

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
OFFICE OF ATTORNEY GENERAL,  
ACTING BY ATTORNEY GENERAL JOSH  
SHAPIRO,

Petitioner,

v.

ELEVATION CAPITAL PARTNERS, LLC

Respondent.

CIVIL ACTION- EQUITY

G.D. No. 21-3357

Code 020-No Real Estate

**ASSURANCE OF  
VOLUNTARY COMPLIANCE**

Filed on Behalf of Petitioner:

COMMONWEALTH OF  
PENNSYLVANIA,  
OFFICE OF ATTORNEY  
GENERAL

Counsel of Record for this Party:

Jesse F. Harvey  
Chief Deputy Attorney General  
PA Id. No. 63435

Office of Attorney General  
Bureau of Consumer Protection  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222  
(412) 565-2883

FILED

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DEPT. OF COURT RECORDS  
CIVIL FAMILY DIVISION  
ALLEGHENY COUNTY PA



students, who attended schools operated by the now defunct Education Corporation of America (“ECA”), including but not limited to, five (5) on ground “Brightwood Career Institute” campuses in Pennsylvania, as well as Virginia College;

**WHEREAS**, for the purpose of this Assurance of Voluntary Compliance (“Assurance”), “PA Student AR” shall mean any balances allegedly owed to ECA for loans by individuals who attended an ECA school that operated in Pennsylvania or a Pennsylvania resident who attended Virginia College, and who either (1) graduated from or (2) who withdrew from school more than 120 days prior to its closure;

**WHEREAS**, the PA Student AR consists of direct loans ECA made to students that could not fully pay for ECA’s high tuition costs through independent means or through federal or state loans and grants;

**WHEREAS**, since November 14, 2018, ECA has been subject to judicially supervised receivership proceeding at *VC Macon GA, LLC. V. Virginia Coll., LC*, Case No. 5:18-cv-00388-*TES*, United States District Court for the Middle District of Georgia, Macon Division (“Receivership Proceeding”);

**WHEREAS**, prior to the sale of certain nationwide student accounts receivable, including PA Student AR, to Respondent, the Commonwealth and the Maryland Office of Attorney General filed a joint objection to a “free and clear” sale of the accounts receivable in an effort to preserve consumer claims and defenses as well as their respective offices’ ability to enforce applicable law, see Receivership Proceeding at Docket No. 261;

**WHEREAS**, by Order of the Receivership Court dated September 17, 2019, District Court Judge Tilman E. Self, III, approved the sale of certain nationwide student accounts

receivable, including PA Student AR, to Respondent at Receivership Proceeding Docket No. 268;

**WHEREAS**, at the time of the sale's approval, the gross amount of the PA Student AR totaled \$2,636,675.78;

**WHEREAS**, the aforementioned Order stated at relevant part that nothing in said Order "or Sale Agreement and documents related thereto releases, nullifies, precludes, or enjoins any claim or defense that a debtor may assert, the enforcement of any legitimate police or regulatory power or liability to any educational or regulatory agency or accreditor, including but not limited to the DOE, any other similar federal and state educational regulators and accreditors, or any other federal or state governmental unit, that any person or entity would otherwise be subject to under applicable law as the post-sale owner or collector of the Collectable AR after the date of entry of this Order";

**WHEREAS**, after the Court approved the aforementioned sale, Respondent entered into contracts with third party entities ("Servicers") to collect and service the accounts receivable for valuable consideration consisting of a portion of any amounts successfully collected;

**WHEREAS**, it is the Commonwealth's position that the PA Student AR was procured as the result of ECA's misrepresentations and material omissions to students prior to its closure related to educational quality, accreditation, career services and the system's financial condition;

**WHEREAS**, without limitation, the Commonwealth has identified the following conduct bringing into question the validity of the PA Student AR:

- a. federal statistics, showing that Pennsylvania Brightwood locations had relatively high cohort default rates compared to the 2015 national average

and that by one measure under the federal Gainful Employment (GE) metric, 29 of the 33 programs received a non-passing ratings;

- b. general misrepresentations made in school catalogs to students regarding the quality of instruction and promised student services, including the provision of future career development services;
- c. the financial troubles that ECA faced resulting in the Receivership Proceeding including its failure to meet United States Department of Education financial responsibility standards; and
- d. ECA's failure to disclose to incoming students that its existing accreditor had lost its recognition as an accrediting body, its subsequent failure to obtain a replacement accreditor, as well as the eventual withdraw of its accreditation by its original accreditor;

