

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

_____)	
NATIONAL STUDENT LEGAL DEFENSE)	
NETWORK,)	
1701 Rhode Island Ave. NW)	
Washington, DC 20036)	
)	
)	<i>Plaintiff,</i>
v.)	Case No. <u>2024-CAB-005912</u>
)	
UNIVERSITY OF MARYLAND GLOBAL)	COMPLAINT
CAMPUS,)	
3501 University Boulevard East)	
Administration Building)	
Adelphi, MD 20783)	
)	
)	<i>Defendant.</i>
_____)	

COMPLAINT

Plaintiff National Student Legal Defense Network (“Student Defense”) brings this action against Defendant University of Maryland Global Campus (“UMGC”) regarding its (1) payment of compensation to a third-party that is based, in violation of federal law, upon that party’s success in securing undergraduate student enrollments, and (2) representations to current and prospective students that it complies with federal law and does not engage in such incentive-based compensation. Student Defense alleges the following based upon personal knowledge, information, and belief. This Complaint is on behalf of current and prospective undergraduate UMGC students in the District of Columbia, who are consumers of higher education.

INTRODUCTION

1. This is a consumer protection case concerning unfair and deceptive trade practices related to student recruitment and enrollment in undergraduate programs. This case is brought by

Student Defense, a nonprofit, public interest organization dedicated to protecting the student-consumers of higher education through policy research, litigation, and advocacy. Student Defense seeks to end the unfair and deceptive recruitment and enrollment trade practices at issue.

2. An undergraduate education is one of the largest investments an individual makes in their lifetime.¹ To finance this large purchase, D.C. residents use a variety of means, including private scholarships, federal loans and grants, the D.C. Tuition Assistance Grant, or their hard-earned savings.²

3. Because an undergraduate education is such a large investment—and because student-consumers often finance their education with depletable, finite resources that cannot be used for a different or second undergraduate degree in the case of buyer’s remorse—it is essential that students have the ability to choose an undergraduate program freely and with full information without that choice being subverted through unfair or deceptive means.

4. To protect student-consumers from coercive recruitment and enrollment practices that subvert consumer choice, federal laws prohibit higher education institutions from engaging in certain practices. One such law, the Higher Education Act of 1965 (“HEA”), prohibits covered institutions from “provid[ing] any commission, bonus, or other incentive payment” to any “person” or “entity” that is “based directly or indirectly on success in securing enrollments.”³

This prohibition is known as the Incentive Compensation Ban.

¹ See Lesley Fair, *FTC Case Against DeVry Yields \$100 Million Settlement*, Fed. Trade Comm’n (Dec. 15, 2016), <https://www.ftc.gov/business-guidance/blog/2016/12/ftc-case-against-devry-yields-100-million-settlement> (“For many consumers, education is the second-largest purchase they’ll ever make.”).

² See *Scholarships and Grants for Students*, Office of the State Superint. of Educ., <https://osse.dc.gov/page/scholarships-and-grants-students> (last visited Sept. 6, 2024).

³ 20 U.S.C. § 1094(a)(20).

5. As an accredited institution that participates in the federal student aid programs authorized under Title IV of the HEA, UMGC is bound by the Incentive Compensation Ban. UMGC also expressly represents to current and prospective students, through policies it publishes online, that it complies with federal law and “prohibits the payment of any commission, bonus, inducement, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments.”⁴

6. Despite UMGC’s obligation to comply with the HEA and its associated regulations and UMGC’s representation to current and prospective students that it does not engage in compensation based upon success in securing enrollments, UMGC does, in fact, pay incentivized, enrollment-based compensation for at least two of its undergraduate programs.

7. UMGC has an arrangement with Coursera Inc. (“Coursera”), an online program management company (“OPM”), relating to its Bachelor of Science in Cybersecurity Management and Policy and Bachelor of Science in Cybersecurity Technology degrees.⁵ Under this contractual arrangement—and consistent with Coursera’s business model—UMGC pays Coursera a fee that is directly tied to the number of successful student enrollments.⁶ With each student Coursera recruits and enrolls, UMGC pays a larger sum.

