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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Regina Calisesi, Toi, and Jeffri Bolton,
14 Ex Rel United States of America,

15 Plaintiffs,

16 vs.

17 HotChalk, Inc., Concordia University,
18 University of Mary, Edward Fields, James
19 Cheshire, and Mark Zinselmeier

19 Defendants.

CASE NO.

QUI TAM COMPLAINT

20 **I. INTRODUCTION**

21
22 1. This is an action to recover damages and civil penalties for false
23 statements and claims made or caused to be made by Defendants HotChalk, Inc.
24 (“HotChalk”), Concordia University (“Concordia”), University of Mary (“U. Mary”),¹
25 Edward Fields, James Cheshire and Mark Zinselmeier in violation of the False Claims
26 Act, 31 U.S.C. §§ 3729, *et seq.* (the “FCA”). At issue are false claims and statements
27

28 ¹ Defendants Concordia and U. Mary are collectively referred to as Defendant Institutions.

1 submitted by Defendant Institutions to the United States Department of Education
2 (“DOE”) in order to participate in federal programs for financial aid for students at
3 Defendant Institutions’ post-secondary internet-based degree programs. The claims at
4 issue with respect to HotChalk relate to its role as aider, abettor and conspirator with the
5 Defendant Institutions.

6 2. Originally enacted 150 years ago,² the False Claims Act (“FCA”) (1986)
7 is “the primary vehicle by the Government for recouping losses suffered through
8 fraud.”³ The FCA prohibits any “person” from “knowingly present[ing], or caus[ing] to
9 be presented, to an officer or employee of the United States Government . . . a false or
10 fraudulent claim for payment or approval.” 31 U.S.C. 3729(a)(1). The Act also prohibits
11 a variety of related deceptive practices involving government funds and property. 31
12 U.S.C. 3729(a)(2)-(7). A “person” who violates the FCA “is liable to the United States
13 Government for a civil penalty of not less than \$5,500 and not more than \$11,000, plus
14 three times the amount of damages which the Government sustains.” 31 U.S.C. 3729(a).
15 The Act empowers Plaintiffs (also referred to as “Relators”) to bring an action on behalf
16 of the United States and to share in any recovery because they possess information
17 regarding false or fraudulent claims made to the government.

18 3. Pursuant to the FCA, Plaintiffs Regina Calisesi (“Calisesi”), Toi (“Toi”),
19 and Jeffri Bolton (“Bolton”) seek to recover on behalf of the United States, damages
20 and civil penalties arising from false and improper claims for payment that Defendants
21 submitted, or caused to be submitted in connection with student loan applications under
22 Title IV of the Higher Education Act of 1965 (“HEA”) from at least August 1, 2009, to
23 the date of filing of this complaint.

24 4. Defendants are engaged in fraudulent conduct that violates the FCA in
25 several ways:

26
27 ² The False Claims Act was enacted in 1863 (see Act of Mar. 2, 1863 (1863 Act),
28 ch. 67, 12 Stat. 696).

³ H.R. Rep. No. 660, 99th Cong., 2d Sess. 18 (1986).

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- a. In order to be eligible to participate and to continue to participate in any Title IV programs, the Defendant Institutions entered into Program Participation Agreements (“PPAs”) with the DOE in which they falsely stated that they were obeying and would obey Title IV’s incentive compensation ban, when in fact they were not and are not in compliance with that ban, and they knew that their statements were false;
- b. Every year, the Defendant Institutions knowingly falsely certify that they are complying with 20 U.S.C. § 1094(a)(20) by promising that they are not and that they will not provide any commission, bonus, or other incentive payment based directly or indirectly on securing enrollments to any person engaged in student recruiting or admission activities, when in fact
 - i. Defendant Institutions routinely and knowingly compensates and awards HotChalk based on the numbers of students enrolled; and
 - ii. Defendants HotChalk, Edward Fields, James Cheshire and Mark Zinselmeier routinely and knowingly compensates and awards its enrollment and admissions employees based on the numbers of students enrolled;
- c. Numerous times every year, the Defendant Institutions submit and cause students to submit loan applications to the DOE that are false and fraudulent in at least three ways:
 - i. The Defendant Institutions knowingly use, and cause students to use, the false PPAs and annual certifications, which are necessary prerequisites to the Defendant Institutions’ eligibility for Title IV funds; and

1 ii. In each and every loan application, the Defendant
2 Institutions falsely certify that they are in compliance with
3 all statutory and regulatory requirements on which program
4 eligibility and payment are conditioned, misrepresentations
5 that the Defendant Institutions know to be untrue because of
6 their ongoing knowing and intentional noncompliance with
7 the incentive compensation ban. This noncompliance is
8 carried out by Concordia and previously by U. Mary
9 through and with the active participation and assistance of
10 HotChalk.

11 iii. Defendants engage in substantial misrepresentations of the
12 nature of their educational programs by deliberately
13 concealing from students and prospective students the very
14 existence of HotChalk, allowing HotChalk to provide a
15 “turnkey partnership opportunity” – disguised as Concordia
16 or U. Mary– consisting of recruitment, enrollment and
17 admission, financial aid, curriculum and online course
18 instructors. Defendants also engage in substantial
19 misrepresentations concerning offers of scholarships to pay
20 all or part of a course charge by falsely and deceptively
21 offering non-existent “scholarships” or grants to make up
22 for any shortfall between the course charge less available
23 financial aid the student’s ability to pay.

24 **II. PARTIES**

25 5. Relators Calisesi, Toi, and Bolton are residents of Arizona and are United
26 States citizens. Toi and Bolton were previously employed by Defendant HotChalk as
27 enrollment specialists. Toi was an enrollment specialist (referred to as either
28 “enrollment specialist” or “ES”) for Defendant Concordia, and Bolton was an ES for U.

1 Mary. Toi's employment commenced on December 15, 2011 and ended November 5,
2 2012. Bolton's employment commenced on February 27, 2012 and ended February 4,
3 2013. Calisesi has been continuously employed by Defendant HotChalk as an ES for
4 Defendant Institutions since October 25, 2010. Toi and Bolton worked, and Calisesi
5 currently works at HotChalk's Phoenix call center located at 4129 East Van Buren,
6 Suite 240, Phoenix, Arizona 85008.

7 6. Relators bring this action for violations of 31 U.S.C. §§ 3729 *et seq.*, on
8 behalf of themselves and the United States. Relators, through their work as enrollment
9 specialists for HotChalk, have direct knowledge of the false records, statements and
10 claims presented to the United States by HotChalk on behalf of the Defendant
11 Institutions.

12 7. HotChalk is a Delaware corporation with its principal offices at 1999 S.
13 Bascom Avenue, Suite 1020, Campbell, California 95008. It is registered to do
14 business in Arizona and its registered agent is located at 300 W. Clarendon Avenue,
15 Suite 240, Phoenix, Arizona 85013. HotChalk is a for-profit operator of an online
16 "university" and a call center through which it poses as the recruiting and admissions
17 operation of its principals, Concordia and U. Mary. Through its Phoenix call center,
18 HotChalk has enrolled thousands of post-graduate students in its purported online
19 courses.

