UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FORD GERALD DAU, on Behalf of Himself and All Others Similarly Situated,

Plaintiff,

-against-

FLATIRON SCHOOL LLC,

Defendant.

No.: _____-cv-_____

(Formerly Index No. 156492/2020 in the Supreme Court of the State of New York, New York County)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendant Flatiron School LLC ("Flatiron"), by its undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, and the accompanying Declaration of James Leslie, dated September 28, 2020 (the "Leslie Decl."), and with full reservation of defenses, hereby removes this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York, and as grounds for removal states as follows:

1. On August 17, 2020, Plaintiff Ford Gerald Dau ("Plaintiff") filed a Verified Complaint ("Complaint" or "Compl.") in the Supreme Court of the State of New York, New York County, for claims relating to Plaintiff's enrollment in Flatiron's UX/UI design program (the "Program"). A true and correct copy of the Summons and Complaint, along with all other process and pleadings filed in the Supreme Court of the State of New York, New York County, is attached hereto as **Exhibit A**.

2. Plaintiff served the Complaint on Flatiron via the New York Department of State, Division of Corporations on August 27, 2020.

3. Plaintiff asserts claims for: (1) deceptive acts and practices under New York General Business Law ("GBL") § 349; (2) fraud; (3) breach of contract; and (4) breach of a settlement agreement between Flatiron and the State of New York. *See generally* Compl. ¶¶ 63-95. Plaintiff asserts these claims pursuant to Article 9 of the CPLR, on behalf of the class of "[a]ll persons who enrolled or graduated from the UX/UI program offered by Flatiron from 2018 to 2020" (the "Class"). *Id.* ¶ 44. Plaintiff asserts that as a result of Flatiron's alleged unlawful activity, Plaintiff and the Class purportedly suffered damages including "lost earnings," as well as "lost wages, tuition and costs paid in association with enrollment in the UX/UI program, legal costs, attorney's fees," and, for the fraud and breach of contract claims, "punitive damages."[1] *Id.* ¶¶ 71-72, 79-80, 88, 94-95.

I. Removal Under CAFA

4. The Class Action Fairness Act of 2005 ("CAFA") extends federal diversity jurisdiction to class actions if (a) there are at least 100 members of the proposed plaintiff class; (b) the aggregate amount in controversy exceeds $5 million; and (c) any member of the class of plaintiffs is a citizen of a state different from any defendant. *See* 28 U.S.C. §§ 1332(d)(1)(B), (d)(2), d(5)(B), (d)(6). Each of these requirements is satisfied here.

A. This Case is a Class Action

5. CAFA defines a "class action" as "any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute of judicial procedure authorizing an

[1] This Notice of Removal addresses the nature and amount of damages placed at issue by the Complaint. References to purported specific damage amounts are made solely to establish the amount in controversy for CAFA purposes. *See, e.g., Lewis v. Verizon Comm'cns.*, 627 F.3d 395, 400 (9th Cir. 2010) ("The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability. To establish the jurisdictional amount, [the defendant] need not concede liability for the entire amount[.]") (internal citations omitted). Flatiron maintains that each of Plaintiff's claims is meritless and that Flatiron is not liable to Plaintiff or the putative class members. Flatiron specifically denies that Plaintiff or the putative class members have suffered any damage due to an act or omission by Flatiron. No statement or reference contained herein or in the Leslie Declaration shall constitute an admission of liability or a suggestion that Plaintiff or the putative class members will or could actually recover these damages in the action.

action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B).

6. Plaintiff seeks to bring this case as a class action under Section 9 of the CPLR, New York's statute authorizing a representative party to bring suit on behalf of a class. *See* Compl. ¶ 44; *compare* N.Y. CPLR § 901 *with* Fed. R. Civ. P. 23. Accordingly, this case qualifies as a class action under CAFA.

B. The Putative Class Consists of More Than 100 Members

7. Plaintiff "estimate[s] that the number of students [in the Class] is likely to be between 50 to 200." Compl. ¶ 45.

8. In fact, the Class—defined by Plaintiff as "[a]ll persons who enrolled or graduated from the UX/UI program offered by Flatiron from 2018 to 2020," *see* Compl. ¶ 44—numbers at least 716 students. *See* Leslie Decl. ¶ 8. This includes both on-campus students and online students in the Program. *Id.* ¶ 9.

9. A defendant's sworn testimony as to the actual number of class members is entitled to greater weight than Plaintiff's "estimate." *See Musiello v. CBS Corp.*, 2020 WL 3034793, at *1-2 (S.D.N.Y. June 5, 2020) (crediting defendants' proffered evidence of number of class members over plaintiff's "pure conjecture").

