STATE OF MAINE
CUMBERLAND, ss.

DISTRICT COURT
Docket No.: PORDC-CV-_____

DAVID BERNARD,
Plaintiff

v.

CLIMB CREDIT, UNIVERSITY ACCOUNTING SERVICE, LOAN SCIENCE, & 2U, Inc.,
Defendants.

COMPLAINT

Plaintiff David Bernard ("Mr. Bernard") complains and alleges as follows against Defendants Climb Credit, University Accounting Services, Loan Science, and 2U:

PRELIMINARY STATEMENT

1. Shortly after the COVID-19 pandemic hit, and deep into the global health crisis, Mr. Bernard lost a well-paying job, destabilizing his family's income and leaving significant uncertainty as to the future. Mr. Bernard began researching coding bootcamps, hoping he could learn a skill within a couple of months that would enable him to be successful in a new career path and secure a good job. In late 2020 and early 2021, Mr. Bernard came across an online coding course at the University of New Hampshire ("UNH"), not far from where Mr. Bernard was living in Maine.
2. Mr. Bernard had put significant time into researching his different options, and thought that he could trust a nearby, public institution, to provide a quality education. What Mr. Bernard didn't realize, and what was obscured by the course's advertising, was that the bootcamp had minimal, if any, substantive affiliation with UNH. Instead, it was entirely

run and operated by 2U, a for-profit company that serves as an online program manager ("OPM").

3. Such OPM agreements provide financial benefits to the host institution based on the number of students enrolled in the course. Congress has recognized the danger of arrangements like this: the Higher Education Act ("HEA") prohibits institutions from "provid[ing] any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments..." 20 U.S.C. § 1094(a)(20).
4. While Mr. Bernard thought he was enrolling in a course run by a well-known and well-respected nonprofit, public university, he was instead signing up for a course created by, and almost fully managed by, a for-profit corporation with little beyond financial connections to UNH.
5. In addition to the misrepresentations made by the bootcamp on its webpages, bootcamp employees also communicated to Mr. Bernard using "unh.edu" email addresses, further misrepresenting the nature of the program and the roles of those administering it. Upon information and belief, and unbeknownst to Mr. Bernard at the time, these officials were not UNH employees, but were 2U employees.
6. To pay for the bootcamp, Mr. Bernard took out a $10,494.75 loan with Climb Credit, a private lender recommended by the bootcamp employees.
7. Shortly after starting courses, Mr. Bernard realized that the program was in fact not what was advertised or communicated. It became clear almost immediately not only that the bootcamp had nothing to do with UNH, but also that it did not provide any better education than what could be found online for free, or at least much more inexpensively than the thousands of dollars he had signed on to pay.

8. The unlawful misrepresentations made by 2U, and for which Climb Credit is also liable under the FTC Holder Rule and Maine statute on assignee liability, amount to deceptive and unfair trade practices under Maine law, violate the Maine Consumer Credit Code, and constitute common law unjust enrichment and negligent misrepresentation. Mr. Bernard brings this suit to hold Defendants accountable for these violations and to recover the actual damages, statutory damages, costs, and reasonable attorney's fees that Mr. Bernard is entitled to as a result of these claims.

9. The unlawful conduct did not stop with the misrepresentations made about the nature and quality of the program. After Mr. Bernard left the program and started repayment, Climb Credit, along with Loan Science and University Accounting Services, made the experience of loan repayment incredibly difficult, frustrating, and harmful to Mr. Bernard.

10. Multiple times, throughout repayment on the loan, Defendants provided conflicting and inaccurate information to Mr. Bernard. Defendants' confusing communications made it unnecessarily difficult for Mr. Bernard to get his payments back on track, harmed his credit score, and violated Maine laws that seek to protect consumers from harmful student loan servicing practices.

11. Defendants' conduct was in violation of the Maine Student Loan Bill of Rights, Private Education Lending law, Maine Consumer Credit Code, and the Maine Unfair Trade Practices Act. Mr. Bernard brings this suit to hold Defendants accountable for their abusive and deceptive servicing actions and practices, and to recover the actual damages, statutory damages, costs, and reasonable attorney's fees that Mr. Bernard is entitled to under these critical consumer protection laws.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this matter pursuant to 4 M.R.S. § 105(1).

13. Venue is appropriate inasmuch as Plaintiff resides in Cumberland County, Maine. 4 M.R.S. § 155(4). Venue is also proper in this Court as many of the causes of action set forth in this Complaint arose in this county.

STATUTORY BACKGROUND

13. The Maine Student Loan Bill of Rights ("SLBR"), 9-A M.R.S. § 14-101 provides specific consumer protections to student loan borrowers, lays out requirements and prohibited activities for student loan servicers, and creates a regulatory scheme for student loan servicers. Section 14-108(3) renders it unlawful for student loan servicers to engage in various enumerated prohibited activities when servicing a borrower's loan. These violations are not only violations of the SLBR, but also constitute unfair trade practices under the Maine Unfair Trade Practice Act. *See* Section 14-108(4). The SLBR authorizes a private right of action pursuant to Section 14-108(4), should a student loan servicer commit any of the violations in Section 14-108. Student loan servicers violating the SLBR may be held liable for actual damages, a monetary award equal to three times the total amount the student loan collected from the borrower, punitive damages, and court costs and attorney's fees. *See* Section 14-108(4)(A)(1)-(4).

14. The Maine Private Student Lender Registry sets registry requirements for persons engaging in student financing within the State. 9-A M.R.S. § 15-101.

15. The Maine Private Education Lending ("PEL") Law sets licensing, disclosure, and other consumer protection requirements for private student loan lenders and holders of private student loans engaging in business in Maine. 9-A M.R.S. § 16-101. The PEL Law went into effect on October 18, 2021. The PEL Law authorizes a private right of action pursuant to Section 16-110(4). Injured consumers can recover actual damages or $500 (whichever is greater), an injunction, restitution, punitive damages, attorney's fees, and any other relief that the court determines proper. *See* Section 16-110(4)(A)-(F).
16. The Maine Unfair Trade Practices Act (UTPA), 5 M.R.S. § 207, renders it unlawful to engage in any unfair or deceptive act or practices in the conduct of any trade or commerce. The UTPA authorizes a private action pursuant to 5 M.R.S § 213 if the plaintiff has purchased "goods, services or property, real or personal, primarily for personal family or household purposes and thereby suffers any loss of money or property, real or personal as a result" of unfair or deceptive trade practices. The UTPA allows injured consumers both equitable remedies and damages as well as litigation costs, including court costs, and reasonable attorney fees.
17. The Maine Uniform Deceptive Trade Practices Act seeks to protect consumers from deceptive trade practices. 10 M.R.S. § 1212.
18. The Maine Consumer Credit Code (CCC), 9-A M.R.S. § 1-101, governs consumer credit transactions and seeks to protect consumers and borrowers from unfair practices, among other goals. It also contains Maine's version of the FTC Holder Rule, 9-A M.R.S. § 3-403, which holds assignees liable for all claims and defenses a buyer may have against a seller. The CCC allows consumers aggrieved by creditors' violations to recover actual damages, costs, and reasonable attorney's fees. *See* 5 M.R.S. §§ 5-201(1), 5-201(9).

PARTIES

16. Plaintiff David Bernard ("Mr. Bernard") is a consumer who resides in Gray, Cumberland County, Maine.

17. Defendant Climb Credit, Inc. ("Climb") is an entity incorporated in Delaware with a principal place of business in Las Vegas, NV.

18. Defendant University Accounting Service, LLC ("UAS") is an entity incorporated in Wisconsin with a principal place of business in Brookfield, WI.

19. UAS is licensed as a loan servicer and NMLS Student Loan Servicer Company in Maine by the Maine Bureau of Consumer Credit Protection.