20 8. Concordia is a non-profit university with a location in Portland, Oregon.
21 Its registered agent is Charles E. Schlimpert, 2811 NE Holman Street, Portland, Oregon
22 97211.

23 9. U. Mary is a non-profit university based in Bismarck, North Dakota. Its
24 registered agent is Brent Winiger, 7500 University Drive, Bismarck, North Dakota
25 58504.

26 10. Defendant Edward Fields resides in California and may be served at
27 14810 Clara St., Los Gatos, CA 95032-1702. Defendants James Cheshire and Mark
28 Zinselmeier reside in Arizona. Each may be served at 300 W. Clarendon Avenue, Suite

1 240, Phoenix, Arizona 85013. As employees of HotChalk, Edward Fields, James
2 Cheshire, and Mark Zinselmeier are principal actors in regard to the fraudulent conduct
3 alleged herein.

4 **III. JURISDICTION AND VENUE**

5 11. This is an action brought pursuant to the FCA, 31 U.S.C. §§ 3279, *et seq.*
6 Jurisdiction of this federal court is invoked pursuant to the Court's federal question
7 jurisdiction, 28 U.S.C. § 1331 and subject matter jurisdiction is invoked pursuant to 28
8 U.S.C. § 1331 and 31 U.S.C. § 3732, the latter of which specifically confers original
9 jurisdiction on this Court for actions brought pursuant to 31 U.S.C. § 3730.

10 12. This Court has in personam jurisdiction over the Defendants under 31
11 U.S.C. § 3732(a), which authorizes nationwide service of process, and because the
12 Defendants can be found in and transact the business that is the subject matter of this
13 lawsuit in the District of Arizona.

14 13. Venue is proper in the United States District Court for the District of
15 Arizona, pursuant to 28 U.S.C. § 1391(b) and (c) and 31 U.S.C. § 3732(a), because
16 HotChalk is a corporation with its principal offices located in Phoenix, Arizona, and
17 because HotChalk maintains and operates an online program within this District, and
18 many of the acts that form the basis of this Complaint occurred in the District of
19 Arizona.

20 14. This case is not based on a public disclosure. Toi, Bolton and Calisesi are
21 each an original source and each of them have direct, personal knowledge of the matters
22 alleged herein.

23 **IV. FACTUAL BACKGROUND**

24 15. Title IV of the HEA requires that to be eligible to participate in and
25 receive payment from its loan and grant programs, educational institutions must agree
26 and promise not to provide any commission, bonus or other incentive payment to their
27 student recruiters based directly or indirectly upon success in securing enrollments. 20
28 U.S.C. § 1094(a)(20); 34 C.F.R. § 668. 14(b)(22). The Defendant Institutions entered

1 into such agreements (Program Participation Agreement or “PPA”) and made such
2 promises, and submitted and caused to be submitted to the DOE thousands of loan and
3 grant applications. Regardless of a signed Program Participation Agreement, HotChalk
4 and the Defendant Institutions are deemed to have agreed to comply with the incentive
5 compensation ban. Defendant Institutions’ agreements and promises, and each and
6 every one of their applications, were and are false and fraudulent because, as this
7 Complaint and Relators’ first-hand experience, and Defendants’ own documents show,
8 Defendants tied their enrollment specialists’ compensation directly to the number of
9 students they enrolled. Over a period of years, in reliance on the Defendant Institutions’
10 false and fraudulent agreements and promises, the DOE paid out millions of dollars in
11 student grants, payments of loan interest, and repayment of defaulted guaranteed student
12 loans, all used for tuition payments for the online programs of the Defendant
13 Institutions. Each of these requests for payment of such funds constitutes an actionable
14 false claim under the FCA. Each dollar paid or guaranteed to be paid by the DOE
15 constitutes a loss to the government.

16 **A. *The Higher Education Act Of 1965***

17 16. Pursuant to Title IV of the HEA of 1965, 20 U.S.C. §§ 1070 et seq., DOE
18 provides financial assistance in the form of grants, loans, loan guarantees and interest
19 subsidies to eligible students to help defray the costs of education, including, but not
20 limited to, the Federal Perkins Loan Program, 20 U.S.C. § 1087aa et seq., 34 CFR § 674
21 and the Federal Direct Student Loan Program, 20 U.S.C. §§ 1087a et seq., 34 CFR §
22 685.

23 **B. *Eligibility for Title IV Loan and Grant Programs***

24 17. Each of the Title IV programs has specific requirements as a prerequisite
25 to obtaining federal funds. One requirement is that in order to become eligible to receive
26 Title IV funds under these programs, each institution must enter into a PPA with the
27 DOE. 20 U.S.C. § 1094(a); 34 C.F.R. § 668. 14(a)(1). Regardless of the existence of a
28 PPA, however, HotChalk and the Defendant Institutions are deemed to have agreed to

1 have entered into a PPA with the DOE. PPAs expressly “condition the initial and
2 continuing eligibility of the school to participate in a program upon compliance with”
3 the requirements of 20 U.S.C. § 1094 and 34 C.F.R. § 668.14.

4 18. The statute, regulation and PPA explicitly provide that an educational
5 institution is prohibited from providing any commission, bonus, or other incentive
6 payment based directly or indirectly on success in securing enrollments or financial aid
7 to any persons or entities engaged in any student recruiting or admission activities or in
8 making decisions regarding the award of student financial assistance[.]” 20 U.S.C. §
9 1094(a)(20); 34 C.F.R. § 668. 14(b)(22). This is commonly referred to in the post-
10 secondary education industry as “the incentive compensation ban.” Compliance with
11 this ban is an express condition to the initial and continuing eligibility of schools to
12 obtain Title IV funding.

13 19. In each PPA, an institution certifies, “The execution of this Agreement by
14 the Institution and the Secretary is a prerequisite to the Institution’s initial or continued
15 participation in any Title IV, HEA Program.” Each PPA then states, inter alia, “By
16 entering into this Program Participation Agreement, the Institution agrees that ... (22) It
17 will not provide, nor contract with any entity that provides, -any commission, bonus, or
18 other incentive payment based directly or indirectly on success in securing enrollments
19 or financial aid to any persons or entities engaged in any student recruiting or admission
20 activities or in making decisions regarding the awarding of student financial assistance
21”

22 20. To maintain its eligibility to receive Title IV funds, each year the
23 institution also must provide the DOE with an annual compliance audit and financial
24 statements prepared by independent auditors. 20 U.S.C. § 1094(c); 34 C.F.R. §§668.23
25 and 668.25. The audit reports are used to determine whether schools are adhering to
26 applicable requirements for funding, including the incentive compensation ban. As a
27 required part of the audit, the Defendant Institutions certify compliance with the
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1 requirements for eligibility to participate in Title IV programs, including the incentive
2 compensation ban.