10. As a result, CAFA's minimum requirement of 100 members is easily satisfied.

C. The Aggregate Amount in Controversy Exceeds $5 Million

11. For a case to be removable under CAFA, the amount in controversy must exceed $5 million, exclusive of interests and costs. 28 U.S.C. §§ 1332(d)(2), (d)(6). To determine whether the jurisdictional amount is satisfied, the "claims of the individual class members shall be aggregated," including all "persons (named or unnamed) who fall within the definition of the

proposed . . . class." *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013) (emphasis in original) (quoting 28 U.S.C. § 1332(d)). The preponderance of the evidence demonstrates that the $5 million threshold is met here.

12. Plaintiff alleges that the Class has suffered damages as a result of Flatiron's supposedly-deceptive marketing materials circulated between 2018 and 2020. *See e.g.*, Compl. ¶¶ 8, 26, 43, 48, 58-59. Although the Complaint does not a allege a specific amount in controversy, it seeks "actual damages" including "lost wages, tuition and costs paid in association with enrollment in the UX/UI program, punitive damages, legal costs, [and] attorney's fees." *See, e.g., id.* ¶ 80; *see also id*. at p. 17 (demanding judgment for "[d]amages, including actual damages to be determined at trial"). Plaintiff alleges that each member of the Class paid $15,000 in tuition to Flatiron to enroll in the Program, and that he personally lost "6 months of paid employment" while enrolled in the Program. *Id.* ¶¶ 50, 58-59.

13. Because the Complaint fails to allege a specific damages amount, the Court may look "outside [the] pleadings to other evidence in the record," including "documents appended to a notice of removal . . . that convey information essential to the court's jurisdictional analysis." *Henry v. Warner Music Grp. Corp.*, 2014 WL 1224575, at *3 (S.D.N.Y. Mar. 24, 2014) (internal citation omitted, and quoting *Romano v. Kazacos*, 609 F.3d 512, 520 (2d Cir. 2010)).

1. Tuition Payments

14. The Class seeks a refund of its tuition that it paid to enroll in the Program, which Plaintiff alleges to be $15,000. Compl. ¶ 58. Plaintiff is correct that tuition for the Program for online students is $15,000, but tuition for on-campus students in the Program varies depending on the location: tuition costs $17,000 for students at the New York and San Francisco campuses, and $15,800 for students at other campuses. Leslie Decl. ¶ 13.

15. Between 2018 and 2020, there were 244 students who enrolled in or graduated from the online Program, and 472 students who enrolled in or graduated from the on-campus Program. *Id.* ¶ 9. Of these on-campus students, 318 took their class at the New York or San Francisco campuses. *Id.*

16. Flatiron, however, offers financial aid and alternative financing options for students. *Id.* ¶ 15. This assistance can be provided in the form of reduced tuition, special arrangements with third-party loan providers, and/or through deferred payment plans or income share agreements. *Id.*

17. Between 2018 and 2020, Flatiron has collected $2,925,630 in direct tuition payments from students in the Program, including a student's initial deposit, if any. *Id.* ¶ 16. In addition, for students in the Program who pay their tuition through a deferred payment arrangement such as an income share agreement, an additional maximum aggregate amount of $3,997,658 may be owed to Flatiron. *Id.*

18. In total, Flatiron estimates that the amount of Class damages in the form of tuition payments for students in the Program—including fees already paid or owed in the future through deferred payment arrangements—is a maximum of $6,923,288. *Id.* ¶ 16.

2. "Costs and Expenses"

19. In addition to tuition, Plaintiff alleges that the Class' damages include the unspecified category of "costs and expenses associated" with the Program. *See, e.g.*, Compl. ¶¶ 68, 72.

20. Flatiron charges one mandatory administrative "cost" for each enrolled student: a software package they must purchase from a third-party vendor, which costs approximately

$120. Leslie Decl. ¶ 17. This software must be purchased by all online and on-campus students in the Program. *Id.*

21. When aggregated among the 716 online and on-campus students, the "costs and expenses" damages sought is approximately $85,920.

3. Lost Wages

22. Plaintiff alleges that he and an unspecified number of members of the Class suffered damages arising from "lost wages for the time Plaintiff and other class members were unable to work while completing the Flatiron program." Compl. ¶ 2. In Plaintiff's case, he alleges he lost approximately $17,500. *Id.* ¶¶ 50, 59.

23. Flatiron offers both full time and "part time" programs for its students. Leslie Decl. ¶ 10. All on-campus students must enroll in the full time program, and online students have a choice between the two options. *Id.* ¶ 7. Between 2018 and 2020, there were 538 students who were enrolled in or graduated from the full-time Program. *Id.* ¶ 10.

24. It is unclear from the face of the Complaint whether all members of the Class will claim "lost wages" damages, or only those who enrolled in the Program on a full time basis, as Plaintiff was. *Id.* ¶ 59 ("Other students who pursued the same program were similarly unable to maintain full time work during the period when they attended classes on a full time basis."). Accepting Plaintiff's allegations as true that he is a representative member of the Class, *see* Compl. ¶ 47, these students seek an average of approximately $17,500. *Id.* ¶ 59.