20. Defendant Loan Science, LLC is an entity incorporated in Texas with a principal place of business in Austin, TX.

21. Loan Science is licensed as a debt collector in Maine by the Maine Bureau of Consumer Credit Protection.

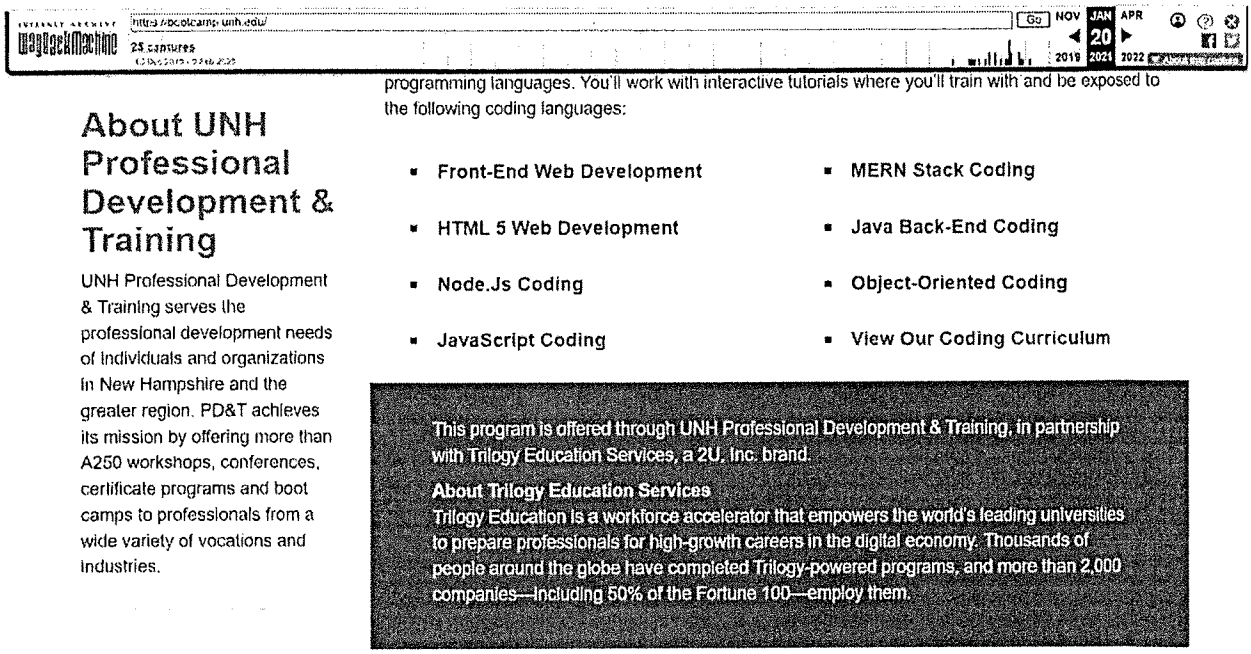
22. Defendant 2U, Inc., is an entity incorporated in Delaware with a principal place of business in New York, New York.

FACTS

22. In or around December 2020 and January 2021, Mr. Bernard started researching coding bootcamp options. He was searching for a program that would deliver a high-quality education and set him up for success in a new field.

23. In his online research, Mr. Benard came across a coding bootcamp that appeared to be run by UNH (hereinafter "the bootcamp").

24. At the time Mr. Bernard came across the bootcamp, the bootcamp website made brief mentions that the bootcamp is delivered "in partnership with Trilogy Education Services, a 2U, Inc. brand," yet it failed to describe the true extent to which 2U and its subsidiaries are in control of the bootcamp and its materials. This page is substantively the same today.



25. Instead, the website used the UNH name and logo repeatedly and misleadingly to describe and advertise the course.

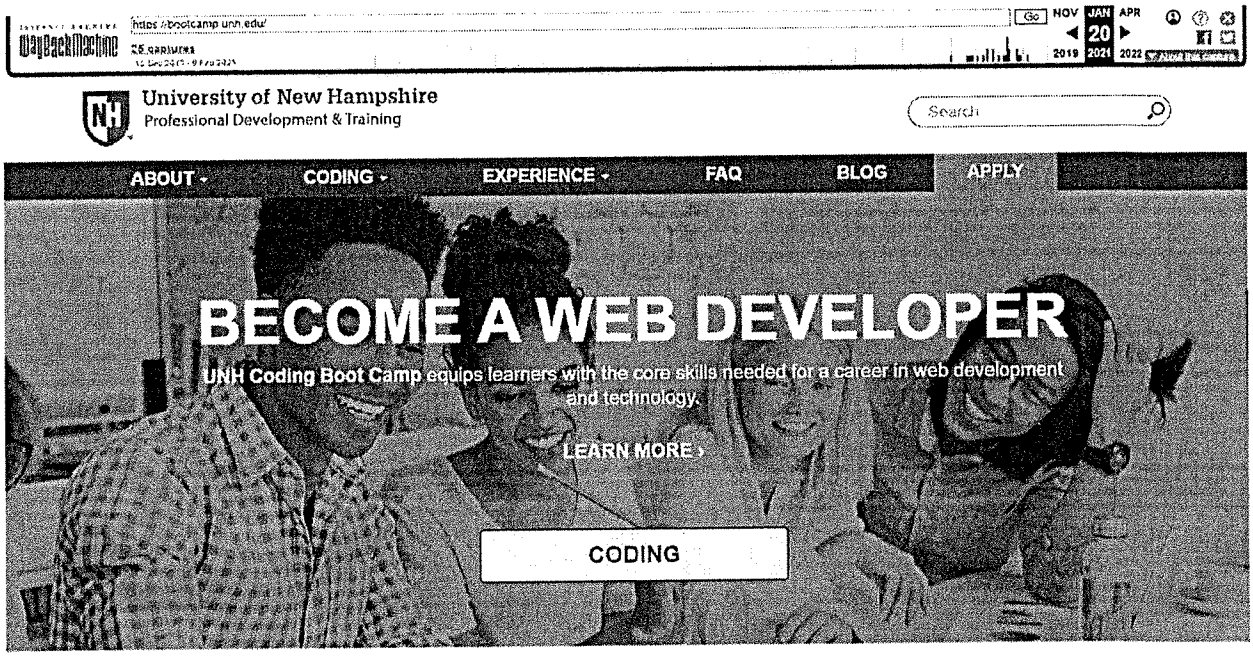
26. The bootcamp website repeatedly indicated that the coding program was a UNH program:

    i. The website is a "unh.edu" website, that contains the UNH logo at the top and bottom of the page, and repeatedly refers to the course as the "UNH Boot Camp."

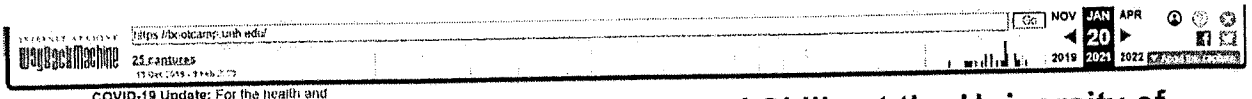
ii. The webpage contains myriad of sentences and descriptions that make the course seem like it is a UNH course, including "Why Learn In-Demand Skills at the University of New Hampshire," "[Graduates Receive] [a] Certification of Completion from UNH Professional Development & Training…" and "[t]his program is offered through Professional Development & Training training.unh.edu."

iii. The webpage provides a phone number with a New Hampshire area code for prospective students to call to learn more.

iv. This landing page is substantively the same today, however instead of saying "Powered by Trilogy Education Services, a 2U, Inc., brand," the bottom banners read "In partnership with edX."[1]



[1] The bootcamp is now delivered with edX, another 2U subsidiary.



COVID-19 Update: For the health and safety of our students, our cohorts will conduct classes virtually.

Read Our Blog »

Why Learn In-Demand Skills at the University of New Hampshire?

The need for skilled technology professionals continues to increase, and at UNH Coding Boot Camp, we teach you the key skills to tap into the rewarding web development industry. Through a cutting-edge coding curriculum, skilled **instructors**, and a virtual **classroom experience**, students will learn the fundamentals for this growing field.

- Learn the latest market skills* for the field of **web development**.
- Build a wide-ranging portfolio of projects or web applications to showcase your knowledge.
- Study part-time while maintaining your work schedule.
- Access UNH Boot Camps' **career services** to support your transition into coding.

**The material covered in these courses is subject to change due to market demand.*

Enrolling Now

Coding

- 3/2/21: Part-Time

Contact Admissions

(603) 389-2051

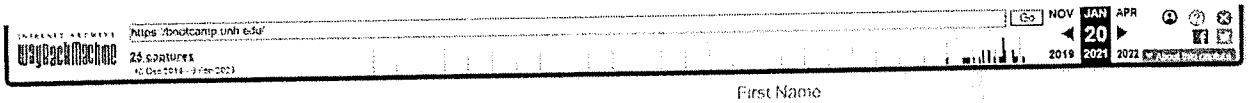
Find us on

About UNH Professional

Coding Curriculum Languages

At UNH Coding Boot Camp our virtual web development classes touch on a broad range of programming languages. You'll work with interactive tutorials where you'll train with and be exposed to the following coding languages:

- **Front-End Web Development**
- **MERN Stack Coding**



First Name

NEXT

25%

ABOUT
CODING
EXPERIENCE
FAQ
BLOG
APPLY

Online
Portsmouth
Salem
Dover
Durham
Nashua
Hampton
Concord
Manchester
Rochester

University of New Hampshire
Professional Development & Training

This program is offered through Professional Development & Training
training.unh.edu

