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ATTORNEY GENERAL OF WASHINGTON
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MEMORANDUM

DATE: November 21, 2016

TO: Bob Ferguson, Attorney General

FROM: Benjamin Roesch, AAG

SUBJECT: **Court Reporting Institute, Inc. d/b/a CRI Career Training
Borrower Defense to Repayment Pursuant to 34 C.F.R. § 685.206(c) for
Former Students**

I. Introduction

I recommend that we ask the U.S. Department of Education (the “Department”) to discharge all federal student loans incurred to attend the court reporting program offered by Court Reporting Institute, Inc. d/b/a CRI Career Training (“CRI”) at its Seattle and Tacoma locations in Washington. As discussed below, CRI induced students to enroll and take out loans to pay for tuition and living expenses by systematically misrepresenting its

- educational practices;
- instructor qualifications;
- graduation rates; and
- employment prospects.

CRI’s misrepresentations were systematic, and took place over many years despite repeated investigations, directives, and admonishments by CRI’s state regulator, Washington’s Workforce Training and Education Coordinating Board (“WTB”), before the WTB withdrew CRI’s license to offer its court reporting program. The evidence shows that each and every student who attended CRI’s court reporting programs in Seattle and Tacoma has state causes of action under Washington’s Consumer Protection Act, RCW 19.86, and common law fraud.

Accordingly, each and every student who attended CRI’s court reporting programs in Seattle and Tacoma may assert a “borrower defense to repayment” as set forth in 34 C.F.R. § 685.206(c)(1), which provides that “the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.” Their federal student loans should therefore be discharged, 34 C.F.R. § 685.206(c)(2), they should be reimbursed “for amounts paid toward the

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loan[s] voluntarily or through enforced collection,” 34 C.F.R. § 685.206(c)(2)(i), their eligibility to receive Title IV assistance should be reinstated if applicable, 34 C.F.R. § 685.206(c)(2)(i), and the Department should provide updates to consumer reporting agencies to which it previously made adverse reports regarding their loans. 34 C.F.R. § 685.206(c)(2)(iii).

II. Factual Background: CRI's Operations and Misrepresentations

CRI opened in January 1988 as a court reporting school in Seattle, Washington. **Exhibit 1, p. 1.** It later added other programs relating to computer and business skills.¹ CRI later opened court reporting schools in San Diego, California (1994) and Boise, Idaho (1996), where it did business as “BCRI Career Training. *Id.* For most of its history, CRI was owned and directed by a single person, *id.*, and operated by a small cadre of administrative staff. *Id.* at p. 8.

As of November 2005, WTB no longer allowed CRI to offer its court reporting program to students in Washington. CRI appealed that determination, and the appeal was pending when CRI closed its doors the next year.

A. CRI's Promotional Materials Mised Students About the Qualifications of Its Instructors, the Quality of Its Education, and Its Completion and Job Placement Rates.

In its catalogs, CRI stated that its “programs emphasize hands-on training by competent and experienced staff.” **Exhibit 1, p. 1.**² But as demonstrated below, CRI used unqualified staff and its own students to teach classes.

CRI's catalogs also represented that its programs “equip its students with the skills necessary for a successful career in today's economy.” **Exhibit 1, p. 1.**³ But as demonstrated below, only about 6% of CRI's court reporting students ever completed the program, and even fewer found employment in their field six to nine months after completion. Instead, students regularly express that their “education” at CRI provided no benefit, and merely caused them to incur crippling student loans.

CRI's catalogs also touted its accreditation by ACICS, stating the now-discredited accreditor had designated it as a “SCHOOL OF DISTINCTION,” explaining that

¹ This memorandum is concerned with CRI's court reporting program only.

² Each of CRI's catalogs from 1998-99 and 2001 through closure in 2006 includes an identical statement. **See Exhibits 1-8.** Although the Attorney General's Offices does not have CRI's catalogs from other years, based on the consistency of the representations in CRI's known catalogs, it is reasonable to assume that the catalogs for which direct evidence is lacking also contained the misleading representations.

³ Each of CRI's catalogs from 1998-99 and 2001 through closure in 2006 includes an identical statement. **See Exhibits 1-8.** Although the Attorney General's Offices does not have CRI's catalogs from other years, based on the consistency of the representations in CRI's known catalogs, it is reasonable to assume that the catalogs for which direct evidence is lacking also contained the misleading representations.

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[t]his seal of approval represents the highest standard for excellence in education and is awarded only to a select number of schools in the nation. CRI is proud to have been awarded this distinction and strives to continue the school's tradition of providing a quality education for Court Reporting

Exhibit 1, p. 2.⁴

CRI's catalogs also boasted exceptional job placement rates. Each of its catalogs states that "[w]hile the school cannot guarantee employment, it has been successful in placing the majority of graduates in their field of study." **Exhibit 1, p. 57 (emphasis in original).**⁵ The catalogs advertised "Placement Rates" as follows:

- 1998-1999
 - Court Reporting Program: 90%. **Exhibit 2, p. 48.**
- 2001
 - Court Reporting Day Program: 89%. **Exhibit 3, p. 55.**
 - Court Reporting Night Program: 89%. **Exhibit 3, p. 55.**
- 2002
 - Court Reporting Day Program: 75%. **Exhibit 4, p. 50.**
 - Court Reporting Night Program: 100%. **Exhibit 4, p. 50.**
- 2003
 - Court Reporting Day Program: 100%. **Exhibit 1, p. 57.**
 - Court Reporting Night Program: 100%. **Exhibit 1, p. 57.**
- 2004
 - Court Reporting Day Program: 100%. **Exhibit 5, p. 52.**
 - Court Reporting Night Program: 100%. **Exhibit 5, p. 52.**
- 2005
 - Court Reporting: 100%. **Exhibit 6, p. 47.**
 - Court Reporting Day Program (Seattle Campus): 100%. **Exhibit 7, p. 40.**
 - Court Reporting Night Program (Seattle Campus): 100%. **Exhibit 7, p. 40.**
- 2006
 - Court Reporting Day Program: 100%. **Exhibit 8, p. 48.**
 - Court Reporting Night Program: 100%. **Exhibit 9, p. 48.**

⁴ Each of CRI's catalogs from 1998-99 and 2001 through closure in 2006 includes an identical statement. **See Exhibits 1-8.** Although the Attorney General's Offices does not have CRI's catalogs from other years, based on the consistency of the representations in CRI's known catalogs, it is reasonable to assume that the catalogs for which direct evidence is lacking also contained the misleading representations.