25. Adopting a conservative approach that assumes only those enrolled full time suffered "lost wages" damages, when aggregated among the 538 full time students, the Class is seeking approximately $9,415,000 in lost wages damages.[2]

4. Total Amount in Controversy

26. When the tuition, costs and expenses, and lost wages damages are aggregated among the class members, and based upon Plaintiff's allegations, the sum total amount in controversy for this action is up to $16,424,208, easily satisfying CAFA's $5 million threshold.

D. Minimal Diversity Exists Between the Parties

27. Under CAFA, class actions need only have minimal diversity between the parties, as opposed to complete diversity." 28 U.S.C. § 1332(d)(2)(A). An action satisfies CAFA's diversity requirement so long as any member of the class of plaintiffs is a citizen of a State different from any defendant. *Id.*

28. For purposes of CAFA, the citizenship of any unincorporated association, such as a limited liability company like Flatiron, is determined by the entity's state of incorporation and principal place of business. 28 U.S.C. § 1332(d)(10). An individual's citizenship is determined by his "domicile," which requires "the party's physical presence in the state and the intent to remain in the state indefinitely." *Gutierrez v. Fox*, 966 F. Supp. 214, 217 (S.D.N.Y. 1997) (internal citations omitted).

29. Minimal diversity in this action is satisfied by looking just to the named Plaintiff, Mr. Dau. Plaintiff alleges that he currently "resides in the state of Florida." Compl. ¶ 5; *see also* Leslie Decl. ¶ 11 (Plaintiff listed Florida as his "State" when applying to Flatiron). Flatiron is alleged to be a New York limited liability company registered in New York and headquartered in

[2] Although, for purposes of this Notice of Removal, Flatiron will consider only the lost wages pleaded by full time students, it is reasonable to assume that some percentage of part-time students also can claim "lost wages" as a result of their claimed injury, thereby increasing the total amount in controversy.

New York. Compl. ¶ 6. Because Plaintiff is a citizen of Florida and Flatiron is a citizen of New York, there is minimal diversity of citizenship.

30. Moreover, the putative Class includes members from at least 35 states. Leslie Decl. ¶ 11. Only 31.7% of the putative Class reported its "State" as New York. *Id.*

31. Because there is diversity of citizenship between at least one plaintiff and one defendant, CAFA's minimal diversity requirement is met.

II. Compliance with Procedural Requirements

32. Under 28 U.S.C. §§ 1446(b) and 1453(b), this Notice of Removal is timely because it is filed within thirty days of Flatiron's "receipt . . . , through service or otherwise, of" the Summons and Complaint, which occurred on August 27, 2020.[3]

33. This Court is the appropriate court to which the action must be removed because it is part of the "district and division embracing the place where" Plaintiff filed the Complaint in this action: New York County, New York. *See* 28 U.S.C. § 1446(a).

34. A copy of this Notice of Removal will be filed contemporaneously with the New York County Clerk, and will be served contemporaneously on all counsel of record, as required by 28 U.S.C. § 1446(d).

35. All copies of state court process, pleadings, and orders, are attached hereto as Exhibit A. *See* 28 U.S.C. § 1446(a).

[3] Thirty days from service of the Complaint fell on September 26, 2020. Pursuant to Fed. R. Civ. P. 6(a)(1)(C), where the last day of a period stated in days is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. As a result, Flatiron's removal on Monday, September 28, 2020 is timely.

WHEREFORE, Flatiron respectfully gives notice that this action has been removed from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York.

Dated: September 28, 2020
New York, New York

Respectfully submitted,

HOGAN LOVELLS US LLP

By: /s/ Phoebe A. Wilkinson

Phoebe A. Wilkinson
Andrew M. Harris
390 Madison Avenue
New York, NY 10017
T: 212-918-3000
F: 212-918-3100
phoebe.wilkinson@hoganlovells.com
andrew.harris@hoganlovells.com

Attorneys for Defendant Flatiron School LLC

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

FORD GERALD DAU, on Behalf of Himself and All Others Similarly Situated

Index No.:

Plaintiff,

SUMMONS

-against-

FLATIRON SCHOOL LLC

Defendant.

----------x

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer within 20 days after the service of this summons exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 17, 2020

By: /s/ Jacob Chen
Jacob Chen, Esq.
DGW KRAMER LLP
Attorneys for Plaintiffs
One Rockefeller Plaza, Suite 1060
New York, NY10020
Ph: 917-633-6860
E-mail: jchen@dgwllp.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

FORD GERALD DAU, on Behalf of Himself and All Others Similarly Situated

Plaintiff,

-against-

FLATIRON SCHOOL LLC

Defendant.