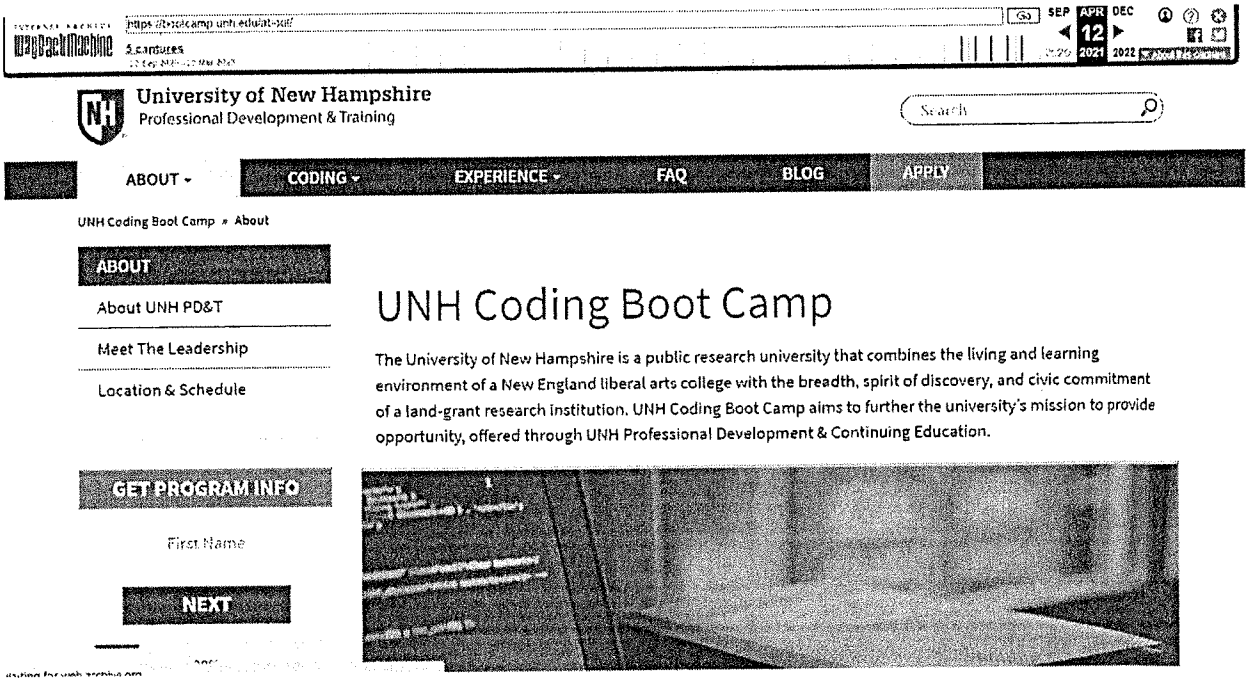
Powered by Trilogy Education Services, a 2U, Inc. brand.

Contact UNH Coding Boot Camp at (603) 389-2051

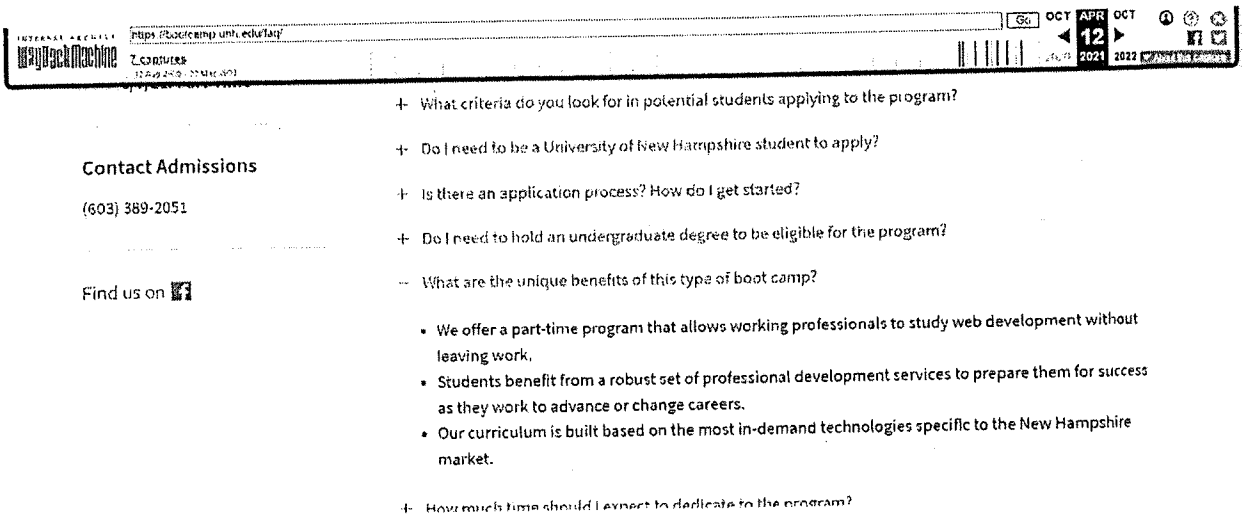
Terms & Conditions | Privacy/Your Privacy Rights

v. On the "About" page, the public, UNH nature of the bootcamp is again emphasized.

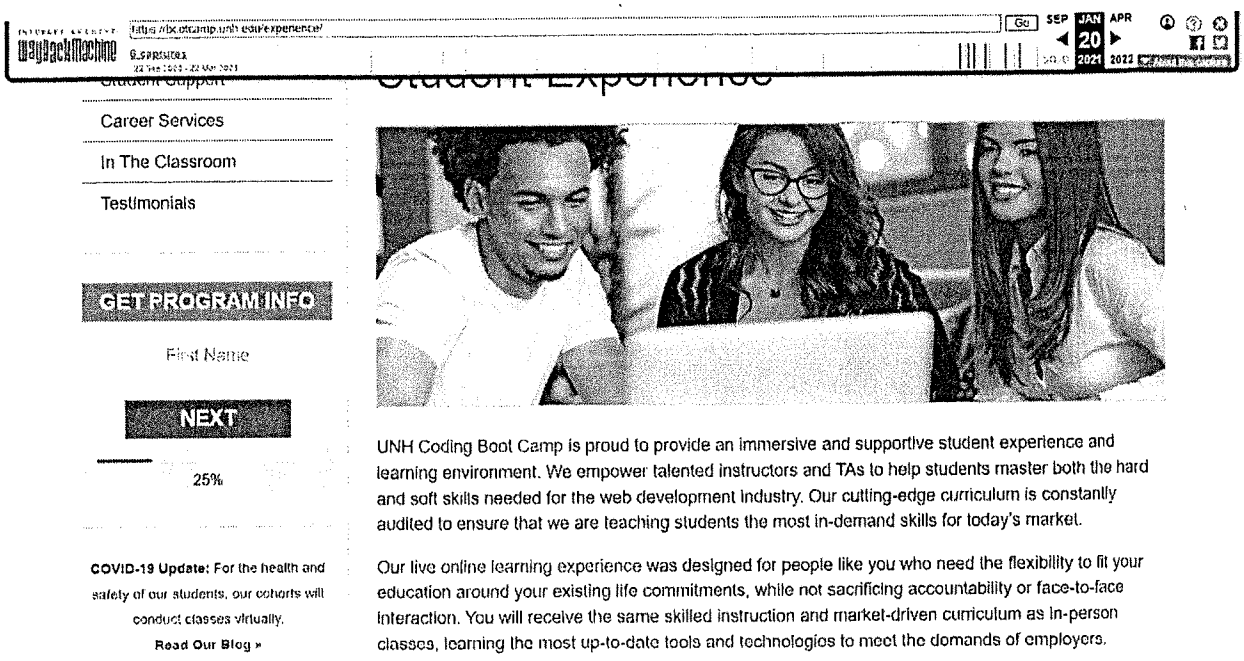
vi. Under the title "UNH Boot Camps," the webpage states "The University of New Hampshire is a public research university that combines the living and learning environment of a New England liberal arts college with the breadth, spirit of discovery, and civic commitment of a land-grant research institution. UNH Boot Camps aims to further the university's mission to provide opportunity, offered through UNH Professional Development & Continuing Education."



vii. On the FAQ webpage of the bootcamp, the website again made it seem as if the bootcamp had significant ties to UNH and New Hampshire, stating that a unique benefit of the program was that the "curriculum is built based on the most in-demand technologies specific to the New Hampshire market." This page is substantively the same today.



27. The bootcamp webpages also touted the quality of education students could expect to receive in the bootcamp. It explained that the "UNH Coding Boot Camp is proud to provide an immersive and supportive student experience and learning environment. We empower talented instructors and TAs to help students master both the hard and soft skills needed for the web development industry. Our cutting-edge curriculum is constantly audited to ensure that we are teaching students the most in-demand skills for today's market." This page is substantively the same today.



28. Mr. Bernard researched several online bootcamp options. Mr. Bernard chose 2U's UNH bootcamp because of the deceptive representations that it was a UNH course.

29. UNH is a close-by, well-respected public institution, and Mr. Bernard reasonably believed, due to 2U's misrepresentations, that the bootcamp was run by UNH and that he would be enrolling in a UNH course.

30. Mr. Bernard knows people who have attended UNH and felt like he could trust UNH to deliver quality education. He felt like it was the safest choice.