8. UMGC’s violation of the Incentive Compensation Ban unfairly risks exposing student-consumers to coercive recruitment and enrollment practices. In addition, UMGC’s

⁴ *Policy 210.13 Recruitment and Enrollment*, Univ. of Md. Glob. Campus (Apr. 20, 2020), <https://www.umgc.edu/administration/policies-and-reporting/policies/academic-affairs/recruitment-and-enrollment>.

⁵ See *Bachelor of Sci. in Cybersecurity Tech.*, Univ. of Md. Glob. Campus, Coursera, <https://www.coursera.org/degrees/bachelor-science-cybersecurity-technology-umgc/> (last visited Sept. 6, 2024); *Bachelor of Sci. in Cybersecurity Mgmt. and Policy*, Univ. of Md. Glob. Campus, Coursera, <https://www.coursera.org/degrees/bachelor-science-cybersecurity-management-policy-umgc/> (last visited Sept. 6, 2024).

⁶ For a more detailed discussion, see Factual Allegations, Parts III and IV, below.

express misrepresentation of its incentive compensation practices subverts student-consumer choice by preventing student-consumers from making enrollment decisions with full and accurate information. Each of these actions are independent unfair and deceptive trade practices, and those unfair and deceptive practices pose an imminent harm to prospective student-consumers who may enroll in a bachelor's degree program and matriculate at UMGC.

PARTIES

9. Plaintiff Student Defense is a 501(c)(3) nonprofit, public interest organization based in the District of Columbia that performs work throughout the United States, including in the District of Columbia. Student Defense was formed in 2017 to advance students' rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility.

10. Student Defense's focus spans the entire student lifecycle, from recruitment and supporting students' basic needs to educational quality to completion to student loan repayment.

11. Student Defense works to protect students—as consumers of higher education services—and promote accountability in higher education through policy research, litigation, and advocacy. Student Defense is particularly focused on representing students from low-income backgrounds, communities of color, veterans, and others who are disproportionately harmed by predatory practices in higher education and student lending. Student Defense also advocates for enhanced oversight by state agencies, the federal government, and higher education accreditors.

12. Student Defense's website promotes an initiative encouraging the Department “to revisit its policies regarding how colleges and universities may engage third-party OPM companies to provide bundled services such as recruitment, marketing, curriculum development,

and instruction on their behalf.”⁷ As part of its mission, Student Defense advocates for policies and practices relating to higher education recruitment and enrollment process. And as a part of this initiative, Student Defense published papers on the Bundled Services Exception and the Incentive Compensation Ban from both a policy and legal perspective.⁸

13. As part of its state and local policy work, Student Defense has also advocated for states to consider legislation to ban all forms of incentive compensation in higher education and to increase transparency for online students by requiring colleges to disclose who is recruiting students and running online programs.⁹

14. Defendant UMGC is organized and exists under the laws of the State of Maryland. Its principal place of business and administrative offices are located at 3501 University Boulevard East, Administrative Building, Adelphi, Maryland 20783.

15. UMGC has purposefully availed itself of the laws, benefits, and protections of the District of Columbia. Specifically, UMGC sought and received permanent licensure status from the District of Columbia’s Higher Education Learning Commission, which authorizes UMGC to operate and confer degrees in the District of Columbia. UMGC maintains a physical presence in

⁷ See National Student Legal Defense Network, *Oversight of Online Program Mgmt. (OPM) Cos. and Incentive-Based Comp.*, Student Defense, <https://www.defendstudents.org/initiatives/oversight-of-online-program-management-opm-and-incentive-based-compensation> (last visited Sept. 6, 2024).

⁸ *New Legal Analysis: Dep’t of Educ. Bundled Servs. Loophole is Illegal, and Contrary to the HEA’s Incentive Comp. Ban*, Student Defense (Mar. 13, 2023), <https://www.defendstudents.org/news/new-legal-analysis-department-of-educations-bundled-services-loophole-is-illegal-and-contrary-to-the-heas-incentive-compensation-ban>; *The Bundled Servs. Loophole*, Student Defense (Mar. 2023), <https://www.defendstudents.org/news/body/SD-Brief-Bundled-Services-Loophole9099.pdf>; see also *Oversight of Online Program Mgmt. (OPM) Cos. and Incentive-Based Comp.*, Student Defense, <https://www.defendstudents.org/initiatives/oversight-of-online-program-management-opm-and-incentive-based-compensation> (last visited Sept. 6, 2024).