⁵ Each of CRI's catalogs from 1998-99 and 2001 through closure in 2006 includes an identical statement. **See Exhibits 1-8.** Although the Attorney General's Offices does not have CRI's catalogs from other years, based on the consistency of the representations in CRI's known catalogs, it is reasonable to assume that the catalogs for which direct evidence is lacking also contained the misleading representations.

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As explained in more detail below, *the WTB found these representations to be deceptive and misleading, in violation of Washington law.*

CRI's catalogs also promoted its "Retention Rates," as consistently in or near the 70% range. *E.g., Exhibit 1, p. 57.*⁶ This statistic is calculated using total withdrawals during the previous year. *Id.* But as explained below, only about 6% of students leaving the program actually completed it – the remainder dropped out. In light of CRI's practice of misrepresenting the time to complete its program and subsequent misrepresentations about students' actual progress toward graduation, *see infra Section II.D.2*, this statistic misleads potential students who reasonably assume that high retention rates mean students are making progress toward graduation and the high job placement rates detailed above.

CRI also recruited students using various pamphlets that gave the false impression CRI offered a short program with excellent job prospects. *See Exhibits 9-12.* Several CRI-specific brochures represent that "[a]ll you need is a high school diploma or GED, basic typing skills, and a thorough understanding of language and grammar [*sic.*]. Most programs take only one to three years to complete." *Exhibit 9, 12.* One generic industry pamphlet CRI used made the same claim. *Exhibit 11.* And another brochure produced by an industry group CRI ultimately left noted that "[w]hile a few students have graduated in less than two years, studies indicate three-plus years is more typical." *Exhibit 10.* Each of these statements is deceptive in light of CRI students' actual experiences.

In response to student complaints, the WTB investigated CRI in 1999, 2001, 2003, and 2005-06. Each investigation showed that CRI was misleading students through representations in its statutorily mandated catalogs, *see RCW 28C.10.050(2)(c)*, and in oral statements by its admissions staff.

B. CRI Closed Abruptly in 2006 and Filed for Bankruptcy.

In late 2005, the WTB learned that CRI's Washington campuses were losing money, and sought a clarification on the company's financial state. *Exhibit 13.* CRI responded that although its Washington-based programs were sustaining yearly losses, the company as a whole was profitable due to its campuses in other states. *Exhibit 14.* This came as the Department audited CRI's federal student aid practices, found that it was channeling more federal loans to its students (and therefore itself) than allowed, and required CRI to reform its practices. *See Exhibit 15, pp. 1-2.*

⁶ Each of CRI's catalogs from 1998-99 and 2001 through closure in 2006 includes an identical statement. *See Exhibits 1-8.* Although the Attorney General's Office does not have CRI's catalogs from other years, based on the consistency of the representations in CRI's known catalogs, it is reasonable to assume that the catalogs for which direct evidence is lacking also contained the misleading representations.

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CRI closed its doors in late August 2006, **Exhibit 16**, while facing numerous student complaints and adverse findings by the WTB detailed below. CRI filed for Chapter 7 bankruptcy on November 27, 2006. *See In re Court Reporting Institute, Inc.*, Case No. 06-14202-MLB (Bkrcty. W.D. Wash.).⁷ Both before and after closing, CRI was the subject of negative reporting in the press, largely because of the issues discussed below. **Exhibits 17-18.**

Some former CRI students received partial relief from Washington's Tuition Recovery Trust Fund (the "Fund"). *See* RCW 28C.10.082. The Fund was created to reimburse students for "unearned prepaid tuition and fees," and in some limited cases "the full value of tuition and fees paid." RCW 28C.10.084(4). The WTB administered relief to qualifying students who submitted claims on the Fund following CRI's 2006 closure. However, the Fund does not provide refunds or relief to the extent students paid for their education with federal student loans. *E.g.*, **Exhibit 19.** Accordingly, the discharge of federal loans will not result in any "double recovery" from government sources.⁸

III. Factual Background: The WTB Repeatedly Found that CRI Committed Unfair Business Practices and Had Appallingly Low Graduation and Employment Rates.

The WTB is Washington State's regulator for vocational schools, including CRI. *See* RCW 28C.10.040. The WTB's governing law is intended "to protect against practices by private vocational schools which are false, deceptive, misleading, or unfair, and to help ensure adequate educational quality at private vocational schools." RCW 28C.10.010.

The WTB is charged with investigating complaints about vocational schools in Washington, making findings, and ordering the school to cease and desist any unfair business practices and provide appropriate relief. RCW 28C.10.120. Pursuant to its rulemaking authority, RCW 28C.10.040(2), the WTB set forth rules for its investigations and adjudication of complaints,

⁷ Without going into too much detail, a brief description of subsequent bankruptcy proceedings will give a sense of the financial manipulation in which CRI's owner engaged. After CRI filed for bankruptcy, the trustee filed an adversary complaint against its owner and another individual to recover funds preferentially transferred in the period leading up to CRI's petition. *McCarthy v. Alen Janisch, et al.*, Adversary Case No. 07-01167-KAO (Bkrcty. W.D. Wash.). The owner then filed bankruptcy himself. *In re Alen Janisch*, Case No. 07-15620-MLB (Bkrcty. W.D. Wash.). The trustee was therefore forced to file an adversary complaint to deny the owner discharge of his debts. *U.S. Trustee v. Alen Janisch*, Adversary Case No. 08-01219 (Bkrcty., W.D. Wash.). The complaint alleged, among other things, that the owner paid himself \$487,360 in 2006 – including some payments after CRI shut its doors. *Id.* The trustee obtained a default judgment denying the owner a discharge of debts in bankruptcy.