31. The misrepresentations continued once Mr. Bernard enrolled: the bootcamp was described as a UNH bootcamp or course throughout communications. For example, the slack channel and online workspace labels both began with "UNH," and made no mention of another company.

32. Because the course was advertised as a UNH program, Mr. Bernard believed the course was being offered through an accredited school, UNH. This factor was important in Mr.

Bernard's decision to attend this bootcamp. Mr. Bernard wanted to get a certificate from an accredited school. It was not until he later came across testimony from another UNH bootcamp student that he learned the program was not accredited.

33. Because of how the bootcamp was advertised, Mr. Bernard believed the bootcamp was a UNH course, and that 2U's involvement did not extend beyond possibly providing some technology to UNH to run the course.

34. However, upon information and belief, the bootcamp was entirely run by 2U, a for-profit company, and not UNH, including, but not limited to, the manner in which the program was advertised.

35. At no point throughout Mr. Bernard's enrollment and registration into the program did bootcamp employees make the true nature and extent of 2U's involvement clear.

36. In fact, throughout Mr. Bernard's communications with the bootcamp when signing up, emails were from .edu email addresses, indicating that the bootcamp was run by UNH and employed UNH staff and faculty. This was not the case.

37. Mr. Bernard would not have attended the bootcamp had he known that it was not UNH-run and was instead entirely run by the for-profit company 2U.

38. When Mr. Bernard attempted to obtain financing for the course, he thought he was doing so through UNH's financial aid office because the financial aid and/or admissions staff with whom he communicated also used unh.edu email addresses.

39. Upon information and belief, Mr. Bernard was not interacting with UNH's financial aid office. Instead, he was interacting with 2U employees.

40. The 2U financial aid employees communicated with Mr. Bernard over the phone and over email. They told Mr. Bernard about certain companies that were "loan partners" with the UNH bootcamp, first directing Mr. Bernard to apply for a loan with Sallie Mae.

41. Mr. Bernard applied for a loan from Sallie Mae but was denied.

42. When Mr. Bernard was denied the Sallie Mae private student loan, 2U employees directed him to apply to Climb for financing.

43. Upon information and belief, 2U and Climb has entered into a revenue sharing agreement pursuant to which 2U benefited from consumer referrals made to Climb when the consumer enrolled in a 2U program.

44. On January 12, 2021, while residing in Standish, Maine, Mr. Bernard signed a loan (the "Climb Credit Agreement") to take out $10,494.75 to attend the UNH Coding Boot Camp.

45. The Climb Credit Agreement included FTC Holder Rule language, stating: NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL THE CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

46. The Climb Credit Agreement lists Climb Investco, LLC as the lender.

47. Upon information and belief, Climb and Climb Investco, LLC operate as a single entity, and Climb Credit is another trade name for Climb Investco.

48. The Climb Credit Agreement states that the loan amount of $9,995 is paid to the University of New Hampshire on Mr. Bernard's behalf.

49. Upon information and belief, UNH and 2U had entered a revenue sharing agreement with respect to the UNH Coding Boot Camp, and a portion or all of the Climb Credit loan funds were directed to 2U to pay for Mr. Bernard's enrollment in the program.

50. Upon first logging into the bootcamp's online portal, Mr. Bernard immediately knew something was off.

51. The portal was generic, basic, and looked like it could have been, or had been, used for any other course offered anywhere else.

52. As courses progressed, it became clear the instruction was minimal and substandard.

53. Most class time was spent in Zoom break-out rooms with other students who were not able to teach each other.

54. Upon realizing that the bootcamp had substandard instruction and was not providing the quality education he was promised, Mr. Bernard dropped out of the course in or around March or April 2021. Mr. Bernard felt that his financial circumstances were only being harmed by continuing to spend time on a course that was not going to provide him with a valuable skillset.

55. Mr. Bernard began repayment on the Climb Credit Agreement in April 2021.

56. The Climb Credit Agreement imposes a repayment schedule consisting of six months of interest-only payments and 36 months of principal and interest payments.

57. The terms of the Climb Credit Agreement state that the first six payments will be interest-only payments.

58. Despite the terms of the Credit Agreement, UAS applied Mr. Bernard's first payment towards both interest and principal.

59. Sometime between January 2021 and April 2021, UAS communicated to Mr. Bernard over the phone that there would be a month or so grace period between the interest-only payments and the start of regular principal and interest payments.

60. The Credit Agreement stated that these payments would be $84.22, however, the payments were never exactly $84.22.

61. Instead, the monthly payment fluctuated, due to the billing period date and daily interest accrual, from $82.76 to $85.84.

62. Mr. Bernard made the initial six interest-only payments, with the last payment being on September 16, 2021.

63. This included interest-only payments for April, May, June, July, August, and September 2021.

64. Climb charged Mr. Bernard $5 late fees in August and September, higher than what was permitted under the Credit Agreement, which limits late fees to 5% of the past due debt, or $15, whichever is less.

65. Mr. Bernard's past due amounts for August and September were $82.76 and $85.52, meaning the late fees should not have exceeded $4.14 and $4.28, respectively.

66. Despite telling Mr. Bernard over the phone that there would be a grace period between interest-only payments and full payments, UAS and Climb (via one, co-branded statement) sent Mr. Bernard a statement dated October 1, 2021, stating that Mr. Bernard owed $82.75, due by October 25, 2021.

67. This payment amount was the same as the interest-only payment amounts he had been making the previous six months.

68. Mr. Bernard paid October's payment on October 31, 2021.

69. UAS accepted October's payment and UAS and Climb did not include any past-due amount on November's statement.

70. On December 14, 2021, Mr. Bernard paid $100 on his account, which would have been enough to cover an interest-only payment in November, but not a full interest and principal payment.

71. Mr. Bernard missed the December 2021 payment.

72. On or around January 14, 2022, UAS or Loan Science communicated to Mr. Bernard over the phone that the loan was 60 days past due.

73. The loan was not yet 60 days past due at that time.

74. During that same phone call, UAS or Loan Science offered a Rehabilitation Agreement to Mr. Bernard.[2]

75. UAS or Loan Science explained that pursuant to this Rehabilitation Agreement, Mr. Bernard would be able to make smaller, interest-only payments on the loan for three months.

76. UAS or Loan Science explained that after successful completion of the Rehabilitation Agreement, Mr. Bernard's account would be brought back to good standing and past late payment marks would be removed from his account.

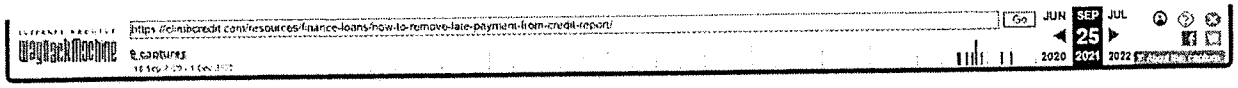
77. Mr. Bernard accepted the Rehabilitation Agreement while on the phone with the Loan Science or UAS representative.

78. During the January 14, 2022 call, UAS or Loan Science did not tell Mr. Bernard that he had any other options to deal with the past due payments.

[2] The Agreement document is titled "Reduced Payment/Deferral Benefit Request."

79. During the January 14, 2022 call, UAS or Loan Science did not tell Mr. Bernard that he could get his loan current again by curing the default and paying all amounts due and owing.

80. During the January 14, 2022 call, UAS or Loan Science did not tell Mr. Bernard that he could ask for any late marks to be removed as "a gesture of goodwill" as Climb had stated on its website.



How do I remove late payments from my credit report?

Seven years is a very long time for bad credit to be hanging over your head – even if you build up your credit score to a decent level, your potential creditors will be able to see your payment history.

Thankfully, you can get late payments removed from your credit report.

One of the most effective ways of removing a late payment is to ask for a gesture of goodwill. This is as simple as calling your credit provider and explaining your situation. However, this method is only really effective if you have a good history and relationship with your creditor.

This is generally a successful method, as at the end of the day, customer service advisors are humans too, and understand that nobody is perfect. They don't want to close your account over one disagreement, so providing you have a good history with them, they will most likely grant you a gesture of goodwill.

81. Had UAS or Loan Science told Mr. Bernard he could bring the loan current by curing the default, Mr. Bernard would have done so.

82. Had UAS or Loan Science told Mr. Bernard he could get late marks removed by requesting it as a gesture of goodwill, he would have done so.

83. Upon information and belief, UAS took two weeks to process the Rehabilitation Agreement.

84. UAS set the next payment date to February 25, 2022.

85. Due to the two-week delay in processing the Rehabilitation Agreement, and the change in the online payment due date, Mr. Bernard did not make a January payment.

86. While Mr. Bernard was ready to start the plan in January, the Rehabilitation Agreement was not processed, and the first payment was not due, until February.

87. Despite this, UAS considered January another missing payment, and charged Mr. Bernard a late fee of $5 on February 10, 2022.