**WHEREAS**, Respondent is a "Debt Collector" as defined by the *Pennsylvania Fair Credit Extension Uniformity Act*, 73 P.S. 2270.1 *et seq.* ("FCEUA")<sup>1</sup>;

**WHEREAS**, under Section 2270.4(a) of FCEUA, it shall constitute an unfair or deceptive debt collection act or practice if a debt collector violates any of the provisions of the *Fair Debt Collection Practices Act*, 15 U.S.C. § 1692 *et seq.* ("FDCPA");

**WHEREAS**, under Section 1692e of the FDCPA:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

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<sup>1</sup> Under section 2270.3 of FCEUA, a "Debt Collector" is defined as "a person not a creditor conducting business within this Commonwealth, acting on behalf of a creditor, engaging or aiding directly or indirectly in collecting a debt owed or alleged to be owed a creditor or assignee or a creditor."

(2) The false representation of—

(A) the character, amount, or legal status of any debt;

.....

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

**WHEREAS**, it is the Commonwealth's position that efforts to collect PA Student AR would violate the aforementioned provisions of FCEUA and the FDCPA;

**WHEREAS**, Section 2270.5(a) of FCEUA states that a violation of FCEUA is deemed a violation of the Consumer Protection Law, 73 P.S. § 2270.5(a);

**WHEREAS**, Respondent voluntarily ceased collection efforts of PA Student AR when apprised of the Commonwealth's position;

**WHEREAS**, Respondent warrants that since it acquired the PA Student AR it has not sold, transferred or assigned the PA Student AR;

**WHEREAS**, pursuant to Section 201-5 of the Consumer Protection Law, this Assurance shall not be considered an admission by Respondent of any violation of the Consumer Protection Law for any purpose, 73 P.S. § 201-5; and

**WHEREAS**, this Assurance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Section 201-4. *See* 73 P.S. §§ 201-4 and 201-5.

**SETTLEMENT TERMS**

**NOW THEREFORE**, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, officers, partners, agents,

representatives, employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

**II. The above recitals are incorporated herein as though fully set forth.**

**III. Injunctive and Affirmative Relief**

A. Upon the Effective Date of this Assurance, Respondent shall comply with all provisions of the Consumer Protection Law and any amendments thereto; and is permanently enjoined from any violation thereof.

B. Upon the Effective Date of this Assurance, Respondent shall comply with all provisions of FCEUA and the FD CPA and any amendments thereto; and is permanently enjoined from any violation thereof.

C. Upon the Effective Date of this Assurance, Respondent shall be permanently enjoined from engaging in any collection efforts related to PA Student AR, whether directly or through any other agent or entity, including but not limited to the Servicers it has previously contracted with to collect and service PA Student AR.

D. Upon the Effective Date of this Assurance, Respondent shall be permanently enjoined from selling, transferring or assigning PA Student AR.

E. Upon the Effective Date of this Assurance, Respondent shall not accept any payments representing PA Student AR and shall instruct its Servicers to cease current and future acceptance of any payments representing PA Student AR.

F. Within 30 days of the Effective Date of this Assurance, Respondent will:

1. Complete all administrative actions necessary to discharge and cancel all outstanding balances representing PA Student AR; and,

2. Cause its Servicers to submit written or electronic requests to all Consumer Reporting Agencies<sup>2</sup> to which Respondent or the Servicer has reported information about any PA Student AR, directing those Consumer Reporting Agencies to delete the consumer trade lines associated with the PA Student AR by updating those consumer trade lines with the appropriate codes to reflect that each of those consumer trade lines has been deleted and, if an explanation is required, with codes referencing a negotiated settlement.

G. Respondent will relinquish all dominion, control, and title to all payments made to it or to its Servicers representing PA Student AR, minus any portion of those payments that were retained by Respondent's Servicers as a fee charged to Respondent for collecting or attempting to collect the PA Student AR. No part of any payment collected by Respondent or its Servicers for amounts representing PA Student AR, other than the fee charged to Respondent by its Servicers to collect the PA Student AR, may be retained by Respondent or its Servicers.

H. Within thirty days of execution of this Assurance, Respondent shall pay to the Commonwealth the total amount it or its Servicers collected representing PA Student AR, minus any portion of those payments that were retained by its Servicers as a fee for collecting the PA Student AR.

I. Any payment received representing PA Student AR after the execution of this Assurance shall be returned to the payor or refunded in full by Respondent or its Servicers, without any portion retained by Respondent or its Servicers.