⁸ To the extent a former CRI student asserts the violations of state law as a defense to any debt collection action pursuant to the Federal Trade Commission's "Holder Rule," 16 C.F.R. § 433, any sums actually refunded through the Fund should not be offset against such a defense or refund. The WTB is authorized to disburse amounts from the Fund, but it is also directed to seek reimbursement from the school's owner. RCW 28C.10.084(11). This sensible rule is designed to ensure that the wrongdoer bears the cost of its actions. The Holder Rule and fundamental principles of equity dictate that the private student lenders who funded CRI's profits do not enjoy a subsidy from non-fraudulent vocational schools who contribute to the Fund. *See* RCW 28C.10.084(3).

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permitting the school to respond and rebut the complaint. Washington Administrative Code (“WAC”) 490-105-180(6). If the school disagrees with the WTB’s determination, the school may file an appeal in accordance with Washington’s Administrative Procedure Act, RCW 28C.10.120(5).

CRI’s unfair and deceptive practices resulted in numerous complaints and adverse findings. Most fundamentally, CRI’s business model relied upon systematically violating its obligation under Washington law to “disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions.” RCW 28C.10.050(1)(c).

RCW 28C.10.110, which prohibits enumerated unfair business practices by vocational schools, was amended in 2014, after the WTB made the findings discussed below. **See Exhibit 45.** The amendment merely re-numbered the statute’s subsections, and did not affect any substantive changes to the prohibited conduct. **Exhibit 45** provides a redline of changes made, so that the Department may map the prior version of RCW 28C.10.110 that was effective while CRI was in operation to the current statute.

A. In 1999, the WTB Found that CRI Misrepresented the Time it Took Students to Complete Its Court Reporting Program.

In 1999, a student complained to the WTB that CRI misled him about the time to complete the program – rather than two-and-a-half years as represented by CRI, the student had been in school for nearly five years and felt he was still several years away from graduating. **Exhibit 20, p. 1.** After the school responded and the WTB conducted an on-site investigation and interviews, the WTB found that while the school’s verbal representations, contracts, and pamphlets all described a two-to-three year program, *id.* at p. 2, the reality was quite different. School records showed that of the 185 students enrolled in CRI’s night program since its inception in July 1988, just over 10% had graduated, *id.*, 4.3% remained enrolled (and had been for an average of six years), and 85.4% had dropped out. *Id.* at p. 3.

The WTB could not determine whether poor instructors and inadequate materials were the cause of these abysmal student success rates, but noted that “*there is some question whether an average student can complete the evening program at all.*” *Id.* (emphasis added). It unequivocally concluded that CRI was providing misleading information to students about the time to complete the program, and that CRI was violating former RCW 28C.10.110(10)’s prohibition on unfair business practices by failing to provide students “with accurate and complete information so they can make informed decisions about whether to enroll.” *Id.* This finding demonstrates that *all students who enrolled at CRI in the years up to and including 2000 were exposed to material misrepresentations in CRI’s recruitment process,*⁹ which gives

⁹ For example, another CRI student wrote in September 2000 that CRI had represented its court reporting program as one that the average student could complete in two-and-a-half years. **Exhibit 21, p. 1.** That student

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rise to a claim under Washington's Consumer Protection Act, as explained below. The WTB prescribed reforms to address this issue going forward.

In December 1999, CRI represented to the WTB that it had undertaken certain reforms to fulfill its obligation to provide students with complete and accurate information. **Exhibit 23, pp. 2-3.** However, the WTB later learned that many of CRI's reforms were either abandoned or never truly implemented. And students enrolled in CRI's court reporting program after 2000 were exposed to similar unfair and deceptive acts or practices.

B. The WTB's 2001 Follow-Up Investigation Found that CRI Continued To Misrepresent the Time it Took Students To Complete Its Court Reporting Program.

By late 2001, the WTB received a spate of new complaints from CRI students regarding (a) misrepresentations about the time to complete its court reporting program, and (b) the amount of federal student financial aid the school receives. **See Exhibits 24-32.** The WTB forwarded concerns about financial aid to the Department, and conducted another investigation into the misrepresentations.

Following receipt of these complaints, the WTB investigated again, reviewing data and documents, and interviewing CRI staff and students. Students who started after CRI purportedly implemented its recruiting reforms in December 1999 were consistently told that completion could be expected in an average of two-and-a-half years. **Exhibit 33, p. 2.** But for those students fortunate enough to graduate, it took an average of more than five years in the evening program, and four years in the day program. **Id.** As a result of this investigation, the WTB required CRI to make a number of additional reforms, including revisions to its catalog to more accurately reflect average completion time and more accurately state the likely total tuition, institution of a progress review plan to allow students to understand their current time to completion at their current rate of progress, and other requirements. **Id. at pp. 3-4.**

In April 2002, the WTB was forced to follow up again with CRI after receiving a report that a prospective student was told he could probably complete the program in eight months. **Exhibit 34.** As the WTB told CRI, "I am sure you can understand how troubling this is to the agency considering our recent investigation and the school's promise to provide potential students with accurate information about program length." **Id.** But even that was not the end of the story.

explained that she was struggling to make her monthly student loan payments, and noted that "I know there are many former students that are going through the same financial hardship as I am." **Id. at p. 2.** Another student who enrolled in 1995 later wrote the WTB to explain that she "was led to believe that I would indeed be finished within 1-2 years," but was forced to drop out five years later after finding herself "totally beaten down, lied to", and unable to put off having a family any longer. **Exhibit 22.**

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C. In 2003, the WTB Found that CRI Employed Unqualified Instructors; CRI Settled the Matter While on Administrative Appeal.