3 21. Congress enacted the prohibition against paying commissions, bonuses or
4 other incentive payments based on success in recruiting students because it determined
5 that such payments were associated with the enrollment of unqualified students to
6 receive federal student-aid funds and high loan default rates, which in turn resulted in a
7 significant drain on program funds where the government acts as a loan guarantor.
8 When Congress amended the HEA in 1992 to prohibit schools from paying these
9 incentives, it did so based on evidence of serious program abuses, of which incentive
10 compensation was a part. *See* S. Rep. No. 58, 102d Cong., 1st Sess., at 8 (1991)
11 (“Abuses in Federal Student Aid Programs”) (noting testimony “that contests were held
12 whereby sales representatives earned incentive awards for enrolling the highest number
13 of students for a given period”); H.R. Rep. No. 447, 102d Cong., 2d Sess., at 10,
14 reprinted in 1992 U.S.C.C.A.N. 334, 343 (noting new provisions that “include
15 prohibiting the use of commissioned sales persons and recruiters”).

16 22. Congress has specifically prohibited educational institutions from using
17 deceptive practices, including misrepresentations which concern the nature of a school’s
18 “financial charges.” Among the specified prohibited conduct, an institution shall not
19 engage in false, erroneous or misleading statements concerning offers of scholarships to
20 pay all or part of a course charge. 20 U.S.C. § 1094(c)(3)(A); 34 C.F.R. § 668.73.

21 23. An educational institution is permitted to engage the services of a third-
22 party servicer provided it complies with 20 U.S.C.A. § 1094(c) and 34 C.F.R. § 668.25.
23 This statute and regulation requires that an educational institution require, in its contract
24 with the servicer, compliance with all statutory provisions of or applicable to Title IV of
25 the HEA, all regulatory provisions prescribed under that statutory authority, and all
26 special arrangements, agreements, limitations, suspensions, and terminations entered
27 into under the authority of statutes applicable to Title IV of the HEA, including the
28 requirement to use any funds that the servicer administers under any Title IV, HEA

1 program and any interest or other earnings thereon solely for the purposes specified in
2 and in accordance with that program. An institution also is required to include in its
3 contract with the servicer, the servicer's agreement to report to the government
4 violations of the law. Essentially, the government prohibits eligible educational
5 institutions from contracting away to third parties the compliance obligations imposed
6 on the institutions.

7 ***C. Claims for Payment Under Title IV Programs***

8 24. After a school becomes eligible to receive Title IV funds by entering into
9 a PPA, claims for payment of those funds can be made in various ways. Under some
10 programs, students submit requests for funding directly to the DOE, or to the DOE with
11 the assistance of schools, while under other programs, students and schools jointly
12 submit requests for loans to private lenders which are guaranteed by state guaranty
13 agencies that are, in turn, insured by the DOE, which pays only in the event of a student
14 default.

15 25. With respect to all Title IV programs, the disbursement of federal funds
16 rests on required statements of eligibility made by schools that were necessary for
17 requests for payment to be considered.

18 26. By signing their PPAs, the Defendant Institutions each acknowledged
19 their responsibilities to act as fiduciaries, to comply with all Title IV program
20 requirements and to account for the federal funds entrusted to them.

21 ***D. Defendants' Participation in HEA Title IV Programs***

22 27. The Defendant Institutions sign and submit PPAs to the DOE, thereby
23 certifying their compliance with the incentive compensation ban, their future
24 compliance with all applicable statutory and regulatory provisions, and compliance with
25 the requirement that the institution will use funds it receives under any Title IV, HEA
26 program and any interest or other earnings thereon, solely for the purposes specified in
27 and in accordance with that program. The Defendant Institutions additionally certify
28 that with certain exceptions, they will not provide any commission, bonus, or other

1 incentive payment based directly or indirectly upon success in securing enrollments or
2 financial aid to any person or entity engaged in any student recruiting or admission
3 activities or in making decisions regarding the awarding of title IV, HEA program
4 funds. Thus, the Defendant Institutions certify that they will not engage in the payment
5 of incentive compensation based either on enrollments or financial aid.

6 28. The Defendant Institutions are currently operating under approved PPAs
7 and cannot, in fact, operate in the Title IV environment without a current PPA. As a
8 matter of law, each Defendant Institution is deemed to be operating under a PPA. See
9 20 USC §1094 and 34 CFR § 668.14. Each submits a variety of claims to the
10 government for Title IV funds that it knows to be false based upon its non-compliance
11 with the incentive compensation ban. During each academic year starting July 2010
12 through March 2013, the Defendant Institutions secured enrollments in their online
13 programs, and received Title IV funds for students enrolled in their online programs
14 marketed by HotChalk. Additionally, during each academic year starting July 2010
15 through March 2013, students obtained loans guaranteed by the government, or in some
16 cases, financial aid directly from the government.

17 ***E. The Role of HotChalk and its Enrollment Specialists***

18 29. HotChalk is a privately held, for-profit corporation. Its operations include
19 a call center in Phoenix, Arizona, through which it aggressively solicits customers; *i.e.*,
20 students, on behalf of the Defendant Institutions from a “boiler room” sales-floor
21 environment. HotChalk boasts that “Making the seven figure investment to grow your
22 programs online is risky — we eliminate the risk. From marketing and recruitment to
23 staffing the online Enrollment, Student Services and Adjunct Faculty departments, we
24 deliver risk-free results.” It further states that, “Our trained Enrollment Specialists will
25 faithfully represent your school and programs, identify potential students whose
26 academic goals and career aspirations align with your offerings, and deliver fully
27 documented applicants to you, per your specifications.”⁴

28 _____
⁴ <http://www.hotchalk.com/higher-education/services/> [accessed May 22, 2013]

1 30. HotChalk is not an educational institution but is a third-party servicer as
2 defined by 34 C.F.R. § 668.2 and hence, its activities are subject to 34 C.F.R. § 668.25,
3 which governs third party servicers. HotChalk also is not an accredited provider of
4 academic degrees, courses or texts and is not accredited in any way in regard to any
5 activities associated with a post-secondary educational institution except student
6 recruitment. Despite the fact that it is not an education institution but is merely a third-
7 party servicer, HotChalk openly touts that it provides a “unique, turnkey partnership
8 opportunity which removes the barriers to growing your degree programs online.”
9 HotChalk indeed provides what it describes as “all Adjunct Faculty” who it claims
10 “participate in weekly professional development calls and receive performance
11 feedback from their students via individual course assessments.”⁵ These “adjunct
12 faculty” personnel are actually employees of HotChalk’s Campbell, California office
13 who operate without oversight from or meaningful accountability by the Defendant
14 Institutions. In essence, when a student enrolls in a U. Mary or Concordia online
15 curriculum, s/he does so unwittingly through HotChalk, and receives his or her
16 “education” from HotChalk – not from U. Mary or Concordia. Defendant Institutions
17 have simply allowed HotChalk to use their name, accreditation status and program
18 participation.