88. UAS and Climb sent Mr. Bernard a February statement that included the $5 late fee, a past due amount of $907.54, and a current amount due of $89.22, with a total amount due of $996.76.

89. This statement was inaccurate: Mr. Bernard did not have a total amount due of $996.76 in February 2022. Instead, he only owed the current amount due of $89.22.

90. On February 15, 2022, Loan Science sent Mr. Bernard a letter stating that his account was more than 70 days past due, and that he owed a past due amount of $832.32.

91. The letter stated that Loan Science could "help by accepting payments or discussing other options," and that they "need[ed] to hear from" Mr. Bernard about the amount he owed.

92. The contents of the Loan Science letter were inaccurate and misleading: per the Rehabilitation Agreement Mr. Bernard entered a month prior, Mr. Bernard only owed one, interest-only payment in February.

93. Additionally, the past due amount Loan Science claimed Mr. Bernard owed was over $100 different from the amount UAS and Climb claimed he owed.

94. In fact, by the date of the Loan Science letter, Mr. Bernard had already paid the Rehabilitation Agreement amount due for February, and paid extra to cover late fees.

95. Under the Agreement, Mr. Bernard owed only one, interest-only payment, far less than the $832.32 Loan Science said he owed.

96. Mr. Bernard made the February payment on time, on February 13, 2022.

97. Mr. Bernard paid $94.22, more than the monthly interest amount he was told he would have to pay under the Rehabilitation Agreement.

98. Ten dollars of Mr. Bernard's February payment went towards late fees, including a late fee assessed on January 10, 2022, and a late fee assessed on February 10, 2022.

99. In March 2022, Mr. Bernard spoke with UAS or Loan Science, and UAS or Loan Science confirmed that the loan was still subject to the Rehabilitation Agreement that Mr. Bernard had accepted during the January 14, 2022 phone call.

100. UAS or Loan Science further advised Mr. Bernard that if the three interest-only payments were made on time, the past due balance on Mr. Bernard's account would be removed, the account would be brought current, and that any missed payments on the credit report would be removed.

101. On March 13, 2022, another late fee was assessed on Mr. Bernard's account, despite the fact that he had made the February payment on time, and paid off $10 in late fees in his previous payment.

102. On March 25, 2022, Mr. Bernard paid $89.22, more than the monthly interest amount, $5 of which UAS applied to the March 13 late fee.

103. On April 10, 2022, another late fee was assessed on Mr. Bernard's account, despite the fact that he had made the February and March payments on time, and paid off $15 in late fees since the Rehabilitation Agreement began.

104. On April 23, 2022, Mr. Bernard made the last Rehabilitation Agreement payment. He paid $89.22, and again UAS applied $5 of that payment to late fees.

105. On May 10, 2022, UAS assessed another $5 late fee on Mr. Bernard's account, despite Mr. Bernard having made the previous months' payment on time.

106. Mr. Bernard paid $339.18 on May 20, 2022, which covered the full monthly payment and the $5 late fee.

107. On March 27, 2022, before the end of the Rehabilitation Agreement, Mr. Bernard submitted a complaint to the Consumer Financial Protection Bureau ("CFPB") regarding misleading communications from Defendants, payment issues, and the Rehabilitation Agreement.

108. On April 11, Climb submitted a response to Mr. Bernard's complaint to the CFPB stating that if Mr. Bernard made all payments as planned, the loan would be deemed current when the Rehabilitation Agreement was completed, and that any past due reporting would be corrected "to reflect all payments made on the payment agreement were current."

109. Climb's CFPB response provided conflicting, confusing, and inaccurate information about the Rehabilitation Agreement.

110. In Climb's CFPB response, Climb inaccurately claimed that Mr. Bernard was not told that he would be marked current on his credit report after completing the Rehabilitation Agreement, when UAS and/or Loan Science repeatedly told Mr. Bernard this would be the case.

111. Yet in the same response, Climb stated that if Mr. Bernard made the payments as agreed in the Rehabilitation Agreement, his loan would be marked current.

112. In Climb's response, Climb also stated that Mr. Bernard's first full principal and interest payment had become due in October 2021.

113. However, Climb and UAS sent Mr. Bernard an October 2021 Account Statement that stated only $82.76 was due, not the full interest and principal payment of $334.18.

114. Mr. Bernard made this October payment, and UAS applied it to the interest on the loan.

115. UAS never told Mr. Bernard he had a past due amount for October 2021's monthly payment, or was late on October's payment.

116. Climb's CFPB response stated that, upon successful completion of the Rehabilitation Agreement, Climb would follow-up directly with Mr. Bernard to confirm that past due reporting was updated to reflect as current and any past due amount is rehabilitated and the loan would be "brought to current immediately." Climb never followed up with Mr. Bernard as promised.

117. Defendants made numerous representations and promises that successful completion of the Rehabilitation Agreement would bring Mr. Bernard's loan current and remove any past due amounts and late payments.

118. The account was not brought current upon completion of the Rehabilitation Agreement.

119. Instead, UAS sent Mr. Bernard a statement for May 2022 that stated that he owed a past due amount of $907.54 and a current balance of $1,241.72, due by May 25, 2022.

120. This statement was inaccurate: Mr. Bernard only owed the current monthly amount of $334.18.

121. On May 20, 2022, Mr. Bernard made a payment of $339.18.

122. UAS applied $5 of this payment towards late fees.

123. On April 30, 2022, after Mr. Bernard had completed the Rehabilitation Agreement, upon information and relief Defendant Climb and/or UAS reported to at least one of the major credit reporting agencies that Mr. Bernard's loan was 120-149 days late, with late payments in December 2021, as well as January, February, and March 2022.

124. This information continued to appear on Mr. Bernard's credit report through May 2022.

125. On or around May 23, 2022, Mr. Bernard spoke to Loan Science or UAS about the fact that missing payments were still appearing on his credit report.

126. It was often unclear whether or not Mr. Bernard was speaking with Loan Science or UAS, as both defendants were in communication with Mr. Bernard during the repayment of the Climb loan.

127. During the May 23 call, Loan Science or UAS stated that Mr. Bernard did not meet the terms of the Rehabilitation Agreement because he had in fact been ineligible for the Agreement because he had a past due balance at the time he entered into it.

128. On May 26, 2022, over a month after Mr. Bernard completed the Rehabilitation Agreement that was meant to bring his account current, UAS and Climb sent Mr. Bernard an email stating that his account was 120 days past due and about to be sent to collections.

129. In June 2022, Climb and UAS sent Mr. Bernard an account statement stating that Mr. Bernard owed a past due amount of $907.54, with a total amount due on June 25 of $1,241.72.

130. This June statement was inaccurate: Mr. Bernard only owed the current monthly amount of $334.18.

131. In June 2022, upon information and belief, Defendant Climb or UAS reported to the major credit reporting agencies that Mr. Bernard's account was 90 days past due, had three missed payments, with the last payment made on July 1, 2021. Mr. Bernard saw this when checking his credit report using Credit Karma.

132. In June 2022, Defendant Climb or UAS reported to at least one of the major credit reporting agencies that Mr. Bernard's account had missing payments in December 2021, and for January, February, March, and April 2022, which Mr. Bernard saw by checking his FICO Report.

133. On July 17, 2022, Mr. Bernard made a payment of $334.18.

134. The misinformation, inaccurate and confusing communication, and incorrect information and action on the part of Defendants during the repayment of Mr. Bernard's loans had an intensely distressing impact on Mr. Bernard.

135. Due to Defendants' actions, Mr. Bernard felt as though he could never get a straight answer on repayment. He spent hours trying to figure out what was going on with his loan, only to get answers that would later be contradicted.

136. When Mr. Bernard thought he had agreed to something with one Defendant, another Defendant, or another representative of the same Defendant, would communicate something else.

137. Throughout this frustrating back and forth, Defendants continued to send Mr. Bernard late notices and report missing payments to at least one of the major credit

reporting agencies, despite Mr. Bernard's successful completion of the Rehabilitation Agreement.

138. Defendants' actions made it difficult for Mr. Bernard to ascertain the actual terms of repayment and status of his loan and to take action to mitigate harm to his account and credit score.

139. Mr. Bernard felt trapped in a payment situation that he could not get control of. He was getting constant calls from UAS, and every time he spoke to Defendants' representatives, he felt like he got a different story about repayment.

140. The uncertainty and spiraling consequences left Mr. Bernard feeling trapped, like Defendants had complete control over his financial life. He could not sleep or focus on anything during this time period.

141. Mr. Bernard was especially distressed because of the impact on his credit. Mr. Bernard had been working diligently to repair his credit since the 2008 housing crisis, and he started to see that progress precipitously decline as a result of Defendants' actions, without clarity as to why or how to fix it.

142. Mr. Bernard has been turned down by at least two debt consolidation companies due to the late marks on the Climb account.