In 2003, the WTB adjudicated several additional student complaints against CRI. *E.g.*, **Exhibit 35**. The WTB found that CRI was using an unqualified instructor to teach its Theory class, and therefore committing an unfair business practice by implicitly misrepresenting that the teacher was qualified to teach that class. *Id.* at p. 3.

After CRI appealed the WTB's findings to an administrative law judge, the WTB entered into a settlement agreement with CRI, which required partial refunds to two complaining students and imposed minimum instructor qualifications for its courses. **Exhibit 36**.

D. In 2005 the WTB Found that CRI Continued to Engage in Numerous Unfair Business Practices.

In 2005 and 2006, the WTB received numerous complaints from CRI students about the same practices, alleging that CRI's teaching methods were not effective, it employed unqualified instructors, prospective students were misled about the length of time to complete the program, and several other issues.

After giving CRI an opportunity to respond, the WTB found that CRI had continued to engage in many of the same unfair business practices that the WTB thought had been resolved (and stopped) in 2003.

1. CRI continued to use unqualified instructors.

The WTB found that CRI continued "to employ students as teachers and has an individual teaching Medical Terminology who does not meet the qualifications specified in the 2003 agreement." **Exhibit 37, p. 7**. As one of those student instructors later told the WTB:

I now realize exactly what was going on at that school. It has taken me a long time to get my head straight. I am sure you know that I worked there as well and I watched some unethical things happen there and I was told many lies to cover it up and I ended up believing it at the time. Now I see the truth and realize I was a victim just as the rest of the students.

Exhibit 38, p. 1.

2. CRI continued to misrepresent the length of its court reporting program.

The WTB found that CRI continued to mislead prospective students about the time to complete the program. The WTB noted that although CRI had amended its catalog and enrollment agreement to include statements that it could take longer than 2.5 years to complete the program,

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CRI admissions officers downplayed this warning, and instead enticed prospective students with an anecdote that one student completed the program in only a year. *E.g.*, **Exhibit 39, p. 3.**

After luring students in with these misrepresentations, CRI then retained them – and continued to reap tuition funded by student loans – by misrepresenting their progress. In response to one complaint, the WTB found:

By the time [the student] dropped out of school she had completed more than 4000 clock hours in pursuit of a 3000 clock hour court reporting program certificate. [The student] was nowhere near graduation when she withdrew, however, the Board found no evidence the school counseled her about her lack of progress or cautioned her about continuing to take out loans to finance a program she was unlikely to complete. It is unconscionable that her instructor continued to praise her progress when she was, in fact, not progressing at all. [The student] was failing to maintain her satisfactory academic progress for nearly two years before she withdrew. Had she been counseled to withdraw when it first became apparent she would not be successful, she would have saved several thousand dollars in tuition and associated costs.

Exhibit 39, pp. 2-3. The WTB also found that CRI breached its contract with the complaining student “by failing to adhere to its own standards of progress which require a student to progress ‘at a pace leading to completion in a specified timeframe.’” *Id. at p. 3.* The WTB further found that CRI misrepresented to this student how long it would take to complete the program. *Id. at p. 4.* In light of the many CRI students who continued to work futilely well beyond the time CRI initially represented it would take to complete the program, it appears that CRI employed this tactic to retain students (and their student loan dollars) on a regular basis. This inference is supported by CRI’s financial aid practices.

The Department audited CRI’s financial aid records in 2005, and found that CRI had requested and collected more financial aid than its students were entitled to receive. **Exhibit 16, pp. 1-2.** On top of running afoul of the Department’s guidelines, the WTB found that “CRI misrepresented [to students] the potential amount of federal financial aid available for the court reporting program,” *id. at p. 2*, in addition to misleading them about the length of time it would take to complete the program. *Id. at pp. 2-3.* These misrepresentations, when taken together, prevented CRI’s prospective students and then-current students from making informed financial decisions regarding their education.

3. CRI systematically misled students about its completion and job placement rates.

The WTB examined completion and employment data provided by CRI to determine whether CRI’s instruction was adequate to prepare students for a career in court reporting. The results were abysmal:

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- For the period July 1, 2000 to June 30, 2003, *CRI's program completion rate was only 6%*. The data showed that of the 179 students who left the program during that period, only 10 completed it. **Exhibit 37, p. 7.**¹⁰
- CRI's job placement rate for the same period was also extremely low. Of the 10 program completers, only three (3) were working in their field of study six to nine months after graduation. **Exhibit 37, p. 7.** Thus, *only 3 out of 179 students of students exiting CRI's program during the time period, or 1.7%, found employment as court reporters six to nine months after separation.*

As noted above, CRI's 2002 catalog stated that "while the school cannot guarantee employment, it has been successful in placing the majority of graduates in their field of study," and provided placement rates of 75% for its day students and 100% for evening students, which CRI defined using "the total number of students placed in their field of study or in a related field of study divided by the number of graduates and completers minus those graduates and completers unavailable to work." **Exhibit 4, p. 51; see also Exhibit 40, p. 2.**

Even setting aside the other issues with CRI's placement claim, by using a statistic derived from "students placed in their field of study *or in a related field of study*" to support its underlined and more prominently placed statement that it "has been successful in placing the majority of graduates in their field of study," CRI used a statistical slight of hand to deceive potential students. Although the WTB did not address this issue, CRI's apples-and-oranges approach to statistics is a violation of the Washington Consumer Protection Act's prohibition on deceptive acts or practices. RCW 19.86.020.¹¹

CRI argued that its "completion rates have no relevance to job placement rates." **Exhibit 40, p. 2.** The WTB reacted to this argument with appropriate incredulity:

By definition, CRI's placement rate is tied to its completion rate and it is completely unfair to quote a 100% job placement rate without disclosing the extremely low number of completers upon whom that rate is based.