19 31. As of May 30, 2013, HotChalk had enrolled 2,405 students into the online
20 M.Ed. it marketed and operated under the Concordia name as Concordia’s “turnkey”
21 servicer and its activities using the Concordia name are ongoing. As of April 17, 2013,
22 HotChalk had enrolled several hundred students into the online masters degree in
23 nursing it marketed and operated under the U. of Mary name as that school’s “turnkey”
24 servicer. The relationship between U. of Mary and HotChalk terminated on April 17,
25 2013. Each of the students enrolled by HotChalk in its online iterations of Concordia
26 and U. Mary programs represents a separate violation of the FCA.

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28
⁵ *Id.*

1 32. Defendants HotChalk, Fields, Cheshire and Zinselmeier were well aware
2 of the incentive compensation ban and spoke openly to HotChalk employees of
3 implementing “ways around” the ban. HotChalk’s Vice President of Enrollment,
4 Thomas Corbett, who conducted the pre-employment interview of Calisesi for the
5 position of enrollment specialist, was employed at University of Phoenix when that
6 company was a defendant in a qui tam suit and paid approximately \$75 million to settle
7 allegations of its violations of the incentive compensation ban.

8 33. Although both Defendant Institutions had existing online programs prior
9 to contracting with HotChalk, each allowed HotChalk to create its own, separate online
10 post-graduate degree programs together with the enrollment and financial aid operations
11 necessary to provide students for those programs. Using its clients’ names with the
12 clients’ knowledge and consent, HotChalk conducts the full array of operations or
13 functions in regard to post-secondary educational student recruitment, enrollment,
14 financial aid, admissions and/or other activities. HotChalk’s enrollment specialists
15 enroll students in HotChalk’s online degree programs which HotChalk marketed as
16 “Concordia University” or “University of Mary.”

17 34. Consistent with HotChalk’s “turnkey partnership opportunity,” each
18 Defendant Institution allowed HotChalk to set up its own versions of their websites,
19 albeit using different tuition rates in violation of 20 U.S.C. § 1094(c)(3)(A) and 34
20 C.F.R. § 668.73. HotChalk also touts this as one of its “services:” “Our Engineering
21 team will deliver seamless integration with your existing Learning Management
22 System, or assist in the selection and deployment of an industry-standard LMS.”⁶

23 35. In violation of 20 U.S.C. § 1094(c)(3)(A) and 34 C.F.R. § 668.73, with
24 respect to U. Mary, a student who enrolled directly with U. Mary in 2012 paid a fee of
25 \$450 per credit hour while a student enrolling in 2012 through
26 <http://online.umary.edu/admissions/tuition>⁷ – the U. Mary website operated by

27
28 ⁶ *Id.*

⁷ accessed December 30, 2012.

1 HotChalk – paid \$750 per credit hour. In either event, the money was paid to U. Mary
2 which in turn paid a portion of it in the form of incentive compensation to HotChalk. U.
3 Mary paid HotChalk for each student enrolled by HotChalk – a direct violation of the
4 incentive compensation ban by U. Mary.

5 36. In the case of Concordia, each student’s tuition money was paid to
6 Concordia which in turn paid a portion of it in the form of incentive compensation to
7 HotChalk. Concordia paid HotChalk for each student enrolled by HotChalk – a direct
8 violation of the incentive compensation ban by Concordia.

9 37. In violation of 20 U.S.C. § 1094(c)(3)(A) and 34 C.F.R. § 668.73, the
10 Defendant Institutions allow HotChalk to operate from its Phoenix call center to use
11 deceptively named email addresses for HotChalk’s enrollment specialists, including
12 Relators, with the domain names of “@education.cu-portland.edu” and
13 “@online.umary.edu.” It also deceptively provides its customers (students) with
14 Portland and Bismarck area codes (where the Defendant Institutions are located) to
15 reach the HotChalk enrollment specialists. The enrollment specialists are instructed not
16 to say they are in Phoenix and to lie about their physical location if asked. The
17 enrollment specialists also are instructed never to say they are employed by HotChalk or
18 even to identify HotChalk in any way. Instead, the enrollment specialists are to say they
19 are “with” U. Mary or “with” Concordia. Each enrollment specialists is assigned to
20 peddle degree programs for only one of these two institutions, presumably to avoid any
21 slip-ups.

22 38. Enrollment specialists, such as Relators, are Defendant Institutions’
23 “recruiters” and are responsible for recruiting applicants for admission, including
24 securing and managing new inquiries, achieving enrollment and start rate goals,
25 participating in appropriate recruitment and enrollment activities. An enrollment
26 specialist must stay in constant contact with potential students during the entire
27 recruitment and enrollment process.

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1 39. An enrollment specialists’ salary increases, number of stock options, and
2 award of other incentives are all based on HotChalk’s relentless and exclusive focus on
3 the number of new students an enrollment specialist is able to recruit, and thus, are in
4 direct violation of the Title IV incentive compensation ban.

5 40. To boost its enrollment numbers, HotChalk urges each ES to enroll
6 students before or without reviewing their transcripts to determine their academic
7 qualifications for the online programs. Both Toi and Calisesi were told that they were to
8 enroll students without having reviewed the prospective student’s transcript. Although
9 the Defendant Institutions publish academic requirements for incoming students, using
10 HotChalk, each accepts all potential students who complete an application and submit
11 an essay which HotChalk refers to as a “letter of intent.” The essay requirement is a
12 sham: even a single paragraph at an average eighth grader’s ability level will suffice
13 and it is extremely rare for any student to be denied enrollment based on the essay’s
14 content or quality or lack thereof of. In any event, HotChalk employees determine the
15 sufficiency of the “letter of intent” with the client Defendant Institution occasionally
16 intervening where the deficiency is particularly egregious.

17 41. On behalf of the Defendant Institutions, HotChalk enrollment specialists
18 approve all student applications regardless of the applicant’s college GPA. In one
19 instance, Toi enrolled a student whose initials are AHG because HotChalk supervisor,
20 Michael Dearing, literally got in Toi’s face and told her substantially the following
21 words: You don’t have any right to tell him he can’t get in – despite the fact that AHG
22 was not qualified or capable of performing in the Concordia program. AHG later
23 emailed another HotChalk ES that he did not feel capable to participate in the program.

24 42. One tactic HotChalk supervisors use to make it appear that a low GPA is
25 an issue is to artificially slow down the enrollment process. Even obviously deficient
26 students who submit woefully inadequate essays and credentials are admitted “by” the
27 Defendant Institutions because all “admissions” decisions are in fact made by HotChalk.
28

1 43. In the case of enrollment specialists for the U. Mary online program, the
2 stated minimum GPA was 2.75 on a 4.0 scale. However, if a prospect had a GPA below
3 2.75, they were simply asked to write a short statement explaining why their GPA was
4 below 2.75. In virtually no case where the student submitted the short explanation was
5 the minimum GPA requirement adhered to; i.e., students whose GPAs were below 2.75
6 were routinely enrolled. Additionally, if a student was sufficiently far enough along in
7 the enrollment process to enroll for the soonest available cohort, their enrollment was
8 pushed through for that cohort.