⁹ See National Student Legal Defense Network, *State & Local Policy Work*, Student Defense, <https://defendstudents.org/work/state-local-policy-work> (last visited Sept. 6, 2024).

the District of Columbia, as defined by Title 5-A, Chapter 83, § 8399 of the District of Columbia Municipal Regulations.

16. UMGC is the largest online public university in the United States. It markets and offers more than 30 online bachelor's degrees, including bachelor's degrees in Cybersecurity Technology and Cybersecurity Management and Policy. These online bachelor's degrees are marketed and made available to D.C. student-consumers, and in the fall 2023 term, more than 560 D.C. residents were enrolled in a UMGC online bachelor's degree program.

JURISDICTION

17. This Court has subject-matter jurisdiction over this action pursuant to the D.C. Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*, which provides that "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District." *Id.* § 28-3905(k)(1)(D).

18. This Court has personal jurisdiction over the parties in this action. Plaintiff Student Defense is based in the District of Columbia.

19. Defendant UMGC has purposefully availed itself of the laws, benefits, and protections of the District of Columbia. Moreover, UMGC advertises its programs to District of Columbia residents, participates in programs that provide tuition reductions for certain District of Columbia residents, and has registered with the higher education authority in the District of Columbia that authorizes it to provide online education to more than 500 District residents annually.

FACTUAL ALLEGATIONS

I. The HEA prohibits institutions like UMGC from providing any incentive payments based on success in securing student enrollment.

20. The HEA expressly and unambiguously prohibits institutions that participate in the federal financial aid programs from providing “any commission, bonus, or other incentive payment” that is “based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance.”¹⁰

21. Congress added the Incentive Compensation Ban to the HEA in 1992 after seeing evidence of serious abuses within the student aid programs.¹¹ The concern was that recruiters paid by the head will “sign up poorly qualified students who will derive little benefit from the subsidy and may be unable or unwilling to repay federal[] [student] loans.”¹² Congress was also concerned with deceptive recruiting practices when it added the Incentive Compensation Ban to the HEA.¹³

¹⁰ 20 U.S.C. § 1094(a)(20); *see also* 34 C.F.R. 668.14(b)(22)(ii) (banning incentive compensation).

¹¹ S. Rep. No. 58, 102d Cong., 1st Sess., at 8 (1991) (“Abuses in Federal Student Aid Programs”) (noting testimony “that contests were held whereby sales representatives earned incentive awards for enrolling the highest number of students for a given period”).

¹² *U.S. ex rel. Main v. Oakland City Univ.*, 426 F.3d 914, 916 (7th Cir. 2005); *see also Assoc. of Priv. Sector Colls. and Univ. v. Duncan*, 681 F.3d 427, 436 (D.C. Cir. 2012) (noting Congress’s “concern that schools were creating incentives for recruiters to enroll students who could not graduate or could not find employment after graduating.”).

¹³ U.S. Gov’t Accountability Off., GAO 11-10, Higher Educ.: Stronger Fed. Oversight Needed to Enforce Ban on Incentive Payments to Sch. Recruiters at 1, <https://www.gao.gov/assets/gao-11-10.pdf> (“Congress instituted this Incentive Compensation Ban to eliminate deceptive recruiting practices and to protect federal student aid funds from fraud and abuse.”).

22. Said another way, the Incentive Compensation Ban helps ensure that agents acting on behalf of schools do not coerce or otherwise subvert student-consumer’s enrollment decisions in pursuit of monetary rewards or corporate profit.¹⁴

23. In addition to the statutory Incentive Compensation Ban, the Department has promulgated regulations that similarly provide that institutions participating in the student aid programs will “not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of Title IV, HEA program funds.”¹⁵

24. Institutions (including UMGC) are required to sign a Program Participation Agreement (“PPA”) that conditions their participation in the student aid programs on compliance with the HEA and its implementing regulations. The PPA, which UMGC most recently executed on April 3, 2023, includes language expressly incorporating the obligation to comply with the Incentive Compensation Ban.