----------x

Index No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Ford Gerald Dau ("Plaintiff" or "Mr. Dau"), by and through his attorneys, hereby files this complaint, on behalf of himself and all others similarly situated, against Defendant Flatiron School LLC ("Defendant" or "Flatiron") as follows:

INTRODUCTION

1. Defendant markets itself as a school that creates opportunity for people to learn and acquire new, marketable skills, and that graduating from their program will allow them to start new careers with impressive starting salaries. They lure students into their program through inaccurate and misleading information about job statistics, the quality of their programming, and the qualifications of their instructors. Mr. Dau was one of many victims of Flatiron's fraudulent misrepresentations.

2. Mr. Dau therefore brings this class action on behalf of himself and all other similarly situated consumers who enrolled in the same program that he did from 2018 to 2020, asserting claims under the New York General Business Law § 349, breach of contract, breach of the settlement agreement with the State of New York, and fraudulent misrepresentation. Mr. Dau seeks damages on behalf of the Class which includes, but is not limited to, a refund to Mr. Dau and all class members of the full amount paid or owed to Flatiron, damages arising from lost wages

for the time Mr. Dau and other class members were unable to work while completing the Flatiron program, and costs and expenses including attorneys' fees and expert fees, and any additional relief that this Court determines to be necessary to provide complete relief to Mr. Dau and the Class.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to CPLR § 301 because Defendant transacts business and committed the alleged acts in New York. Defendant is headquartered in New York and has systematically and continuously conducted business in New York County in New York State.

4. Defendant is doing business in New York County, and thus venue is proper under CPLR § 7502.

PARTIES

5. Plaintiff Mr. Ford Gerald Dau is a former resident of the State of New York and currently resides in the state of Florida.

6. Defendant Flatiron is a New York limited liability company registered in New York. It is headquartered at 11 Broadway Suite 260, New York, New York 10003.

THE FACTS GIVING RISE TO THIS ACTION

Job Report and Summaries

7. Flatiron is a New York based trade school founded in 2012 that markets itself as an institution focused on providing technology related skills and education. When the school initially opened up, it offered a 12 week full time program that taught web development and coding. The programs offered expanded over time as Flatiron increased its portfolio although it continues to remain focused on technology.

8. As part of its marketing efforts, Flatiron generates and distributes job reports and job report summaries from New York, allegedly containing statistics and data about the

employment rate and earnings of its graduates. Specifically, in its job reports, Flatiron claims that the vast majority of its graduates go on to find employment with high starting salaries significantly above the national average.

9. These reports and summaries were disseminated from New York State and specifically New York City where Flatiron is based.

10. But those reports were misleading.

11. In 2017, the New York State Attorney General sued Flatiron School on the grounds that, among other issues, it improperly marketed and misled promotion of its job placement rate and average starting salary of its graduates. The Attorney General's investigation uncovered that Flatiron had made inflated claims on its website concerning the percentage of its graduates who obtained employment and their average salary.

12. Under a settlement that was reached, in addition to monetary payment, Flatiron was also required to make changes to its job reports, including clearly and conspicuously disclosing the method and categories by which its employment rate and average salaries were calculated, and clearly and conspicuously disclosing the population comprising the average salary as well as the population comprising the employment rate calculation when disclosing employment rate and average starting salary.

13. In 2018, Flatiron acquired Designation, a UX/UI design program.

14. UX/UI stand for "user experience" and "user interface" respectively.

15. Broadly speaking, the purpose of learning UX/UI is to acquire the skills necessary to design the client-facing interface of a product, website, software, or location in order to provide better services.

16. The UX/UI program was very different from the coding bootcamp program that

Flatiron previously offered. Before the Designation acquisition, Flatiron did not have any UX/UI program or any UX/UI students or any UX/UI program graduates.

17. Nevertheless, this did not stop Flatiron from distributing to potential students interested in the UX/UI program a grossly misleading job report summary, in which Flatiron claimed a "94% job placement rate for job-seeking online students who accepted job offers" when in reality, Flatiron had no relevant data or statistics concerning graduates of the UX/UI program.

18. Flatiron claimed that they collected outcomes data for 99% of their students and of those, they had an average starting salary of $66,774 for those who accepted full time salaried positions, and $28/hour for those accepting full-time contract, internship, apprenticeship, or freelance roles, or part-time work.

19. Flatiron also distributed to potential students at the end of 2019 a 2019 Jobs Report in which they stated in bold and prominent font a 93% employment rate for job-seeking online graduates, and that the majority of job-seeking graduates accepted offers within 2 months of starting their job search.

20. The 2019 Jobs Report summary boldly and in large font repeats the 93% employment statistics and furthermore claims that students had an average starting salary of $72,000 per year.