9 44. During their recruitment pitch, the enrollment specialists are instructed to
10 fraudulently misinform potential students that they are “at” or “with” U. Mary or
11 Concordia (depending on which school the enrollment specialist has been assigned to
12 pitch for). At the end of April or early May 2011, Toi was told by her then Director of
13 Admissions, James Cheshire, to tell a prospective student that she was in Portland,
14 Oregon.

15 45. Enrollment specialists are instructed to create a false sense of urgency on
16 the part of prospective students. For example, enrollment specialists are required to tell
17 prospective students that if they “sign up” now for “this cohort” they will receive a free
18 iPad and textbooks. The enrollment specialists were further instructed, in printed
19 instructions, not to call the iPad and textbook give-away “free” but to say it is
20 ‘included’ and not to refer to this as a “promotion” but as a “pilot program.” This
21 activity directly violates 34 C.F.R. § 668.14(b)(22)(iii)(A) which defines an “incentive
22 payment” as “a sum of money or something of value.”

23 46. When a student agrees to enroll, a Las Vegas style announcement is
24 flashed on video monitors on the sales floor that comprises HotChalk’s Phoenix
25 premises. One image that is flashed on the video screens whenever there is a new
26 enrollment is that of a one hundred dollar bill with colorful animations.

27 47. Provided that each ES meets his or her sales goal, s/he is retained and
28 given increased pay. When a prospective student tells the ES that s/he wants to delay

1 her/his start date, the ES is required to pressure the prospect to start classes even if there
2 is no “course” and no instructor. As stated previously, the instructors are actually
3 HotChalk employees – not faculty of the client Defendant Institutions. For example, if
4 a student has enrolled and HotChalk has no course ready, the ES is required to falsely
5 tell the students that the course start date is being “moved back.”

6 48. During the week before a cohort, called new start period or “cycle,”
7 enrollment specialists will receive approximately five confirmation reports per day
8 updating them as to whether their students have confirmed enrollment. If an ES’ student
9 has not confirmed enrollment, the ES is required to remain in contact with the student
10 via telephone calls and e-mails urging the student to confirm enrollment, even if a
11 student expresses doubts about doing so. After a student is confirmed as a “start”,
12 HotChalk is compensated by the Defendant Institutions and the ES earns credit for the
13 enrollment for purposes of salary increase.

14 49. Enrollment specialists are required to make sure the students complete all
15 of their loan applications and submit them to the school and the federal government. To
16 do this, enrollment specialists follow a phone script provided by HotChalk (referred to
17 at HotChalk as “the rubric”). Using the rubric, each ES is required to use high pressure
18 sales tactics to “qualify” the student for financial aid by asking canned questions.
19 Enrollment specialists are required to direct students to the federal financial aid website
20 (FAFSA) and instruct them to fill it out and enter Concordia or U. Mary’s school code.

21 50. Once a student’s financial aid forms are complete, a financial aid officer
22 calculates the student’s financial aid plan based on a DOE formula and informs the
23 student. The student can accept or reject the financial aid plan. If a student rejects a
24 financial aid plan, often because the student does not qualify for enough financial aid to
25 cover the entire amount of tuition, it is the ES’ job to convince the student to accept the
26 financial aid package and enroll by misleadingly offering “scholarships” that in reality
27 are nothing more than a HotChalk “discount” of the tuition prices set by HotChalk in
28 the first place. This is a misrepresentation concerning the nature of the Defendant

1 Institution's financial charges in violation of 20 USC§ 1094(c)(3)(A) and 34 CFR §
2 668.73.

3 51. Enrollment specialists are instructed to offer "scholarships" for several
4 reasons: (1) if the student is considering applying at another institution; (2) if the student
5 complains that the tuition is too high; (3) if the student wants to wait for another cohort
6 because of personal reasons; or (4) if the students has a shortfall of financial aid
7 coverage. Enrollment specialists are instructed to mislead students by telling them that
8 the "scholarships" are only available if the student signs up now for the next cohort.
9 However, in reality, "scholarships" are offered at any time.

10 52. Students are not allowed to go part-time. Students are told that they must
11 adhere to the one class every five weeks schedule and cannot for any reason detour from
12 that set schedule because to do so will affect their financial aid period. If a student has
13 plans, such as surgery or having a baby, enrollment specialists are instructed to tell the
14 student that he or she will not be able to pay for school because he or she is disrupting
15 his or her financial aid year. Although, in reality, a student would be allowed to return
16 to school, enrollment specialists are instructed to advise students that it would not be
17 likely.

18 53. The "Study Buddy Scholarship" is awarded when a student refers
19 someone who also enrolls and begins in the same cohort. Each of the students is given a
20 \$2,000 "scholarship". In reality, this is not a scholarship, but merely another gimmick to
21 get students to refer prospects. These tactics of falsely and deceptively offering
22 "scholarships" or grants to make up for any shortfall between the course charge and
23 available financial aid is a substantial misrepresentation concerning offers of
24 scholarships to pay all or part of a course charge in violation of 20 U.S.C. 1094(c)(3)(A)
25 and 34 C.F.R. § 668.73.

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27 . . .

28 . . .

1 ***F. Defendants’ False Claims, Fraudulent Conduct and Violations of the***
2 ***Incentive Compensation Ban***

3 54. Since approximately July 2010 and continuing through April 17, 2013 in
4 the case of U. of Mary and at least May 2013 in the case of Concordia, HotChalk, acting
5 on behalf of the Defendant Institutions, compensated enrollment specialists, including
6 Relators, and their call-center supervisors based upon the number of new students
7 enrolled. In direct violation of the ban on incentive compensation, Defendants have a
8 “boiler room”-style sales culture, in which they not only pay incentive compensation,
9 but they make the recruitment of students to their schools the sole focus of their
10 compensation regime. Failure to enroll sufficient numbers of students results in
11 termination. HotChalk fosters an environment of fear of losing one’s job, tension and
12 pressure to meet unreasonable sales goals of new student enrollments (these sales goals
13 are referred to as the ES’ “ramp rate”) Defendant HotChalk knowingly violates HEA,
14 Title IV regulations. In so doing, HotChalk breaks the promises made by its principals –
15 U. Mary and Concordia – in the PPAs and the representations made by U. Mary and
16 Concordia in connection with the annual compliance audits.

17 55. The sales-culture of HotChalk’s operation is typified by management’s
18 repeated emphasis that the salary of each ES is tied to the number of students s/he
19 enrolls. The Vice President of Operations, Mark Zinselmeier, and Director of
20 Enrollment, James Cheshire, have stated openly substantially the following words:
21 “Make no mistake, we are in sales. This is a sales floor. This is what you have to get.”
22 HotChalk supervisor, Dearing, told Toi that she needed to stop acting like a “social
23 worker.” HotChalk managers have said to the enrollment specialists substantially the
24 following words: “Imagine how much money you will make and how “wealthy” you
25 will become from your HotChalk stock options.” This statement is not true. In direct
26 contradiction, enrollment specialists are instructed to explain to prospective students
27 that they are “with” a non-profit institution; thus, they do not answer to stockholders.