The Board concludes that the job placement rates quoted in CRI's catalog are misleading and give students an unrealistic picture of their chance for success. Making statements or representations in connection with the offering of education

¹⁰ Indeed, the completion rate for this period was down from the previous WTB review in 1999, discussed above.

¹¹ Moreover, CRI did not include even that problematic explanation of its calculation in its catalog for 2001, simply stating that the rates were calculated in accordance with ACICS's accreditation guidelines. *See Exhibit 3, p. 55; 2002.* In 1998-1999, CRI did not even make that statement. **Exhibit 2, p. 48.** Current and prospective students had no realistic way to investigate these calculations.

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that the school knows or reasonably should have known the statement or representation to be false, substantially inaccurate, or misleading is an unfair business practice [RCW28C.10.110(10)].

Id. at p. 3.

Accordingly, the WTB concluded that CRI

engaged in a significant number of unfair business practices, by failing to comply with the terms of a student contract (which incorporates the school's catalog by reference) [RCW28C.10.110(1)], representing falsely the qualifications of its faculty [RCW28C.10.110(6)], providing prospective students with information which has the tendency to mislead or deceive prospective students regarding current practices of the school [RCW28C.10.110(8)] and making statements in connection with the offering of education that the school knew or reasonably should have known to be false, substantially inaccurate, or misleading [RCW28C.10.110(10)].

Exhibit 37, p. 7.

The WTB ordered CRI to provide refunds to the complaining students. CRI appealed numerous findings made against it in 2005 and 2006. However, these appeals were dismissed in 2006 when CRI permanently closed, leaving the WTB's findings intact. And because CRI sought bankruptcy protection shortly after closing, it appears that even students who complained and for whom restitution was ordered did not receive meaningful relief.

IV. CRI's Unfair and Deceptive Acts Give Rise to a Cause of Action under Washington's Consumer Protection Act.

Washington's Consumer Protection Act ("CPA") prohibits "unfair or deceptive acts or practices" in "trade or commerce." RCW 19.86.020. The CPA also allows private actions. RCW 19.86.090. A private plaintiff must show (1) the defendant committed an unfair or deceptive act or practice, (2) the act or practice took place in trade or commerce, (3) the act or practice affects the public interest, (4) an "injury," and (5) causation between the unfair or deceptive act or practice and the injury. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986).¹²

The Legislature has found that violations of RCW 28B, such as those detailed by the WTB above, are *per se* violations of the CPA:

¹² In a law enforcement action under the Consumer Protection Act, the Attorney General need only demonstrate the first three elements. *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2001).

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A violation of this chapter or the rules adopted under this chapter affects the public interest and is an unfair or deceptive act or practice in violation of RCW 19.86.020 of the consumer protection act. The remedies and sanctions provided by this section shall not preclude application of other remedies and sanctions.

RCW 28C.10.210. Pursuant to that statute, the first and third elements of a private CPA claim are met by any violation of RCW 28C, such as those detailed above.

As discussed in more detail below, there can be no dispute that Washington students who enrolled in CRI's court reporting program can meet all five elements of a private CPA claim against CRI. Accordingly, they meet the standard for defense to repayment under 34 C.F.R. § 685.206(c)(1).

A. CRI Engaged in Unfair and Deceptive Acts or Practices

For purposes of Washington's CPA, an act is "deceptive" if it has the "capacity to deceive a substantial portion of the public." *Hangman Ridge*, 105 Wn.2d at 785. A communication containing true statements can be deceptive under the CPA if it conveys a deceptive "net impression." *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 50, 204 P.3d 885 (2009).

To determine whether an act or practice is "unfair," Washington courts look to

(1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen).

Blake v. Federal Way Cycle Center, 40 Wn. App. 302, 310, 698 P.2d 578 (1985), *rev. denied* 104 Wn.2d 1005 (1985) (quoting *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n.5 (1972)).

1. CRI's unfair or deceptive acts or practices have already been adjudicated through the administrative process.

In a court of law, the doctrine of collateral estoppel would apply to prevent re-litigation of the WTB's findings. Although the Department is not a court of law, and therefore not bound by the doctrine of collateral estoppel, the policies animating the doctrine apply with equal force here. As the U.S. Supreme Court put it:

Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial

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proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution.

Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 107-08 (1991). The notion of collateral estoppel is also consistent with the Department's approach to borrower defense to repayment starting in July 2017.¹³ The Department should apply the principles of collateral estoppel in this matter to support group discharge for former CRI students.

Under Washington law, collateral estoppel applies when:

(1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

Christensen v. Grant County Hosp. Dist., 152 Wn.2d 299, 307, 96 P. 3d 957 (2004). Each of these elements is met here.

First, the issue is the same. The WTB found that CRI committed unfair business acts and violated RCW 28C.10.110(1), (6)(8), and (10). Pursuant to RCW 28C.10.210, each of the violations found by the WTB is an unfair or deceptive act or practice in violation of RCW 19.86.020. This is precisely the first element of a private claim under the Consumer Protection Act. *Hangman Ridge*, 105 Wn.2d at 780.

Second, the WTB's administrative proceeding ended in a decision on the merits. Both federal and Washington State courts apply collateral estoppel to issues adjudicated in an administrative hearing. *E.g.*, *Univ. of Tenn. v. Elliott*, 478 U.S. 788 (1986); *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). In determining whether to assign collateral estoppel effect to an administrative hearing, Washington courts consider "(1) whether the agency acted within its competence, (2) the differences between procedures in the administrative proceeding and court procedures, and (3) public policy considerations." *Christensen*, 152 Wn.2d at 308. The WTB was acting within its competence to adjudicate student complaints – indeed the Legislature directed it to do so. RCW 28C.10.120. There is no indication that the WTB deviated from its published procedure for adjudicating such complaints. *See* WAC 490-105-180(6). And while the initial WTB proceeding did not include all the procedural protections of a civil action filed in court, CRI had an opportunity to (and did) respond, and the WTB's findings were

¹³ The Department's final regulations for borrower defense of post-July 1, 2017 loans provides for discharge when the student (individually or as part of a class) or a government agency has obtained a non-default, favorable contested judgment against a school. 34 C.F.R. 685.222(b).