21. None of these summaries, which Flatiron distributed or shared with potential students interested in the UX/UI program, mentions the recent acquisition of Designation, or offer any statistics concerning the success specifically of the Designation program before its acquisition.

22. In fact, in reality, these job reports and job report summaries contain *no information whatsoever* as to graduates of the UX/UI program.

23. However, that fact was entirely omitted from the summaries and carefully buried

in the job reports in order to hide the fact from potential students.

24. Upon information and belief, with respect to students of Flatiron's online programs, Flatiron only collected data from *one specific narrow group of students*: those who were enrolled in their Self-Paced software engineering program, which is a program that is designed for students who either already had "prior coding experience" and therefore are already much more likely to find high paying full time jobs upon graduation, or are looking to complete the program *while still working* full or part time, meaning that they would already have a job after graduating.

25. The selection of this group only, with no data collected from any other graduates of any other Flatiron online program, ensures highly inflated, skewed, and misleading outcomes that results in potential students thinking that graduating from Flatiron's online program would improve their job prospects when in reality, these numbers and figures would not apply to the vast majority of students.

26. Plaintiff and all other students who viewed the jobs report summary relied upon this jobs report in selecting the Flatiron UX/UI program. The jobs report and job report summaries were material information upon which a customer would reasonably rely, and those materials were substantially misleading.

Program Details and Failings

27. In addition to misleading potential students about their job prospects, Flatiron also misled them about the nature of the UX/UI program.

28. Regarding the UX/UI program, Flatiron represented that their "online UX/UI design courses are taught by industry experts and combine flexible online learning with a team-based experience" and on their website, Flatiron lists a number of experienced, qualified

professionals. Each of these instructors that was advertised had many years of experience, with one having allegedly "almost two decades of industry experience" in the UX/UI field.

29. As with the job report and job report summaries, these representations were made from the State of New York.

30. But the *actual* instructors who led Plaintiffs' classes were nothing of the sort.

31. One of the lead instructors who taught Mr. Dau and other class members was Corey James Clifton ("Clifton"). Clifton had no previous experience in UX/UI until January of 2018, and previously worked as a ride-share driver and bartender. He has no certification or education in UX/UI design until 2019, at which point he became a "lead instructor" for Flatiron.

32. Mr. Clifton was the primary instructor tasked with teaching Mr. Dau and other students UX/UI design for the vast majority of the program and only his name was included on the certificate that was issued to students upon their graduation.

33. Another instructor who taught Mr. Dau and other class members was Christina Downs ("Downs"). Downs similarly had no UI/UX experience until 2015 when Downs completed a UX bootcamp, and thereafter began working. At the time Downs became a UX/UI instructor, in 2019, Downs had only about four (4) years' experience.

34. Neither Clifton nor Downs could be considered as "industry experts" as Flatiron advertised.

35. Mr. Dau and other students relied upon the statement by Flatiron that his courses would be taught by industry experts. This was material information upon which a customer would reasonably rely, and those materials were substantially misleading regarding the nature of the course instruction.

36. Flatiron also advertised their UX/UI program as an "immersive course" that would

teach its students "to think and execute like a modern-day designer," promising "technical training, real-world client projects and personalized career coaching" to make the student a "well sought-after UX or UI designer."

37. Flatiron marketed the program has including "900+ Hours of Training" that would give students "the most robust and comprehensive UX/UI education," and multiple weeks spent "working on real projects for live clients."

38. During Phases 2 and 3 of the program, instructors were supposed to deliver substantive learning about UX/UI design. However, because of the poor quality of the actual instructors, little to no learning actually took place. The program fell far short of offering a "robust and comprehensive UX/UI education."

39. Phase 4 of the program, also known as the "Client Phase," was supposed to be a chance for the students to "Solve real design problems with real business stakeholders." Based on Flatiron's marketing materials, students would work for clients who had an actual need or desire for improved UX/UI interface and were willing to utilize the services of Flatiron students.

40. However during the very brief weekly meetings with the "client," who was a Flatiron affiliate, neither the client nor the instructor (Clifton) provided any meaningful feedback or directions to Mr. Dau on the work being performed. Upon information and belief, other students enrolled in the UX/UI program received similarly useless feedback.

41. It became quickly clear that the "client" was completely uninterested in the work being performed by the students, that the "client" was not intending to use or incorporate any of the work being performed by the students and was merely participating in a *pro forma* basis.

42. During Phase 5 of the program, the students were supposed to generate a portfolio of work. Because of the poor quality of Phases 2-4, students had no meaningful portfolio to present

by Phase 5 of the program and the feedback given by the Flatiron instructors failed to present the students with a high quality portfolio they could then later on present to others as part of their job search efforts.