28 ***1. “Overtime”***

1 56. As a matter of corporate practice, enrollment specialists have been
2 required to meet an enrollment quota, depending on how long they have been employed
3 at HotChalk. Those enrollment specialists, including each of the relators, who met their
4 quotas received an initial raise of 10% of their starting base salary. Then, in
5 approximately the fall of 2012, each ES, was informed by HotChalk managers that they
6 had been transformed into “hourly” wage employees so that they could have the
7 opportunity to earn more money if they met or exceeded their quotas of new
8 enrollments.

9 57. There was so much buzz among the management staff the day of the
10 “overtime” announcement. Toi recalls Zinselmeier stating substantially the following
11 words: “Edward Fields wanted a way for us to be able to put more money directly in
12 enrollment specialists’ pockets for getting more enrollments and we have found it.”

13 58. Those enrollment specialists, including each of the Relators, who met
14 their quotas and without regard to any other factors, were in fact granted “incentive”
15 compensation in the form of “overtime hours” for the next five week cycle during which
16 they would receive one and a half times their presumed hourly rate of pay. Thus,
17 “overtime” compensation was doled out solely on the basis of the number of new
18 students which each ES, including the Relators, enrolled to incentivize the enrollment
19 specialists, including the Relators, to enroll more students.

20 59. Those employees who failed to meet their quotas for any five week cycle
21 were told they were not eligible for “overtime.” Similarly, those employees who met
22 their quota for a given five week cycle, but fell below the quota’s minimum because too
23 many students failed to stay in the program for more than eight days, were told they
24 were not eligible for “overtime.”

25 60. On one occasion, Toi’s manager, Dearing, stated to Toi substantially the
26 following words: “Can you believe the nerve of that [expletive] to ask me for overtime
27 after four of her [eight] new enrollments dropped out? No one is taking that kind of
28 money from me and getting away from it.” On another occasion, Dearing told Toi that

1 she was not eligible for overtime because she had not met her quota of new enrollments
2 for the five week cycle.

3 61. HotChalk managers knew that the overtime scheme was an impermissible
4 violation of the incentive compensation ban: Cheshire and Zinselmeier, as well as
5 Dearing and Ken Cook excitedly told the enrollment specialists, including the Relators,
6 that the overtime program was being implemented to compensate new student
7 enrollments. Zinselmeier went so far as to say that it was to “get around” the incentive
8 compensation ban. In practice and as implemented, “overtime” pay is determined by
9 HotChalk solely on the basis of whether the number of students each ES enrolls meets
10 or exceeds his or her quota.

11 62. Congress, the DOE and the Defendant Institutions’ PPAs ban incentive
12 payments except the “payment of fixed compensation, such as a fixed annual salary or a
13 **fixed hourly wage**, as long as that compensation is not adjusted up or down more than
14 twice during any twelve month period, and any adjustment is not based solely on the
15 number of students recruited, admitted, enrolled, or awarded financial aid.”

16 63. Selectively granted overtime violates this ban in three ways: First, it is
17 not a “fixed hourly wage” but is instead a variable hourly wage of one and a half times
18 the “normal” hourly rate of the ES. Second, it was an adjustment that occurred “more
19 than twice during any twelve month period” because it was granted or denied at the end
20 of each five week enrollment cycle based on the number of students enrolled that cycle.
21 Third, whether an ES is allowed to work overtime at one and a half times his or her
22 “normal” hourly rate is determined solely on the number of students enrolled by each
23 particular ES, including the Relators, and on no other basis.

24 2. *“Core Values”*

25 64. “Core values” (sometimes referred to by HotChalk’s managers as “core
26 competencies”) is merely a sham performance rating system. In spring or summer of
27 2012, Zinselmeier addressed the ES team. Toi, Bolton and Calisesi attended.
28 Zinselmeier stated that that because of what he referred to as the [qui tam] lawsuit

1 against the University of Phoenix, HotChalk could no longer openly compensate
2 enrollment specialists for enrollments, and HotChalk would be changing its review
3 process. He further stated that reviews would be based purely on “soft skills.” This is
4 the “core values” reviews. Zinselmeier said substantially the following words: “I know
5 there are some people here who were going to get graduate bonuses and we can’t do that
6 anymore. Since we cannot give bonuses, the core values are a way to reward you for
7 your hard work.” Each ES, including Relators, was required sign an acknowledgment
8 to this effect and the team was told that the document would go into the personnel file.
9 Zinselmeier made clear to the enrollment specialists that this was just for what he called
10 “CYA” purposes.

11 65. Subsequently, HotChalk implemented a list of “core values” – supposed
12 quality factors – for use in evaluating the performance of each ES. The “core
13 competencies” are: “Adaptability/Flexibility”, “Be Happy, No Drama”,
14 “Communication”, “Results Focus” and “Sense of Urgency”. From the time of the
15 implementation of these “core values” and continuously thereafter, HotChalk
16 management personnel has openly stated to each Relator and every other ES that so
17 long as the minimum number of student enrollments is achieved, the “core values” do
18 not matter and that they are nothing more than an effort to disguise the fact that
19 performance and compensation are measured exclusively by reference to student
20 enrollment. For example, to achieve the minimum core competencies, the enrollment
21 specialists do not even have to meet basic job requirements such as being at work on
22 time. Instead and as openly stated by management, whether each ES, including the
23 Relators, receive the minimum core values rating is based solely on whether the ES
24 meets his or her quota of new enrollments. HotChalk management makes it clear to the
25 enrollment specialists that it is impossible to achieve successful ratings on the “core
26 values” without meeting the ES’ ramp rate. Thus, in practice and as implemented, the
27 “core values” of each ES are determined by HotChalk solely on the basis of the number
28 of students each enrollment specialist enrolls.

1 **3. “Ramp Rate”**

2 66. On or about January 7, 2011, the enrollment specialists received a
3 document titled “Ramp Rate Policy.” The document explains HotChalk’s definition of
4 ramp rate, the number of students each ES is expected to enroll, the penalties for
5 missing a goal, and the incentive for meeting a goal. The incentive explained in the
6 January 7, 2011 “Ramp Rate Policy” was that enrollment specialists would receive \$100
7 for every student that graduated who they enrolled. Enrollment specialists were
8 required to follow up with students to make sure they stay in the program into which
9 they enroll. This “policy” as implemented is an intentional violation of the incentive
10 compensation ban.

11 67. HotChalk’s emphasis of, and reliance on, new student enrollment as the
12 exclusive basis upon which it determines an ES’ compensation is demonstrated by the
13 extreme emphasis it places on training its enrollment specialists to “sell” enrollments.
14 HotChalk meticulously tracks each ES’ recruitment activities on a daily, weekly,
15 monthly, quarterly and annual basis. Each ES’ enrollment activity is then included in
16 reports which are disseminated throughout HotChalk at the indicated intervals. These
17 reports contain only quantitative information, and focus exclusively on the applications
18 and enrollments achieved. None of these reports, which HotChalk uses to manage,
19 evaluate, and compensate its enrollment specialists, contains any information regarding
20 any “core competencies.” The “core competencies” performance metric is nothing but a
21 sham which HotChalk intentionally set up and uses to disguise its incentive
22 compensation scheme.