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grounded firmly on data produced by CRI regarding time to completion, instructor qualifications, and program completion and job placement rates. CRI also appealed many of these decisions under the Administrative Procedure Act, as was its right. That CRI's appeals relating to its 2005 and 2006 complaints were dismissed when it closed down (and then declared bankruptcy) only strengthens the argument that the process was procedurally fair and reached the right result – once CRI was no longer able to access improper amounts of federal student aid and was held accountable for its deceptive recruitment and retention practices, its business model was no longer viable. Finally, public policy concerns support application of collateral estoppel where CRI no longer exists, memories have faded, documents have likely been lost, but CRI's former students remain saddled with debt in the elusive pursuit of a worthless degree.

Third, CRI is effectively in privity with the Department (and any private FFEL Program lender) for purposes of the Department's borrower defense rule. With respect to FFEL Program lenders, the Department required such loans to include the requisite statement for the Federal Trade Commission's "Holder Rule," 16 C.F.R. § 433, such that CRI's former students may assert any claim or defense against the lender that they could assert against CRI itself. *See* FFEL Master Promissory Note (1994); 34 C.F.R. § 682.209(g). And the Department has consistently explained that the Direct Loan Program's borrower defense regulation, § 685.206(c), was meant to create rights for borrowers akin to those that would arise under the FFEL Program. While the Department's recent final regulations for post-July 1, 2017 loans declined to incorporate the Holder Rule, it remains a useful analytic tool for evaluating the privity element here.

Fourth, application of collateral estoppel does not "work an injustice." CRI agreed to remedy its unfair business practices in 1999 (after the Mitchell complaint), 2001 (after the WTB's follow-up investigation), and 2003 (after its settlement with the WTB). Instead, it persisted in those practices, and had a full and fair opportunity to be heard before the WTB adjudged it to be in violation of the law again in 2005 and 2006.

2. CRI's deceptive or unfair acts or practices are proved by its own information and documents.

Even in the absence of collateral estoppel, there can be no reasonable dispute that CRI engaged in unfair or deceptive acts or practices toward students and prospective students.

CRI's misrepresentations about time to complete the program and its employment of students and unqualified staff as instructors, detailed above, are laid bare by information provided by CRI itself. These are material facts, as they are central to considerations of the amount of time and money to obtain a degree, and the quality of education offered.

CRI's astonishingly low job placement rate, also discussed above, was also derived by the WTB from CRI's own data. CRI failed to disclose this information, and instead painted a rosy, but false, picture for its students' career prospects. Information about program completion and job placement is perhaps the most material information for students making choices about their

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education. These are among the central data points provided by the Department's College Scorecard, and studies have shown that failure to complete a program of study is one of the most accurate predictors of subsequent default on a student loan.

Had CRI revealed that only 6% of its students ever graduated, and that only 30% of graduates got a court reporting job within 9 months of graduation, it would have had substantially fewer (if any) students – most reasonable people would not sign up for a 2.5 year (optimistically) course of study with only a 1.7% chance of landing a job in the field of study.

Critically, *the unfair and deceptive acts and practices detailed above were directed at each and every CRI student who attended its court reporting program.* While not every student filed an administrative complaint with the WTB, there can be little doubt that each of the students received a catalog with misleading completion and job placement rates. *See* RCW 28C.10.050(2)(c) (requiring vocational schools to “[d]isclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions”). And because the complaining students consistently described the manner in which CRI verbally misrepresented its time-to-completion period, it is all but certain that the non-complaining students were exposed to the same misleading information. As one former student observed:

This school is nothing but a money-making scam. . . . It is unfortunate that so many people are so beaten down financially and emotionally by the time they have either dropped out or finished the program, that they fail to file a complaint. Most of them just want the experience behind them. I hope that one day someone will take the steps necessary to close this school down. They truly have destroyed many lives.

Exhibit 41, p. 1.

Accordingly, the Department should find that CRI engaged in illegal acts with respect to all its students and prospective students.

B. CRI's Unfair or Deceptive Acts or Practices Occurred in "Trade or Commerce."

In Washington's CPA, the terms trade and commerce “include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.” RCW 19.86.010(2). CRI's unfair or deceptive acts occurred in its marketing and provision of educational services to Washington residents. This element of a CPA action is met.

C. CRI's Unfair or Deceptive Acts or Practices Affect the Public Interest.

The “public interest” of Washington's CPA is satisfied in two independently sufficient ways, each of which is sufficient to establish a former student's claim under state law.

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First, Washington's Legislature has declared that a violation of RCW 28C "affects the public interest." RCW 28C.10.210. This declaration alone is sufficient to satisfy the public interest element. *See* RCW 19.86.093(2). No further analysis is needed as to this element.

Second, the traditional factors for determining whether an unfair or deceptive act or practice affects the public interest confirm that this element is met. Traditionally, courts looked to a series of judicially created factors to determine whether the public interest element is met:

- (1) Were the alleged acts committed in the course of defendant's business?
- (2) Are the acts part of a pattern or generalized course of conduct?
- (3) Were repeated acts committed prior to the act involving plaintiff?
- (4) Is there a real and substantial potential for repetition of defendant's conduct after the act involving plaintiff?
- (5) If the act complained of involved a single transaction, were many consumers affected or likely to be affected by it?

Hangman Ridge, 105 Wn.2d at 790.