25. Accordingly, UMGC’s participation in the student aid programs, “and thus, the funding that is associated with such eligibility—is *explicitly* conditioned, in three different ways, on compliance with the Incentive Compensation Ban.”¹⁶

¹⁴ See, e.g., *U.S. ex rel. Munoz v. Comput. Sys. Inst., Inc.*, No. 11-CV-7899, 2013 WL 5781810, at *3 (N.D. Ill. Oct. 25, 2013) (noting the “overarching concern” of the Incentive Compensation Ban is that “educational entities—motivated by profit rather than rankings or other industry benchmarks—have every incentive to maximize enrollment by recruiting unqualified students who will not be able to repay their loans[.]”).

¹⁵ 34 C.F.R. § 668.14(b)(20).

¹⁶ *U.S. ex. rel Hendow v. Univ. of Phoenix*, 461 F.3d 1166, 1175 (9th Cir. 2006).

II. UMGC represents to student-consumers that it does not engage in any incentive-based payments tied to enrollment success.

26. UMGC provides “Consumer Disclosures and Policies” on its website “to help prospective and current students make the most informed decision about choosing higher education.”¹⁷ From this website, a prospective student may navigate to Policy 210.13, Recruitment and Enrollment, with only three clicks.¹⁸

27. Policy 210.13 provides, in relevant part, as follows:

In accordance with federal laws, regulations, and the Department of Defense (DoD) Voluntary Education Partnership Memorandum of Understanding (MOU), UMGC prohibits the payment of any commission, bonus, inducement, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or awarding financial aid to any persons or entities, engaged in any student recruiting, admission activities, decision-making regarding the award of Title IV, HEA program funds. This prohibition shall apply to UMGC itself as well as any third party contractors.¹⁹

28. By the plain language of Policy 210.13, which has been in effect since April 13, 2015, UMGC represents both that it complies with federal law and does not pay any incentive payment based in any part on student enrollment.

III. Despite the Incentive Compensation Ban and UMGC’s unambiguous representations in Policy 210.13, UMGC provides incentive payments to a third party, Coursera, based on its success securing student enrollments.

29. In June 2023, UMGC entered a Master Services Agreement with Coursera that required Coursera to perform certain services for UMGC. Those services included marketing,

¹⁷ *Consumer Disclosures and Policies*, Univ. of Md. Glob. Campus, <https://www.umgc.edu/terms-conditions/disclosures> (last visited Sep. 8, 2024).

¹⁸ *See Policy 210.13 Recruitment and Enrollment*, Univ. of Md. Glob. Campus (Apr. 20, 2020), <https://www.umgc.edu/administration/policies-and-reporting/policies/academic-affairs/recruitment-and-enrollment>.

¹⁹ *Id.*

recruiting, developing content for, and administering several master’s and undergraduate degree programs (“Degree Programs”):



DEGREE DESTINATIONS DEGREE EXHIBIT

This DEGREE DESTINATIONS DEGREE EXHIBIT (the “**Degree Exhibit**”), made effective as of the last signature date by a party hereto (the “**Degree Exhibit Effective Date**”), is between Coursera, Inc., a Delaware public benefit corporation, with a principal place of business at 381 E. Evelyn Avenue, Mountain View, CA 94041, USA (“**Coursera**”) and the University of Maryland Global Campus, located at 3501 University Blvd East, Adelphi, MD 20783 (“**Partner**”), pursuant to the Degree Destinations Master Services Agreement executed simultaneously herewith (“**Agreement**”).

<p>1. Degree Program</p>	<p>The degree programs governed by this Degree Exhibit and the Agreement are (collectively, “Degree Programs”):</p> <p><u>Masters programs</u></p> <ul style="list-style-type: none"> ● Cybersecurity Management & Policy ● Cybersecurity Technology ● Data Analytics ● IT concentrations: <ul style="list-style-type: none"> ○ IT: Database Systems Technology ○ IT: Informatics ○ IT: Project Management ○ IT: Software Engineering ● Management: concentrations: <ul style="list-style-type: none"> ○ Management: Financial Management ○ Management: Human Resource Management ○ Management: Marketing ○ Management: Project Management ● MBA <p><u>Bachelor Programs</u></p> <ul style="list-style-type: none"> ● Bachelor of Science in Cybersecurity Technology ● Bachelor of Science in Cybersecurity Management and Policy
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30. Pursuant to this agreement, UMGC agreed to pay “Service Fees” to Coursera based on the number of students that enrolled in the Degree Programs after (1) they completed an

expression of interest form on Coursera’s platform, and (2) subsequently clicked a link to UMGC’s Degree Program application portal:²⁰

6. Service Fees.

- a. As compensation for Coursera’s services provided in support of the Degree Programs, Customer shall pay Coursera

[REDACTED]

(“Service Fees”).