23 **4. Initial Interviews by HotChalk**

24 68. As explained by HotChalk to each Relator during the interview and hiring
25 process, each ES’ compensation is based on, and only on, the number of new students
26 recruited. During Toi’s initial interview for her ES position with HotChalk, she asked
27 what she had to do to earn a higher salary than what HotChalk was initially offering.
28 She also asked what the criteria was for her future compensation and when she would

1 be given her first review. This occurred at an in-person interview with HotChalk's then
2 Director of Admissions, Cheshire and HotChalk's Manager of Human Resources and
3 Recruiting, Wanda DeLoatche, in the last week of November 2011 and was followed by
4 a telephone offer from DeLoatche of \$50,000. At the interview, Toi presented Cheshire
5 with an email she had from her prior employment at University of Phoenix. The email
6 showed that she had a relatively good "lead conversion" rate. Based on the email, Toi
7 said she wanted \$55,000. Cheshire said that if she performed at HotChalk as well as she
8 performed for University of Phoenix, HotChalk would give her a \$5,000 increase in
9 ninety days and at least a \$5,000 increase every year thereafter. Cheshire told Toi not
10 share that ninety day review information with her training class peers because HotChalk
11 does not normally give salary increases at ninety days. Toi responded that she did not
12 know what she would have to work with at HotChalk and asked whether she would be
13 provided with "the tools" she would need to hit five enrollments per cycle. Cheshire
14 said that there are people on the sales floor that are doing that well and they are well
15 compensated. Toi met her sales quota and was given the \$5,000 increase in June 2012
16 – five months after her employment began. When combined with subsequent overtime
17 pay, this violates the incentive compensation ban's prohibition on more than two salary
18 increases within a year.⁸

19 69. Relator Bolton had similar conversations with her interviewers. After she
20 was hired and received her first review, she realized that the reviews were not
21 meaningful and that if she failed to achieve her quota of five new enrollments per
22 month, she would receive "reprimands" followed by termination. If she met her sales
23 quota, she would receive a good review on the "core competencies". If she did not meet
24 the quota, she would be given a reprimand and receive a negative review on "core
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27 ⁸ 34 C.F.R. § 668.14(b)(22)(ii)(A)(2010).
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1 competencies”. The “core competencies” reviews are merely a smokescreen to disguise
2 that fact that HotChalk engages in incentive compensation.

3 70. HotChalk offered Relator Calisesi a starting salary of \$42,000 plus stock
4 options. Using an employment recruiter, John Murphy, HotChalk informed Calisesi of
5 her salary and stock options. Murphy set up an in-person interview with HotChalk’s
6 director of enrollment, Tom Corbett. During the interview, Corbett reiterated the salary
7 and benefits as explained by Murphy. Following this, Calisesi was interviewed over the
8 phone by HotChalk’s Vice President of Operations, Mark Zinselmeier. Neither
9 Murphy, Corbett nor Zinselmeier asked any questions or made the slightest comment
10 about Calisesi’s qualifications to work in post-graduate recruiting and enrollment.
11 Instead, their sole focus was on HotChalk’s sales culture. Zinselmeier, for example,
12 said he only wanted to make sure Calisesi would fit into HotChalk’s “culture” by asking
13 her what kind of culture she would like to work in. Calisesi responded that she liked an
14 environment of integrity where she could be part of a cohesive team without being
15 micromanaged.

16 71. As soon as she started work at HotChalk, it was made clear to Calisesi
17 that her compensation was purely a function of her sales performance. She was told, for
18 instance, that if she failed to meet her quota of new enrollees, she would be terminated.
19 She was given two weeks of training before going onto the sales floor. She began on
20 November 25, 2010, and was told that her “ramp rate” was to get one enrollment in her
21 first two weeks after training. When she failed to get one enrollment within her first
22 two weeks, Corbett turned on her and became hostile. Calisesi’s Assistant Director of
23 Admissions at that time, James Cheshire, told her that she was ahead of the “curve” in
24 training but now she had fallen below the “curve”.

25 72. Corbett, the former University of Phoenix employee, told Calisesi that
26 after six months, she would have a salary increase eligibility review. At the end of her
27 first six months, Zinselmeier called Calisesi into his office and informed her that her
28 salary was being raised to \$50,000 per year. She was then told it would go to \$60,000

1 per annum if she continued to meet her “ramp rate.” This is an intentional and direct
2 violation of the prohibition on more than two salary increases within a year.
3 Alternatively, when combined with HotChalk’s overtime pay policy, it violates the
4 prohibition on more than two salary increases within a year.⁹

5 73. Each Relator was told at the commencement of her employment at
6 HotChalk that she would receive additional stock in the company if she excelled at
7 enrollments. Calisesi did receive additional stock on July 26, 2012 from Zinselmeier in
8 the presence of DeLoatche. This is an intentional and direct violation of the prohibition
9 on more than two salary increases within a year.

10 74. On one occasion, Calisesi was present for a sales meeting with
11 Zinselmeier and DeLoatche in which they told the enrollment specialists that they
12 would be allowed to get up to a twelve percent increase if they got a five rating on the
13 “core values.” Zinselmeier and DeLoatche told the enrollment specialists that this was a
14 “CYA” tactic to disguise the fact that this was a way for paying enrollment specialists
15 based on the number of students enrolled.

16 5. *Incentives*

17 75. In addition to salary, HotChalk recognizes *every* enrollment specialist in
18 the form of all-expenses paid trips to Las Vegas, Nevada, paid lavish dinners at
19 expensive restaurants with defendant Fields, HotChalk’s CEO, free tickets to MLB
20 games and the like.

21 76. During the year, HotChalk managers send mass e-mails to the enrollment
22 specialists on a weekly basis detailing the top performers for the previous week. The
23 results and the rankings consist only of the number of appointments, interviews, and
24 enrollments each ES secured.

25 77. On one occasion, the ES sales team received free MLB tickets for the
26 team obtaining 200 enrollments.

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⁹ *Id.*

1 78. On another occasion at the 2011 Christmas Party, HotChalk CEO,
2 Defendant Fields, announced that the HotChalk board was really pleased with the sales
3 numbers being delivered by the enrollment specialists. He further stated that these types
4 of numbers would enable HotChalk to “go public”. He exhorted the employees to keep
5 up the good work. He then stated that because the sales team had met its quota, he
6 wanted to reward them for their successes of new enrollments with a trip to Las Vegas.
7 The trip to Las Vegas was for the ES and his or her spouse, and every ES and his or her
8 spouse was given a fifty dollar gift card or cash to gamble while on the trip.