143. Not only did Defendants' actions lead to emotional distress and financial distress, but the misrepresentations made by 2U when advertising the bootcamp meant that Mr. Bernard did not benefit at all from taking out a Climb loan.

144. Mr. Bernard lost his job at the beginning of the COVID-19 pandemic. He wanted to improve his family's financial situation and get into a good and steady career. He was

committed and engaged in learning, gaining a certificate, and finding a quality job. He researched his options and thought he could trust the public university next door.

145. Instead, Defendants' deceptive and unfair practices induced Mr. Bernard to take out a five-figure loan for a generic online course that offered material no more helpful than free or low-cost YouTube or Udemy videos.

146. Mr. Bernard has continued to make full payments on the loan and has never defaulted.

147. To date, Mr. Bernard has paid over $7,000 to Climb.

COUNT I – Student Loan Bill of Rights

148. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

149. Mr. Bernard is a "student loan borrower" under the SLBR as he took out a loan from Climb to pay for tuition at a coding bootcamp, a postsecondary educational expense or other school-related expense, while living in Maine. See 9-A M.R.S. § 14-103(2)-(3).

150. The bootcamp is a postsecondary educational program, as it provides an educational course and only admits students who are at least 18 years old and possess a high school diploma or GED. The bootcamp is advertised as a six-month long course in coding basics, aimed at developing skills for careers in full stack development. Prospective students must apply, do a phone interview, and complete an additional assessment to enroll.

151. The SLBR defines loan servicing in three different ways.

i. First, entities engage in servicing when they receive scheduled periodic payments, apply those payments, and/or notify the borrower of those payments pursuant to terms of a loan or contract. Section 14-103(A).

ii. Second, entities engage in servicing when they maintain account records for a student education loan and communicate with the borrower on the holder's behalf during a period when payment is not required. Section 14-103(B).

iii. Third, entities engage in servicing when they interact with a student loan borrower for various reasons, such as to communicate with the borrower about default. Section 14-103(C).

152. Climb, UAS, and Loan Science are "student loan servicers" as defined in the SLBR § 14-103(4), as they were responsible for servicing a student education loan to a student loan borrower.

i. Climb interacted and communicated with Mr. Bernard regarding his loan, and maintained account records about his loan, including at times when payments were not required. Climb also sent Mr. Bernard account statements.

ii. UAS received scheduled, periodic payments from Mr. Bernard, and applied those to Mr. Bernard's loan. UAS also sent Mr. Bernard account statements, late notices, and maintained account records relating to the loan. In carrying out these activities, UAS communicated directly with Mr. Bernard.

iii. Loan Science notified Mr. Bernard of payments, sent Mr. Bernard notices regarding past due payments, and spoke to Mr. Bernard over the phone regarding payment arrangements.

153. Climb, UAS, and Loan Science's actions described in this Complaint violate the Student Loan Bill of Rights § 14-108.

i. Defendant Climb and/or UAS's actions violate Section 14-108(3)(B) and 14-108(3)(D) by charging higher than permitted late fees in August and September 2021, thereby misapplying Mr. Bernard's payment made on August 11, 2021 and September 16, 2021, and misrepresenting the nature and terms of the fees and payments due on the account.

ii. Defendant Climb's actions violate Sections 14-108(3)(A), 14-108(3)(B), and 14-108(3)(H) by making misleading statements, both directly to Mr. Bernard and in response to his complaint to the Consumer Financial Protection Bureau, about when the first principal and interest payment was due, and how far behind the account was on January 14, 2022, when Mr. Bernard entered into the Rehabilitation Agreement.

iii. Defendant Loan Science violated Section 14-108(3)(B) by sending Mr. Bernard a notice in February 2022 that Mr. Bernard was late and had a past due amount of over $800;

iv. Defendants UAS and Climb violated Section 14-108(3)(B) by sending Mr. Bernard a statement in February 2022 stating that Mr. Bernard owed a total payment of $996.76.

v. Defendants UAS and Climb violated Section 14-108(3)(B) by sending Mr. Bernard a statement in May 2022 stating that Mr. Bernard owed a past due payment of $907.54 and a total amount due of $1,241.72.

vi. Defendant Climb and UAS's actions violate Sections 14-108(3)(A) and 14-108(3)(B) by sending an email to Mr. Bernard on May 26, 2022 that his account was 120 days past due and about to be sent to collections.

vii. Defendant Climb and/or UAS's actions violate Sections 14-108(E) and 14-108(F) by reporting Mr. Bernard's account as 120-149 days past due, with late payments in December 2021, January 2022, February 2022, and March 2022, after Mr. Bernard had completed the Rehabilitation Agreement, to at least one credit reporting agency.

viii. Defendants UAS and Climb violated Section 14-108(3)(B), by sending Mr. Bernard a statement in June 2022 stating that Mr. Bernard owed a past due payment of $907.54 and a total amount due of $1,241.72.

ix. Defendant Climb and/or UAS's actions violate Sections 14-108(E) and 14-108(F) by reporting Mr. Bernard's account as 90 days past due with three missed payments in or around June 2022, with the last payment made on July 1, 2021.

x. Defendant Climb, UAS, and/or Loan Science's actions violate Sections 14-108(3)(A) and 14-108(3)(B) by making misleading statements about Mr. Bernard's ineligibility for the Rehabilitation Agreement.

xi. Defendant Climb and/or UAS's actions violate Section 14-108(3)(D) by applying the first interest-only payment to both interest and principal, contrary to the terms of the Credit Agreement.

xii. Under the Student Loan Bill of Rights § 14-108(4), violations of the Student Loan Bill of Rights constitute unfair practices under the Maine Unfair Trade Practices Act.

154. As described in Paragraphs 134-147, Defendants' above-described inaccurate and misleading communications have caused Mr. Bernard substantial injury, including emotional distress, actual damages relating to late charges and interest charged, and harmed his credit score.

155. Mr. Bernard could not have reasonably avoided these injuries.

156. Defendants' actions offer no countervailing benefits to consumers nor to competition.

157. As a result of Defendants' violations of the Student Loan Bill of Rights, Mr. Bernard is entitled to the following remedies, enumerated in § 14-108(4):

i. Actual damages;

ii. Money damages equal to three times the total amount the servicer has collected from the borrower;

iii. Punitive damages; and

iv. Costs and reasonable attorney's fees.

158. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of the unlawful and wrongful conduct.

COUNT II – Private Education Lending

159. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

160. Climb qualifies as a "private education lender" under the Private Education Lending ("PEL") law as it is engaged in the business of making or extending private education loans, or holding those loans. Private Education Lending § 16-101(5).

161. The loan extended by Climb qualifies as a "private education loan" under the PEL law as it was an extension of credit for postsecondary expenses. Private Education Lending § 16-101(6).

162. Section 16-102 of the PEL law requires a private education lender to acquire a supervised lending license prior to "securing, making or extending a private education loan or holding a private education loan."

163. Climb holds the Climb Credit Agreement but does not currently have a supervised lending license with the state of Maine.

164. Climb did not have a supervised lending license when securing, making or extending a private education loan to Mr. Bernard.

165. Section 16-106(3)(A) of the PEL law requires lenders to describe any alternative repayment options on its website.

166. Climb does not clearly advertise any sort of Rehabilitation Agreement on its website.[3]

167. Instead, Climb merely makes mention of an "alternative repayment option," in an FAQ-style webpage from October 1, 2021, buried in the Help Center part of its website.

168. This webpage explains an alternative payment plan with some similar, and some different, terms to the Rehabilitation Agreement offered to Mr. Bernard.

[3] The Rehabilitation Agreement application is titled "Reduce Payment/Deferral Benefit Request." Climb's website does not clearly advertise a plan by this name, either.

169. For example, both the webpage and the Rehabilitation Agreement state that payments made on these plans will bring the loan current upon completion of the plan.

170. However, the alternative payment plan described on the website does not specify the length of the repayment plan, and does not specify a total limit on the number of months a borrower can be enrolled in such a program. Additionally, the FAQ webpage describing the alternative repayment plan states that payments are due on the exact payment due date.

171. By contrast, the Rehabilitation Agreement offered to Mr. Bernard was for three months, and stated that the total number of months he could be enrolled in such a plan over the life of the loan would be six months. The Rehabilitation Agreement does not state that payments must be made exactly on the payment due date to be considered on time.

172. Section 16-106(3)(B) of the PEL law requires lenders to "establish consistently implemented policies or procedures to evaluate private education lending alternative repayment options requests, including providing accurate information...."

173. Upon information and belief, during the relevant times, Climb failed to treat Mr. Bernard as they would treat other borrowers when it came to alternative repayment options and remedying loan delinquency.

174. Upon information and belief, Climb had a policy of offering to bring some borrowers' loans current through "gesture[s] of goodwill," which could appeal to customer service advisors who "are human, too, and understand that no one is perfect."