- b.

[REDACTED]

- c. “Program Students” means Customer students enrolled in a Degree Program who:

- i. complete an expression of interest form for the Degree Program on Coursera’s platform (such prospective Program Students collectively referred to as “EOIs”);
- ii. subsequently clicked on the link to the Customer’s Degree Program application portal provided by Coursera to EOIs; and
- iii. subsequently applied for admission to a Degree Program, were accepted, and enrolled in the Degree Program.

- d.

[REDACTED]

- e. Customer will provide written reports (“Revenue Reports”) to Coursera within five (5) business days of the end of the adjustment period for each academic term in which Program Students initially enroll in Degree Program courses. Each Revenue Report shall include all arising out of the initial enrollment of Program Students in Degree Program courses since the last Revenue Report.

- f. In the Revenue Report the Customer will calculate Service Fees due for each academic term in which Program Students initially enroll in Degree Program courses and Coursera will then submit an invoice to Customer for the same after receipt of each Revenue Report from Customer. The Customer shall pay all amounts within thirty (30) days of receipt of each invoice. Payments to be made in US Dollars.

31. Upon information and belief, UMGC subsequently paid Coursera these Service Fees, which are based directly and exclusively on success in securing student enrollments in

²⁰ See Exhibit A (Degree Destinations Master Services Agreement) at 3.

Degree Programs, including the undergraduate Cybersecurity Technology and Cybersecurity Management and Policy degrees.

32. UMGC and Coursera’s Master Service Agreement remains in effect for the 2024-2025 school year.

IV. Coursera acknowledges that its business model of accepting incentive compensation based on success in securing student enrollments rests on shaky legal ground.

33. In its most recent Form 10-K filing with the Securities and Exchange Commission, Coursera discusses the Incentive Compensation Ban, which it refers to as the incentive compensation rule.²¹

34. Coursera explains that although the Incentive Compensation Ban “generally prohibits entities or individuals from receiving incentive-based compensation payments for the successful recruitment, admission, or enrollment of learners,” it relies on a 2011 guidance document from the Department of Education (the “Dear Colleague Letter”) for the exception that its “business model relies heavily on” when it “enter[s] into tuition-sharing agreements with [its] U.S.-based university partners.”²²

35. The Dear Colleague Letter,²³ which does not carry the weight of statute or regulation, created the “Bundled Services Exception,” ostensibly permitting a third party like Coursera to receive incentive-based compensation based on success in student enrollments,

²¹ Coursera, Inc., Annual Report (Form 10-K), at 16 (Feb. 23, 2023), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001651562/3aef2ca7-a2ff-4ccf-93a7-fcf0ecff772b.pdf>.

²² *Id.*

²³ Eduardo M. Ochoa, U.S. Dep’t of Educ., Dear Colleague Letter: Implementation of Program Integrity Regulations, GEN-11-05, at 8-10 (Mar. 17, 2011), <https://fsapartners.ed.gov/sites/default/files/attachments/dpcletters/GEN1105.pdf>.

provided that the third party provides “bundled services”—that is, provided the third party does more than just provide recruitment services.²⁴

36. The Bundled Services Exception is unlawful because it directly contradicts the express, unambiguous language of the HEA and the Department’s own regulations implementing the statutory Incentive Compensation Ban.²⁵

37. Coursera acknowledges that “the legal weight the [Dear Colleague Letter] would carry in litigation over the propriety of any specific compensation arrangements under the [Higher Education Act] or [Incentive Compensation Ban] is uncertain.”²⁶

38. Coursera also acknowledges that the Dear Colleague Letter is agency guidance that is “not codified by statute or regulation.”²⁷ Coursera has disclosed to its investors and potential investors that court action involving Coursera or its “university partners” that invalidates the informal guidance contained in the Dear Colleague Letter could require Coursera to change its business model and “renegotiate the terms of [its] university partner agreements.”²⁸

V. UMGC’s violation of the Incentive Compensation Ban unfairly and deceptively subverts student-consumers’ choice in making informed enrollment decisions.