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<sup>2</sup> "Consumer Reporting Agencies" has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f) and further means the credit bureaus and consumer reporting agencies to which the Servicers have reported information about the PA Student AR.



J. Respondent, and its officers, employees, representatives, and agents who receive actual notice of this Assurance, whether acting directly or indirectly, may not disclose, use, or benefit from Consumer Information<sup>3</sup>, except as follows:

1. Consumer Information may be disclosed if requested by a government agency or required by law, regulation, or court order; and
2. Consumer Information may be used to effectuate and to carry out the obligations set forth in this Assurance.

K. Within 120 days of execution of this Assurance, Respondent will submit to the Commonwealth an accurate written compliance progress report that:

1. Describes the manner and form in which Respondent has complied with this Assurance; and
2. Contains a list of all individuals allegedly owing PA Student AR setting forth the following information with separate fields for:
  - i. his/her name;
  - ii. unique identifying loan or student number(s);
  - iii. Social Security Number;

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<sup>3</sup> **Consumer Information** means identifying information obtained by Respondents or its Servicers about any individual allegedly owing PA Student AR, including that individual's name, address, telephone number, email address, social security number, or any data that enables access to any account of that individual (including a credit card, bank account, or other financial account). Consumer Information does not include any compilation or summary of Consumer Information if such compilation or summary does not include identifying information of individual consumers.

- iv. last known contact information (mailing address, email address and telephone number, including any updated information obtained by Respondent's Servicers);
- v. outstanding balance(s) as of the day before the execution of the Assurance (broken down among principal, interest, fees and any other amount due and owing); and,
- vi. the amount of payments that the individual made that were remitted by Respondent to the Commonwealth pursuant to Paragraph H, above.

#### **IV. Miscellaneous Terms**

A. The Court of Common Pleas of Allegheny County, Pennsylvania shall maintain jurisdiction over the subject matter of this Assurance and over Respondent for the purpose of enforcing this Assurance.

B. Time shall be of the essence with regards to Respondent's obligations hereunder.

C. Nothing in this Assurance shall be construed to waive or limit any right of action by any individual, person or entity, or by any local, state, federal or other governmental entity.

D. Scott Schambacher of Respondent hereby states that he is authorized to enter into and execute this Assurance on its behalf; and, further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.

E. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance, whether required prior to, contemporaneous with, or subsequent to the Effective Date.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance shall not constitute a waiver of its rights hereunder.

G. This Assurance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

H. This Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent understands and agrees that if any false statement in or related to this Assurance was made on its behalf, such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondent agrees by the signing of this Assurance that it shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court of Common Pleas of

Allegheny County, or any court of competent jurisdiction, to seek the penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

K. The "Effective Date" of this Assurance shall be the day it is filed with the Court.

L. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and the Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

M. Neither the Commonwealth nor Respondent shall be considered the drafter of this Assurance or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Assurance.

N. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

**(SIGNATURES ON FOLLOWING PAGES)**

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

**FOR THE PETITIONER:**

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO  
ATTORNEY GENERAL

Date: 4/6/21

By: 

Jesse F. Harvey  
Chief Deputy Attorney General  
PA Attorney I.D. No. 63435  
Bureau of Consumer Protection  
1251 Waterfront Place, Mezzanine Level  
Pittsburgh, PA, 15222  
Telephone: 412-565-2883  
Facsimile: 412-880-0196

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**FOR THE RESPONDENT:**

ELEVATION CAPITAL PARTNERS, LLC

Date: 2/22/2024

By: 

**Scott Schambacher, Manager**

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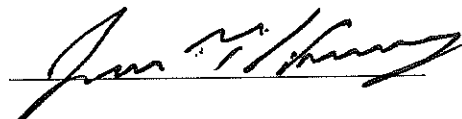
CIVIL ACTION- EQUITY

G.D. No. 21-3357

CERTIFICATE OF SERVICE

I, Jesse F. Harvey, hereby certify that a true and correct copy of the foregoing Assurance of Voluntary Compliance was served by UPS Overnight Mail and email ([dclem@johnstonclem.com](mailto:dclem@johnstonclem.com)) on **April 6, 2021** upon the below:

David M. Clem  
Johnston Clem Gifford PLLC  
1717 Main Street  
Suite 3000  
Dallas, Texas 75201  
(Counsel for Respondent)



Jesse F. Harvey  
Chief Deputy Attorney General  
Office of Attorney General  
Bureau of Consumer Protection  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222  
(412) 565-2883  
[jharvey@attorneygeneral.gov](mailto:jharvey@attorneygeneral.gov)