175. This goodwill policy was never offered to Mr. Bernard nor implemented to bring Mr. Bernard's account current.

176. Defendant Climb's actions described in this Complaint violate Private Education Lending §§ 16-106, 16-108.

i. Climb's actions violate Section 16-102 by failing to obtain a supervised lender license before securing, making or extending a private education loan to Mr. Bernard and before holding such a loan.

ii. Climb's actions violate Section 16-106(3)(A) by failing to describe or advertise the Rehabilitation Agreement program Mr. Bernard was offered and entered into, on its website.

iii. Climb's actions violate Section 16-106(3)(B) by failing to have consistently implemented policies and procedures to review alternative repayment plan requests made by borrowers.

iv. Climb's actions violate Sections 16-106(1) and Section 16-106(2) by failing to offer and apply Climb's goodwill gesture policy to Mr. Bernard's account;

v. Climb's actions violate Section 16-108(2)(D) by placing Mr. Bernard's loan into default after Mr. Bernard had enrolled in a Rehabilitation Agreement and sending him a 120-day past due notice in May 2022 that threatened to send the account to collections.

177. Due to Climb's actions, in violation of the PEL Law, Mr. Bernard was unable to access accurate information about his repayment options, causing him to fall further behind on his loan, suffer emotional distress, and suffer harm to his credit. As a result of these violations and the harm suffered by Mr. Bernard, Mr. Bernard is entitled to the remedies enumerated in Private Education Lending Law § 16-110(4), which include:

i. Actual damages or $500, whichever is greater;

ii. An order enjoying the methods, acts, or practices;

iii. Restitution of property;

iv. Punitive damages;

v. Attorney's fees; and

vi. Any other relief that the court determines proper.

COUNT III – Private Student Loan Registry

178. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

179. Climb qualifies as a "student financing company" as defined in the Private Student Loan Registry ("PSLR") as it is engaged in the business of making and extending, as well as holding, loans for postsecondary education expenses. 9-A M.R.S. § 15-101(3).

180. Since the PSLR went into effect, Climb has held Mr. Bernard's loan.

181. Climb engages in the business of "student financing" in Maine, as defined under the PSLR, as it extends and holds credit or debt for students specifically for postsecondary education expenses. 9-A M.R.S. § 15-101(2)(B).

182. Climb violated the PSLR by engaging in student financing in Maine while failing to register with the Maine superintendent, as required by Section 15-102(1).

183. Climb is liable to the Plaintiff for actual damages or $500, whichever is greater, an injunction, restitution, punitive damages, attorney's fees, and any other relief that the

court determines proper, including a declaration that the Climb Credit Agreement is void and unenforceable. 9-A M.R.S. § 15-103(4)(A)-(F).

COUNT IV- Maine Uniform Deceptive Trade Practices Act

184. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

185. 2U constitutes a "person" under the Maine Uniform Deceptive Trade Practices Act ("UDTPA") as the definition includes corporations. 10 M.R.S. § 1211(5).

186. The Maine UDTPA prohibits a person from:

i. "Pass[ing] off goods and services as those of another," 10 M.R.S. § 1212(1)(A);

ii. "Caus[ing] likelihood of confusion or of misunderstanding as the source, sponsorship, approval or certification of goods or services," 10 M.R.S. § 1212(1)(B)

iii. "Caus[ing] likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another," 10 M.R.S. § 1212(1)(C);

iv. "Represent[ing] that goods or services have... characteristics, ingredients, uses, benefits or quantities they do not have, or that a person has... status, affiliation or connection that he does not have," 10 M.R.S. § 1212(1)(E);

v. "Advertis[ing] goods or services with intent not to sell them as advertised," 10 M.R.S. § 1212(1)(I);

vi. "Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding," 10 M.R.S. § 1212(1)(L).

187. Defendant 2U's actions violate Sections 1212(1)(A)-(C), (E), (I), and (L) by:

i. Advertising the bootcamp as a UNH bootcamp;

ii. Failing to provide clear or meaningful disclosures about the nature and extent of 2U's involvement with the bootcamp; and

iii. Continuously passing off the bootcamp as a UNH bootcamp by using UNH logos, branding, and email addresses.

188. Pursuant to the FTC Holder Rule, language found in the Climb Credit Agreement, and Maine Consumer Credit Code § 3-403, Defendant Climb is also subject to all claims asserted in this count regarding 2U's actions and practices. If, in the alternative, UNH is determined to have been the provider of any of the goods or services at issue in these claims, Defendant Climb is still subject to any and all claims under the same theories of liability.

189. As a result of the above violations of the Maine UDTPA, Mr. Bernard is entitled to an injunction and all other equitable relief this court determines necessary and proper. 10 M.R.S. § 1213.

190. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of the unlawful and wrongful conduct.

COUNT V – Maine Unfair Trade Practices Act
Advertising and Lending Violations

191. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

192. 2U constitutes a "person" under the Maine UTPA as the definition includes corporations. 5 M.R.S. § 206(2).

193. Climb constitutes a "person" under the Maine UTPA as the definition includes corporations. 5 M.R.S. § 206(2).

194. At all relevant times, 2U and Climb engaged and engage in trade and commerce as defined in the Maine UTPA, by "advertising, offering for sale, [selling].... services..." 5 M.R.S. § 206(3).

195. Defendants violated the Maine UTPA, 5 M.R.S. § 205-A, by engaging in unfair, deceptive, and unlawful practices in connection with advertising and offering the bootcamp, extending credit to finance the bootcamp, and servicing Mr. Bernard's Climb loan.

196. Defendants 2U and Climb's violations of the Maine UTPA include, but are not limited to, the following:

i. The allegations alleged in Count IV (UDTPA), paragraphs 186(i)-(vi) and 187(i)-(iii);

ii. Defendant 2U misrepresenting the bootcamp as a UNH-run bootcamp;

iii. Defendant 2U misrepresenting the nature of the bootcamp, as it related to UNH and 2U's involvement in operating the course, creating the substance of the course, and teaching the course;

iv. Defendant 2U misrepresenting the quality of education provided through the bootcamp;

v. Defendant 2U failing to disclose that the bootcamp was not accredited; and

vi. Defendants 2U and Climb failing to disclose the financial and/or preferred lender relationship between Climb and the bootcamp.

197. Such conduct caused Mr. Bernard harm and could not reasonably be avoided. Mr. Bernard was provided with misleading and inaccurate information about the nature and quality of the program and loan.

198. Defendants' conduct does not provide a benefit to consumers or to competition that outweighs the harms caused to Mr. Bernard.

199. Defendants' misrepresentations were material.

200. Mr. Bernard reasonably relied upon these misrepresentations, which induced him to attend the bootcamp and take out a loan from Climb, actions he would not have otherwise taken.

201. The conduct resulted in substantial injury, including emotional and financial distress, as detailed in paragraphs 134-147.

202. Defendants' actions offer no countervailing benefits to consumers nor to competition.

203. Pursuant to the FTC Holder Rule, language found in the Climb Credit Agreement, and Maine Consumer Credit Code § 3-403, Defendant Climb is also subject to all claims asserted in this count regarding 2U's actions and practices. If, in the alternative, UNH is determined to have been the provider of any of the goods or services at issue in these claims, Defendant Climb is still subject to any and all claims under the same theories of liability.

204. As a result of the above violations of the Maine UTPA, Mr. Bernard is entitled to actual damages, restitution, reasonable attorney's fees, and all other equitable relief this court determines necessary and proper. 5 M.R.S. § 213.

205. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of the unlawful and wrongful conduct.

206. On August 29, 2023, Plaintiff sent a Maine UTPA Demand Letter to Defendants as required by 5 M.R.S. § 213(1-A).

COUNT VI – Maine Unfair Trade Practices Act
Servicing Violations

207. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

208. UAS constitutes a "person" under the Maine UTPA as the definition includes corporations. 5 M.R.S. § 206(2).

209. Loan Science constitutes a "person" under the Maine UTPA as the definition includes corporations. 5 M.R.S. § 206(2).

210. Climb constitutes a "person" under the Maine UTPA as the definition includes corporations. 5 M.R.S. § 206(2).

211. At all relevant times, UAS, Loan Science, and Climb engaged and engage in trade and commerce as defined in the Maine UTPA, by "advertising, offering for sale, [selling].... services..." 5 M.R.S. § 206(3).

212. Defendants violated the Maine UTPA, 5 M.R.S. § 205-A, by engaging in unfair, deceptive, and unlawful practices in connection with providing and servicing Mr. Bernard's Climb loan.