For private litigants, RCW 19.86.093 provides in relevant part that "a claimant may establish that the act or practice is injurious to the public interest because it: . . . (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons."¹⁴

If the Washington Legislature's declaration of public interest is insufficient for the Department, then the Department can conclude that CRI's conduct affects the public interest regardless of whether it applies the *Hangman Ridge* or the RCW 19.86.093 test. The acts and practices occurred in the regular course of CRI's business. As demonstrated CRI's continuation of illegal practices even after being confronted by the WTB, the acts were repeated as part of a pattern and generalized course of conduct. Indeed, CRI's very business model appears in retrospect to have been luring potential students with misrepresentations, and then retaining them as long as possible without providing adequate instruction or reasonable prospects of graduating or finding a job. As one student put it, "[o]nce they get their money, they do not appear to care if a student graduates or not." **Exhibit 22, p. 2.** CRI's unfair and deceptive practices affected numerous consumers, with many students filing similar claims with the WTB about CRI's unfair or deceptive practices.

D. CRI's Unfair or Deceptive Acts Caused Injury to its Former Students.

CRI's former students will have no difficulty establishing that the school's unfair or deceptive acts or practices caused them to suffer injury.

¹⁴ RCW 19.86.092(1) and (2) address statutes that incorporate the CPA, or which declare that violations of such statutes are unfair or deceptive acts or practices under the CPA. As discussed above, RCW 28C is such a statute. *See* RCW 28C.10.210.

1. Injury

CRI's former students can establish an injury to their "business or property." The CPA's "injury requirement is met upon proof the plaintiff's 'property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.'" *Panag v. Farmers Ins. Co.*, 166 Wn.2d 27, 57, 204 P.3d 885 (2009) (quoting *Mason v. Mortgage Am., Inc.*, 114 Wn.2d 842, 854, 792 P.2d 142 (1990)). Here, CRI's former students were injured when they took out student loans to finance their courses of study.

2. Causation

Washington courts apply "but-for" causation to the CPA inquiry. *See Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wash.2d 59, 84, 170 P.3d 10 (2007) ("A plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury."). Causation is a question of fact. *Id.* at 83.

Here, CRI's former students may establish causation through affidavits or declarations stating that CRI's misrepresentations and omissions discussed above were material to their decision to enroll at CRI and take out student loans to finance their studies.¹⁵

Moreover, because CRI's misrepresentations and omissions were made routinely, included in printed material distributed to prospective and enrolled students, and related to the most important considerations for potential students when choosing a school – time to graduation, program completion rate, and job placement rate – the Department may reasonably infer that

- All CRI students were exposed to the misrepresentations and omissions;
- Those material misrepresentations and omissions were material and caused each CRI student loan borrower to take out his or her federal student loan(s).

The common facts and claims – particularly in light of the violations already administratively adjudicated by the WTB – support discharge pursuant to the borrower defense to repayment, 34 C.F.R. § 685.206(c), for all former CRI student loan borrowers.

V. CRI's Misrepresentations Give Rise to Claims for Negligent Misrepresentation and Fraud under Washington law.

¹⁵ Such declarations are consistent with the Department's model attestation for student loan borrowers asserting a borrower defense based on the school's material misrepresentations or omissions.

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CRI's former students also meet the standard for defense to repayment under 34 C.F.R. § 685.206(c)(1) because each element for a claim of fraud and/or negligent misrepresentation under Washington law is met based on the evidence outlined above.

The elements of a fraud claim are: (1) a representation of existing fact, (2) its materiality, (3) its falsity, (4) the speaker's knowledge of its falsity, (5) the speaker's intent that it be acted upon by the person to whom it is made, (6) ignorance of its falsity on the part of the person to whom the representation is addressed, (7) the latter's reliance on the truth of the representation, (8) the right to rely upon it, and (9) consequent damage. *Williams v. Joslin*, 65 Wn.2d 696, 697, 399 P.2d 308 (1965).

A plaintiff claiming negligent misrepresentation

must prove by clear, cogent, and convincing evidence that (1) the defendant supplied information for the guidance of others in their business transactions that was false, (2) the defendant knew or should have known that the information was supplied to guide the plaintiff in his business transactions, (3) the defendant was negligent in obtaining or communicating the false information, (4) the plaintiff relied on the false information, (5) the plaintiff's reliance was reasonable, and (6) the false information proximately caused the plaintiff damages.

Ross v. Kirner, 162 Wn.2d 493, 499, 172 P.3d 701 (2007). Moreover, "[a]n omission alone cannot constitute negligent misrepresentation, since the plaintiff must justifiably rely on a misrepresentation." *Id.* at 499.

The elements of these claims are met here. As detailed above, CRI made regular, repeated misrepresentations of existing fact to students concerning time to completion, graduation and job placement rates, and other important issues. This information was material to students' decisions to enroll and remain in CRI's court reporting program. As one student put it,

I don't know many people who would have signed up to be a student at CRI had they been told the truth about it taking six or seven years, or possibly more to finish. It's just not fair to be able to lie to people using exaggerated or omitted statistics. . . . These potential students don't have the real statistics that will allow them to make an informed decision.

Exhibit 42, p. 4. Information concerning program completion and job placement rates is central to prospective students' school choices. Information about progress toward completion, **Exhibit 39, pp. 2-3**, is material to the decision whether to remain in school. And information concerning the availability of federal student aid is important in making educational choices, because private student loans are often significantly more expensive. Once students were ensnared, it was difficult to leave. One student who borrowed nearly \$28,500 explained to the *Seattle Times* that

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“[b]y the time you realized what happened, you’ve put too much of your time and your life into it,” and therefore “[y]ou have to make it work.” **Exhibit 18, p. 3.**

CRI knew that most of these misrepresentations were false. It had independent knowledge of the average completion time for its court reporting program, and disregarded repeated WTB directives to cease its misrepresentations. Likewise, CRI knew its completion and job placement rates, but nevertheless misrepresented those statistics.

CRI should have known that its misrepresentations relating to the amount of federal student aid to which students were entitled were false, because it must be charged with knowledge of the Department’s regulations and with the accurate application of those regulations to its programs.