39. When D.C.-resident undergraduate student-consumers choose where to enroll, they generally use one or more finite and depletable sources of funds, including private scholarships, federal loans and grants, the D.C. Tuition Assistance Grant, and their or their

²⁴ *Id.*

²⁵ National Student Legal Defense Network, *You Can’t Bundle That*, Student Defense (Mar. 2023), <https://www.defendstudents.org/news/body/SD-Brief-You-Cant-Bundle-That6692.pdf>; National Student Legal Defense Network, *The Bundled Servs. Loophole*, Student Defense (Mar. 2023), <https://www.defendstudents.org/news/body/SD-Brief-Bundled-Services-Loophole9099.pdf>.

²⁶ Coursera, Inc., Annual Report (Form 10-K), at 17 (Feb. 23, 2023), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001651562/3aef2ca7-a2ff-4ccf-93a7-fcf0ecff772b.pdf>.

²⁷ *Id.*

²⁸ *Id.* at 43.

family's hard-earned savings. Once they have enrolled, student-consumers generally cannot "start over" financially at a new institution or in a new program, so their decisions regarding where to enroll have significant financial consequences.

40. The absence of full and accurate information about student-consumers' choices necessarily subverts their ability to make fully informed enrollment decisions. Similarly, when recruiters have financial motivations that are directly or indirectly tied to numerical student enrollment instead of each individual student-consumer's needs, goals, or desires, there is a substantial risk that those recruiters will unfairly subvert student-consumers' enrollment decisions with practices designed to increase the total number of student enrollments.

41. UMGC's violation of the Incentive Compensation Ban and its express representation, through Policy 210.13, that it complies with federal law and does not engage in incentive-based compensation both work to subvert student-consumer choice. This conduct both (1) robs student-consumers of the opportunity to make fully informed decisions, and (2) unfairly risks subjecting student-consumers to coercive recruitment and enrollment practices. These are among the harms that Congress intended to prevent when adopting the Incentive Compensation Ban.

COUNT I

Violation of the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3904(e-1) Engaging in Deceptive Trade Practice of Representing That a Transaction Involves Rights That It Does Not Have or Involve

42. Student Defense repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

43. Student Defense, pursuant to D.C. Code § 28-3905(k)(1)(D), brings this Count against UMGC on behalf of D.C. residents who are prospective student-consumers of online undergraduate degree programs, as well as D.C. residents who are current UMGC undergraduate

students in programs that are subject to an incentive compensation arrangement between UMGC and a third party.

44. UMGC is a “person” within the meaning of D.C. Code § 28-3901(a)(1) and provides “services” within the meaning of D.C. Code § 28-3901(a)(7) by providing undergraduate education. Undergraduate education is “a personal consumer service under the CPPA’s broad definition of the term.”²⁹ UMGC’s conduct related to the recruitment and enrollment of students into its undergraduate programs constitute “trade practices” within the meaning of D.C. Code § 28-3901(a)(6).

45. Student Defense is a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

46. Because this case concerns undergraduate education, UMGC cannot avail itself of the limited nonprofit carve-out in § 28-3905(k)(5).

47. It is a violation of the CPPA “for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby.” D.C. Code § 28-3904. Pursuant to the CPPA, it is an unfair or deceptive trade practice to “represent that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.” *Id.* at § 28-3904(e-1).

48. Through Policy 210.13, UMGC represents to current and prospective student-consumers that they have the right to an enrollment transaction that complies with federal law and is free from compensation that is based in any part on success in securing student

²⁹ *Qureshi v. American Univ.*, Case Nos. 20-CV-1141 (CRC), 20-CV-1454 (CRC), 20-cv-1555 (CRC), 2023 WL 2387811, at *8 (D.D.C. 2023).

enrollments. The enrollment transaction does not, in fact, involve that right, although that right is conferred by the HEA.

49. UMGC violates the CPPA by making this representation to prospective student-consumers when it, in fact, provides incentive compensation based on enrollment success to Coursera.

