brook v. Sistema Universitario Ana G. Mendez, Inc.*, No. 8:17-cv-171, 2017 WL 1743500, at *4 (M.D. Fla. May 4, 2017). To state a claim for reverse redlining under Title VI, a plaintiff may allege that an entity that receives financial assistance from the federal government deliberately targeted a protected class for a fraudulent scheme. *Id*. at *3. For the reasons stated *supra* with respect to Plaintiffs' ECOA claims, common issues of law and fact predominate as to Plaintiffs' Title VI claims.

***2. Class Action Is Superior to Other Methods for Litigating this Case*.**

Rule 23(b)(3) sets forth four specific, but not exclusive, considerations pertinent to a superiority finding: (1) the class members' interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the likely difficulties in managing a class

action. Fed. R. Civ. P. 23(b)(3)(A)–(D).

Here, it is extremely unlikely that individual class members have any interest in instituting or controlling their own individual actions. With few exceptions, they are working people burdened with debt, and their lack of ability to control individual actions is evidenced by the fact that out of over a thousand members of the proposed class, none has filed a separate action. *See Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 337 (S.D. Fla. 1996). Class certification thus "vindicate[es] the rights of groups of people who individually would be without effective strength to bring their opponents into court at all," one of the primary purposes of Rule 23(b)(3). *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 617 (1997) (internal quotations and citation omitted). And concentrating the litigation in this forum is not only reasonable but also efficient, because HCI's campuses and headquarters, many class members, and most witnesses are located in Florida.

Finally, this class action is not difficult to manage. The determination of whether a class action is manageable focuses "not on the convenience or burden of a class action suit *per se*, but on the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Klay*, 382 F.3d at 1269. As discussed *supra* Part E.1, each of the claims here involves common issues of fact and law that can be resolved based on common proof; there are "no prickly individualized questions with the potential to derail this class action." *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674, 690 (S.D. Fla. 2013). The fact that final damages calculations may require individual analysis would not render a class action unmanageable. *See Carriuolo*, 823 F.3d at 988. By contrast, "[s]eparate actions by each of the class members would be repetitive, wasteful, and an extraordinary burden on the courts." *Kennedy v. Tallant*, 710 F.2d 711, 718 (11th Cir. 1983). Thus, the class action vehicle provides the most efficient, effective, and economic means of settling the controversy.

F. The Requirements of Rule 23(b)(2) Are Satisfied.

Certification under Rule 23(b)(2) is appropriate where, as here, "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." A Rule 23(b)(2) class is appropriate here because of Defendants' common conduct toward RN students. Plaintiffs seek a declaration that Defendants' challenged practices violated FDUTPA and constituted breach of Defendants' contracts with class members, and that as a result, all class members are absolved from paying monies due under the contracts. On behalf of the Targeting Subclass, Plaintiffs seek a declaration that Defendants' challenged practices additionally violated ECOA and Title VI. All Plaintiffs also seek an injunction prohibiting Defendants from enrolling students in the "new" RN Program at HCI-WPB and from collecting debts from class members or reporting delinquent balances to consumer credit reporting agencies. Additionally, Plaintiffs seek an injunction requiring Defendants to issue diplomas to all students who, like Ms. Roberson, Ms. Freeman, and Ms. King, completed all graduation requirements stated in HCI college catalogs and enrollment agreements but were blocked from graduating due to new testing policies, and to send those students' names to the BON so that they may sit for the NCLEX-RN. These are important remedies essential to protecting class members from further unlawful conduct and further harm from prior conduct. Because the requested declaratory judgments and injunction would provide relief to each member of the class, all classes are amenable to Rule 23(b)(2) certification.

CONCLUSION

For the above reasons, this Court should grant Plaintiffs' Motion for Class Certification and (i) certify the Primary Classes and four Subclasses under Rules 23(b)(2) and (b)(3); (ii) appoint the Named Plaintiffs as class representatives; and (iii) appoint the undersigned as class counsel.

Dated: December 19, 2023

Respectfully submitted,

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