43. Mr. Dau and other students who signed up for the program relied upon the statements by Flatiron that his courses would include meaningful hands-on training and would result in a portfolio of work. This was material information upon which a customer would reasonably rely, and those materials were substantially misleading regarding the nature of the course instruction

CLASS ACTION ALLEGATIONS

44. This action is brought as a class action pursuant to Article 9 of the CPLR. Plaintiffs bring this action on behalf of themselves and all other similarly situated, as representative members of the following proposed class (the "Class"):

> All persons who enrolled or graduated from the UX/UI program offered by Flatiron from 2018 to 2020.

45. The proposed Class is numerous and impracticable to bring them all before the Court. Although the exact number and identifies of the Class is unknown, they can be ascertained through appropriate discovery. Plaintiffs estimate that the number of students is likely to be between 50 to 200. The number and identities of other Class members may be determined from Defendant's records and files and potential class members may easily be notified about the pendency of this action.

46. Common questions of law and fact predominates with respect to the Class. The main issues are:

(a) whether Defendant engaged in deceptive, misleading, fraudulent or otherwise unlawful

advertising in their job report and job report summaries,

(b) whether the Defendant engaged in deceptive, misleading, fraudulent or otherwise unlawful advertising in respect to the quality of instruction and provided sufficiently qualified instructors,

(c) whether Defendant's conduct and marketing violated the General Business Law,

(d) whether Defendant's failing to provide adequate instructors constitute a breach of contract with Plaintiff and Class members,

(e) whether Plaintiff and Class members are third party beneficiaries of the settlement agreement reached with the Attorney General's office and whether Defendant's conduct constituted a breach of that settlement,

(f) whether Plaintiffs and Class members are entitled to recover actual damages, restitution of tuition, and ancillary relief, and

(g) whether Plaintiffs and Class members are entitled to an award of reasonable attorneys' fees, prejudgment interest and costs.

47. Mr. Dau's claims are typical of the claims and of the members of the Class.

48. In November 2019, Mr. Dau saw an advertisement for and applied to Flatiron School's Online UX/UI Design program.

49. The advertisement originated from and was distributed from New York where Flatiron was based.

50. At the time, Mr. Dau was working at a public relations firm and was earning an average salary of $35,000 per year.

51. He was drawn to Flatiron's UX/UI Design program because of the advertisements and promotional information that was distributed, as discussed at length above.

52. Mr. Dau relied on the representations he received by Flatiron via email and the ones listed on their website.

53. He signed up for and agreed to pay tuition to Flatiron, a New York school, in order to enroll in an online class furnished and administered by Flatiron in and from New York.

54. After signing up for the program, his primary instructors for phases 2-5 out of the program's five phases were Clifton and Downs.

55. All members of the class were similarly provided the same set of promotional materials, and upon information and belief, other members of the class also relied upon these material in deciding to sign up for the class.

56. Many Class members and were harmed by the same poor quality of instruction and instructors in so far as having the same instructors as Mr. Dau.

57. Given the nature of the instructors responsible for teaching Mr. Dau, and the patent lack of qualifications, it is likely that other Class members suffered similarly through inadequately screened and unqualified instructors.

58. The UX/UI program costs $15,000 for a program intended to last 24 weeks. Mr. Dau and other students who signed up for the program either paid this amount to Flatiron or agreed to pay that amount in Flatiron over time, and did so in reliance on Flatiron's marketing materials.

59. In addition, Mr. Dau lost 6 months of paid employment to pursue the worthless program offered by Flatiron. Other students who pursued the same program were similarly unable to maintain full time work during the period when they attended classes on a full time basis.

60. Mr. Dau is an adequate representative of the Class because he is a member of the Class and there is no conflict of interest between his and the Class. The interests of the Class will be fairly and adequately protected by Mr. Dau and his undersigned counsel.

61. Should individual Class members be required to bring separate actions, courts would be confronted by multiple lawsuits burdening the court system, creating the risk of inconsistent rulings and contradictory judgments. In addition, most members of the Class lack the means to pay attorneys to prosecute their claims individually. Given the complexity of legal issues presented here, individual claims are not sufficiently sizeable to attract the interests of highly able and dedicated attorneys who would prosecute them on a contingency basis. Only by aggregating claims can the Class gain the leverage necessary to pursue a just and global resolution of the issues raised in this Complaint.

62. Wherefore Mr. Dau, on behalf of himself and the Class, ask for an order certifying the Class and appointing him and his counsel of record to represent the Class.

FIRST CAUSE OF ACTION: VIOLATIONS OF NY GENERAL BUSINESS LAW § 349

63. Plaintiff repeat and reallege each and every allegation contained in paragraphs above as if repeated and incorporated herein.

64. Defendant's actions constitute unlawful, unfair, deceptive and fraudulent practices as defined by New York's Deceptive Acts and Practices Law, NY General Business Law § 349, *et. seq.*

65. As part of its fraudulent marketing practices, Flatiron engaged in a pattern of deceptive and misleading representations and omissions with respect to its job reports, job report summaries, program instructors, and program details.