9 79. In early 2012, in follow-up to Fields’ comment about taking the
10 enrollment specialists to Las Vegas, HotChalk management said that new hires would
11 not be allowed to go to the Las Vegas trip. Toi expressed her disappointment in this
12 regard to Cheshire because she was excited that Bolton would also be going on the trip.
13 Cheshire responded to Toi that new enrollment specialists were not invited because they
14 have not enrolled any students.

15 80. On another occasion, because the sales team met its overall quota,
16 HotChalk had Hummer limousines pick up all the enrollment specialists and other
17 HotChalk employees. The limousines took the entire team to lunch and presented all
18 with a “gift bag.” On another occasion, Starbucks cards were passed out during phone
19 “blitzes” by HotChalk supervisors to enrollment specialists who had the “most dials”
20 and “most talk time.” Additionally, enrollment specialists are routinely given free movie
21 tickets, chair massages and lunches all based on their performance of signing up new
22 student enrollments. Each of these gifts and other incentives violates the incentive
23 compensation ban.

24 81. The top-recruiting ES for certain time periods or in particular offices wins
25 bonuses, including but not limited to, Godiva Chocolate gift baskets, movie tickets,
26 MLB baseball tickets, amusement park tickets, various restaurant gift cards, and free
27 lunches and dinners. At other times, enrollment specialists with a large number of new
28 students will be given permission to leave work early yet still be paid for an entire work

1 day. Each of these gifts and other incentives violates the incentive compensation ban
2 because the enrollment specialists are rewarded by HotChalk directly and indirectly on
3 the number of students they enroll.

4 82. By regularly and repeatedly promoting the outings, dinners and trips, each
5 ES is incentivized based on the number of students they enroll. The trips are not
6 designed to educate or improve the skills of the enrollment specialists, at least not in any
7 way that complies with the incentive compensation ban. Instead, these are simply
8 incentive prizes used to spur enrollment specialists to compete against one another to
9 achieve the most enrollments in the high pressure sales environment of HotChalk.

10 83. In connection with paying incentives based directly or indirectly on the
11 number of students enrolled, HotChalk acted in concert with Defendant Institutions.
12 Defendant Institutions were aware of HotChalk's policy and practice of incentive
13 compensation tied directly or indirectly to the number of students enrolled.
14 Additionally, Defendant Institutions' compensation to HotChalk was based directly or
15 indirectly on the number of students enrolled by HotChalk enrollment specialists.

16 84. U. Mary conspired with HotChalk to violate the incentive compensation
17 ban. U. Mary did this by agreeing, expressly or impliedly, with HotChalk for HotChalk
18 enrollment specialists' compensation to be tied directly or indirectly to the number of
19 students enrolled in the online U. Mary program.

20 85. Concordia conspired with HotChalk to violate the incentive compensation
21 ban. Concordia did this by agreeing, expressly or impliedly, with HotChalk for
22 HotChalk enrollment specialists' compensation to be tied directly or indirectly to the
23 number of students enrolled in the online Concordia programs.

24 **6. Reprimands, or being Put on "Plan"**

25 86. In addition to rewarding enrollment specialists who meet their sales goal
26 ("ramp rate"), HotChalk closely monitors each ES for failure to meet his or her sales
27 goal. Enrollment specialists are terminated for failing to achieve an acceptable number
28 of new enrollments, without regard to the so-called "core values." Also, as alleged

1 above, HotChalk makes it clear to the enrollment specialists that it is impossible to
2 achieve successful ratings on the “core values” without meeting the enrollment
3 specialists’ ramp rate.

4 87. If an ES fails to meet her individual enrollment goal, HotChalk issues a
5 written warning of disciplinary action. This is known as being put on “plan.” The ES is
6 given a specific period of time within which to achieve her “ramp rate” before being
7 subject to further “disciplinary action.” If the ramp rate is met, the ES will not be
8 terminated or given further “disciplinary action.”

9 88. Defendants are liable to the United States under the FCA because of their
10 use of false statements to obtain HEA, Title IV loan funds. Specifically, in requesting
11 and receiving millions of dollars annually, Defendant Institutions falsely represented
12 that they were in compliance with the HEA’s prohibitions against using incentive
13 payments for enrollments, a key pre-condition to the receipt of any HEA Title IV funds.

14 89. The Defendant Institutions falsely certified that they were in compliance
15 with the ban on incentive compensation for enrollments and without such certifications
16 of compliance, Defendant Institutions would not have been permitted to continue to
17 participate in Title IV HEA activities nor to receive Title IV funds from the
18 government. In submitting PPAs which falsely certified compliance, each Defendant
19 Institution knew the PPAs were false and acted knowingly or in reckless disregard of
20 the truth or falsity of the information provided to the United States. The Defendant
21 Institutions thereby fraudulently caused the United States to pay Title IV HEA funds to
22 themselves by false and fraudulent PPAs, compliance audit and financial statement
23 audit opinions. Defendant Institutions certified to the DOE their compliance with the
24 ban on incentive compensation in order to collect federal funds for which they were
25 ineligible, in violation of 31 U.S.C. § 3729(a)(1)(A), (B), (C), (G).

26 90. HotChalk violated the law by knowingly receiving incentive
27 compensation from the Defendant Institutions – both Concordia and U. Mary – for each
28 student its enrollment specialists enrolled, and by knowingly paying incentive

1 compensation to its enrollment specialists in the form of salary increases, “overtime”
2 compensation, per-enrollment bonuses, prizes, gifts and other incentives.

3 **V. COUNT I – THE FALSE CLAIMS ACT, 31 §§ U.S.C. 3729(a)(I),(a)(2) and**
4 **3732 (b)**

5 91. Plaintiffs/Relators re-allege and incorporate by reference the allegations
6 made in the preceding paragraphs of this Complaint as though fully set forth herein.

7 92. This is a claim for treble damages under the False Claims Act, 31 U.S.C.
8 §§ 3729, *et seq.* as amended.

9 93. Through the acts described above, Defendants knowingly submitted or
10 caused to be submitted to the United States government false or fraudulent claims for
11 student financial aid. The United States, unaware of the falsity, paid the Defendants for
12 claims that would otherwise not have been allowed.

13 94. By reason of the Defendants’ fraudulent acts, the United States
14 government has been damaged and continues to be damaged in the amount of millions
15 of dollars.

16 **WHEREFORE**, Plaintiffs/Relators Regina Calisesi, Toi, and Jeffri Bolton pray
17 for judgment against Defendants HotChalk, Inc., Concordia University, University of
18 Mary, Edward Fields, James Cheshire and Mark Zinselmeier and that this Court grant
19 them all monetary and equitable relief available under each statute, including but not
20 limited to actual damages, trebled damages, statutory penalties, prejudgment and
21 postjudgment interest and attorneys’ fees and costs. In addition, Plaintiffs/Relators
22 request such other and further relief to which they are entitled.

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Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs/Relators hereby demand trial by jury.

Dated this 6th day of June, 2013.

Respectfully Submitted,

POLSINELLI PC

/s/ Carlyle W. Hall, III

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