213. Defendants Climb, UAS, and Loan Science's violations of the Maine UTPA include, but are not limited to, the following:

i. Defendant Climb and/or UAS telling Mr. Bernard there would be a grace period in between the interest-only and full principal and interest payments;

ii. Defendant Climb, UAS, and/or Loan Science misrepresenting a Rehabilitation Agreement as Mr. Bernard's only option to bring his loan current;

iii. Defendant Loan Science or UAS telling Mr. Bernard he was ineligible for the Rehabilitation Agreement;

iv. Defendant Climb, UAS, and/or Loan Science failing to offer and/or accept a gesture of goodwill to bring Mr. Bernard's account current;

v. Defendant Loan Science sending Mr. Bernard a notice in February 2022 that Mr. Bernard was late and had a past due amount of over $800;

vi. Defendants UAS and Climb sending Mr. Bernard a statement in February 2022 stating that Mr. Bernard owed a total payment of $996.76;

vii. Defendants UAS and Climb sending Mr. Bernard a statement in May 2022 stating that Mr. Bernard owed a past due payment of $907.54 and a total amount due of $1,241.72;

viii. Defendants UAS and Climb sending Mr. Bernard an email notice on May 26, 2022, stating that his account was 120 days past due and about to be sent to

collections, despite the fact that Mr. Bernard had completed the Rehabilitation Agreement a month prior, and made May's payment in full on May 20, 2022;

ix. Defendants UAS and Climb sending Mr. Bernard a statement in June 2022 stating that Mr. Bernard owed a past due payment of $907.54 and a total amount due of $1,241.72; and

x. Defendant Climb responding to Mr. Bernard's CFPB complaint with conflicting and inaccurate information about the effect of the Rehabilitation Agreement.

xi. Under SLBR § 14-108(4), Defendants' actions described in Count I as violations of the SLBR constitute unfair trade practices under UTPA.

214. Such conduct caused Mr. Bernard harm and could not reasonably be avoided. Mr. Bernard was provided with misleading and inaccurate information regarding repayment.

215. Defendants' conduct does not provide a benefit to consumers or to competition that outweighs the harms caused to Mr. Bernard.

216. Defendants' misrepresentations were material.

217. Mr. Bernard reasonably relied upon these misrepresentations, which induced him to attend the bootcamp and take actions during repayment that he would not have otherwise taken.

218. The misrepresentations prohibited Mr. Bernard from making different choices with his loan that would have minimized the impact of negative credit reporting and kept his loan in good standing.

219. Defendants' conduct caused Mr. Bernard to miss out on other opportunities to bring his loan current, avoid making late payments, and avoid negative credit reporting.

220. The conduct resulted in substantial injury, including emotional and financial distress, as detailed in paragraphs 134-147.

221. Defendants' actions offer no countervailing benefits to consumers nor to competition.

222. As a result of the above violations of the Maine UTPA, Mr. Bernard is entitled to actual damages, restitution, reasonable attorney's fees, and all other equitable relief this court determines necessary and proper. 5 M.R.S. § 213.

223. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of the unlawful and wrongful conduct.

224. On August 29, 2023, Plaintiff sent a Maine UTPA Demand Letter to Defendants as required by 5 M.R.S. § 213(1-A).

COUNT VII –Maine Consumer Credit Code

225. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

226. Mr. Benard qualifies as a "consumer" as defined by the Maine Consumer Credit Code as he is "a natural person to whom consumer credit [was] offered or extended…" 9-A M.R.S. § 1-301(10).

227. The Climb Credit Agreement constitutes a "consumer loan" as defined by the Maine Consumer Credit Code as it is "a loan made by a person regularly engaged in the business of making loans…," to Mr. Bernard, "a person other than an organization," for a "personal, family or household purpose." 9-A M.R.S. § 1-301(14).

228. The extension and contracting of the Climb loan constitutes a "consumer credit transaction" as defined by the Maine Consumer Credit Code as it is a "consumer loan." 9-A M.R.S. § 1-301(12).

229. Climb qualifies as a "creditor" as defined by the Code, as it "regularly extends... consumer credit that is payable by agreement in more than 4 installments or for which the payment of a finance charge is or may be required..." and "[i]s the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness..." 9-A M.R.S. § 1-301(17).

230. Climb violated the Maine Consumer Credit Code's prohibition on false and misleading advertising by "engag[ing]...in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit transaction..." 9-A M.R.S. § 3-201(1). Climb's actions in violation of this Section include, but are not limited to:

i. Extending credit for a UNH bootcamp that was not as advertised; and

ii. Advertising a repayment schedule on the Credit Agreement that was inaccurate.

231. Defendants' actions violated Maine Consumer Credit Code § 5-115, by inducing Mr. Bernard to enter into a consumer credit transaction by misrepresenting the nature and quality of the bootcamp.

232. Defendants' actions caused Mr. Bernard to sign up for a bootcamp from which he received no value, and take on a $10,000 loan he would not have otherwise taken on had he known the truth about the program's quality or operations.

233. Defendants' actions caused Mr. Bernard's account to fall behind, hindering loan repayment and harming his credit, and made it more difficult for Mr. Bernard to get his loan back in good-standing.

234. As a result of these violations of the Maine Consumer Credit Code, Mr. Bernard is entitled to actual damages, rescission of the loan, and reasonable attorney's fees. 9-A M.R.S. §§ 5-115, 5-201(1), 5-201(9).

235. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of these violations.

COUNT VIII – Negligent Misrepresentation

236. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

237. 2U advertised and held out its bootcamp as if it was a UNH-run bootcamp, enticing students, including Mr. Bernard, to sign up for a program that in fact had nothing to do with UNH beyond its branding. Such actions amount to negligent misrepresentation of the nature and quality of the program.

i. 2U advertises its bootcamp as a "UNH" bootcamp, continuously using UNH's name, logo, and reputation as a public, non-profit institution.

ii. 2U advertises its bootcamp as a UNH bootcamp, with only short, brief statements that the bootcamp is "in partnership with Trilogy Education Services, a 2U, Inc. brand," negligently creating the impression upon a reasonable person that the bootcamp is embedded within the UNH infrastructure and primarily operated by UNH.

iii. 2U's advertising fails to disclose the extent to which the bootcamp is run by a for-profit company, and the lack of involvement by UNH.

iv. Instead, 2U highlights the quality education one can expect from the program by highlighting the reputation and status of its host, UNH.

v. 2U's statements about the bootcamp misleadingly convey that students can expect to receive an education that is of the same quality and caliber as a UNH education, when in reality the quality was substandard.

238. Pursuant to the FTC Holder Rule, language found in the Climb Credit Agreement, and Maine Consumer Credit Code § 3-403, Defendant Climb is also subject to all claims asserted in this count. If, in the alternative, UNH is determined to have been the provider of any of the goods or services at issue in these claims, Defendant Climb is still subject to any and all claims under the same theories of liability.

239. Plaintiff is entitled to equitable relief including restitution and disgorgement of all revenues, earnings, and profits that 2U and Climb obtained as a result of unlawful and wrongful conduct.

240. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of their unlawful and wrongful conduct.

COUNT IX – Unjust Enrichment

241. Mr. Bernard repeats and realleges the allegations in the above Paragraphs as if fully set forth herein.

242. Mr. Bernard conferred an economic benefit on 2U, which received some or all of the $9,995.00 proceeds from the Climb loan for the bootcamp tuition.

243. 2U has been unjustly enriched at the expense of Mr. Bernard and 2U has unjustly retained the benefit of its unlawful and wrongful conduct because Plaintiff did not receive the services or program advertised.

244. It would be inequitable and unjust for 2U to be permitted to retain any of the unlawful proceeds resulting from its unlawful and wrongful conduct.

245. Pursuant to the FTC Holder Rule and language found in the Climb Credit Agreement, Defendant Climb is also subject to all claims asserted in this count. If, in the alternative, UNH is determined to have been the provider of any of the goods or services at issue in these claims, Defendant Climb is still subject to any and all claims under the same theory of liability.

246. Plaintiff is entitled to equitable relief including restitution and disgorgement of all revenues, earnings, and profits that 2U and/or Climb obtained as a result of the unlawful and wrongful conduct.

247. Defendants are jointly and severally liable to Mr. Bernard for damages as a result of the unlawful and wrongful conduct.

WHEREFORE Plaintiff Mr. Bernard respectfully requests that this Court enter judgment in his favor against Defendants Climb, UAS, Loan Science, and 2U and grant the following relief:

i. Find that Defendants' conduct is in violation of the Student Loan Bill of Rights, Private Education Lending Law, Private Student Loan Registry, Maine Unfair Trade Practices Act, Maine Uniform Deceptive Trade Practices Act, and the Maine Consumer Credit Code;

ii. Order Defendants pay Mr. Bernard's actual damages that he suffered as the result of Defendants' violations;

iii. Order Defendants pay Mr. Bernard the maximum statutory damages permitted under the Student Loan Bill of Rights § 14-108(4) and the Private Education Lending Law § 16-110(4);

iv. Order Defendants pay Mr. Bernard's costs and reasonable attorney's fees pursuant to the Student Loan Bill of Rights § 14-108(4), Private Education Lending Law § 16-110(4), Maine Unfair Trade Practices Act 5 M.R.S.A. § 213(2), and Maine Consumer Credit Code 9-A M.R.S. §§ 5-115, 5-201(1), 5-201(9); and

v. Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date: 3/19/24

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