66. These misrepresentations and omissions were likely to and did in fact actually mislead a number of reasonable consumers including Plaintiff and the Class into falsely thinking that the UX/UI program would impart valuable knowledge, information, and skills, and finishing the program would significantly increase a graduate's likelihood of finding gainful and well paid

employment.

67. The job report summaries and the distribution of job report summaries to potential UX/UI students specifically created a false appearance and false general impression that those statistics were relevant to and applied to potential students who enrolled in and completed the UX/UI program when that was in fact not the case at all.

68. As a result of Defendant's conduct, Plaintiff and the Class enrolled in Defendant's UX/UI full time class and as a consequence suffered from both a loss of wages during the time they were enrolled, in addition to the costs and expenses associated with the program.

69. Defendant's conduct has a broad impact on consumers at large as Defendant advertises to and accepts consumers at large, a large percentage of which are New York residents, and has already misled many consumers.

70. The advertisements were made by a New York company, and students who were mislead signed up to receive online classes administered in and from New York, and made payments to the company in New York.

71. As a result of Defendant's conduct, Plaintiff and the Class signed up for Defendant's program, and in so doing, suffered economic losses including lost earnings and payment of tuition and costs to their detriment, in exchange for a certification that confers no meaningful job prospects.

72. Thus Plaintiff and the Class are entitled to actual damages to be determined at trial including lost wages, tuition and costs paid in association with enrollment in the UX/UI program, legal costs, attorney's fees, and any other remedy the Court may find just and proper.

SECOND CAUSE OF ACTION: FRAUD

73. Plaintiff repeat and reallege each and every allegation contained in paragraphs above as if repeated and incorporated herein.

74. As discussed above, Defendant induced Plaintiff and the Class to enroll in Defendant's UX/UI program through the use of misleading and false advertising as concerning both post graduation job statistics and the quality and nature of the program, instruction and instructors.

75. Plaintiff and the Class reasonably relied on Defendant's representations in deciding to enroll for Defendant's UX/UI program.

76. As a result, Plaintiff and the Class signed up for Defendant's program. As a consequence, Plaintiff and the Class suffered damages including lost earnings for the period of time when they attended Defendant's program full time and also payment of tuition and costs associated with Defendant's program.

77. Defendant was aware that the job report and job report summaries they provided were false and misleading as they were prepared by and disseminated by Defendant.

78. Defendant was aware that their program description were false and misleading as Defendant operated the program, was responsible for the promotion of the program and the description provided, was responsible for screening and selecting instructors, and thus had actual knowledge that the program did not match the description provided.

79. As a result, Plaintiff and the Class signed up for Defendant's program, and in so doing, suffered economic losses including lost earnings and payment of tuition and costs to their detriment, in exchange for a certification that confers no meaningful job prospects.

80. Thus Plaintiff and the Class are entitled to actual damages to be determined at trial

including lost wages, tuition and costs paid in association with enrollment in the UX/UI program, punitive damages, legal costs, attorney's fees, and any other remedy the Court may find just and proper.

THIRD CAUSE OF ACTION: BREACH OF CONTRACT

81. Plaintiff repeat and reallege each and every allegation contained in paragraphs above as if repeated and incorporated herein.

82. Defendant made certain representations concerning the content and quality of the programming including the nature of the classes and phases and the quality and qualification of the instructors, which formed material terms of the parties' contractual agreement.

83. Defendant failed to perform as required of them by providing competent and qualified instructors and the quality of programming that Defendants represented. In so doing, Defendant breached the parties' agreement.

84. Plaintiff fully performed all obligations owed under the parties' agreement, including but not limited to payment of tuition.

85. As a result of Defendant's breach, Plaintiff and the Class did not receive the education or training that they had signed up for and agreed to pay tuition for.

86. Furthermore, there is an implied promise that the program would impart a certification and education that would assist the graduate in their post graduation job search and impart on them knowledge, tools, and information with respect to UX/UI graphics and design.

87. This implied promise was similarly breached when Defendant failed to deliver the education or training that was implicitly promised as part of their agreement with Plaintiff and the Class.

88. Thus Plaintiff and the Class are entitled to actual damages to be determined at trial including lost wages, tuition and costs paid in association with enrollment in the UX/UI program, legal costs, and any other remedy the Court may find just and proper.

FOURTH CAUSE OF ACTION: BREACH OF CONTRACT / SETTLEMENT AGREEMENT

89. Plaintiff repeat and reallege each and every allegation contained in paragraphs above as if repeated and incorporated herein.

90. In 2017, Defendant entered into a settlement with the State of New York in which Defendant agreed to make sure that their job reports and summaries would clearly and conspicuously disclose the methods and categories by which its employment rate and average salaries were calculated, clearly and conspicuously disclose the population comprising the average salary and population comprising the employment rate, among other stipulations.