COUNT II

Violation of the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3904 Engaging in Unfair Trade Practice by Providing Compensation Based Upon Success in Student Enrollment in Violation of the HEA's Incentive Compensation Ban

50. Student Defense repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

51. Student Defense, pursuant to D.C. Code § 28-3905(k)(1)(D), brings this Count against UMGC on behalf of D.C. residents who are prospective student-consumers of online undergraduate degree programs or current UMGC undergraduate students in programs that UMGC pays incentive compensation to a third party like Coursera based on success in securing student enrollments.

52. UMGC is a “person” within the meaning of D.C. Code § 28-3901(a)(1) and provides “services” within the meaning of D.C. Code § 28-3901(a)(7) by providing undergraduate education. Undergraduate education is “a personal consumer service under the CPPA’s broad definition of the term.”³⁰ UMGC’s conduct related to the recruitment and enrollment of students into its undergraduate programs constitute “trade practices” within the meaning of D.C. Code § 28-3901(a)(6).

³⁰ *Id.*

53. Student Defense is a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

54. Because this case concerns undergraduate education, UMGC cannot avail itself of the limited nonprofit carve-out in § 28-3905(k)(5).

55. It is a violation of the CPPA “for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby.”³¹ The statute identifies more than 35 specific actions that constitute unfair or deceptive trade practices.³² This list is illustrative, not exhaustive.³³

56. To determine whether a trade practice that is not enumerated within D.C. Code § 28-3904 constitutes an unfair or deceptive trade practice in violation of the CPPA, courts are directed to look to the interpretation of the term “unfair or deceptive act or practice,” as used in § 5(a) the Federal Trade Commission Act.³⁴

57. UMGC’s compensation arrangement with Coursera violates the Incentive Compensation Ban and, by extension, is an unfair and deceptive trade practice that violates the CPPA.

58. Because UMGC offers compensation to Coursera tied to its success in securing students’ enrollment in its programs, student-consumers’ choice in determining whether to attend the school is (1) subverted by the decisions of those persons involved in recruitment and

³¹ See D.C. Code § 28-3904.

³² *Id.*

³³ See *Atwater v. D.C. Dept. of Consumer & Regulatory Affairs*, 566 A.2d 462, 466 (D.C. 1989) (“Although § 28–3904 makes a host of consumer trade practices unlawful, its list of such practices was not designed to be exclusive. The remainder of the statute obviously contemplates that procedures and sanctions provided by the Act will be used to enforce trade practices made unlawful by other statutes.”).

³⁴ D.C. Code § 28-3901(d).

enrollment activities on behalf of UMGC whose compensation is tied to the number of students that enroll, or (2) at a substantial risk of being subverted by persons involved in recruitment enrollment activities on behalf of UMGC whose compensation is tied to the number of students that enroll. These are the types of behaviors that Congress was seeking to outlaw in crafting the Incentive Compensation Ban and are unfair under D.C. Code § 28-3904.

PRAYER FOR RELIEF

WHEREFORE, Student Defense prays for judgment against UMGC and respectfully requests the following relief:

- (1) A declaration that UMGC has violated the CPPA (D.C. Code § 28-3904(e-1)) by paying incentive compensation based, directly or indirectly, upon success in securing enrollments despite the fact that UMGC has expressly represented to current and prospective students that it does not engage in such conduct;
- (2) A declaration that UMGC has engaged in an unfair trade practice and violated the CPPA (D.C. Code § 28-3904) by violating the Higher Education Act's ban against providing incentive compensation that is based, in whole or in part on success in securing student enrollments;
- (3) An order enjoining UMGC's conduct found to be in violation of the CPPA;
- (4) An order granting Student Defense costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- (5) Grant Student Defense such other relief as the Court deems just and proper.

Dated: September 17, 2024

Respectfully submitted,

/s/ Christopher J. Bryant

Christopher J. Bryant (D.C. Bar No. 1673495)

Melissa A. Padilla (D.C. Bar No. 90018065)

Daniel A. Zibel (D.C. Bar No. 491337)

NATIONAL STUDENT LEGAL DEFENSE
NETWORK

1701 Rhode Island Ave. NW

Washington, DC 20036

(202) 734-7495

chris@defendstudents.org

melissa@defendstudents.org

dan@defendstudents.org

Counsel for Plaintiffs