There can be no doubt that CRI’s students relied on its misrepresentations – indeed, actual reliance on CRI’s statements about program length, financing, progress, completion rates, and employment prospects is the only reasonable explanation for students’ enrollment and continuation in the court reporting program. Indeed, the Department’s own College Scorecard provides precisely this information to prospective students for use in comparing schools and making enrollment decisions that will affect the rest of their lives. *See* <https://collegescorecard.ed.gov/>. In particular, the Department may presume that CRI’s students actually relied on its misrepresentations about graduation and job placement rates, which represent the entire point of going to a vocational school – getting a marketable certificate and a well-paying job.

Students’ reliance on CRI’s misrepresentations was also reasonable. Students understood that CRI was in possession of the relevant data for its completion and placement rate claims, and had no reason to suspect that their school would mislead them. To the contrary, CRI’s student materials consistently presented a positive trustworthy image, bolstered by its designation by ACICS as a “SCHOOL OF DISTINCTION.” This designation was pointed out on the very first page of CRI’s catalog, together with the statement that

[t]his seal of approval represents the highest standard for excellence in education and is awarded only to a select number of school in the nation. CRI is proud to have been awarded this distinction and strives to continue the school’s tradition of providing a quality education for Court Reporting

Exhibit 1, p. 2.¹⁶ ACICS’s deficiencies did not come to light for another decade, when the Department determined not to recognize it as an accrediting agency.¹⁷ Students’ reliance on CRI’s misrepresentations was reasonable.

¹⁶ Each of CRI’s catalogs from 1998-99 and 2001 through closure in 2006 includes an identical statement. *See Exhibits 1-8.* Although the Attorney General’s Offices does not have CRI’s catalogs from other years, based on the consistency of the representations in CRI’s known catalogs, it is reasonable to assume that the catalogs for which direct evidence is lacking also contained the misleading representations.

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Finally, there can be no question that CRI's misrepresentations proximately caused its students to incur damages. These damages include taking out (and paying on) student loans to cover tuition and living expenses, associated harm to their credit scores and financial freedom, as well as lost educational and employment opportunities.

VI. Group Relief for all CRI Students Is Appropriate.

CRI's unfair and deceptive acts or practices were systematic and part of its very business model; they affected each of CRI's former students. The similarity of legal and factual issues presented by each former CRI student asserting a borrower defense claim make this matter appropriate for a group relief process. Accordingly, the Washington Attorney General's Office should request that the Department take the following actions with respect to each and every former CRI student:

- Discharge federal student loans, 34 C.F.R. § 685.206(c)(2);
- Reimburse any and all "amounts paid toward the loan[s] voluntarily or through enforced collection," 34 C.F.R. § 685.206(c)(2)(i);
- Determine, if applicable, that a borrower is not in default and is eligible to receive Title IV assistance should be reinstated, 34 C.F.R. § 685.206(c)(2)(ii); and
- Provide updates to consumer reporting agencies to which it previously made adverse reports regarding their loans. 34 C.F.R. § 685.206(c)(2)(iii).¹⁸

Should the Department determine that individual applications are required from former CRI students for some or all forms of relief requested above, the Washington Attorney General's Office should request that the Department consider this memorandum and the attached exhibits as appropriate and sufficient evidence to support such applications.

VII. Conclusion

CRI's own documents and information, together with evidence on file with the WTB establish that CRI repeatedly violated the prohibition on unfair or deceptive acts or practices in RCW 28C.10.110 and the Consumer Protection Act, RCW 19.86.020, and engaged in common law fraud in recruiting and retaining students. These violations of state law were part of CRI's regular business practices, and directed at each and every student enrolled in CRI's court reporting program. These violations "would give rise to a cause of action under applicable State law," 34 C.F.R. § 685.206(c), and it would therefore be appropriate and advisable for the

¹⁷ See, e.g., <http://www.usnews.com/news/articles/2016-09-22/education-department-strips-authority-of-acics-the-largest-for-profit-college-accreditor>.

¹⁸ The Department should determine that former CRI students' FFEL Program loans are dischargeable if converted into Direct loans through consolidation.

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Department to discharge all federal student loans and provide other relief as outlined above to former CRI students who were enrolled at any time in the Court Reporting Program at its Seattle and Tacoma campuses.¹⁹

¹⁹ The Washington Attorney General does not have information concerning CRI's campuses in Boise, Idaho or San Diego, California. However, the pervasiveness of illegal conduct at CRI's Washington campuses, together with the single-owner and small management structure, make it more probable than not that CRI engaged in the same conduct at those locations in violation of California's Unfair Practices Act, Cal. Bus. And Prof. Code § 17000 *et seq.*, and Idaho's Consumer Protection Act, Idaho Code 48-601 *et seq.*, and its Rules of Consumer Protection, IDAPA 04.02.01.000 *et seq.*, as well as both states' common law fraud rules. *Small v. Fritz Companies, Inc.*, 132 Cal.Rptr.2d 490, 494, 30 Cal.4th 167, 65 P. 3d 1255 (2003) (listing elements for claim of fraud or deceit); *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 518, 808 P.2d 851 (1991) (listing elements for actionable fraud claim). The inference of similar misconduct in California and Idaho is also supported by the evidence available to the Washington Attorney General's Office. First, it appears that one Seattle admissions officer may have moved to the San Diego location. **See Exhibit 22.** Second, 2006 reporting by the San Diego Union-Tribune noted that complaints to California regulators included allegations of "fraud, incompetence, negligence and use of an uncertified instructor – charges that mirror what some Seattle area students had said." **Exhibit 43.** Third, a copy of CRI's 2000 Boise school catalog obtained by the WTB included the same type of representations described above with respect to educational quality, preparing students with skills for a successful career, and retention and job placement rates. **Exhibit 44, pp. 1, 55.** Because the Boise catalog used precisely the same language – word for word – as its Washington catalogs, it undoubtedly included the same (mis)representations in its San Diego catalogs. The Washington Attorney General's Office should therefore request that the Department – in the interest of fairness to all CRI court reporting students and administrative efficiency – grant group relief for CRI's Idaho and California students, as well.