91. The settlement was agreed to for the benefit of consumers and potential consumers who were recipients of Defendant's marketing and marketing practices or interested in enrolling in Defendant's programs.

92. Defendant's deceptive marketing violated the terms and stipulations of their settlement with the State of New York.

93. Plaintiff and the Class are third party beneficiaries of the settlement agreement and as such, have standing to bring this litigation as to and against Defendant for the violation of that agreement.

94. As a result of Defendant's breach, Plaintiff and the Class signed up for Defendant's program, and in so doing, suffered economic losses including lost earnings and payment of tuition and costs to their detriment, in exchange for a certification that confers no meaningful job

prospects.

95. Thus Plaintiff and the Class are entitled to actual damages to be determined at trial including lost wages, tuition and costs paid in association with enrollment in the UX/UI program, legal costs, attorney's fees, and any other remedy the Court may find just and proper.

WHEREFORE, with respect to each cause of action, Plaintiffs demand judgment as follows:

I. For certification of the Class;

II. For damages, including actual damages to be determined at trial and punitive damages on all causes of actions;

III. For attorney's fees, and costs and expenses;

IV. And for such other and further relief as the court deems just and proper.

Dated: New York, New York
August 17, 2020

Respectfully submitted,
DGW KRAMER LLP

By: /s/ Jacob Chen
Jacob Chen, Esq.
Attorneys for Plaintiff and Class
One Rockefeller Plaza, 1060
New York, NY10020
Telephone: 917-633-6860
jchen@dgwllp.com

AFFIDAVIT OF SERVICE

STATE OF NEW YORK
COUNTY OF NEW YORK SUPREME COURT FILED ON: 8/17/2020 INDEX NO.: 156492/2020

FORD GERALD DAU, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED Plaintiff(s)-Petitioner(s)

-vs-

FLATIRON SCHOOL LLC

Defendant(s)-Respondent(s)

STATE OF NEW YORK}
COUNTY OF SARATOGA ss.}

I, MARK E. MCCLOSKY being duly sworn, deposes and says that deponent is over the age of eighteen years, is not a party in this proceeding and resides in New York State.

On AUGUST 27, 2020 at 2:00 P.M.
Deponent served two true copies of **NOTICE OF ELECTRONIC FILING (CONSENSUAL CASE) (UNIFORM RULE § 202.5-b), SUMMONS AND CLASS ACTION COMPLAINT**

bearing index number: 156492/2020 and date of filing: 8/17/2020
upon **FLATIRON SCHOOL LLC**
at address: **SECRETARY OF STATE, 99 WASHINGTON AVENUE**
city and state: **ALBANY, NY 12210**

MANNER OF SERVICE}

Personal

☐ By delivering to and leaving with personally}
known to the deponent to be the same person mentioned and described in the above proceeding as the person to be served.

Suitable Age Person

☐ By delivering and leaving with personally}
at the premises mentioned above. Such person knowing the person to be served and associated with him/her, and after conversing with him/her, deponent believes him/her to be a suitable age and discretion.

Authorized Agent

☒ By delivering and leaving 2 copies with} **AMY LESCH, BUSINESS DOCUMENT SPECIALIST**
the agent for service on the person in this proceeding designated under Rule 303 LLC and tendering the required fee.
Service having been made to such person at the place, date and time above.

Affixing to Door, Etc.

☐ By affixing a true copy of each to the door of the actual place of business, dwelling place or usual place of abode stated above. Deponent was unable with due diligence to find the proper or authorized person to be served, or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode stated above after having called there on the following dates and times:

Mailing

☐ Deponent completed service by depositing a true copy of each in a postpaid, properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service. The package was labeled "Personal & Confidential" and mailed to the person stated above at address
on . The envelope did not indicate on the outside that the communication was from an attorney or concerned an action against the recipient. The envelope was mailed by__first class mail__certified mail__registered mail__return receipt requested.

Deponent further states upon information and belief that said person so served is not in the Military service of the State of New York or the United States as the term is defined in either State or Federal statutes.

DESCRIPTION} deponent describes the person actually served as:
Sex: FEMALE Race/Skin Color: WHITE Hair Color: BLONDE
Approximate Age: 48 years Approximate Height: 5'8" Approximate Weight: 170 pounds
Other:

Subscribed and sworn before me on} AUGUST 27, 2020

Notary Public, State of New York
Karen E. Rock
Qualified in Schenectady County
Number 01R06065213
Expires: October 9, 2021

Attorney:
DGW Kramer LLP
One Rockefeller Plaza, Suite 1060
New York, NY 10020

MARK E. MCCLOSKY
Deponent

affidavit #: 222127
NLS#: 20-7191

FIRM FILE # 538551